

# Ecuador

## Chamber of commerce:

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## An overview of the corporate landscape

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The Ecuadorian legal system is constitutional and statutory. At the moment, a new constitution is under revision. However, fundamental rights remain the same, particularly the principle of equal treatment for national and foreign investment and the freedom to engage in economic activities.

International treaties prevail over domestic laws under constitutional provisions. Ecuador has executed a number of investment protection treaties and double-taxation agreements. It has been a member part of the WTO since June 1996.

Foreign trade is regulated by the Law of Foreign Trade and Investments (LEXI), which expressly requires observance of the commitments assumed by Ecuador as a member of the WTO. From an administrative viewpoint, the Foreign Trade and Investment Council, created in connection with LEXI, is the agency responsible for defining national foreign-trade policies. At the moment, Ecuador observes the principle of free trade.

### Tariffs and taxation

Ecuador, as a member of the Andean Community, has adopted a common foreign tariff. It consists of four levels of tariffs: 5%, 10%, 15% and 20%.

Ecuador has a flat corporate rate of 25% for income tax purposes. The tax brackets for individuals range from 0% to 35%. Dividends and profits are tax-exempt. Interest, royalties and other payments remitted abroad are subject to a 25% withholding tax. Only interest accrued on foreign loans granted directly from government to government or to specific multilateral credit institutions, such as the World Bank, are tax-exempt

provided they meet the conditions set forth in the tax law.

The VAT rate is 12%, following the destination principle, hence exports are zero-rated. VAT grants exemptions to certain goods and services, such as receptive tourism.

A tax reform, in effect as of January 2008, introduced a capital exit tax that is levied on all payments remitted abroad at a rate of 0.5%. This new tax exempts foreign-trade transactions and foreign loans duly registered at the Central Bank of Ecuador. The reform also eliminated the 15% special consumption tax on all telecoms services.

### Equal treatment

Ecuador warrants equal treatment for national and foreign investors. This guarantee also stands under the Andean Community provisions in this respect. Foreigners who register their investments have, among others, the following guarantees:

- tax-free repatriation of net profits;
- tax-free remittance of earnings from total or partial liquidation of enterprises in which investment was made;
- no restrictions on negotiating recorded investment;
- unrestricted access to promotion, technical assistance, cooperation and similar mechanisms; and
- right to ownership.

All commercial or industrial companies are governed by the Companies Act, which provides for types of company as listed below:

- General partnership and simple partnership, although it is recognised that they are not often used.
- Limited liability company. No personal liability of members for business obligations. May operate with only two members.
- Stock company (UK public limited company/US corporation). Its capital is divided into freely negotiable shares and the shareholders are liable only up to the amount of their stockholding.

- Public/private company, formed by private capital and participation by the state, municipalities, provincial councils or public/semi-public juridical persons.
- Holding company, whose purpose is the purchase of shares or equity interests of other companies in order to bind them and exercise their control through connections concerning stockholding, management, administration, credit liability or results.

Companies carrying out financial activities are governed by the Ecuadorian Law for Financial Institutions.

### Operation permit for foreign companies

Subject to an authorisation granted by the Superintendence of Companies, any foreign company may operate in Ecuador through a domiciled branch. Foreign companies authorised to conduct business in Ecuador are subject to local legislation in respect of their acts and contracts executed in Ecuador. The business of the domiciled branch is governed by the by-laws of the parent company.

### Liability and bankruptcy

As a general rule, both in a limited liability company and a stock company, shareholders are liable only up to the amount of their contributions. However, general managers are personally liable for the labour and tax obligations of the business.

Insolvency is presumed. As a consequence, it may be declared that there is sufficient reason to initiate a creditors' meeting or bankruptcy proceedings if the debtor fails to pay or to surrender assets or if, having surrendered assets, these are not sufficient to cover the debt. This procedure is conducted before a civil judge of the domicile of the natural or juridical person.

A final and legal bankruptcy order against a company leads to the company's dissolution and liquidation. Once the company's assets are cashed, its obligations are paid following the order. First-class privileged credit, which

ranks over mortgages and pledges, comprises the company's debt with the National Treasurer, the Ecuadorian Institute of Social Security and the company's workers.

## Financial and corporate

Recommended firms	
<b>Tier 1</b>	Bustamante & Bustamante Pérez Bustamante & Ponce
<b>Tier 2</b>	Coronel & Pérez Quevedo & Ponce Romero Arteta Ponce
<b>Tier 3</b>	Corral-Sánchez Paz Horowitz Zavala Baquerizo Abogados

Despite recent political turmoil, the Ecuadorian economy has continued its slow growth. Volatility has curtailed some foreign private investment, especially in industries like mining and energy where political uncertainty can affect the market. For example, the government has threatened to nationalise the energy sector, which is causing trepidation among investors.

Ecuador is one of the biggest oil exporters in Latin America. The government has been directing a lot of its resources to large infrastructure and public works projects, in hopes of elevating the standard of living for its many poorest citizens. In order to maintain this level of spending on social programmes, oil prices will need to remain high, and the country must find ways to exploit oil reserves.

Recently Ecuador's attorney-general has considered terminating the country's contracts for oil exploration with US company City Oriente and the Brazilian state-owned oil company, Petrobras. Such state intervention in the economy is likely to increase in other strategic areas like banking and telecoms. In May 2008, the government extracted a combined \$700 million from Spanish Telefónica and Mexican América Móvil in order to renew their concessions in Ecuador.

Possibilities for gold and copper mining in the country began to materialise recently as another source of income to support the country's expansive social programmes. But in April 2008, the Constitutional Assembly passed a mining mandate essentially suspending all mining activities for five months and cancelling 80% of all mining concessions, which will be reverted to the state without

compensation. This does not bode well for attracting the foreign investment that the country so desperately needs.

Another important development is the Manta ports project. Manta, the closest port to Asia on Latin America's west coast, will be a new means of facilitating traffic and cargo from Asia to Brazil. Instead of going through Panama or around Chile, cargo will be deposited in Ecuador at the port of Manta, and travel down the Amazon to Brazil. The Manta deal could also help smooth tensions between China and Ecuador, which have escalated since Ecuador's president, Rafael Correa, raised the windfall tax on oil revenue to nearly 100%. Of course, this greatly affects Chinese oil companies like PetroChina that have huge investments in Ecuador.

In fact, in response to the increased tax on oil revenues, certain oil companies operating in Ecuador have filed claims against the government at the International Centre for Settlement of Investment Disputes in Washington DC. At the time of writing, the government had offered to cut the windfall profits tax in exchange for the companies dropping their arbitration claims.

### Bustamante & Bustamante

"Bustamante & Bustamante is quite capable in virtually all aspects of Ecuadorian law," says a client. The firm's attorneys also received praise from competitors, with one noting: "Juan Carlos Bustamante is the best lawyer in Ecuador. He is the most sophisticated and reliable senior practitioner in the market." The firm is the largest in the country, with over 50 lawyers, and has offices in three Ecuadorian cities.

Bustamante has actively represented clients in the regional leg of their global acquisitions. Throughout the summer of 2007 partner José Rafael Bustamante led the team representing Banco Santander on all aspects Ecuadorian law regarding Arcos Dorados' purchase of the McDonald's franchise across Latin America. The firm conducted the due diligence and advised the lender, Banco Santander, regarding all financial documents for closing. This \$700 million deal was one of the biggest Latin American transactions of the year, and Bustamante & Bustamante reinforced its position as one of the premier firms in Ecuador by virtue of its participation.

Bustamante & Bustamante is in the process of advising members of a consortium that is providing services on the Mazas project, one of the largest hydroelectric plants in Ecuador. The firm's client, Impreglio, in a joint venture with Ecuadorian company Constructora Herdoiza Crespo, has numerous contracts with service providers for different

aspects of constructing and developing the plant. Partner Patricia Ponce leads the team reviewing all government contracts and preparing the documentation that deals with expanding the project and building access roads for a new electrical plant.

### Leading lawyers

José Rafael Bustamante  
Juan Carlos Bustamante

### Pérez Bustamante & Ponce

Pérez Bustamante & Ponce has advised on both local and global transactions, working with important regional clients, international law firms and global corporations.

Pérez Bustamante & Ponce provided Ecuadorian counsel to McDonald's in the sale of its franchises across Latin America to the Arcos Dorados consortium, which was represented in Ecuador by Bustamante & Bustamante. The \$700 million transaction was one of the most important deals of the year, and the firm's participation in the Ecuadorian portion suggests its ability to work on complicated and multi-jurisdictional deals.

The firm provided local counsel for international law firm Davis Polk & Wardwell in the \$17.9 billion IPO of Visa. Via Davis Polk, the firm advised international financial institutions including JP Morgan, Goldman Sachs, Citigroup, Merrill Lynch, HSBC, and Bank of America as joint bookrunners and representatives of the IPO's underwriters.

Another highlight for the firm was its role in General Cable's \$735 million acquisition of the global wire and cable business of Freeport-McMoRan Copper & Gold. The firm worked closely with international law firm Blank Rome on the transaction.

In addition, Pérez Bustamante & Ponce has worked on important regional M&A deals. In December 2007 partners Federico Chiriboga and Diego Pérez-Ordóñez led the team that advised Alpina, the Colombian dairy products group, in the acquisition of Proloceki, an Ecuadorian company that runs a large dairy products operation. This acquisition enabled Alpina to boost its presence in the Andean region and become one of the largest producers of dairy products there.

### Leading lawyers

Rodrigo Jijón-Letort  
Pablo Ortiz-García  
Sebastián Pérez-Arteta  
José M Rumazo-Arcos  
Jaime P Zaldumbide-Serrano