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The new Constitution and its economic effects

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As reflected over the past two years in the news, Ecuador is undergoing a period of profound economic and political change. Since 2007, Ecuador has been governed by Rafael Correa, an economist and former university professor trained in the US and Belgium.

Following his first election, Correa imposed a governmental programme focused on reform at the root level of Ecuador's political institutions – generally identified with corruption and inefficiency – and on installing an economic system centred on state planning and intervention. Correa was re-elected as President of the Republic on April 26 and, unless there is another election, he will remain in office until 2013.

The nature of the Constitution

Precisely based on his promise of change, a Constituent Assembly met in Ecuador during 2008 and drafted a new Constitution – the twentieth since Ecuador's independence in 1830. The new Constitution has been in force since October 2008 and, in many ways, it presumes a switch towards a more state-oriented stance.

First of all, it is a document that grants broad powers to the executive body to the detriment of the legislative body. With respect to business and investments, it takes up the state's interference in areas deemed to be strategic such as petroleum, mining, infrastructure projects, ports and airports. It respects investment from the private sector, but grants privileges to public investment.

In many cases, economic activities are subordinated to the exercise of fundamental rights and collective rights. It favours – extensively and in detail – the rights of nature, even more generously than with respect to interna-

tional obligations committed by Ecuador. And, as a final example, it strictly protects individual and collective labour rights.

Furthermore, the new Constitution recognises the existence and validity of arbitration as an alternative mechanism for dispute resolution and, in recent international arbitration cases mostly relating to investments, the Ecuadorian state has accepted the venue of arbitral tribunals as the place to resolve disputes. The country has executed approximately two-dozen bilateral investment protection treaties with other countries.

Economic conditions

In Ecuador, a country where the last president who naturally completed his term of office was elected in 1992, recent years have brought about relatively steadfast economic and political stability. It is necessary to bear in mind that Ecuador does not have a local currency, but that it uses the US dollar as its lawful currency and legal tender. The dollar was officially implemented in 2000, and has brought about a reduction of inflation to single-digit monthly indexes, expansion of credits for consumption and, according to economic analysts, a reduction in the level of poverty.

Despite political events, the government has announced the promotion of private foreign investment in areas such as mining and infrastructure projects. During recent months, mining has received much attention as a result of the enactment of a new Mining Law, which encourages long-term investment in mining activities. Besides, public projects such as electricity generation or road building are expected to take place. It is also foreseen that the Ecuadorian state – based on a new law on public contracting – will begin an aggressive procurement and biddings programme.

Also despite political events, the consumer economy has continued and business opportunities in these areas have arisen, reflected in mergers, acquisitions, joint ventures, distributor contracts or the creation of new enterpris-

es. Therefore, business in Ecuador – although with a greater dose of state presence – has been carried out without prejudice to political occurrences and regional situations.

Financial and corporate

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

If the constitution ratified in July 2008 gives recently re-elected President Correa extensive power over the nation's legislature and courts, one faction the socialist president has not been able to bring under control is Ecuador's lawyers. Many leading attorneys have been outspoken against the administration's policies towards foreign trade and private operators in the country's oil, mining, transportation and telecoms industries. As one lawyer put it: "We don't have a president – we have a dictator."

It would seem the erratic policies of Correa – which include freezing all mining and exploration activities in April 2008 and then lifting the ban early last year – have sent mixed messages to foreign investors attracted to Ecuador's vast wealth of natural resources. In the midst of a global financial crisis it may be an easy choice for investors to forgo venturing into Ecuador altogether.

Foreign investors have found vocal advocates in their representative lawyers, who have

been publishing critical editorials in local media sources and tirelessly lobbying the government to change its tune regarding private businesses. While Correa has utilised state media channels to reply to critics, his actions speak louder than his words. In July 2008 Ecuadorian police seized several television stations that had at times been critical of the regime and the stations' managers were replaced by the president.

Another station embroiled in disputes with the government is Teleamazonas, which broadcasts over channel four in Ecuador. Journalists at the station have been accused by the government of disseminating false information about the recent elections and transmitting images of bullfighting before the permitted time, among other charges. Some lawyers in Ecuador point to one particular reporter's relation to a prominent attorney as a sign that they are under a focused attack by the government. Other lawyers play down the notion of a conspiracy, noting that many of the actions undertaken by the government are in line with socialist agendas throughout the region.

If the president is making few friends among the nation's lawyers, he is extending the same chilly relationship to some of his neighbours. In November 2008 the Brazilian government withdrew its envoy from Ecuador after Correa expelled Brazilian developer Odebrecht over a dispute involving the San Francisco hydroelectric power plant. Ecuador's refusal to recognise its obligation to the Brazilian development bank BNDES, which supported the project with \$460 million in financing, not only further cooled relations with Brazil but effectively closed an important source of capital for infrastructure projects.

Bustamante & Bustamante

While competitors feel the traditional family structure of Bustamante might limit the firm's growth, they also note the abilities of the two senior attorneys. "Juan Carlos Bustamante is one of the best attorneys in Quito," says one lawyer, "and his brother José Rafael is a good rainmaker". Clients concur and mention Mario Flor as a capable attorney representing financial clients. "He is young," one client notes, "but he is doing a very good job advising and assisting us as a client."

In the oil and gas industry Bustamante is considered Ecuador's leader, and rivals mention an impressive list of clients as evidence. One good example is bottled gas producer Agip, with which the firm has a longstanding relationship. Juan Carlos Bustamante handles all the legal aspects of the company, from day-to-day business to managing the regulatory

requirements of Ecuador's ministry of mines and petroleum.

In the corporate department, Augustin Hurtado provides ten of Ecuador's largest retailers with advice on tax, customs and other matters relating to conducting business in the country. The list of representative clients includes supermarket chain Supermaxi, drug store Fybeca and sporting goods retailer Marathon Sports. Early last year these companies, which bring in an average of \$1.5 billion a year, led a group of businesses before the government to discuss recent decisions related to tariffs, quotas and quality standards, among other topics.

In the financing market, Flor and Francisco Bustamante advised the Inter-American Development Bank in extending \$50 million of capital to Banco Pichincha, Ecuador's largest bank, to provide credit for small and medium-sized enterprises.

Leading lawyers

Juan Carlos Bustamante
Mario Flor
José Rafael Bustamante

Pérez Bustamante & Ponce

It can be considered a tough year for law firms in Ecuador, and several lawyers note that the political situation may be making things particularly tough for the partners of Pérez Bustamante & Ponce. One competitor suggests that a war of words taking place in Ecuador's media between several partners of the firm and President Correa may have ramifications for their clients.

Competitors and representative clients point to a number of attorneys at Pérez Bustamante as top lawyers in Ecuador. One rival particularly mentions Jaime Zaldumbide as a capable, if often overlooked, asset to the firm's oil and gas practice. "I wish I could bring him to my law firm," the attorney says.

Affirming its leadership in local markets, Pérez Bustamante has taken part in some of the largest recent transactions in Ecuador. In 2008 the firm advised Kinross Gold in its \$1.19 billion global acquisition of fellow mining company Aurelian Resources. The purchase included Aurelian's main property – the Fruta del Norte gold discovery in south east Ecuador, giving the transaction a particularly important local aspect.

Longstanding Pérez Bustamante client Hewlett Packard (HP) yielded transactional work in mid 2009 with its decision to acquire computer services firm EDS for \$13.9 billion. Diego Pérez-Ordóñez's team advised on the Ecuadorian aspects of the acquisition, which is expected to more than double HP's services revenue.

One particularly strong transaction in 2008 involved the joining of Conclina, which administers the Quito Hospital Metropolitano, with Hospital de los Valles in a joint venture to administer the latter. While not technically a merger, the agreement paves the way for a future acquisition of Hospital de los Valles by Conclina, which Pérez Bustamante advised in the process.

Leading lawyers

Rodrigo Jijón
Pablo Ortiz-García
Sebastián Pérez-Arteta
Francisco Roldán-Cobo
Jaime P Zaldumbide

Romero Arteta Ponce

While competitors note the outstanding abilities of the partners at Romero Arteta Ponce, several cite the fact that the firm has chosen a family-oriented structure as a limiting aspect to the firm's practice. "From my perspective they have decided by philosophy to remain a family firm, which has limited their ability to engage large clients," says one peer.

Competitors praise the partners of Romero for their ability to bring in and retain representations. "Diego Romero is mid-aged but very active and is very good with clients," says one competitor. One such client is Toyota, which began importing cars to Ecuador in 2005. The government's promotion of hybrid technology made Ecuador the first nation in South America to begin importing the Prius. Romero advises Toyota on administration matters and the distribution of its vehicles in the nation.

Another important client is Delta Airlines, which the firm has helped gain permission from Ecuador's civil aviation authority to expand its operations. In 2008 the airline announced new non-stop flights to Quito and Guayaquil from the US.

Leading lawyers

Diego Romero
Gustavo Romero

Other notable firms

Clients praise José Meythaler of Larreátegui Meythaler & Zambrano for his ability to foresee issues they may face in Ecuador's shifting business landscape. "He helps me very much in the prediction of the future and what we have to expect," one client says.

The firm has had success representing oil clients such as Ecuador TLC and Vetra in exploration contracts with the Ecuador government.

Leading lawyers: José Meythaler