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Mergers and acquisitions in Ecuador

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In Ecuador, the core regulations governing mergers and acquisitions are contained in the Corporations Law, last amended in January 2006. Furthermore, specific rules may be – and in fact have been – set forward by the specialized regulatory body, the Superintendency of Corporations (the Superintendency), via resolutions. The Superintendency is granted the power to do so by the Corporations Law. The Superintendency also has the power to provide the criteria for the interpretation of the Corporations Law; these are the so-called doctrines of the Superintendency.

Other legal matters connected to mergers and acquisitions – notably tax regulations – are set out in the Tax Code, the Law of Internal Tax Regime and its accompanying regulations. Furthermore, other subject-specific laws, such as the Insurance General Law, also contain references to mergers and acquisitions.

Core regulations for mergers and acquisitions

The Ecuadorian Corporations Law deals with mergers and acquisitions under the umbrella concept of corporate fusions. Under this concept, regulations for mergers and acquisitions are intermeshed. Nevertheless, a fusion takes place either when two corporations merge to create a new one (a merger), or when one or more corporations are absorbed by another one (an acquisition). Overall, though, regulations for mergers and acquisitions under Ecuadorian law are not particularly lengthy or detailed.

For both mergers and acquisitions to take place, shareholders must convene in an extraordinary session, called for this specific purpose. The agreement must be approved with a vote similar to that required by the corporations' bylaws for voluntary closure. To maintain surveillance over these transactions, the law mandates that the deed of merger and/or acquisition must be approved by a judge or by the Superintendency and must be registered and published. The transaction comes into effect with the registration.

For the acquisition to take place: (i) the acquired company must be dissolved and all assets and liabilities transferred to the buying firm; and (ii) any impending financial obligations of the acquired company must be transferred to the acquiring firm. Under the Corporations Law, partners and shareholders are given a proportion of shares in the new entity equivalent to their holdings in the original corporation. In both cases the deed must contain the final profit and loss statement, and any changes to the bylaws resulting from the transaction. The number of shares allocated to each new shareholder must also be specified in the deed.

The law also specifies that assets can be transferred at their current market value, rather than at their nominal value. In 2000, the Superintendency passed Resolution 10, which regulates the appraisal of assets for the purpose of mergers and acquisitions. As far as nominal value is concerned, Resolution 10 contemplates the conversion of values from Ecuador's former currency (*sucres*) to its actual legal currency, US dollars. This resolution also states that asset market value will be fixed by shareholders, who will base their appraisal on the information provided by an appointed expert.

Finally, doctrine 135 of the Superintendency exempts corporations absorbed through an acquisition from the standard process by which third parties can object to any modification of, among other things, a corporation's capital, name, and domicile.

Related regulations

Article 27 of the Ecuadorian Tax Code determines that the acquiring firm is responsible for any tax obligations that the acquired firm may have impending for the fiscal year in which the transaction takes place. However, this obligation will be limited to the value of assets transferred, and will expire a year after the Internal Revenue Service has been notified of the transaction. The same scheme is applicable to mergers.

The Regulation for the Application of the Law of Internal Tax Regime determines that the transference of assets (and liabilities) through mergers and/or acquisitions will not be taxable. Likewise, if value is added to, or diminished from, shares as a result of the merger, taxes will not be paid over the added value, nor will the reduction be applicable for tax deductions.

Finally, the Insurance General Law, aiming to protect the interests of insured individuals, determines that the merger of insurance or reinsurance companies must be duly approved by the Banking Superintendency, and must be conducted according to the procedures established in the Corporations Law, described above.

Corporate and commercial

Recommended firms
Tier 1
Bustamante & Bustamante
Pérez Bustamante & Ponce

Tier 2
Coronel & Pérez
Larreátegui & Larreátegui
Quevedo & Ponce
Romero Arteta Ponce

Bustamante & Bustamante

Along with Pérez Bustamante & Ponce, Bustamante & Bustamante is the best choice for corporate and financial advice in Ecuador. The firm comprises 13 partners and around 25 other lawyers, and has developed a rock-solid reputation for advice across the full gamut of corporate law, including administrative, financial and energy legislation. It is also respected as "an excellent choice for intellectual property matters".

In what was probably its most noteworthy mandate of the last year, Bustamante & Bustamante landed the plum role advising the lenders of a loan granted in relation to the management and construction of Quito's new airport. The deal has involved complex negotiation with Corporación Quiport and the Aecon Construction Group, as well as with the Quito municipal authorities and the Ecuadorian government. The complexity of the transaction led to it being designated by *Air Finance Journal* as the 2005 Latin American transaction of the year.

Among the year's other transactions of note, Bustamante & Bustamante advised drinks conglomerate AmBev in relation to its acquisition of Ecuadorian company Cervecería Suramericana, and acted for the Fonterra Cooperative Group in relation to the establishment of a joint venture with Société des Produits Nestlé in Latin America for the production and distribution of liquid and powdered milk products.

Bustamante & Bustamante is a member of Multilaw, a leading network of independent law firms, and the Bomchil Group, an association of law firms spanning Latin America set up to provide services to international clients.

Leading lawyer	**Key contact partner**
José Rafael Bustamante	José Rafael Bustamante

Pérez Bustamante & Ponce

Pérez Bustamante & Ponce has had a fantastic year, winning roles across the board and attracting praise from all corners of the Ecuadorian legal market in the process. All the firm's lawyers are "very experienced," but from the team, Sebastian Perez-Arteta stands out for being, in the words of one client, "a very prepared and proactive lawyer," and another client called Pablo Ortiz-García "absolutely second-to-none".

Pablo Ortiz-García and Jose Rumazo head the four-lawyer banking department, although most of the firm's notable transactions were handled by Bruno Pineda. For example, over the past year he has acted for Dresdner Bank on the closure of its representative offices in Ecuador, and provided UBS with a survey of the jurisdiction's laws governing securities, banking and other products. At the time of writing Pineda was providing ongoing advice to FMO Investment Bank in relation to its operations in Ecuador; the firm also provides regular advice to Citibank.

The firm also handles a range of transactional banking matters. Washington DC's Interamerican Investment Corporation is a regular client, and turned to the firm twice for banking advice over the past year – first, in July 2005, in relation to a $2.5 million revolving credit facility to Procredit, and secondly, in October 2005, in relation to a similar facility, worth $7 million, to Banco Bolivariano. In another banking highlight, Ortiz-García and Pineda joined forces to act for Citibank on a structured lease transaction for Consorcio Ecuatoriano de Telecomunicaciones.

Ortiz-García's ambit extends to capital markets work too, a department he runs in conjunction with Sebastian Perez-Arteta. The firm's work over the past year has covered debt and equity work. On the debt side, the firm found itself across the negotiating table from US powerhouse Cleary Gottlieb Steen & Hamilton when it advised JP Morgan and Deutsche Bank as managers of the Republic of Ecuador's $650 million bond issue, which closed in December 2005. This followed on from the Republic's failed attempt to launch a bond issue earlier in the year. On the equity side, meanwhile, Perez-Arteta and Ortiz-García teamed up to act for Conclina on its $7 million issue of preferred stock in June 2006.

Structured finance is increasingly becoming a popular way for Ecuadorian companies to free up capital, and Pérez Bustamante & Ponce has been successful at taking advantage of the increased work available in this area. Among the highlights, in December 2005 the firm acted for Cellstar in relation to the $6 million assignment of the Zilicom account receivable, and at the time of writing was representing ABN Amro on a securitization of Swift transfers.

M&A is also a busy area for the firm, and here too it has developed a great reputation. Among the year's standout deals, the firm acted for Bupa on its acquisition in September 2005 of Amedex, guided CNCP through its acquisition of Encana´s petroleum assets in Ecuador, and advised SAB Miller when it bought Bavaria.

Three partners and three associates focus their attentions on project finance work, a department headed by Sandra Reed and Perez-Arteta. In probably Ecuador's highest-profile project of the year, the firm has been acting for Corporación Quiport on the $500 million development of Quito's new international airport. Another project instruction saw the firm selected to advise Odebrecht on the Baba hydro-electric power project, a $200 million project that was also ongoing at the time of writing.

Leading lawyers	**Key contact partners**
Rodrigo Jijón	Sebastian Perez-Arteta
Pablo Ortiz-García	Jaime Zaldumbide
Sebastian Perez-Arteta	
José Maria Rumazo	

Other notable firms

It has been a relatively quiet year for corporate and financial advice in Ecuador, and many of the deals that have made it to market have been snapped up by one of the two top firms. However, when the market picks up there are a number of firms that are perfectly placed, and perfectly equipped, to advise on the resulting work available.