

# Ecuador

## Chamber of commerce:

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## Professional body:

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### Bayardo Rafael Poveda Bustamante & Bustamante Quito

Other than certain specific exceptions (for example, relating to strategic areas), there are no restrictions on foreign investment in Ecuador. Although the provision of public utility services and the exploitation of underground resources is the reserve of the state, the state can authorize national or foreign investors to exploit those resources or provide a certain utility or service. Foreign investment never requires the approval of a public authority – all that is required is registration with the Central Bank of Ecuador, pursuant to March 2000's Promotion of Investment Act, decision 291 of the Andean community, and the Central Bank Regulation 939-95. Besides, as part of the foreign investment regime, the Ecuadorian monetary system has been thoroughly dollarized. The local currency is the US dollar, under a free currency circulation basis, and is not subject to exchange control provisions. This means that all transactions – including capital transfers – and accounting can be denominated in US dollars.

With regards to the protection and guarantee of investments, the Ecuadorian Constitution states: "The state shall guarantee national and foreign capital invested in production that is destined for domestic consumption and exportation" and that "the State may enter into agreements with investors in order to establish special guarantees and assurances, so that (investment) contracts cannot be amended by laws or any other kind of provision affecting their clauses." These principles are developed by local legislation and bilateral and multilateral treaties.

In fact, the Promotion and Guarantee of Investment Act (the PIA), enacted in 1997, provides that duly registered foreign investments benefit from guarantees such as: (i) free transfer of net profits abroad in any free convertible currency deriving from a registered investment; (ii) free remittance of resources obtained from total or partial liquidation of corporations in which investments were made, or from the sale of shares, interests or rights acquired by virtue of the investment; (iii) freedom to negotiate investment; (iv) free access to foreign currency markets to cover the needs relating to investment development and to the fulfillment of the above guarantees; and (v) tax stability for a 10- or 20-year period, according to the regulations and conditions prescribed by law.

Moreover, the PIA states that the state and foreign investors can submit any dispute arising from the application of the PIA to any arbitration court operating under the terms of international treaties executed by Ecuador, as well as to the procedures specifically agreed upon or set out in bilateral or multilateral agreements executed and ratified by Ecuador. The PIA also sets out that the state fully acknowledges all treaties and agreements executed and ratified with other countries, or through the country's participation in international organizations regarding investment promotion and protection, including those that avoid double taxation.

In accordance with standard investment protection legislation, international investment promotion treaties executed by Ecuador include provisions establishing the acquisition and protection of investments under favourable conditions for investors of each contracting country, fair and equitable treatment in accordance with principles of international law, full protection and security, and unrestricted transfer of investments and returns.

Other important features of the international treaties signed by Ecuador are protection against expropriation, compensation of losses, subrogation, and the principle of *most favoured nation treatment*, not to mention provisions that allow for settlement or solution of differences between investors and host contracting parties under international arbitration proceedings. Contracting countries that have entered into such treaties with Ecuador are Germany, Argentina, the US, Chile, Cuba, El Salvador, Spain, Finland, the UK, Canada, the Netherlands, Paraguay, Peru, Sweden and Venezuela.

Ecuador is also a contracting party to Decision 291 of the Andean Community on the Common Regime of Treatment to Foreign Capital and Trademarks, Patents, Licences and Royalties and, at the time of writing, – along with other Andean Community countries – is negotiating a free trade agreement with the US that includes a chapter ruling investment protection and guarantee.

The free trade agreement between Ecuador, the Andean Community countries and the US was scheduled to be executed in 2005. Some sensitive issues regarding bilateral and multilateral treatment for investment are still outstanding, but it is expected that the treaty will mark an important step towards a global market and an open economy for Ecuador and the Andean Community.

## Corporate and commercial

### Recommended firms

Tier 1

**Bustamante & Bustamante**

**Pérez Bustamante & Ponce**

Tier 2

**Coronel & Pérez**

**Quevedo & Ponce**

Tier 3

**Bermeo & Bermeo Law Firm**

**Larreátegui & Larreátegui**

**Romero Arteta Ponce**

### Bustamante & Bustamante

Interviewees state that Bustamante & Bustamante remains “a key figure” in Ecuador, “maintaining its importance in the market”. Now in its 50th year, the firm has offices in Quito and Guayaquil, as well as a subsidiary office in Alicante, Spain. Counsel is offered on diverse aspects of corporate law (including administrative, financial and energy legislation), and the practice is well regarded for its knowledge of intellectual property matters.

The firm has 13 partners, the pick of whom is José Rafael Bustamante, a corporate lawyer with an excellent reputation in trademark law, and former chairman of international law firm network Multilaw.

AEC Ecuador, Royal Caribbean Cruises, AT&T and Nokia are all clients of the firm. Bustamante & Bustamante is a member of the international law affiliations Multilaw and The Bomchil Group.

#### Leading lawyer

José Rafael Bustamante

#### Key contact partner

José Rafael Bustamante

### Pérez Bustamante & Ponce

In terms of numbers of lawyers, Pérez Bustamante & Ponce offers the greatest depth of expertise in corporate legislation of any of the Ecuadorean law firms, with 16 partners and 12 associates. It is also the domestic representative of international law associations Interlaw and Lex Mundi.

The firm’s strengths lie in banking, mining and energy, securities, telecommunications and aviation law. Rodrigo Jijón and Pablo Ortiz have “participated in important transactions” and are “very professional, reliable and trustworthy”.

#### Leading lawyers

Rodrigo Jijón

Pablo Ortiz

José María Rumazo

#### Key contact partner

Jorge Cevallos

### Coronel & Pérez

Coronel & Pérez is an expanding practice, particularly in the areas of intellectual property, telecommunications and energy. The firm has begun to attract some interesting referral business from a range of leading foreign law firms, such as US firms Fulbright & Jaworski, Coudert Brothers and Winston & Strawn, Spanish market leader Gómez-Acebo & Pombo, and Peru’s Estudio Ehecopar.

Among the past year’s highlights, the telecommunications team, led by industry expert Daniel Pino Arroba, represented Telefónica Móviles in relation to its acquisition of BellSouth’s mobile telephone operation in Ecuador. The firm has also been involved in many of the concession cases that have recently taken place in Ecuador. For example, Coronel & Pérez advised Corporación América, an Argentinian airport operator, after it won the bid for the concession of Ecuador’s Guayaquil International Airport. The firm also represented Sundown-Clipper, a US consortium, on its successful bid for the exploration and exploitation of oil and natural gas reserves in the Gulf of Guayaquil.

#### Key contact partner

Daniel Pino Arroba

### Quevedo & Ponce

A growing firm with five partners and three associates specializing in corporate and commercial law, Quevedo & Ponce has had an active year. It remains “heavily involved in litigation,” and is also one of the major intellectual property firms in Ecuador.

The biggest banking deal Quevedo & Ponce acted on last year was a \$25 million bonds issue by Standard Bank of London, and the highlight of the M&A deals the firm acted on was an acquisition of stock by Solutionsre Cia for \$230,000. The firm also represented Cessna Finance Corporation in two \$2 million aircraft leasing transactions.

Alejandro Ponce is the foremost litigation lawyer in Ecuador, and his reputation has helped Quevedo & Ponce attract high-calibre clients such as Procter & Gamble, Microsoft, Visa International, Del Monte and ChevronTexaco.

#### Leading lawyer

Alejandro Ponce Martínez

#### Key contact partners

Antonio Martínez Borrero

Alejandro Ponce Martínez

Luis Ponce Palacios

### Romero Arteta Ponce

Founded in 1950, Romero Arteta Ponce has a long-established reputation for professional excellence, especially in project finance and hydrocarbons law. Many of the firm’s recent deals have been in arbitration and litigation, where the firm has represented clients such as Emsa, Renault and Toyota.

Among the many projects benefiting from Romero Arteta Ponce's solid advice over the past year have been the concession for the country's first private toll highway, the construction of Quito and Guayaquil airports and the construction of a water basin to irrigate large areas of the coastal plains of the Santa Elena peninsula. Representative hydrocarbons deals, meanwhile, include advising Williams on the private construction of Ecuador's new heavy crude oil pipeline, and acting for Unocal in a service contract with Petroecuador for crude oil exploitation in block 13 of the Amazon region.

Gustavo Romero Ponce is one of the firm's most recognized lawyers, and specializes in oil and gas law, banking, and intellectual property. Quevedo & Ponce is the Ecuadorian member of law firm association Meritas.

**Leading lawyer**

Gustavo Romero Ponce

**Key contact partner**

Gustavo Romero Ponce