

# Ecuador

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## Corporate finance in Ecuador

**Rodrigo Jijon**

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In Ecuador, financial activities such as lending are reserved to banks and financial institutions. Other alternatives for the generation of liquidity in corporations - with a significant reduction of funding costs - such as syndicated loans, structured credits, issuance of bonds, securitization, and public offering of shares, are possible.

The Securities Market Law, enacted in 1998, regulates the securities market, agents, public and private offerings, bond offerings, commercial trusts, funds and fund management, and securitization. It also governs the regulations and the regulatory authorities (the Securities Market Council and the Superintendency of Companies, respectively), and imposes fines and civil and criminal penalties for breaches of its provisions.

Only brokerage companies may be agents in the securities market. They are authorized to sell and buy securities on behalf of third parties and for themselves. Brokerage companies may also provide advisory services on some corporate finance matters, such as assistance, arrangement and agency in connection with structured credits or syndicated loans. Because there are no investment banks in the traditional sense of the word, financial institutions may only participate in such operations as creditors (in the case of structured or syndicated loans), or as buyers in investments made for themselves, or as issuers of bonds, shares or securitization certificates. Brokerage companies may also participate as underwriters in the issuance of shares, bonds or securitization certificates.

For the issuance of bonds, shares or securitization titles through the securities market, it is necessary to obtain an authorization for the issue itself and another authorization for the filing of each issue with the Securities Market Registry (the Registry). It is also necessary to prepare a public offering prospectus. Risk rating is not required for stock issues, but in the case of bond issues and securitizations it is necessary to obtain risk rating from a qualified and registered risk rating company.

Only corporations may issue shares. Limited liability companies and other kinds of local companies may not issue shares. All transactions in shares registered with the Registry must be done through the stock exchange, with no exceptions based on the amount of shares, or the kind of buyer. Only shares in companies not registered with the Registry may be traded privately.

Bond issues may be guaranteed either by a general guarantee (the company's whole equity) or by a special guarantee. A special guarantee might be a trust to which some assets are transferred, a mortgage or pledge, or a bank or insurance guarantee.

Bonds may be privately traded only where a private agreement for purchase of the whole issue is executed. In this case, it is not necessary to prepare a public offering prospectus. Besides this, all transactions in bonds must be public and through the



securities market. Only corporations, duly registered branches of foreign companies, limited liability companies, and municipal or provincial institutions may issue debentures.

Securitization structures may be achieved either by creating a special fund referred to as collective fund, or by creating a commercial trust. Some assets of the originator must be transferred to this collective fund or commercial trust, and must be the source of payment for the securitization certificates. Commercial trusts and collective funds must be administered by a trustee or fund administrator. Securitization certificates must without exception be traded on the stock exchange.

Regarding mergers and acquisitions, the Companies Law regulates mergers and split-up processes. According to this law, mergers may be effected between Ecuadorian companies of any kind. However, it is not possible for an Ecuadorian company to merge with a foreign company. Split-up processes may be done by any kind of Ecuadorian company. Both mergers and split-up processes must be approved by the Superintendency of Companies. This public entity verifies the formal requirements, the existence of assets and the observance of appropriate accounting principles and requirements. Opposing shareholders have the right to leave the company and receive the equity value of their shares.

In Ecuador there are no general regulations concerning the acquisition process. There are, however, some rules regarding the acquisition of companies registered with the Registry. Such rules contemplate the requirements for the acquisition and public offering of stock.

Usually, the acquisition of a company in Ecuador involves the acquisition of an ongoing business. In this case the buyer acquires movables, real estate and trademarks. For these purposes there are specific regulations regarding the transfer of each kind of assets and some specific tax regulations.

Finally, it is necessary to note that until now, for various economic reasons the growth of the securities market has been limited. As such it is not yet a significant method by which companies achieve liquidity. For example, the first securitization was completed in 2002, although it has been legally possible since 1998. So far this year there has been only one share issuance and only a few bond issues - major transactions in the securities market relate to bank and state documents.

## Corporate and commercial

### Recommended firms

Bustamante & Bustamante

Pérez Bustamante & Ponce

Bermeo & Bermeo Law Firm

Coronel & Pérez

Quevedo & Ponce

Correa Fernández-Salvador & Iturralde

Larreátegui & Larreátegui

Romero Arteta Ponce

### Bustamante & Bustamante

Leading lawyers José Rafael Bustamante and Juan Carlos Bustamante spearhead the reputation of this firm, one of Ecuador's oldest. Juan Carlos has been repeatedly named as the best-regarded lawyer in Ecuador by the national press.

Established in 1956, the firm has a wealth of experience on all areas of corporate and commercial legal advice. Yet the firm is particularly recommended for its project finance work. It acted on Ecuador's \$700 million international airport and on a \$1 billion oil pipeline project running from the Ecuadorian coast to the country's interior.

Despite accusations from some peers that there is a shortage of quality partners at Bustamante, the firm maintains an impressive roster of international clients. These include AT&T, Nokia and, before its insolvency, Parmalat.

#### Key contact partner

José Rafael Bustamante

#### Leading lawyers

José Rafael Bustamante

Juan Carlos Bustamante

### Pérez Bustamante & Ponce

The two top-tier firms share between them the majority of international clients operating in Ecuador. Pérez Bustamante & Ponce's client list includes Repsol, Agip, Union Femosa and Cayman International. It worked on a \$700 million pipeline project and the financing and construction of the country's new airport, as well as advising Banco Alemán, a Swiss-German international bank, on the Ecuadorian aspects of its takeover by Panama's third-largest private bank, Banco Continental de Panamá. Recently, the firm advised livestock company Agrícola Ganadera Reysahiwal on its loan from the Inter-American Investment Corporation.

While it has two leading lawyers in Rodrigo Jijón and Pablo Ortiz, it is José María Rumazo who is most often recommended by the firm's competitors. He is described as an "efficient, competent lawyer" that has garnered a "very good name in the market".

#### **Key contact partner**

Jorge Cevallos

#### **Leading lawyers**

Rodrigo Jijón  
Pablo Ortiz  
José María Rumazo

### **Bermeo & Bermeo Law Firm**

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Bermeo & Bermeo is disregarded by some as solely an intellectual property practice. It is, however, both one of the top two IP firms in the country and among the best for corporate legal advice. Led by partner Rodrigo Bermeo, the firm's five lawyers are recommended by their contemporaries as "a very active and professional outfit". Its roster of past clients speaks well of the firm, including as it does British American Tobacco, Coca-Cola and Proctor & Gamble. And the firm is impressively connected, being a member of the American Bar Association, the International Trademark Association and the Intellectual Property Institute of Canada.

#### **Key contact partner**

Rodrigo Bermeo

### **Coronel & Pérez**

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Coronel & Pérez is the dominant firm in Ecuador's main port, Guayaquil. As the main trading point for the country, Guayaquil houses branches of most of the international corporates with interests in Ecuador. The firm is, as such, a popular choice for legal advice and has strong relationships with both domestic and international banks, including Banco la Previsora, Banco del Pacifico, the Latin American Bank of Exports (Bladex) and Air Lease, a subsidiary of ING.

Coronel's 11-strong team was involved in the privatization of Guayaquil garbage removal and disposal services, the construction of the Daule Peripa hydroelectric plant and the concession of the port's potable water and sanitation services. Other clients include Cristalería del Ecuador (a subsidiary of Owens-Illinois) Shell Ecuador, Empresa Pesquera Ecuatoriana (a Subsidiary of Heinz), Glaxo SmithKline and La Cemento Nacional.

#### **Key contact partner**

Daniel Pino

### **Quevedo & Ponce**

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Universally respected by the Ecuadorian legal market, Quevedo & Ponce is variously described as "unwavering,"

"reliable" and "experienced". It has "some of the best-qualified lawyers in Ecuador" and an "excellent young staff". Alejandro Ponce, who works in the litigation and corporate departments, is a particular favourite, a "litigation star" who won notable cases for Proctor & Gamble in the Ecuadorian courts.

With recommendations like this, it is hardly surprising that the firm's clients include Microsoft, Visa, Texaco, Philip Morris, Amoco and Cable & Wireless. The firm has 16 partners and 10 associates working in three offices – Quito, Guayaquil and Cuenca.