



Doing business in Ecuador

A comparative guide

May 2022

A guide to doing business in Ecuador

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.



No.	Question
A. Legal system and landscape	
1	Is the system of law in your jurisdiction based on civil law, common law or something else?
	Civil law
B. Entity establishment	
2	What are the different types of vehicle/legal forms through which people carry on business in your jurisdiction?
	(i) Limited liabilities corporations (<i>Sociedad de Responsabilidad Limitada</i>); (ii) Corporations (with limited liability - <i>Sociedades Anónimas</i> -); (iii) Holding companies (type of corporation); (iv) Branch opening; (v) Corporation of simplified shares (<i>Sociedad por acciones simplificadas</i>).
3	Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?
	Depends on the activity, i.e., a foreign company could buy a property in Ecuador without having to incorporate or register an entity, but they would need to apply for a tax number. Non-domestic companies can also provide services in Ecuador without any requisites. If non-domestic companies would operate in a day-to-day basis in Ecuador, they would need some sort of local entity.
4	Are there any capital requirements to consider when establishing different entity types?
	For corporations and limited liability companies, the minimum capital is US\$800 (it could vary depending on the type of operations, i.e., for insurance companies the minimum capital is US\$8 million)
5	How are different types of vehicles established in your jurisdiction? And which is the most common entity/branch for investors to utilize?
	Corporations and LLCs are established via a public deed before a Notary Public and must be registered with the Commercial Registry. The Superintendence of Companies can review the documentation ex-post, not ex-ante. The most common entity is the corporations. Notwithstanding the aforementioned, in 2020, the Companies Act was reformed to include corporations of simplified shares (<i>Sociedad por acciones simplificadas</i>). The process to incorporate this type of company is easier (via private documents that must be registered with the Commercial Registry), less expensive, and allows for all types of changes to the bylaws. Some multinational companies, due to their bylaws, prefer to use the branch establishment, which is a process that must be done almost entirely before the Superintendence of Companies.
6	How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?
	It depends on the entity. Corporate governance must be stated in the bylaws (tailor-made).
7	Are there general requirements or restrictions relating to the appointment of (a) authorized representatives/directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?
	There is a contradiction in Ecuadorian law. On one side, the law states that the company must have at least one Ecuadorian legal representative or a foreign person with legal residence. In other parts of the law, it states that a company could have more than one foreign legal representative and no Ecuadorians. Usually, our recommendation is to have at least one Ecuadorian but if that is not possible, we take that case to the Superintendence of Companies and the Commercial Registry.
8	Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade/commercial agents, resellers and are there any specific rules to be observed?
	Yes, non-domestic companies could retain agents, distributors, and other types of representatives (depending on the operations).
C. Entity operation	

C1. Governance

9	<p>Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.</p> <p>No. Only the bylaws apply in terms of corporate governance (in accordance with the Companies Act and the rules of shareholders general assembly meetings).</p>
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C2. Capital

10	<p>What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans, etc.</p> <p>It could be done via shareholders loans and an increment of the paid capital of the company (with the issuance of new shares). All types of capital or financial operations are permitted. Some benefits apply when the loans come from abroad, but it is on a case-to-case basis.</p>
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C3. Return of proceeds

11	<p>What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.</p> <p>Via dividends, repayment of loans (some benefits apply -see C2.10). In most cases a Currency Outflow Tax applies (currently at 5% -the government has said that they will reduce this rate progressively).</p>
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C4. Shareholder rights

12	<p>Are specific voting requirements/percentages required for specific decisions?</p> <p>There are a few decisions in companies that, in order for them to be valid, must be taken by two-thirds of the shareholders' votes, such as dissolution and liquidation of the companies. Bylaws usually include other types of majorities.</p>
13	<p>Are shareholders authorized to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?</p> <p>No. Just via the shareholders general assembly meetings, which is the most important entity of the company.</p>

C5. Employment

14	<p>What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal, etc.)?</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Right/Protection</th> <th>Details</th> </tr> </thead> <tbody> <tr> <td>National Minimum Wage</td> <td>US\$425</td> </tr> <tr> <td>Holiday</td> <td>Two weeks per year</td> </tr> <tr> <td>Working Hours</td> <td>40 per week</td> </tr> <tr> <td>Rest Periods</td> <td>Depends on the industry. Usually weekends. Some companies apply for special authorizations to have different types of working weeks (i.e., Wednesday to Sunday). Others, such as shrimp farms, usually have a schedule of 14 days without rest and 5 resting days after that.</td> </tr> <tr> <td>Pension Rights</td> <td>Every employee pays 9.45% of its salary to the Social Security Institute in Ecuador. Employers pay 11.15% of the employee's salary to the Social Security Institute.</td> </tr> <tr> <td>Discrimination</td> <td>N/A</td> </tr> <tr> <td>Maternity Leave/Pay</td> <td>Paid maternity leaves last for three months. Additional time is provided if the baby is being breast fed.</td> </tr> <tr> <td>Paternity Leave</td> <td>Paid paternity leaves last for 15 days.</td> </tr> <tr> <td>Shared Parental Leave</td> <td>See last two cases.</td> </tr> <tr> <td>Statutory Sick Pay</td> <td>N/A</td> </tr> <tr> <td>Statutory Notice Periods</td> <td>15 days in advance</td> </tr> <tr> <td>Unfair Dismissal</td> <td>It varies depending on the years of service: General rule: Three salaries, plus 25% of the combination of the three salaries, and the proportional amounts of the thirteenth and fourteenth salaries of the year of dismissal. From fourth year, those three salaries increment to four, the next year to five, etc.</td> </tr> </tbody> </table>	Right/Protection	Details	National Minimum Wage	US\$425	Holiday	Two weeks per year	Working Hours	40 per week	Rest Periods	Depends on the industry. Usually weekends. Some companies apply for special authorizations to have different types of working weeks (i.e., Wednesday to Sunday). Others, such as shrimp farms, usually have a schedule of 14 days without rest and 5 resting days after that.	Pension Rights	Every employee pays 9.45% of its salary to the Social Security Institute in Ecuador. Employers pay 11.15% of the employee's salary to the Social Security Institute.	Discrimination	N/A	Maternity Leave/Pay	Paid maternity leaves last for three months. Additional time is provided if the baby is being breast fed.	Paternity Leave	Paid paternity leaves last for 15 days.	Shared Parental Leave	See last two cases.	Statutory Sick Pay	N/A	Statutory Notice Periods	15 days in advance	Unfair Dismissal	It varies depending on the years of service: General rule: Three salaries, plus 25% of the combination of the three salaries, and the proportional amounts of the thirteenth and fourteenth salaries of the year of dismissal. From fourth year, those three salaries increment to four, the next year to five, etc.
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Statutory Redundancy Payment	N/A
Statement of Particulars	N/A

15	<p>On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?</p> <p>Unfair dismissal: See Number 14.</p> <p>If the employee has done something that contravenes the law or the internal rules of the company, the employer could ask a labor Inspector to authorize it to terminate the labor relationship without indemnification.</p> <p>Collective dismissals are ruled by the collective bargaining agreements of each company (if applies).</p>
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16	<p>Does your jurisdiction have a system of employee representation/participation (e.g., works councils, co-determined supervisory boards, trade unions, etc.)? Are there entities which are exempt from the corresponding regulations?</p> <p>N/A</p>
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C6. Anti-corruption/bribery/money laundering/supply chain

17	<p>Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to non-domestic constellations, i.e., have extraterritorial reach?</p> <p>Ecuador has a Commission of anti-money laundering (<i>Unidad de Análisis Financiero y Económico</i>) that investigates potential crimes of corruption, bribery, and money laundering.</p>
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18	<p>What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?</p> <p>The Anti-Money Laundering Act (“AMLA”) and the Penal Code. There is an obligation in the AMLA to report some transactions (especially for financial institutions).</p>
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19	<p>How is money laundering and terrorist financing regulated in your jurisdiction?</p> <p>Through Anti-Money Laundering Act (“AMLA”) and the Penal Code.</p>
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20	<p>Are there rules regulating compliance in the supply chain (for example, comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?</p> <p>No</p>
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C7. Compliance

21	<p>Please describe the requirements to prepare, audit, approve, and disclose annual accounts/annual financial statements in your jurisdiction.</p> <p>The preparation of annual accounts must be done in accordance with the past practice. Usually, GAAP rules apply. Audits are required when the company has sales of over US\$500,000.</p>
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22	<p>Please provide details on any corporate/company secretarial annual compliance requirements?</p> <p>Only to have the corporate and financial books up to date.</p>
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23	<p>Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?</p> <p>Once a year, during the first three months of the year, to approve accounts, financial statements, and the legal representative administration.</p>
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24	<p>Are there any reporting/notification/disclosure requirements on beneficial ownership/ultimate beneficial owners (“UBO”) of entities? If yes, please briefly describe these requirements.</p> <p>Yes, once a year before 31 January. If the shareholders do not file those documents, they become ineligible to participate in the shareholders general assembly.</p>
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C8. Tax

25 **What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?**

Revenues Tax: 25%
Currency Outflow Tax: 5%

Though it is not considered a tax, the 15% revenue sharing for employees is very high and, in our experience, it may be considered by foreigners as a tax.

26 **Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g., tax holidays, incentive regimes, employee schemes, or other)?**

The possibility to negotiate an investment contract with the central government. You could get protection and tax breaks. It is a case-by-case contract.

27 **Are there any impediments/tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?**

Sometimes withholding taxes apply but it depends on the service. The most relevant is the Currency Outflow Tax.

28 **Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?**

No

C9. M&A

29 **Are there any public takeover rules?**

No

30 **Is there a merger control regime and is it mandatory/how does it broadly work?**

The Superintendence of Market Power Control ("SCPM") is the entity in charge of merger control. If a merger exceeds one of two thresholds (and if there is a change of control), the operation must be filed for approval of the SCPM. The thresholds are: (i) US\$85 million in sales between the economic operators, and (ii) 30% or more of the relevant market of the operation. The process takes between two to six months.

31 **Is there an obligation to negotiate in good faith?**

Yes

32 **What protections do employees benefit from when their employer is being acquired, for example, are there employee and/or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?**

No

C10. Foreign direct investment

33 **Please provide details on any foreign direct investment restrictions, controls or requirements. For example, please provide details on any limitations, notifications and/or approvals required for corporate acquisitions.**

Just the one stated in number 30 above.

34 **Does your jurisdiction have any exchange control requirements?**

No.

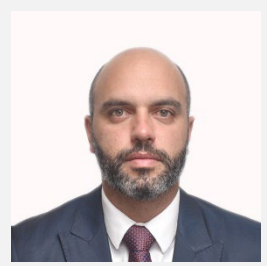
D. Entity closure

35 **What are the most common ways to wind up/liquidate/dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.**

The most common way is to dissolve and liquidate the entity. The process is the following:

1. Approval from two-thirds of the shareholders to dissolve the company and, consequently, liquidate it;
2. Public deed of dissolution and liquidation of the company;
3. Filing before the Superintendence of Companies;
4. Approval of dissolution by the Superintendence of Companies and declaration of the start of the liquidation process;
5. Liquidation of all pending accounts of the company;
6. If there is anything left in the company, it gets assigned to the shareholders in the way the Shareholders Meeting stated.

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