



TOBAR ZVS<sup>®</sup>  
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# DOING BUSINESS IN ECUADOR GUIDE

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## **DOING BUSINESS IN ECUADOR GUIDE**

This Doing Business in Ecuador Guide has been prepared by TOBAR ZVS C.L.<sup>1</sup>, and is intended to provide with general information for the knowledge of potential investors interested in acquiring an existing business or before starting operations in Ecuador.

The information included in this Guide is not exhaustive, and any in-depth and detailed information shall be consulted with experts.

**Updated as of January 2018**

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<sup>1</sup> For further information about the Firm, please refer to Section III at the end of this document.

## INDEX

### **SECTION I - DOING BUSINESS IN ECUADOR GUIDE**

<b>I. GENERAL INFORMATION OF ECUADOR</b>	<b>5</b>
<b>II. TYPES OF INVESTMENTS IN THE COUNTRY</b>	<b>6</b>
<b>II.I. PRIVATE SECTOR</b>	<b>6</b>
<b>II.II. PUBLIC SECTOR</b>	<b>6</b>
<b>III. BUSINESSES IN ECUADOR: GENERAL BACKGROUND</b>	<b>8</b>
<b>III.I. FORMS OF INCORPORATING A LEGAL ENTITY IN ECUADOR</b>	<b>8</b>
<i>a)</i> Corporations	8
<i>b)</i> Branches	8
<i>c)</i> Limited Liability Companies	9
<i>d)</i> Mixed Economy Company	9
<i>e)</i> Joint Ventures	9
<b>III.II. PRINCIPAL DIFFERENCES AMONG MOST COMMON LEGAL ENTITIES</b>	<b>10</b>
<b>III.III. GENERAL OBLIGATIONS FOR LEGAL ENTITIES UNDER LOCAL LEGISLATION</b>	<b>11</b>
<b>IV. TAX REGIME</b>	<b>13</b>
<b>IV. I. MAIN TAXES IN ECUADOR</b>	<b>13</b>
<i>a)</i> Corporate Income Tax	13
<i>b)</i> Value Added Tax	13
<i>c)</i> Tax on Special Consumptions (ICE)	14
<i>d)</i> Currency Outflow Tax (ISD)	14
<i>e)</i> Municipal Taxes	14
<b>IV. II. AGREEMENTS TO AVOID DOUBLE TAXATION</b>	<b>14</b>
<b>IV. III. INVESTMENT PROTECTION TREATIES</b>	<b>15</b>
<b>IV. IV. SPECIAL TAX &amp; CUSTOM REGIMES</b>	<b>15</b>
<b>IV. V. TRANSFER PRICING</b>	<b>16</b>

<b>V. EMPLOYMENT REGIME IN ECUADOR</b>	<b>17</b>
<b>V.I. LABOUR CONTRACTS</b>	<b>17</b>
<b>V.II. OUTSOURCING LIMITATIONS</b>	<b>18</b>
<b>V.III. EMPLOYMENT OF DISABLED INDIVIDUALS</b>	<b>18</b>
<b>V.IV. WORKER'S ECONOMIC RIGHTS</b>	<b>18</b>
<b>a) Minimum Wage</b>	<b>18</b>
<b>b) Additional Remunerations</b>	<b>18</b>
<b>c) Profit Sharing</b>	<b>19</b>
<b>V.V. SOCIAL SECURITY</b>	<b>19</b>
<b>V.VI. WORKING HOURS</b>	<b>19</b>
<b>V.VII. VACATIONS</b>	<b>20</b>
<b>V.VIII. TERMINATION OF LABOUR CONTRACTS</b>	<b>20</b>
<b>V.IX. ECONOMIC COMPENSATION IN CASE OF TERMINATION</b>	<b>20</b>
<b>V.X. LIMIT OF FOREIGN WORKERS IN THE COMMON REGIME</b>	<b>21</b>
<b>V.XI. EMPLOYMENT REGIME FOR FOREIGNERS</b>	<b>21</b>
<b>a) Non-immigrant Visas</b>	<b>21</b>
<b>b) Immigrant Visas</b>	<b>22</b>
<b><u>SECTION II – EXHIBITS</u></b>	
▪ <b>Exhibit A – <i>Formation of a Corporation</i></b>	<b>23</b>
▪ <b>Exhibit B – <i>Establishment of Branches</i></b>	<b>24</b>
▪ <b>Exhibit C – <i>Tax Havens</i></b>	<b>25</b>
<b><u>SECTION III - ABOUT THE FIRM</u></b>	<b>27</b>
<b>I. NATURAL RESOURCES</b>	<b>27</b>
<b>II. CORPORATE &amp; TAX</b>	<b>27</b>
<b>III. CONFLICT MANAGEMENT &amp; LITIGATION</b>	<b>28</b>
<b>IV. INTELLECTUAL PROPERTY</b>	<b>28</b>



<b>V. SPORTS RIGHTS &amp; ENTERTAINMENT</b>	<b>29</b>
<b>VI. SUSTAINABILITY</b>	<b>29</b>

## **SECTION I – DOING BUSINESS IN ECUADOR GUIDE**

### **I. GENERAL INFORMATION OF ECUADOR**

**Official Name:** Republic of Ecuador

**Capital:** Quito Metropolitan District

**Geography:** The Republic of Ecuador is located on the Northwest Coast of South America, and lies on both the Northern and the Southern Hemispheres, divided by the Parallel 0, or the Equator line. Colombia to the North, Peru to the South & East, and the Pacific Ocean to the West border Ecuador's continental territory. Despite its small size, Ecuador is one of the most geographically, biologically, ethnically and culturally diverse countries in the world.

**Currency:** US Dollars

**Official Language:** Spanish is the official language. Native languages –such as Quechua– are spoken by specific groups of the population. English is commonly used for international business relations.



## II. TYPES OF INVESTMENTS IN THE COUNTRY

### II.I PRIVATE SECTOR

In general terms, investments in private sector are ruled by the will of the parties and subject to the compliance with local legislation.

To the present date, the Organic Production, Commerce and Investment Code ("**Production Code**") establishes tax exemptions and deductions for investments in productive areas, as well as a five-year Income Tax exemption for new investments made outside of the principal cities of Quito and Guayaquil, and in any sector considered as a prioritized economic sector by the Government<sup>2</sup>. Furthermore, the Production Code also contains provisions for additional incentives to enhance productivity and the use of green technologies, as well as to create jobs and improve wages of workers.

In addition, Ecuadorean Government has issued new norms in order to avoid, eliminate and penalize any abuse by economic operators using market power ("**Antitrust Law**"), in benefit of end-users and other market operators.

### II.II PUBLIC SECTOR

The procurement of civil works, goods and services –including consulting services- carried out by Public Entities is performed as per the dispositions of the Organic Law of the National Public Procurement System, its General Regulations, and the relevant Rules of Procedure issued by the National Public Procurement Service ("**SERCOP**"), which is the entity responsible for the overall supervision of public procurement processes.

For contracting with the Government, the following aspects should be taken into consideration:

- a)** Suppliers must be registered in the Unique Registry for Suppliers ("**RUP**")<sup>3</sup>.
- b)** For legal entities, no shareholder, stakeholder, or affiliate shall be domiciled in a "Tax Haven" –defined as such as per the Ecuadorean regulations<sup>4</sup>-, otherwise it will be disqualified from any process.
- c)** The mechanism used for each pre-contractual process is determined by the contracting entity in conformity with its particular requirements, and will not depend on the supplier's will.
- d)** Overall, local legislation encompasses provisions to be fulfilled by Government contractors to increase national participation in the goods and/or services contracted;

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<sup>2</sup> Fresh and processed foods, forestry, agro-forestry, metalworking, petrochemicals, pharmaceuticals, tourism, renewable energies, logistics services, biotechnology, and applied software

<sup>3</sup> Only applicable for contracting with the Government and/or any Public Entity.

<sup>4</sup> Please find Tax Havens listed by the Ecuadorean Internal Revenue Service (SRI), in Exhibit C.

as well as to promote the employment of local workforce from the areas of influence of the activities contracted by the Government.

- e)* Currently, Ecuadorean Government is encouraging the development of endeavours in not common areas such as: tourism, renewable energies, technology development, and telecommunications, amongst others.

### **III. BUSINESSES IN ECUADOR: GENERAL BACKGROUND**

Whether you are about to start a new business in Ecuador, to acquire an existing one or already have operations in the Country, it is important to consider that according to the nature of the legal entity chosen to pursue business, there are some legal, financial and tax obligations that shall be observed.

When starting operations in Ecuador—or in order to improve their current businesses—foreign investors must analyse the legal structure available as per local legislation that best suits their expectations, taking into consideration their interests, type of endeavour, and shareholders' country of origin, in order to establish the most efficient and adaptable legal entity that fits to their specific needs. For this purpose, it is recommended to search for and consult legal, finance and audit assessment.

#### **III.I FORMS OF INCORPORATING A LEGAL ENTITY IN ECUADOR**

Foreign investors starting up a business in Ecuador most frequently establish local corporations, or local branches of offshore entities. Alternatives include limited liability companies, partnerships or joint ventures, and mixed economy companies (when including government participation). Corporations, branches, limited liability companies, and mixed economy companies are registered with and controlled by the Superintendence of Companies and governed by the Companies Law.

Foreign companies may only participate in the share capital of an Ecuadorian company if their capital is represented by shares or stocks issued in the name of their partners or shareholders.

##### **a) Corporations**

This is the most flexible form of legal entity, allowing a mixture of foreign and local capital, unlike private limited liability companies which useful as closed companies, but have limitations regarding the sale and transfer of shares.

The Corporation figure offers the same major advantages to investors as does this corporate entity in other jurisdictions, including (1) limitation of shareholders' liability to the amount of the subscribed capital; (2) shareholders are free to negotiate their stock without restrictions; (3) corporations are represented by managers who may be discharged at any time; and (4) continuity of the business as an ongoing concern is assured, regardless of changes in management or ownership.

Please refer to Exhibit A for further information with regards to the incorporation process of a Corporation.

#### **b) Branch Office**

A Branch Office or subsidiary company is an extension of its Parent Company and for legal purposes it is not considered as a separated incorporated entity; consequently, the liabilities of a Branch extend to its Parent Company without restriction. However, pursuant to the Ecuadorean legislation, for tax and accounting purposes Branches are considered independent entities, thus they shall keep their own accounting records, have a Tax ID Number and comply with local financial and tax regulations.

Notwithstanding the abovementioned, according to the Companies Law, Branches shall comply with most of the corporate obligations required by the Superintendence of Companies for legal entities incorporated in the Country.

Generally, investors decide to establish Branches in Ecuador to comply with financial and/or experience requirements in order to participate in contracting processes with the Government.

Please refer to Exhibit B for further information regarding with the steps to be followed for the establishment of a Branch.

#### **c) Limited Liability Companies**

This type of legal entity closely resembles a limited partnership and is suitable for that type of operation. A limited liability company is characterized by (1) having two or more members, but cannot exceed of 15; (2) members have limited liability for company obligations up to the amount of their individual contribution; (3) foreign corporations are excluded from membership; and (4) any transfer of participations must have the unanimous approval of all Partners.

The procedure for incorporating a Limited Liability Company is the same followed for a Corporation. For further information, please refer to Exhibit A above mentioned.

#### **d) Mixed Economy Company**

By its own initiative, Central and Provincial Governments, Municipalities and entities or organizations of the public sector may incorporate Mixed Economy Companies with private capital and social management, to develop and promote agricultural and industrial projects deemed convenient for the national economy and devoted to satisfy common needs and provide new public services or improve current services.

However, it should be noted that incorporation of this type of companies for the development of endeavours related to sectors deemed strategic by the Constitution of the Republic of Ecuador is restricted to the decision of the Central Government, and the participation of the State in the share capital of these companies shall be at least of 51%.



### e) Joint Ventures

Two or more parties may enter into a private agreement in order to carry out a particular business activity in Ecuador. There is no obligation to register this private agreement in the Mercantile Registry, and the Companies Law recognizes a joint venture figure as association agreements.

These legal entities are not obliged to submit to the Superintendence of Companies the information requirements established in the law for local entities.

Joint Ventures in Ecuador are not considered independent legal entities. Under local legislation, Joint Ventures are association agreements formed with the only purpose of completing or executing a determined project.

Nevertheless, Joint Ventures are considered as independent business units for accounting and tax purposes. A Joint Venture shall obtain a tax ID number (RUC) and shall maintain its own accounting records.

In Ecuador this type of association occurs primarily when foreign corporations are contracted as associates to carry out specific projects with Government Entities. It is normal for foreign corporations entering into this type of agreement through the establishment of a local branch.

## III.II PRINCIPAL DIFFERENCES AMONG MOST COMMON LEGAL ENTITIES

<i>Concept</i>	<i>Corporation</i>	<i>Limited Liability</i>	<i>Branch</i>
<b>Minimum Capital</b>	US\$ 800,00	US\$ 400,00	US\$ 2.000,00
<b>Time to pay capital in full</b>	2 years	1 year	At the moment of incorporation
<b>Legal Representative or Attorney in fact</b>	<u>Legal Representative</u>  This person is joint and severally liable for tax and labour obligations.  Must be resident in Ecuador, and in case of foreigners holding a resident visa	<u>Legal Representative</u>  This person is joint and severally liable for tax and labour obligations.  Must be resident in Ecuador, and in case of foreigners holding a resident visa	<u>Attorney in Fact</u>  Must be resident in Ecuador, and in case of foreigners, holding a resident visa

<b>Authorization required by local Authority</b>	YES, Superintendence of Companies	YES, Superintendence of Companies	YES, Superintendence of Companies
<b>Estimated time of incorporation</b>	30 business days	30 business days	30 business days

<b>Limitation of Liability to Shareholders or Partners</b>	Up to the amount of contribution of the shareholder	Up to the amount of contribution of the partner	N/A
<b>Legal Reserve</b>	10% of net profit, until reaching 50%. On a yearly basis	5% of net profit, until reaching 20%. On a yearly basis	N/A
<b>Transfer of Shares/Participations</b>	Shares can be freely transferred with no need of authorization or approval of other shareholders	Any transfer of participations must have the unanimous approval of all Partners	N/A
<b>Term of appointments of Legal Representatives</b>	The bylaws will determine the term; nevertheless the term shall not exceed 5 years.	The bylaws will determine the term; nevertheless the term shall not exceed 5 years	Indefinite
<b>Minimum Number of Shareholders/Partners</b>	2	2 (Maximum 15)	N/A
<b>Term of existence</b>	Established in the By - laws	Established in the By - laws	Linked to the term of existence of the Parent Company

### III.III GENERAL OBLIGATIONS FOR LEGAL ENTITIES UNDER LOCAL LEGISLATION

1. To obtain a Tax ID number (RUC) and maintain accounting records of the company according to the International Financial Reporting Standards (IFRS).
2. Companies must file an annual return with the Superintendence of Companies, containing financial statements and other relevant information established in the Companies Law.
3. Corporations and limited liability companies must celebrate a General Shareholder's Meeting within the first three months of each year to resolve about the following matters:

- a)** Acknowledgment of financial statements, reports from the legal representative, the corporate controller and external auditors, when corresponds.
  - b)** Resolve the remuneration of administrators within the company.
  - c)** Profit Distribution.
  - d)** Appointing of Corporate Controller and External Auditors for the coming year, when corresponds.
- 4. If the shareholder of a local company is a foreign entity, the following information must be provided on a yearly basis:
  - a)** Certificate of Existence issued by the relevant authority of the county in which the company is incorporated, duly legalized or apostilled;
  - b)** A list of the company's shareholders, together with a detail of their full name, address, nationality and, if the shareholder is an individual, his/her marital status, or, if the shareholder is a company quoted on a stock exchange, a sworn declaration regarding the listing;
  - c)** A Power of Attorney ("POA"), to be granted to an individual, either an Ecuadorean or a foreigner resident in Ecuador, enabling him/her to sign on behalf of the foreign company the documentation regarding its Shareholders required by the Superintendence of Companies, which POA must be legalized or apostilled; and
  - d)** Certified copy of the appointment of the legal representative of the foreign shareholder, duly legalized or apostilled.
- 5. Payment of annual contribution to the Superintendence of Companies equivalent to 0.1% (1 per thousand) of the real assets of the company.

## IV. TAX REGIME

### IV.I MAIN TAXES IN ECUADOR

All companies operating in Ecuador shall be subject to the following main taxes:

<i>Taxes</i>	<i>Rate</i>
<i>Income Tax</i>	25%
<i>Value Added Tax</i>	0% or 12%
<i>Tax on Special Consumptions (ICE)</i>	5% - 25%
<i>Currency Outflow Tax (ISD)</i>	5%
<i>Municipal Taxes</i>	<ul style="list-style-type: none"><li>▪ 1.5 ‰ over Total Assets</li><li>▪ Municipal Patent (Commercial Business Authorization)</li><li>▪ Tax on Urban Property</li><li>▪ Tax on Rural Property</li></ul>

#### a) Corporate Income Tax

Ecuadorean and foreign companies with local branches in Ecuador are subject to Ecuadorean Income Tax. This tax is applied to the company's profits (after 15% of profits have been distributed to employees as required by law). The current corporate tax rate is 25%.

Legal entities reinvesting their profits in Ecuador in equipments for the core business of the Company or technological equipments for researching and improving the productivity of it could obtain a reduction until ten percentage points in the Corporate Income Tax rate, provided they execute the corresponding capital share increase which will be deemed executed upon its registration with the Mercantile Registry until December 31<sup>st</sup> of the year following the year on which profits subject to reinvestment were made.

As we mentioned before, the Production Code establishes a five-year Income Tax exemption for new investments made outside of Quito and Guayaquil Metropolitan Districts, in any sector considered as a priority economic sector by the Government (fresh and processed foods, forestry, agro-forestry, metalworking, petrochemicals, pharmaceuticals, tourism, renewable energies, logistics services, biotechnology, and applied software).

#### b) Value Added Tax

Shall mean the tax paid on the transfer of movables goods, provision of services and importations. All purchasers are liable to the payment of value added tax at a 12% rate. The purchase of medicines, raw materials, basic products, food in natural state and veterinary products are subject to VAT at a 0% rate.

The payment shall be made to the vendor or service provider who, in turn, shall collect the tax and deliver it to the State jointly with the corresponding tax filing. As regards

importations, importer shall execute payment at the moment merchandise is withdrawn from customs and amount is assessed based on the Fiscal Identification Code (CIF).

The taxable base amount for VAT is the value of the goods transferred or the services rendered. In the case of imports, the taxable base amount is the sum of the CIF (cost, freight and insurance) amount, taxes, customs tariffs, fees, charges, surcharges and other expenses appearing on importation documents.

#### **c) Tax on Special Consumptions (ICE)**

It is levied on the consumption of: cigarettes, soft drinks, alcoholic beverages, perfumes and toilette waters, video games, firearms, sports weapons and ammunition, motor vehicles and hybrid or electric vehicles, paid television services, shares or subscriptions to social clubs and sumptuary goods of national origin or imported, according to the rates determined by the Tax Administration.

#### **d) Currency Outflow Tax (ISD)**

Any transaction or operation that involves the transfer of funds outside of Ecuador pays a 5% tax of the amount remitted abroad. Transferences made by Governmental financial institutions, special economic development zones (ZEDE's), and the remittance abroad of prepaid dividends, is exempt from the Currency Outflow Tax.

Other remittances sent abroad (i.e., foreign transfers, payments, royalties) that constitutes income to the beneficiaries is subject to the regular Corporate Income Tax rate.

#### **e) Municipal Taxes**

##### *e.1) Patents (Commercial Business Authorization)*

All individuals executing commercial or industrial activities or any other activity of economic nature in each jurisdiction must obtain on a mandatory basis a patent and make the corresponding payment.

The Municipal Council through an Ordinance shall determine an annual tax rate based on the operating capital of the taxpayers within the specific jurisdiction. The minimum rate shall be ten dollars of the United States of America and the maximum twenty five thousand dollars of the United States of America.

##### *e.2) 1.5‰ over Total Assets Tax*

Shall mean the tax payable by all individuals, legal entities, sole proprietorships, either national or foreign- resident in Ecuador and performing economic, financial or industrial activities. Their taxable basis shall be the difference between current assets and current liabilities.

## **IV.II AGREEMENTS TO AVOID DOUBLE TAXATION**

Ecuadorean source income obtained by individuals or companies resident or not resident in Ecuador shall be subject to tax in accordance with the provisions envisaged in the corresponding International Tax Treaty, on the basis of tax reciprocity and to avoid

international double taxation.

Currently, Ecuador has executed bilateral treaties to avoid double taxation with regards to Income Tax, with the following countries:

- |              |                |                |
|--------------|----------------|----------------|
| ▪ Argentina, | ▪ China,       | ▪ Mexico,      |
| ▪ Belgium,   | ▪ South Korea, | ▪ Rumania,     |
| ▪ Brazil,    | ▪ France,      | ▪ Spain,       |
| ▪ Canada,    | ▪ Germany,     | ▪ Switzerland, |
| ▪ Chile,     | ▪ Italy,       | ▪ Uruguay.     |

Other Treaties to avoid double taxation are being negotiated with Portugal and the United Arab Emirates.

Additionally, Ecuador has signed CAN Decision 578, which is a Multilateral Agreement to avoid double taxation and prevent tax evasion among the countries of the Andean Community (Bolivia, Colombia, Peru and Ecuador).

#### **IV.III INVESTMENT PROTECTION TREATIES**

At present time Ecuador do not have in force any investment protection treaty with any third state since those treaties were denounced by the Republic of Ecuador on May 2017.

Notwithstanding the aforementioned, most of the investment protection treaties provided that the investments made by nationals of any signing State should be protected for an additional period of time since the denunciation date. This provision should be analysed in a case by case scenario.

#### **IV.IV SPECIAL TAX & CUSTOM REGIMES**

Current legislation establishes several options for investors to obtain tax and customs incentives.

The Production Code establishes tax incentives to attract both domestic and foreign investment in certain priority sectors (fresh and processed foods, forestry, agro-forestry, metalworking, petrochemicals, pharmaceuticals, tourism, renewable energies, logistics services, biotechnology, and applied software). These incentives, which may take the form of tax exemptions, income tax deductions, as well as a five-year tax holiday, are only available for investments made outside of Quito and Guayaquil Metropolitan Districts. The five-year tax holiday should be counted from the first year that income is generated. There is no need for any registry or authorization granted by authorities to benefit from this incentive.

The Organic Law of Production Incentives and Fiscal Fraud Prevention that, among other reforms, included into the Production Code tax incentives for the basic industries (Foundry and refining copper and/or aluminium; Foundry of iron and steel for the plain



stainless-steel production; Hydrocarbons refining, Petrochemical Industry, cellulose industry and Construction and repair of boats) that take advantage of renewable or non renewable raw materials, transforming these into products required by other industries for manufacturing intermediate and final products.

Among the tax benefits that a basic industry may access to are the exemption of the income tax payment for 10 years, counting from the first year's income attributable to the new investment.

In case of execution of an investment contract by a basic industry or a society dedicated to mining exploitation, with investments for over one hundred million US Dollars, if a favourable technical report from the pertinent Ministry in the investment area is issued and is authorized by the Tax Policy Commission, said entity will be able to access tax stability in the income tax (22%), ISD (5%) and over all the regulations that are considered to determine the taxable base and the amount of tax to be paid, in force as of the date of execution of such investment contract.

Regarding customs, there are special customs regimes (Temporary Admission for Active Improvement, or Transformation under Customs Control) that allow duties exemptions for imports of supplies destined to the manufacturing of products to be exported. These regimes apply even if such operation is not developed under a ZEDE. A qualification issued by the National Customs Director is required to benefit from these incentives.

Likewise, exporters are entitled for refunds for the Income Tax paid for imports of goods or services used in the elaboration of products to be exported, and even for exemptions in the case of special customs regimes.

These incentives may also apply if the investor qualifies as an operator within a ZEDE zone. The main difference is that in a ZEDE, there is an indefinite 5% income tax reduction.

With regards to the Special Economic Development Zones ("**ZEDE**" due to its Spanish acronym), a concept that was created by the Production Code that came into force on December 29<sup>th</sup> 2010, these are zones created by the Ecuadorean Government that grant tax breaks to administrators or operators of such zones. These zones are oriented to benefit innovative investors that are mainly looking to export goods, utilizing quality work. Such operators or administrators receive the following tax benefits: **i)** a 5% reduction in income tax; **ii)** goods imported from abroad are free from customs duties and no VAT is payable, provided the goods are used for authorized purposes; **iii)** refund of paid VAT in local purchases; **iv)** and no Currency Outflow Tax is payable on any payments made abroad by such administrators or operators, for imports as well as for payments for credit loans granted by international financial entities. However, prospective administrators or operators must apply to the Government, requesting the project area to be designated as a ZEDE.

#### **IV.V TRANSFER PRICING**

Ecuador has incorporated OECD<sup>5</sup> guidelines in order to regulate the transactions performed between related companies –local or domiciled overseas- therefore if certain conditions established in the law are complied, taxpayers shall be required to present studies and information on their transactions with related parties to the Internal Revenue Service (IRS), along with their Income Tax return.

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<sup>5</sup> [Organisation for Economic Co-operation and Development](#)

## V. EMPLOYMENT REGIME IN ECUADOR

According to the Constitution of Ecuador as well as the labour legislation, workers' rights may not be waived and when there are matters or doubts with respect to the meaning of legal, regulatory or contractual provisions, these should be interpreted in favour of employees. Principally the Labour Code governs Ecuadorean labour relations, and labour related matters generally fall under the jurisdiction of the Ministry of Labour.

Employment contracts shall be in writing and shall include as minimum requirements: working hours, remuneration, place of work, position, among others. Oral contracts shall be interpreted as an indefinite working relationship.

While working contracts per hour are prohibited, partial working hours are permitted (less than 8 hours. Outsourcing of activities that are included in the core, permanent business of the employers' company is also prohibited.

Depending on the number of employees, employers may be subject to additional obligations contained in the Labour Code that are included in this general Guide.

### V.I LABOUR CONTRACTS

Labour contracts permitted under Ecuadorean legislation are the following:

- **Fixed Term Contract** According to the law, this kind of contract does not have a determined duration.
- **Eventual Contracts**, which are supposed to satisfy incidental needs of the employer, such as the replacement of workers (whether due to vacation periods, sickness, major demand in production, etc.) with a maximum duration of 180 days. This type of contract is subject to a salary increase of 35% over the minimum wage.
- **Occasional Contracts** are celebrated to cover urgent or extraordinary needs not related to the core business of the employer. Duration of this type of contract may not exceed 30 days in a year. This type of contract is subject to a salary increase of 35% of the minimum wage for employees.
- **Season Contracts** are celebrated for periodic or cyclical activities. This type of contract offers stability to the workers, meaning that they will be hired each season.
- **Contract for a determined work or service:** Once the activity or task for which the worker was hired concludes, the work relationship ends and is appropriate the ouster bonus. In case of the performance of new works or services, the employer shall compulsorily re-hire those workers who had rendered their service in the execution of prior works or services under this contract. If the worker is not called, there will be an

unfair dismissal; however, if the worker does not attend the employer's call, the latter is released of the responsibility to hire him back.

- **Trial period:** Although this is not a type of contract, in indefinite contracts it is possible to determine a trial period, with a maximum duration of 90 days. Either of the parties will be able to terminate the contract within such period, subject to no compensation.

## **V.II OUTSOURCING LIMITATIONS**

Outsourcing of activities that are included in the core, permanent business of the employer company is forbidden.

Other than the foregoing, outsourcing is permitted under the following conditions: (i) for supplementary activities contemplated in the law, such as vigilance, security, catering, courier and cleaning services, the supplier of any such services needs to have a registration and a permit as a provider of complimentary services issued by the Ministry of Labour Relations. If the company offering these complimentary services does not have an authorization, workers will be considered to have a direct labour relationship with the company contracting these services. (ii) Other complimentary services not referred above do not require an authorization. In any case, contracting companies are jointly and severally liable for the labour obligations of the supplier company.

Profit sharing to workers of outsourced companies: user companies of complimentary services (vigilance, security, catering, courier and cleaning) shall share profits with workers of outsourced companies. If profits of user company are higher than the profits of the company offering complimentary services, then user company must share its profits with employees of the complimentary services company. Payment to workers shall be made until April 15<sup>th</sup> of each year.

## **V.III EMPLOYMENT OF DISABLED INDIVIDUALS**

For companies with a minimum of 25 workers, at least 4% of the total headcount should be disabled employees or employees that have a disabled person in their family. Hiring these employees allow companies to have tax-benefits. Not complying with this requirement results in the establishment of a fine equal to USD \$ 2.920 per month which is applicable for each employer in Ecuador.

## **V.IV WORKER'S ECONOMIC RIGHTS**

**a) Minimum Wage:** Effective from January 1<sup>st</sup>, 2018 minimum wage is equal to US \$386 per month<sup>6</sup>. In addition, there is a minimum wage per sector or industry that is determined by the Ministry of Labour. The minimum wage does not include commissions, extra hours, bonuses or subsidies that must be paid separately. The payroll must contain a detail of each concept.

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<sup>6</sup> Minimum wage is set each year according to the annual inflation and productivity indexes in Ecuador.

**b) Additional Remunerations:** In addition to monthly salaries, local legislation recognizes two additional salaries: a) Thirteenth salary that is equal to the summation of all salaries (base wage plus overtime) received by the worker between December and November of each year, divided by twelve, and must be paid either monthly or, upon request of the worker, accumulated until December 24<sup>th</sup> of each year; and, b) Fourteenth salary that is equal to one minimum wage and must be paid on a monthly basis or, upon request of the worker, accumulated on or before August 15<sup>th</sup> (in the Highlands and Amazon regions), and on or before March 15<sup>th</sup> (in the Coastal region and Galápagos Islands).

**c) Profit Sharing:** Labour Code establishes that 15% of the profits generated by the company must be shared with all of its workers. The distribution of the Profit Sharing is the following: (i) Ten per cent (10%) divided among the company's workers; and, (ii) Five per cent (5%) is given to the company's workers according to the number of their dependents<sup>7</sup>.

In April, 2015, was set a limit of the profits, which could not exceed 24 minimum wages (currently the minimum wage is US\$ 354, hence the limit of the profits to be received by a worker is US\$ 8,496). The surplus will be delivered to the Social Security.

**d) Limits to remuneration gaps:** It will be possible, by means of Ministry Agreements, to establish limits to the remuneration gaps between the maximum remuneration of managers or high executives and the lowest remuneration within the company considering, among other, the following standards: i) Nature and economic sector of the company; ii) Profitability, income, cost and expenses and assets of the company; iii) Number of workers; iv) Corporate Responsibility; v) Those determined by the administrative authority. The amount exceeding the limit of remunerations determined by the Ministry of Labour will not be deductible for income tax purposes. Up to the present date said limits have not been set up. This capacity was included in the Labour Code since April 2015.

## **V.V SOCIAL SECURITY**

Employer must affiliate all workers to the Ecuadorean Institute of Social Security (IESS) from the first day of work. Employers must notify the IESS of any entrance of a new worker within 15 days of such entrance.

It is mandatory for all workers, executive employees, including legal representatives, and independent professionals to obtain a social security affiliation number and to pay affiliation fees accordingly.

IESS affiliation fees amount to 20,5% of the worker's salary, of which 9,35% is borne by the worker and 11,15% by the employer.

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<sup>7</sup> Worker's dependents are the following: spouse or partner, and children under age and disabled children of any age.

Workers that have more than one year working for a company are entitled to receive from the employer a social security reserve fund contribution, in addition to any other benefits described in this summary. This is an annual compensation equal to a monthly salary, which the employee can (i) have deposited once a year in its IESS reserve fund, or (ii) have included in the employees' monthly payroll.

## **V.VI WORKING HOURS**

Working hours shall not exceed 8 hours per day and 40 hours per week, any contract establishing a greater working regime is prohibited. Overtime shall be compensated in addition to the remuneration agreed with the employees. A 48-hour rest per week is mandatory for all workers.

The ordinary night working shift (7 pm to 6 am) shall be compensated with an extra 25%.

Supplementary Hours are considered the extra hours worked on ordinary days (hours in addition to the 8 hours), and may not exceed 4 hours per day or 12 hours per week. If extra hours are worked during the day, until 12 am, an extra 50% shall be charged. If extra hours are worked from 12 am to 6 am, an extra 100% shall be charged. Employees who represent the employer (i.e. executive positions) are not entitled to bill supplementary hours, unless otherwise agreed upon with the employer.

Extraordinary hours are the hours worked during Saturdays, Sundays and Holidays – defined as such by the Central or Local Government–. These hours must be agreed between the employer and the employee. Other than for emergency situations, the employer may not force the employee to work extraordinary hours. Extraordinary hours must be compensated with an extra 100% charge.

General rule is that working hours shall not exceed 8 hours, nevertheless labour laws recognize working shifts of less hours in the following cases: a) work performed underground (6 hours per day); b) teenagers' working hours shall not exceed 6 hours per day during a maximum of five days a week; c) mothers shall work 6 hours per day during 9 months following birth of her new-born; and d) each sector or industry within the economy could establish the working hours regime with prior authorization of the Ministry of Labour Relations.

## **V.VII VACATIONS**

Every employee has the right to 15 days of vacation per year. These 15 days include Saturdays, Sundays and Holidays. Workers shall have the right to one additional vacation day per each year of work starting the sixth year of work for the same employer. Employer has the option to pay for those days instead of vacations.

## **V.VIII TERMINATION OF LABOUR CONTRACTS**

Labour contracts may terminate by resignation of the employee, by mutual consent of the parties, by unilateral dismissal, or by termination by the employer for fair cause, i.e. upon the occurrence of certain causes contemplated in the Labour Code, provided the existence of such causes is previously determined by the labour authorities ("Visto Bueno").



#### **V.IX ECONOMIC COMPENSATION IN CASE OF TERMINATION**

If labour contract is terminated by mutual consent, resignation of the employee or termination by the employer for just cause, the employee is entitled to receive 25% of the last salary for each year of work for the employer, in addition to any other outstanding benefits (i.e. unpaid extra hours, unused days of vacation).

In cases of unilateral dismissal in contracts with an open-ended term, compensation shall be calculated by adding (i) one salary per each year of work calculated on the amount of the last salary (subject to a minimum of three salaries), and (ii) the compensation applicable to termination by mutual consent, as per the foregoing paragraph (i.e. 25% of the last salary for each year of work for the same employer).

In fixed term contracts, severance for unilateral dismissal is equivalent to 50% of the salary that would have been paid for the remaining term of the contract, subject to a minimum of three months salary.

#### **V.X LIMIT OF FOREIGN WORKERS IN THE COMMON REGIME**

The maximum percentage of foreign workers allowed by the law is 20% of the employer's workforce.

In addition to the percentage referred to the number of workers, the Regulation to the Foreign Law provides that this same relation shall be maintained for "the financial expenses because of wages and salaries". This means that the total amount of the expenses incurred by the employer for remunerations of the foreign personnel cannot exceed the 20% of the costs incurred by the employer with respect to the total payroll.

Foreign personnel that hold the legal representation of the company and any other personnel without labour dependency relationship with the company, such as general agents, are not considered within the percentage abovementioned.

#### **V.XI EMPLOYMENT REGIME FOR FOREIGNERS**

Local legislation grants foreigners the same rights as Ecuadorean citizens. According to this, foreigners are allowed to work in Ecuador as President, General Manager, Attorneys in fact, officers, or specialized workers for legal entities performing activities in the Country. In order for a foreigner to work in Ecuador, or execute any commercial activity, it must obtain a visa.

## **SECTION II – EXHIBITS**

### **EXHIBIT A**

#### **Formation of a Corporation and a Limited Responsibility Corporation**

No.	Procedure
1	<b>Reservation of the company name at the Companies Superintendence.</b>
2	<b>Preparation of the minutes of incorporation/company's bylaws.</b>  The minutes include the constituting contract, the articles of incorporation, the bylaws of the company, and the formation of capital.
3	<b>Notarize the charter of incorporation and bylaws.</b>  The shareholders of the company must sign the Notary Public certificate, with a sworn statement of its content and that the capital of the society will be deposited in a financial institution
4	<b>Registration of the company in the Mercantile Registry; register the appointments of the legal representatives of the company in the Mercantile Registry.</b>  The public constitution deed shall be registered at the Mercantile Registry. Upon said registration, the Mercantile Registry shall inform the Superintendence of Companies that the society had been registered and will prepare and register the appointments of the legal representatives before the Mercantile Registry.
5	<b>Attain the Tax ID Number of the Company (Registro Unico de Contribuyentes-RUC)</b>

**EXHIBIT B**  
**Establishment of Branches**

No.	Procedure
1	<b>Reservation of the company name at the Superintendence of Companies.</b>
2	<b>Formalization of all corporate documents of the foreign entity including company's bylaws, certificate of legal existence and power of attorney in favour of local legal representative.</b>
3	<b>Qualification and approval of the Superintendence of Companies of the formation of the branch.</b>
4	<b>Registration of the branch in the the Mercantile Registry.</b>
5	<b>Attaining the Tax ID Number of the Branch (Registro Único de Contribuyentes-RUC)</b>

## **EXHIBIT C**

### **Tax Havens**

The following territories are considered as Tax Havens or Preferred Tax Regimes (PTR) -- including dominions, jurisdictions, territories or associate States-- as per the Ecuadorean Tax Regulations, issued by the Internal Revenue Services (SRI):

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| <b>1. Albany</b>  | <b>28. Guyana</b>  |
| <b>2. Angola</b>  | <b>29. Islas del Canal</b> (Guernesey, Jersey, Alderney, Great Stark Island, Herm, Little Sark, Brechou, Jethou Lihou) |
| <b>3. Anguilla</b> (Overseas territory of the United Kingdom)                               | <b>30. Isle of Man</b> (Dependency of the British Crown)   |
| <b>4. Antigua and Barbuda</b>   | <b>31. Jordan</b>  |
| <b>5. Aruba</b> (Territory of the Kingdom of Netherlands)                                   | <b>32. Keeling Islands</b>   |
| <b>6. Ascension Island</b>  | <b>33. Kingdom of Swaziland</b>  |
| <b>7. Azores Islands</b>  | <b>34. Kingdom of Tonga</b>  |
| <b>8. Bahamas</b>   | <b>35. Kiribati</b>  |
| <b>9. Bahrain</b>   | <b>36. Kuwait</b>  |
| <b>10. Barbados</b>   | <b>37. Labuan</b>  |
| <b>11. Belize</b>   | <b>38. Liberia</b>   |
| <b>12. Bermuda</b> (Overseas territory of the United Kingdom)                               | <b>39. Luxemburg</b>   |
| <b>13. British Virgin Islands</b> (Overseas territory of the United Kingdom)                | <b>40. Macau</b>   |
| <b>14. Brunei Darussalam</b>  | <b>41. Madeira</b> (Territory of Portugal)   |
| <b>15. Campione D'Italia</b> (Community di Campione d'Italia)                               | <b>42. Marshall Islands</b>  |
| <b>16. Canary Islands</b>   | <b>43. Mauritius</b>   |
| <b>17. Cayman Islands</b> (Overseas territory of the United Kingdom)                        | <b>44. Montserrat Island</b> (Overseas territory of the United Kingdom)  |
| <b>18. Christmas Islands</b>  | <b>45. Myanmar</b> (ex Birmania)   |
| <b>19. Cook Islands</b> (Fully self-governing country in free association with New Zealand) | <b>46. Netherlands Antilles</b> (Territory of the Kingdom of Netherlands)  |
| <b>20. Cyprus</b>   | <b>47. Niger</b>   |
| <b>21. Djibouti</b>   | <b>48. Niue</b>  |
| <b>22. Dominica</b> (Commonwealth of Dominica)  | <b>49. Norfolk Island</b>  |
| <b>23. French Polynesia</b> (Overseas territory of France)                                  | <b>50. Ostrava Free Zone</b> (Check Republic)  |
| <b>24. Gibraltar Colony</b> (Overseas territory of the United Kingdom)                      | <b>51. Pacific Islands</b>   |
| <b>25. Greenland</b>  | <b>52. Palau</b>   |
| <b>26. Grenada</b>  | <b>53. Panama</b>  |
| <b>27. Guam</b> (Unincorporated Insular area of the United States)                          | <b>54. Pitcairn</b>  |
|   | <b>55. Principality of Andorra</b>   |
|   | <b>56. Principality of Liechtenstein</b>   |
|   | <b>57. Principality of Monaco</b>  |
|   | <b>58. Puerto Rico</b>   |
|   | <b>59. Qatar</b>   |
|   | <b>60. Qeshm Island</b>  |
|   | <b>61. Republic of Cape Verde</b>  |

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| <b>62.</b> Republic of Maldives                                     | <b>75.</b> Svalbard Archipelago  |
| <b>63.</b> Republic of Nauru  | <b>76.</b> Territorial Collectivity of Saint Pierre and Miquelon             |
| <b>64.</b> Republic of Vanuatu                                      | <b>77.</b> Tokelau   |
| <b>65.</b> Saint Helena   | <b>78.</b> Trieste (Italy)   |
| <b>66.</b> Saint Kitts and Nevis Islands (San Cristobal Federation) | <b>79.</b> Trinidad and Tobago   |
| <b>67.</b> Saint Lucia  | <b>80.</b> Tristan da Cunha (Saint Helen)                                    |
| <b>68.</b> Saint Vincent and the Grenadines                         | <b>81.</b> Tunisian Republic   |
| <b>69.</b> Solomon Islands  | <b>82.</b> Turks & Caicos Islands (Overseas territory of the United Kingdom) |
| <b>70.</b> Samoa (American and Occidental)                          | <b>83.</b> Tuvalu  |
| <b>71.</b> San Marino   | <b>84.</b> United Arab Emirates  |
| <b>72.</b> Seychelles   | <b>85.</b> USA Virgin Islands  |
| <b>73.</b> Sri Lanka  | <b>86.</b> Yemen   |
| <b>74.</b> Sultanate of Oman  |  |

Notwithstanding the detail above, other countries, dominions, territories or places could be considered as Tax Havens or PTR, if the local Income Tax rate –or similar tax- is 60% lower than the payable amount applicable in Ecuador for the same income, under similar conditions.

On the other hand, those places with which Ecuador has executed Double Taxation Treaties (DTT), where an “Information Exchange Clause”<sup>8</sup> has been included, will not be considered as Tax Havens or PTR.

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<sup>8</sup> It means that no local law or regulation impedes local authorities to deliver to the Ecuadorean authorities (SRI) legal, financial or stock exchange information when required.

## **SECTION III – ABOUT THE FIRM**

Tobar ZVS Spingarn is one of Ecuador's most respected and successful independent firms. Mining, Intellectual Property and IP enforcement were strong business units from the beginning. The firm has since followed a niche-based approach, focusing on client profiles rather than on the legal classification of its practice, expanding products in areas in which it would have a leading presence. Tobar ZVS Spingarn is currently one of the top choices for clients seeking business partners at a strategic level in case-oriented relationships. The firm takes pride in understanding its client's strategic goals and business drivers, in designing products and rendering services that meet and contribute to the value proposition of each of its client business. Tobar ZVS Spingarn provides integrated legal services aiming to become its customer's strategic business partner through a personalized procedure. Tobar ZVS Spingarn endeavours to be the leading firm in the integration of strategies and Solutions for sustainable and innovative Business in the global market.

### **I. NATURAL RESOURCES, ENERGY & INFRASTRUCTURE**

- The firm's practice in natural resources (in general) and mining (in particular) has been one of our greatest strengths. We have consistently supported several of the most important mining projects in Ecuador since their conception, by assisting in the acquisition or sale of mining projects and companies, both private and public.
- The firm represents large mining clients in the full range of their legal and consulting needs. The Firm's advice and representation ranges from obtaining and managing mining concessions, advising and negotiating Government contracts, investment contracts and stability agreements and other operation and construction- related contracts, permitting issues, general legal compliance, land acquisition programs, labour planning and management, to assisting headquarters with the local content required for project financing and stock listing.

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### **II CORPORATE AND M&A**

- Due to the transnational vocation and focus on corporate clients, our Firm broadened its range of services until it became established as one of the select firms that provides integral support to both international companies that invest in Ecuador and companies throughout the region, as well as local companies that expand their operations abroad. The Firm offers the services of its lawyers throughout more than 150 jurisdictions through the Terralex Platform, which is an international network of independent firms. TOBAR ZVS SPINGARN is the exclusive member for Ecuador.



- Currently, the firm is acknowledged as one of the best options for corporate clients also due to the abilities of its team, its integral focus on advisory, its corporate methodology of service and cutting-edge technology. Corporate practice has grown steadily through project financing, M&A, venture capital, private equity, business

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**III NEGOTIATION, CONFLICT RESOLUTION AND DISPUTES**

- The dispute resolution and litigation area focuses its strength in litigation, arbitrary matters, and negotiation/ conflict management in intellectual property, labour, commercial and civil matters.
- TOBAR ZVS SPINGARN favours negotiation as the most valuable management tool whenever possible. Most of the conflicts the Firm takes care of are successfully managed through direct negotiation or by alternate dispute resolution mechanisms.

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**IV INTELLECTUAL PROPERTY AND ANTIPIRACY**

- Providing counselling service to reputable companies as well as to local and International SME's (Small & Medium Enterprises), the firm has raised awareness on brand appraisal matters deepening its advisory on patent and trademark registration services innovating strategies and methods providing an outstanding quality service.
- The IP legal advice embraces its lawyers to provide clients with complimentary legal services such as formation of corporations, mergers and acquisitions (M&A), and preparation of partnership contracts.
- As part of their national and worldwide campaign to enforce anti-counterfeiting policies and laws the firm has enforced its network of associate firms broadening its capacity to assist requirements of their clients abroad.

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**V ANTITRUST AND COMPETITION**

- TOBAR ZVS SPINGARN has participated in M&A approvals by the Antitrust Authority, has successfully initiated and defended clients in unfair competition

actions and has provided counseling since the date when the Antitrust Law came into effect in Ecuador.

- It is worth mentioning that we frequently furnish significant support to the Antitrust authorities in international seminars and events related to this area.
- The team is multidisciplinary, with broad capacity to attend the complex issues that may arise in this sector.

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**VI TAX AND LABOUR CONSULTANCY**

- This unit is committed to provide a range of strategic tax and financial services that answer to the requirements of local and international businesses and contributes to the proper functioning and growth of companies. The aim is to allow clients to achieve their vision for the future.

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