

# Doing Business in Ecuador 2013

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## Introduction

UC&CS is an international organisation providing accountancy, business management and consultancy services through financial business centres in countries throughout the world. Business partners work together through the network to conduct trans-national operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Ecuador has been provided by the office of UC&CS representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at January 2013.

We look forward to helping you do business in Ecuador.

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## **Business environment**

### **General Information**

#### **Constitution and Political Situation**

The Republic of Ecuador consists of 24 provinces: six in the southern coastal region, eleven in the northern region, six in the Amazon region and one in the Galapagos Islands. The provinces are sub-divided into counties and again divided into urban and rural parishes.

Ecuador has been an independent country since 1830 and has always been an active Democratic Governmental Body. The Political System of Ecuador is ruled by a presidency with three independent governmental powers: Executive, Legislative (National Assembly) and Judicial Systems.

#### **Economic Situation**

The country's monthly inflation borders approximately 0.51% at the end of 2010. The companies that are more relevant in the economic framework of the country are the small and medium sized firms. However, there are large companies with capital from abroad. The total PIB suffered an increase of 2.74% in the second quarter of 2010 compared to same period of 2009. The passive rate of interest is 4.28% and the active rate of interest is 8.68%. The unemployment rate is 6.10% (as of December 2010).

The monetary system is the US Dollar (USD \$), which came about and took effect in January 2000. For this reason there are no major differences in foreign exchange or risks to be undertaken in economic matters.

#### **Banking and Finances:**

The Central Bank of Ecuador, until 8 January 2000, was totally responsible for regulating the monetary political policies. At the root of the process of monetary change to US Dollars in Ecuador (9 January 2000), the Central Bank of Ecuador no longer distributes currency, but is in charge of managing and distribution of Foreign Exchange. The banking system includes those banks controlled by the government and independent banking, including these branches, affiliated or joint ventures of the majority of principal international banks. Financial Institutions specialized in leasing, securities, inversions, loans, savings and companies with pension accounts are acceptable.

#### **Legal System**

The legal system is based on written agreements in the Constitution, International agreements, Laws, Regulations, Resolutions and Agreements.

#### **Area and Population**

Ecuador borders with various countries of South America and with the Pacific Ocean. In the north it borders with Colombia and in the south it borders with Peru and with the Pacific Ocean in the west. It's a relatively small country within Latin America, with a land area of nearly 256,370 sq. kilometers and a population of 14,000,000 approximately. The urban

population is 65% and the rural is 35% respectively. The most important cities are Quito (the capital; with 2,200,000 inhabitants approximately), Guayaquil (principal port; with 2,400,000 inhabitants approximately) and Cuenca with (495,000 inhabitants approximately).

In addition, Ecuador possesses 4 natural regions: Coastal, Mountain, Amazon and Insular (Galapagos).

### **Communications**

Communications are very good by air, land and sea. Some communications are poor if traveling by train. There are two major international airports: Quito and Guayaquil.

### **Language**

According to the resolution passed by the members of the National Assembly on 24 July 2008, it was established that the official language of Ecuador is Castellano (Spanish). Kichwa (quechua) and Shuar (indigenous languages of the Amazon) are official languages in relation to cultural matters. The majority of businesses use the English language.

### **Time relative to GMT**

Ecuador is five hours less than GMT.

### **Working Hours**

Normal office working hours are 9am to 6pm, Monday to Friday. Banking hours are 8:30am to 4:30pm, Monday to Friday. On Saturday, Sunday and during public holidays, the public is assisted during the hours of 10am to 4pm.

### **Climate**

By its location at the central part of the planet, Ecuador has a variety of micro climates.

Coastal: mild with temperatures from 25 to 34 degrees centigrade. It has two climatic seasons: Rainy – hot and humid from December to May, and Dry – from June to November.

Mountain: the temperature varies depending on the altitude. The elevated areas enjoy a sub-tropical climate. Closer to the mountain peaks the cold climate is intense. The central urban areas have a temperature that varies from 13 to 18 degrees centigrade.

Amazon: mild, humid and rainy with temperatures from 23 to 36 degrees centigrade. The dry season is October to December.

Insular: dry and mild with temperatures from 22 to 32 degrees centigrade.

### **National Holidays:**

New Year's Day	January 1
Carnival Week	February
Holy Week	April

Labor Day May 1  
Battle of Pichincha May 24  
Guayaquil Founded July 25  
Independence Day August 10  
Independence Guayaquil October 9  
All Souls Day November 2  
Independence Cuenca November 3  
Quito Founded December 6  
Christmas Day December 25

## **Foreign investment**

### **Attractions for foreign investors**

Ecuador is modernizing its economy within the new scheme in order to fit in with the worldwide economic structure. Ecuador is immersing in an aggressive process of globalization, with a liberal attitude toward the economy and opening new markets, thus has witnessed the importance of how foreign investments effect the dynamic internal production of its country. This investment channeled in the proper manner can allow the internal production to restart again and generate new companies in the country.

Following this theme, Ecuador has worked in defining a clear institutional and stable legal framework that signals to foreign investors that Ecuador will respect their rights, promote and safeguard a favorable investment climate, and represents a viable opportunity for investors.

The necessities of the Ecuadorian market vary, much like its population. The major part of what is needed requires technological sites, hi-tech machinery, specialized machinery for specific industries, etc.

Up to December 2010, Ecuador has yet to make a commitment to participate in the Free Trade Agreement with the United States. However, Ecuador has signed agreements of participation with several Latin American countries.

Ecuador gives to the foreign capital the same tributary and fiscal treatment that applies to the national capital. By which, it abolishes all existing restrictions for foreign investments in the country. This is evident in all sectors except in those strategic areas of state. Areas of state enjoy absolute liberty in this matter.

### **Foreign Investment Regulations**

Ecuador manages to carry out focused actions in order to modernize its economy and harness international financial recourses by way of direct foreign investments, in order to increase the level in the local economy, production of goods and services offered.

The political constitution promotes private investments in the economy, guarantees the liberty of companies and obligates the State to stimulate free competition and competitive markets. The Constitution contains agreements to protect the private property and guarantee the

compliance of all contracts. In fact, if the State continues being responsible for the roads, highways, shipping ports, drinking water, electric energy and telecommunications, then it too could delegate the corresponding services to the private sector by means of concessions or the privatization of state companies. Those dispositions are applied to all private investors, both national and foreign.

The Government of Ecuador maintains an open mind towards international rulings and permits foreign investors to submit whatever differences they may have to this international ruling, and agreeing to the conditions of international treaties of which Ecuador is also part of. Also, Ecuador is a signatory to the Agreement of Differences relative to the investments between States and other State Nationals approved in Washington in 1965.

Direct foreign investment in Ecuador abides by the law of promotions and guarantee of investments promulgated in 1997, compatible with Decision 291 of the CAN.

The Law of Investments recognizes the potential economic benefits of direct foreign investments, like, generating employment, increase and diversification of exportations, development of appropriate technologies and the integration of the national economy in the worldwide economy.

The Law establishes a National System of Promotion of Investments, which is a system of rules and public and private institutions that cover political topics and matters related with the participation of foreign companies in the Ecuadorian economy.

The general coordination of the system is in the hands of the Ministry of Exterior Commerce, Industrialization, Fishing and Competition (MICIP), while the responsibility for formulating the national politics of investments correspond to the Consul of Exterior Commerce and Investments. (COMEXI). Within the institutions that participate in the system are as follows: Ministry of Exterior Relations, National Financial Corporation (CFN), Promotions Corporation of Exportations and Investments (CORPEI) and other public and private entities, including the association of producers and professionals.

Foreign investors may participate in all sectors of the economy, without restrictions or prior authorization of the MICIP or any other state agency, except those agencies involved in strategic matters of state, for which it would be required to receive authorization from the entity corresponding to that area of investment.

For complete understanding of this law, it is intended to be understood as foreign investments, whatever type of transfer of capital designated to the production of industries and services, included are the following:

- Financial Resources in currency liberally accepted for conversion.
- Real estate such as industrial plants, new machinery or refurbished, equipment, parts and pieces, prime materials and intermediate products.
- Technological contributions and tangibles, brand names, industrial models, technical assistance, patented and non-patented techniques.

All foreign investments should be registered in Banco Central del Ecuador, with all pertinent documents of the case presented.

### **Governmental Incentives**

There are certain sectors in the economic activities of direct foreign investments, and they are principally productive sectors not related with the oil industry.

In addition, those sectors which are in capacity to compete in the export markets taking advantage of the rules of packing, temporary acceptance with the rules governing the rights covering all activities of investment procedures would be potential candidates of the resources of foreign investments.

The State will foment foreign investment towards punctual sectors and those with great potential: i.e. agro-exportation, mining, tourism and services.

In January of 2011 took effect the Code of Production, Trade and Investment, in which the Government provides incentives mainly foreign trade and tax for new investments in the country, in order to promote and encourage foreign investment and overall new investment in economic development zones.

### **General Guarantees**

The Ecuadorian State will watch over the development of national and foreign investments with total liberty and guarantees established within the judicial framework of the country.

Whatever discriminatory or anomalous situation which acts against investments can be denounced before the MICIP, this can be done directly or through the COMEXI, immediate action should be taken before the competent organism in order to correct the situation.

The foreign and national investors should conserve, preserve and restore completely the damages caused to the natural environment and natural resources. The COMEXI, prior to the report from the Ministry of Environment, could prohibit totally or partially the operations of any company that has been causing damages to the environment and causing depreciation to the natural resources of said country.

### **Specific Guarantees**

The following are specific guarantees for foreign investment:

Taking advantage of the sales made from the application of the Liberation program of the Andina Community, as well as the duty charged by Customs authorized by other countries to Ecuador.

Free access to the mechanisms of promotions, technical assistance, cooperation and other similar conditions foreseen for national companies.

## **Free Zone**

The administrative companies and its users of the Free Zone, for all events and contracts which take place in the Free Zone, will be exonerated 100% from paying income tax, as well as aggregated taxes, provincial and municipal tax, patent taxes, production taxes, use of patents and brands, technological transfers and repatriation of utilities.

## **Tourism**

Tourism will enjoy being exonerated from all tributes which burden the transfer of real estate, contributions to the constitution of companies, with its final result being tourism. Likewise the contributions made to increase the capital of tourism companies, which are registered and qualified in the Ministry of Tourism. The tourism services which are invoiced abroad will find themselves with a 0% tax to the aggregated value in agreement with the current tributary legislation.

The contracts or tourist packages paid within or outside the country will not incur taxes to the aggregated value, keeping in mind that the total amount of tax to be paid by the operator to the corresponding lending service.

## **Setting up a Business**

### **Organizational Models for Foreigners**

In Ecuador, companies are subject to the Law of Companies, the Commerce Codes by agreement of both parties and by the dispositions of the Civil Codes.

The most common forms of Commerce or Mercantile societies are limited companies and companies with limited responsibility.

The transfer of shares and the participation of established companies in Ecuador, subject to and under direct vigilance of the Superintendent of Companies, will be communicated to the same, with name and nationality of the shareholder and receiver of transferred shares, by the respective company administrators, within eight days prior to the inscriptions in the corresponding ledgers.

### **Difference between a Limited Company and a Limited Responsibility**

A limited company is the most common form of firm organization, probably for the ease of share negotiations, since the difference of the limited responsibility, the shareholders don't need acceptance from other shareholders, or the formality of handwritten public documents, in order to concede or endorse its shares.

After limited companies, limited responsibility are the next most common. For other reasons, because the minimum capital needed in order to integrate them are less than the limited companies. However, one of the motives why many do not advise taking this route is because you must have a general approval of all partners and public handwritten documents. These documents must be submitted to the Mercantile Registry Department in the country where the



company was established and near the headquarters which has all legal documentation of said company.

### **Principal Differences between a Limited Company and Limited Responsibility**

The limited responsibility company is made-up of two or more shareholders up to a maximum of twenty-five. The limited society however has no limitations over the minimum or maximum number of partners. In the limited responsibility the increase or transfer of shares are only allowed within partners and in the limited company the same takes place with no restrictions.

### **Establishment and Start-up of Business Unity**

#### **Limited Society (S.A.)**

The limited company is a society whose capital, divided in negotiable shares, is formed by the contributions of the shareholders who respond and react only in matters pertaining to their gains in shares held.

#### **Incorporation**

It constitutes between two or more persons who take part in a public handwritten contract. This legal action can take place at one time, simultaneous, or in sequential order, or by public subscriptions of shares. These persons can be Ecuadorians or foreigners.

Nevertheless, the company once formed can exist with only one shareholder. In those which, participate institutions of public or private rights, with social or public aims, they also can be formed and exist with one or more shareholder.

The contract should come about by public handwritten documents, that is to say, witnessed and signed by a Notary. If the contract contains all the necessary articles and is in line with all legal requirements and the capital is duly integrated, then the Superintendent will approve and enter the contract in the Mercantile Registry Department and include a copy of said contract in a major newspaper in the same company. This will occur only once.

The minimum capital subscribed and paid by these companies are those which by general resolution are fixed by the Superintendent of Companies. At present this capital is fixed at \$800.00 minimum. The capital should be integrated at the moment of the companies constitution, at the very least, 25% of each share that are subscribed, following the requirement to have deposited the paid portion of the social capital in a financial institution. The balance should be paid within a period of two years.

#### **Administration**

The general committee, formed by the shareholders who have been legally summoned and reunited, is the supreme body of the company.

In the social contract, there should be included the administrative structure of the company. The Superintendent of Companies will not approve the contracts if it is not clearly determined who will have legal, judicial and extrajudicial representation.

The last disposition invoked establishes that the representation can be confided in directors, managers, administrators and other agents. The representation can also be executed by another company, in this case acting by means of a President (observe that this does not say manager or other, a President can act with a manager but a manager cannot act with someone who is not a President).

The administrators of the company can be nominated in the same constitutional contract.

It is suitable for the General Committee to name and remove members of the administrative organisms of the company and designate or remove the administrators, if the statute does not confer this right to another organism (which could be a Director or Administrative Consultant, for example). Likewise, he must affix the retribution, when it doesn't correspond by statute or other organism or civil employee.

Once the administrator, who has the legal representation, has been designated and with the guarantee presented, he will be urged by statute to inscribe his nomination in the Mercantile Registry.

The term of office for the position of administrator cannot exceed five years.

Generally, the general committee of shareholders can validly unite in the first assembly if more than 50% of the capital has been paid. In the second assembly they can unite with the present capital. The quorum necessary can be incremented in the social statutes. The general committee of shareholders should meet within the territory of the Republic of Ecuador.

### **Utilities**

Of the liquid annual benefits there should be assigned at least 50% of dividends in favour of the shareholders, unless the general committee, by unanimity, decides the contrary.

Of the liquid annual benefits there should be set aside a percentage of not less than 10% in order to form the legal reserve of the company, until this reaches at least 50% of the social capital.

When the shares of the company are sold to the public, the minimum to be shared should be 30% of the liquid utilities and which were obtained in the respective economic exercise.

Also these companies, prior to an unanimous resolution of the general committee, could hand over down payments in quarterly or half-yearly portions, charging the results of the same exercise.

### **Limited Responsibility Company (LTDA)**

The limited responsibility company is that which is contracted between two or more persons, who only respond to the social obligations up to the amount of their individual contributions and make the low commerce a social reason or a denomination objective.

## **Incorporation**

This company constitutes between three or more partners that makeup the contract and public documents. Once constituted, the company can exist with one partner as minimum and fifteen maximum. If the number of partners exceeds fifteen the company would be forced to change into other companies or close down.

The contract should be presented in form of a public document, that is to say, presented before a Notary. Once these copies have been conferred by the Notary (normally they are given in stacks of five copies) they are submitted for approval to the Superintendent of Companies. If the documents fulfill all the requirements legally and the capital has been also integrated, the Superintendent will put into publication an extract of the documents, only once, in a major newspaper in the area of the company and place its inscription in the Mercantile Registry Department.

The partner has the right to limit his responsibility of the amount of his social participations, except for those cases of exception established by law pertaining to this matter.

The minimum capital subscribed and paid by these companies are those that by general resolution are viewed by the Superintendent of Companies, the minimum capital for this type of company is \$ 400.00 and will be divided in participations. The capital should be integrated at the moment of constituting the company, at least 50% of each of the participations subscribed. The balance unpaid should be paid twelve months from the date of constitution of the company.

## **Administration**

The general committee formed by the partners legally summoned and reunited is the supreme organism of the company.

In the social contract you can find the administrative structure of the company. The administrators or managers can be designated in the contracts constitution or by resolution of the general committee, which would be within their right to do so. In order to be an administrator it is not required to be a partner of the company.

The functions of the administrators are those which are established in the social contract, and although not noted, will be resolved by the general committee. If there are no contractual stipulations or resolutions in the case of the general committee, it is understood that there are faculties present to represent the company in a judicial or extrajudicial manner.

The administrators of the company can be nominated in the same constitutional contract.

Once designated, the administrator who has the legal representation and presents the guarantee, if the statute orders, should register his acceptance in the Mercantile Registry Department.

The term of office for the administrator shouldn't exceed five years.

### **Utilities**

The general committee has attributes in order to resolve the type of distribution of utilities. The administrators have the obligation to present the proposal of distribution of benefits sixty days from the termination of the respective economic exercise.

A percentage of 5% should be taken from the annual liquid utilities in order to form the legal reserve of the company, until this reaches at least 20% of the social capital.

This percentage cannot be higher or lower, due to the fact that the statute cannot go against the law.

### **Mercantile Trust**

The Ecuadorian norm establishes that in a mercantile trust contract, one or more persons named constituents or trustees, transfer temporarily or irrevocable, the real estate property or corporal or non-corporal properties which exist or are waiting to exist, to an autonomous inheritance, gifted of judicial personality in order that the society administrator of funds and trust, who is the trustee and legal representative, carry out the finalities specifically instituted in the contract, in favor of the constituent or other party named beneficiary.

The autonomous inheritance, is that which is the joining of rights and obligations affected towards a finality and which is a judicial affect of the contract, is also named mercantile trust. In this manner, each mercantile trust will have a particular name assigned by the constituent in the contract, so as to distinguish it from other contracts being held by trustees during their daily routines.

Each autonomous inheritance (mercantile trust), is gifted with judicial personality, being that its legal representative (trustee), is the person who exercises the functions in compliance to the instructions designated by the constituent in the corresponding contract.

The autonomous inheritance (mercantile trust), is not, and cannot be considered as a civil or mercantile society, but only as judicial fiction capable of exercising rights and contract obligations by means of trustees, attentive to the instructions noted in the contract.

The mercantile trust should constitute itself by means of an open public forum. When to the inheritance of the mercantile trust there are contributions of property and others urged by law which require public documentation, these will abide by the requirements.

The transfer of titled property to the trust will take effect in conforming to the general dispositions as foreseen by law, attentive to the nature of the property.

The mercantile trust will have a period of validity or could exist up to the execution of finality foreseen or conditions. The duration period of the mercantile trust cannot exceed eighty years, except for the following cases:

- a) If the resulting condition is the dissolution of a judicial person; and:
- b) If the trustees are constituted with cultural aims or investigations, such as the philanthropists, those which have as an objective the establishment of museums, libraries, scientific investigational institutes or cultural diffusions, or give relief to the elderly, orphans and invalids, they can exist until it is feasible to carry out the purpose for which it was constituted.

## **Labour**

The relationships between employers and employees are regulated by the Work Code. The work period is 8 hours per day, five days a week. Overtime hours, that is, Saturdays, Sundays and holidays are paid at double of the hourly rate. The night shift personnel are paid at 50% more per hour up to midnight and twice the hourly rate from midnight onward. The rate of overtime is 50% of the hourly rate except in the case of nocturnal fees or weekends and holidays, in which the rate is 100%.

Generally the work contracts are written and can be exhibited publicly or kept in private. However there are contracts written with specific working titles as follows:

### **Said and Tacitus Contracts**

This contract is between employer and employee, who are both in agreement with the conditions of work and agree verbally or in writing. Aside from stipulations in the said contract, the contractual agreement of both parts falls into the category of a Tacitus Contract.

### **Fixed Salary Contract**

This contract is made when the employee or worker agrees to perform his tasks at a fixed salary which falls in line with the economic status of the employer.

### **Participation Contract**

This contract allows the employee or worker to take part in the negotiations of the employer as well as being remunerated for his work.

### **Job Completion Contract**

This contract takes effect when the employer and employee are in agreement in the amount of time the Project will take. The minimum time is approximately one year when the Project is of a stable natural process and cannot exceed two years without renovation of said contract.

### **Indefinite Time Contract**

If after two years of the contract has expired, the contract can convert itself into a permanent one.

### **Time Trial Contract**

In all types of contracts, normally for the first time, there can be a trail period, this being a trail period of ninety days. After the trail period has elapsed this contract could stay in effect until the year has ended.

### **Task Completion Contract**

This contract takes effect when a worker or employee begins a project, understanding the salary to be received without any restrictions to amount of time required to complete the project.

### **By Project Contract**

This contract is when the employee takes on a project and promises to complete the same within a designated period of time. The contract ends when the time allotted and project is completed.

### **Part by Part Contract**

This contract is made when the employee or worker will execute his task by parts, that is to say, does not complete the entire project at one time, but in phases, without consideration of time necessary to completion.

### **Fill-in Contract**

This contract is written and agreed to as a fill-in temporary job. The employee or worker will replace any other fulltime employee who is absent for sickness, vacations, maternity leave or other similar cases.

### **On Call Contract**

This contract is assigned by the employer as an emergency tactical move to assist him in an extraordinary situation not common to the company. This contract would not exceed 30 days within the work year.

### **Seasonal Contract**

This contract for whatever reason is the decision of each employer to hire one or more workers or seasonal employees during a given time period each year. These jobs are given by cycles or seasonal, and the workers or employees have the right to be called in to work for said employee each season.

### **Individual Contract**

This contract is up to each individual worker or former employee. The worker lends his or her personal services under his or her free will for a specific payment for said services.

### **Freelance Contract**

This is sub-divided as follows:

*Exterior Freelance Contract* - This contract is initiated when workers or employees are selected in order to complete a said project outside of the country.

*National Freelance Contract* - This contract is initiated when workers or employees are selected in order to complete a said project within the same country but in different locations outside the home or in other provinces. The employer has the obligation to pay for all costs of transportation to and from the workers home.

### **Group Contract**

This contract occurs when an employer hires a group of workers for one specific project.

### **Team Contract**

This contract occurs when a group of workers, organized judicially or non-judicially, to perform a task with one or more employers.

### **Training Contract**

This contract is agreed to between an employer and a worker who commits himself to complete a project in return for technical training and payment from said employer. This contract is made for a specific period of time, and cannot exceed one year from Start of Contract.

A contract made for training purposes to underage individuals cannot last more than two years in the case of arts and crafts and not more than six months for industrial projects or other types of works.

### **Domestic Contract**

This contract relates to a labour intensive job, in which the worker commits to household duties for himself or his family with salary compensation and benefits such as housing, food, etc. The worker could be a live-in resident or travel daily to and from the work place.

In Ecuador, the affiliation of the employees to the Social Security Enrollment is obligatory. The Social Security department is financed by contributions of the employees and employers to pay for: maternity, sickness, unemployment, work accidents, retirement pensions, death, etc. The employer contributes 11.15% (also 0.5% for SECAP and 0.5% for IECE) from each paycheck monthly to the Social Security Department of Ecuador, and the employees pay 9.35% from their paycheck monthly.

### **Retirement Fund**

Workers or employees who have worked for twenty five years or more continuously without interruptions have the right to retirement from their employers. The retirement pension should be more than the basic salary unified half of the last year, no less than \$ 30.00 monthly, if the worker has retirement from his employer and \$ 20.00 monthly if the worker has the right to double retirement.

### **Distribution of Benefits to Workers**

The workers of a company have the right to receive 15% of the benefits prior to payment of income tax (this is considering any Transfer Pricing adjustment applied in the year according

to OCDE rules). The 10% of the benefits will be distributed independently of the compensations received and the 5% remaining will be distributed according to the number of children of each worker. Those workers who have not worked a full year would receive a portion based on the time worked during the year.

Besides paying salaries, the employer should pay for the following concepts:

*Thirteenth Salary or Christmas Bonus:* Annual compensation equivalent to the twelfth part of remunerations earned by the worker, during the period understood as between December 1st thru November 30th. This payment should be paid no later than December 24th.

*Fourteenth Salary or School Bonus:* Annual compensation equivalent to (1) basic unified salary. If the worker has not worked the full year, he will be paid a proportional part. The payment should be effective until the 15th of August (mountain region) and until 15th of April (coastal and insular region) of each year, for the year prior, between the dates of 1st of August and 31st of July or 1st of April and 31st of March. Current basic unified salary (2013) is \$ 318.00 monthly.

*Vacation Pay:* Employees receive 15 days paid vacation each year. Including on additional day for each year of work with the same employer, providing he has worked five years prior. In no case can an employee receive more than 30 days paid vacation. Vacations can be accumulated during three consecutive years; but must be taken in the fourth year. Vacation days after the first 15 can be taken in form of payment.

### **Jobs for Foreigners**

Every foreigner who wishes to enter the country with the purpose to develop or establish a workplace with judicial or national persons living in Ecuador or abroad, should apply for a working visa and apply for a certificate granted by the Ministry of Jobs (National Director of Employment and Human Resources), which authorises favourable to the activities to be developed by foreigners.

On the other hand, in the sectors of mining and oil industries and Free Zones other additional restrictions apply. In the case of mining and oil, 90% of the workers, 95% of the administrative personnel and 5% of the technicians are and should be Ecuadorians. In the case of Free Zones, the restriction is that the National Consul of Free Zones will determine the general requisites to hire foreigners.

### **Outsourcing Labour Ethics**

In Ecuador it is prohibited by Constitutional Mandate the outsourcing of labour and whatever form of non working labour ethics taken upon by the companies or its employers. The labour relationship should be direct and bilateral between the employer and employee. This law also prohibits and eliminates the hiring of labour per hour.

The employee enjoys the stability and integral labour protection and has rights to being remunerated, which constitutes a complete day's work, and which also cannot be less than



the remuneration of the basic unification. The employees also have the rights to all benefits by law, including reserve funds and the induction into the Social Security Program which is obligatory.

Likewise, Ecuador guarantees the collective contracts of work in the institutions of the public sector, public state companies, sectional organisms and entities of public rights, under which, whatever denominations, natural or judicial structure, the state or its institutions have majority participation and/or contributions direct or indirect of public resources, which adjusts to the terms established in the constitutional mandates and in the regulations of the Ministry of Work and Employment.

There can be contracts with natural or judicial persons authorised as lenders of complimentary activities by the Ministry of Work and Employment, whose prime objective is the realisation of complimentary activities of: vigilance, security, nourishment, messenger service and cleaning, the labor of others or the usual productive process of the user.

## **Taxation**

### **Income Tax**

The constituted societies in Ecuador, like the branches of foreign housing societies in the country and the permanent establishments of foreign non-housing societies that have accumulated income are subject to a tariff of 24% of the base income by 2011, 23% by 2012 and 22% by 2013 onwards. The societies that reinvest their utilities in the country can obtain a reduction of 10% of the tariff of income tax of the total amount reinvested, only if they carry out the increase of capital for the value of the utilities reinvested. The inscription of the corresponding documents in the respective mercantile registry should be made up to the 31st of December. Also to gain from this reduction in tax, the societies should designate the value of the reinvested funds exclusively to the acquisition of new machinery or new equipment and that this directly relates to their economic activities in the country.

The utilities distributed to companies domiciled in the country or which are send abroad after the payment of income tax will not be subject to additional taxes except when send to a country with lower taxation or tax heavens. The income tax caused by the societies should be understood as attributed to the shareholders, partners or participants, when these are branches of foreign societies, societies constituted abroad, or natural persons without residence in Ecuador. The utilities distributed to natural persons domiciled in Ecuador or which are send abroad to companies or natural persons domiciled in countries with lower taxation or tax havens, will pay the income tax, which is 22% by 2013 in the case of foreign beneficiaries or according to an annual range table in case of natural persons domiciled in Ecuador.

The societies should determine, pay and declare their income tax annually. Declarations begin the 1st of February of the following year in which income has been declared. All income tax must be paid by 28th of April, according to the ninth digit of the Contributory Registry (fiscal identification number).

In the case of inheritances, legacy and donations, the income tax will be met within a tax rate of 0% for inheritances up to \$ 64,890.00 and 35% for inheritances from \$.778,670.00 onwards. This information will be actualized annually in accordance with the price index of consumers established up to the 30th of November of each fiscal period. For 2013, tax for inheritances, legacy and donations is calculated according the following table:

<b>Tax for Inheritances, Legacy and Donations 2013</b>			
<b>Basic Fraction</b>	<b>Excess Until</b>	<b>Tax Basic Fraction</b>	<b>% Fraction Over</b>
-	64.890,00	-	0%
64.890,00	129.780,00	-	5%
129.780,00	259.550,00	3.245,00	10%
259.550,00	389.340,00	16.222,00	15%
389.340,00	519.120,00	35.690,00	20%
519.120,00	648.900,00	61.646,00	25%
648.900,00	778.670,00	94.091,00	30%
778.670,00	onwards	133.022,00	35%

In the case of inheritance benefactors and legacy, the taxes will be reduced by 50%.

### **Rules to determine the Base Income Tax**

Income Tax is based upon total received income throughout the previous year. From this amount is subject to changes by subtracting all items non-taxable and justifiable deductions by law.

### **Payments Abroad**

Payments made abroad which are deemed necessary are deductible within the statutes of income tax laws of the country. Those parties that send, pay or accredit income directly or thru compensations or thru financial entities should pay and declare 22% by 2013 of the total accumulated amount, except in the cases when these amounts are exempt from income tax.

In order that all interests paid for (to related companies), credits paid abroad or resident entities abroad are deductible, the total amount must not be more than 300% with respect to heritage. In regard to naturalized persons, the total amount of credits abroad must not be more than 60% with respect to their total assets.

### **Special Taxable Items (ICE)**

This tax applies to cigarettes, beer, soft drinks, liquor, all alcoholic beverages, video games, perfumes, legal weapons, light bulbs, casinos, social club fees and property such as: motorized vehicles and transportation by land up to 3 tons, aeroplanes, helicopters, boats and motorized water vehicles. The tax runs from 5% to 300% calculating the sales price of each item from the sellers. Those products destined for exportation are not subjected to taxes.

### **Added Value Tax (IVA)**

Added Value Tax has a fixed rate of 12% and pertains to all items sold and certain services rendered. This pertains to all goods worked, processed or changed in its natural state for the better. There are some instances where sales tax is not applicable.

VAT will not be enforced on the following items: all food products such as crops grown, fish and meats in their natural state (in other words, those items that have not been changed or altered from their natural state). Refrigeration, clearing, peeling, packing, cutting are not considered as processing and therefore are not taxable.

This includes milk in its natural state, pasteurized, homogenized or in powder form; bread; sugar; canned tuna; certified seeds; plants; medicines and drugs for human use, in accordance with the lists published by the Minister of Public Health, likewise, prime material and items imported or items acquired in internal markets; bond paper, books; exported items and other items within the laws of the country.

Those services with a VAT of 0% are: health, education, transfer of titleship, exported items, tourism, toll booths and other items by law in the country.

### **Simplified Tax Rules**

The new fiscal norm fixed by the Reformity Law for the Tributary Equity in Ecuador, establishes the creation of a simplified system focused in the payment of monthly payments determined by the level of income and commercial activity, to this rule we welcome the naturalised persons that develop activities of production, commercialisation and transfer of property or application of services, keeping in mind, that the total income obtained during the last twelve months prior to their inscriptions, does not surpass \$60,000.00 and for the development of their economic activities it is not necessary to hire more than 10 employees.

In accordance with the annual income, the maximum limitations established for each activity and category of income, the Simplified System contemplates 7 categories of payments which are: Activities of Commerce, Services, Construction, Hotels, Restaurants, Transportation, Agriculture, Quarries and Mines.

### **Foreign Exchange Tax**

Since January 1st of 2008, there was the creation of a new Foreign Exchange tax, regarding the transfer abroad of cash, drawn checks, withdrawals, payments of any nature, with or without intervention of financial institutions.

The amount of tax on capital transferred abroad will be 2% of the total amount of capital sent.

### **Extraordinary Income Tax**

Since the vigilance of the Tributary Equity Law in Ecuador, a tax on income obtained by companies that have subscribed contracts with the state for the exploration and exploitation of resources not renewable was established, considering extraordinary income perceived by the companies under contract.

The amount of tax is 70% of the difference between the sales price and the base price established in the contract, multiplied by the number of items sold, which pertains to said price.

The values by which other norms have been paid to the state by extraordinary income constitute tax credit.

### **Rural Land Tax**

There was established an annual tax covering properties or possessions of rural lands, which apply to the property or possession of lands with an area equal to or more than 25 acres in the same rural sector according to the limitations agreed to by each municipality abiding by the corresponding decrees and situated within a radius of 40 kilometers from the hydrographical basin, or places of water defined by the Ministry of Agriculture and Cattle or by the authorities in the area.

Excluded from this tax including others are: property located more than 3,500 meters above sea level, property located in protected areas or ecological reserves, and property common to associations of farmers and small agricultures.

### **Municipal Taxes**

*Total Asset Tax:* Those who are subject to this tax at 1.5%/1000 are naturalised persons, judicial, ready-made societies, individual businesses, nationals and foreigners, those residing in the respective jurisdictions, those who exercise commercial activities, industries and financial institutions with obligations in keeping accounting records.

The tax of 1.5%/1000 corresponds to the total assets during the prior calendar year and the financial period would run from the 1st of January to the 31st of December. This tax would be paid up to 30 days after the date established to declare the said income tax.

*Municipal Patents:* Are obligated to obtain a patent and payment of the tax for persons in the municipalities and industrialists who operate in each province, likewise those who exercise any economic activity. This patent should be obtained within the 30 days following the last day of the month of initiating economic activities or the following 30 days following the last day of the month at the end of the year.

The municipal town council of each province will establish the annual tax in function of the capital in which operates the passive subjects of this tax within the province. The tax would be a minimum of \$10.00 up to a maximum of \$5,000.00.

*Property Tax:* The properties located within the limits of the urban zones should pay an annual tax, whose benefactor is the respective municipality where the property is located.

The urban properties are appraised by means of the application of the elements of the value of the land, value of the construction.

To the value of the property they will apply a percentage which will range from a minimum of 0.25%/1000 to a maximum of 5%/1000 which is fixed by order of the Municipal Town Council.

The tax should be paid in the course of the year, without the necessity for being reminded of this obligation by the Treasury. These payments can be made from the 1st of January of each year; the expiration date is the 31st of December of each year.

The payments made during the first 15 days of the months of January to June will receive a discount of 10, 8, 6, 4, 3, and 2 percent respectively.

The payments made from the 1st of July will receive a surcharge penalty of 10% annually.

*Contribution to the Superintendent of Companies:* The contributions which the companies and other entities are subjected to pay to the Superintendent of Companies should be deposited until the 30th of September, in a savings account with rotating income, this account named Superintendent of Companies. This account should be opened in the headquarters building or in a branch or agency of a local bank designated for this purpose.

### **Personal Tax**

*Resident:* An individual is classified and named a resident of Ecuador when he or she has either been born in Ecuador or has a permanent visa. The personal income tax is paid by each individual and is calculated over the monthly income obtained, including salaries, rent and other class of income except amount of capital. Some deductions are permitted for contributions made, paid concessions to an ex-wife or ex-husband and children and for economic dependency. The tax is calculated at a progressive rate from 5% (over \$9,210.00) up to 35% (over \$93,890.00).

The natural persons could deduce up to 50% of the total of their income without surpassing a value equivalent to 1.3 times the basic fraction of income tax, personal expenditures excluding sales tax, likewise for his dependents, wife, underage or handicapped children, or others who are dependent of this contributor.

The personal expenditures that can be deducted correspond to those realized by: rent or payments of interests for the acquisition of housing, education, health, nourishment and apparel according the following limits:

Housing (up 0,325 times the basic fraction)  
Education (0,325 times the basic fraction)  
Health (1,3 times the basic fraction)  
Nourishment (0,325 times the basic fraction)  
Apparel (0,325 times the basic fraction)

The costs of higher education can also be deducted as expenditures personal, family members, children of any age and other persons dependent on the contributor.

*Non-Residents:* The income obtained by natural foreign persons who do not have residency in the country, for services rendered occasionally in Ecuador, would satisfy the tax of 22% (by 2013) of the total perceived income.

Dividends and distributed utilities for companies to natural persons residing in the country, will be part of their total income, with the right to use, in its statement of income tax, as credit tax, tax paid by the company attributable to that dividend, that in no case can be greater than 22% (by 2013) of its value. The applicable tax credit shall not exceed the tax that will be payable by that person for this income.

For 2013, tax for natural persons is calculated according the following table:

Income Tax			
Basic Fraction	Excess Until	Tax Basic Fraction	% Fraction Over
-	10.180,00	-	0%
10.180,00	12.970,00	-	5%
12.970,00	16.220,00	140,00	10%
16.220,00	19.470,00	465,00	12%
19.470,00	38.930,00	855,00	15%
38.930,00	58.390,00	3.774,00	20%
58.390,00	77.870,00	7.666,00	25%
77.870,00	13.810,00	12.536,00	30%
13.810,00	onwards	20.318,00	35%

### Code of Production, Trade and Investment

In January of 2011 took effect, the Code of Production, Trade and Investment, which establishes tax incentives for new investments in Ecuador. Major incentives are the exoneration of income tax and income tax advance for five (5) years for all those new companies dedicated to the following activities:

- Production of fresh, frozen and industrialized food;
- Forestry and agroforestry chain and its products;
- Metalworking;
- Petrochemicals;
- Pharmaceutical;
- Tourism;
- Renewable energies including bio-energy or energy from biomass;
- Foreign Trade Logistics;
- Biotechnology and Applied Software, and
- Strategic sectors of import substitution and export promotion, as determined by the President of the Republic.

## **Accounting & reporting**

Since 2000, due to a resolution published by the Superintendent of Companies, Ecuador has adopted the Ecuadorian Norms of Accounting (NEC) with the purpose in mind to be equal to international norms, which is why the NEC is similar to the International Norms of Accounting.

Since 1 January 2010, International Financial Reporting Standards (NIIFs) will apply according to the following schedule:

- Apply from 1 January 2010: Companies and entities regulated by the Securities Market Law, and all companies that perform external audit activities.
- Apply from 1 January 2011: Companies that have total assets at 31 December 2007 equal or above U.S. \$ 4,000,000.00; Holding companies or shareholders, that voluntarily formed business groups, mixed capital companies and companies constitute by the State and Public Sector entities, branches of foreign companies or other foreign state companies, private or mixed, organized as legal entities and the associations formed by them and that implement activities in Ecuador.
- Apply from 1 January 2012: All other companies not included in the previous two groups.

All companies that equal or surpass \$1,000,000.00 in total assets at the end of a fiscal year are obliged to submit their financial statements for audit by a suitably qualified firm or individual.

The reports issued by the external auditor is presented, by them, and before the Superintendent of Companies with all discoveries and living their verdict.

Each company should present a report from management of the results and extraordinary activities before the Superintendent of Companies as well as a report issued by a commissioner.

The accounting books should be archived for a period of six years in accordance to Ecuadorian norms.

## **UC&CS in Ecuador**

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### **UC&CS offices worldwide**

For contact details of UC&CS offices worldwide, or for details on how to contact the UC&CS executive office, please visit [www.uccs-america.org](http://www.uccs-america.org) or [www.uccsglobal.org](http://www.uccsglobal.org)



## ANNEX:

The World Bank (WB) and the International Finance Corporation (IFC) to measure business regulations and on its website [www.doingbusiness.org](http://www.doingbusiness.org) shows the following ranking in spanish:

Facilidad de hacer negocios (clasificación)	Comparación Filtrada	Apertura de un negocio	Manejo de permisos de construcción	Obtención de electricidad	Registro de propiedades	Obtención de crédito	Protección de los inversores	Pago de impuestos	Comercio transfronterizo	Cumplimiento de contratos	Presencia de UC&CS
Chile	37	1	4	17	12	5	7	5	1	5	Si
Puerto Rico (Estados Unidos)	41	2	1	31	10	20	1	3	14	19	Si
Perú	43	3	9	18	21	1	4	2	9	8	Si
Colombia	45	4	10	8	30	4	10	1	13	17	Si
México	48	5	5	10	28	25	6	12	15	9	Si
Santa Lucía	53	6	8	3	2	16	20	5	2	24	
Panamá	61	7	3	16	3	12	7	14	31	1	Si
Antigua y Barbuda	63	8	17	7	5	19	20	5	25	25	
Dominica	68	9	7	6	17	17	13	5	7	18	
Trinidad y Tobago	69	10	15	21	1	32	4	4	11	12	Si
San Vicente y las Granadinas	75	11	11	1	7	26	26	5	6	3	
Bahamas	77	12	16	14	13	33	13	21	5	7	
Barbados	88	13	14	12	22	28	13	27	17	2	
Uruguay	89	14	6	32	6	29	10	18	23	22	Si
Jamaica	90	15	2	11	25	11	20	14	30	23	
Guatemala	93	16	30	20	9	2	1	26	19	26	Si
San Kitts y Nevis	96	17	13	4	4	30	26	5	21	10	
Grenada	100	18	12	2	18	27	20	5	9	11	
Paraguay	103	19	19	15	8	7	13	13	24	32	Si
Belice	105	20	28	5	15	23	26	23	3	21	
Costa Rica	110	21	21	26	14	3	13	27	20	6	Si
El Salvador	113	22	24	29	29	6	7	27	27	13	Si
Guyana	114	23	18	9	32	15	33	14	16	15	
República Dominicana	116	24	23	23	24	14	13	18	12	4	Si
Nicaragua	119	25	22	30	27	18	20	18	29	14	Si
Argentina	124	26	26	33	20	22	10	21	26	30	Si
Honduras	125	27	27	13	23	9	1	27	22	16	Si
Brasil	130	28	20	27	16	13	20	14	28	27	Si
Ecuador	139	29	29	22	31	10	13	24	8	29	Si
Bolivia	155	30	31	25	26	24	26	24	32	28	Si
Suriname	164	31	32	19	11	31	30	33	4	20	
Haití	174	32	33	28	19	21	30	27	18	31	
Venezuela, RB	180	33	25	24	33	8	30	32	33	33	Si