



# Ecuador

Juan Carlos Bustamante, Patricia Ponce, Francisco Bustamante,  
Olinda Vera, Bayardo Poveda, Edmundo Flores,  
Carolina Guerrero, Tania Irigoyen, and Gino Ivich  
Bustamante & Bustamante Law Firm

## I. COUNTRY OVERVIEW ON INFRASTRUCTURE LEGISLATION

Ecuador is a country located in the northwestern corner of South America. The equator crosses the country and the Andes mountain range runs through it from north to south. Ecuador has several ecosystems and a rich biodiversity with various microclimates. The country is divided into four natural regions, three of which lie on the continent and one offshore. These regions are formed by the coastal plain facing the Pacific Ocean, the Sierra (highlands), the Amazon jungle, and the Galapagos Islands. The country has several marine reserves and 42 percent of its territory has been declared as ecologically protected areas.

Petroleum has been the main source of foreign income for the country in recent decades. Lately, however, there have been important developments in other areas, such as agriculture and shrimp and fish farming. Ecuador exports bananas, coffee, cacao, flowers, shrimp, tuna, and timber. Tourism is the country's fourth major source of revenue, and this sector is booming, especially on the Galapagos Islands. Despite the country's large mineral reserves, it has not yet developed a major mining industry (Exterior, 2016), other than for gold and copper production. The U.S. dollar is presently the currency in place.

### A. *Introduction to Ecuador's System of Law*

The Ecuadorian legal system is eminently constitutional and statutory, as is in any civil law country. The constitution assigns legislative duties to the National Assembly, which is responsible for approving statutes of common interest. The judicial branch exercises judicial powers through judges and courts with jurisdiction. The constitution

also recognizes mediation and other alternative dispute resolution mechanisms, such as arbitration and recently the use of dispute boards.

To conduct business on a permanent basis, a foreign company or natural person can either (i) operate through a permanent establishment or (ii) incorporate or participate in a local entity. Foreign companies can also open branches in the country. The regulations applicable to the incorporation of companies are established in the Companies' Act, as well as the resolutions issued by the Superintendence of Companies, Insurance, and Securities.

The most frequently used types of companies in Ecuador are the limited liability companies and the stock companies. The locally executed acts and contracts of foreign companies authorized to do business in Ecuador are subject to local legislation. The business of a branch is governed by the parent company's by-laws. The branch's general attorney-in-fact or legal representative in Ecuador must be an individual residing in Ecuador or a company organized in the country with broad powers to contract obligations for the company in Ecuadorian territory, including the power to answer claims and comply with the obligations that the company contracts in Ecuador.

In the case of a local or international merger or acquisition involving a company doing business in Ecuador that bears an impact on the Ecuadorian market, approval from the Superintendence for the Control of Market Power will likely be required.

## ***B. Constitutional Aspects***

The constitution, enacted in 2008, establishes that Ecuador is a constitutional state of rights and justice. The state is social, democratic, sovereign, independent, unitary, intercultural, and secular; it is organized as a republic and its government is decentralized.

The constitution provides the same rights and obligations for nationals and foreigners. The state encourages domestic and foreign investment as well as establishes specific regulations depending on the type of investment, giving priority to domestic investment. Investments are made following the criteria of diversification of production and technological innovation, while striking a balance among regions and sectors. Foreign direct investment must supplement domestic investment and is subject to the country's legal framework, regulations, and application of rights, while having to meet the needs and priorities laid down in the National Development Plan, as well as in the various development plans of decentralized autonomous governments.

Furthermore, when defining the new system for economic development, the constitution establishes that the primary obligation of the state, whether the central or decentralized state, is to provide certain public services. These include the services of potable water, irrigation water, sanitation, electrical power, telecommunications, roadwork, port infrastructure, and airports. It also sets forth that the state undertake the full supervision of services regarding citizens' right to education, health, security, and so on. In addition, the constitution saves the administration, regulation, oversight, and management of strategic sectors, such as telecommunications, nonrenewable natural resources, transportation and refinement of hydrocarbons, biodiversity and genetic

wealth, the radioelectric spectrum, and water (Art. 313), for the state. Furthermore, the state has to undertake the supervision and provision of health services, security, and education.

### **C. *Regulatory Regime***

Although the constitution provides that the National Assembly exercise legislative powers, it also confers certain legislative powers to other sectors as a result of a constitutional provision for the decentralization of the state. These sectors include municipalities, provincial councils, ministries, and oversight agencies, each in its area of competence.

The following is the hierarchy of laws in Ecuador:

1. The constitution is the supreme law and prevails over any other law. Duly recognized international human rights treaties containing rights more favorable than constitutional rights take precedence over other laws or governmental action.
2. Treaties and international agreements ratified by Ecuador
3. Organic laws
4. Ordinary laws
5. Regional regulations and district ordinances that are normally issued by autonomous regional governments, as well as decrees and resolutions
6. Decisions by public authorities

Basically, the following entities are in charge of the regulatory regime in Ecuador:

1. The National Assembly is responsible for enacting, codifying, amending, and repealing laws. Its interpretation of the law produces a generally binding effect thereof.
2. Regional decentralized autonomous governments (regions, metropolitan districts, municipalities, provinces, and cantons) have legislative powers within the scope of their jurisdictions and competences, as well as based on the Organic Code of Territorial Organization, Autonomy, and Decentralization (COOTAD, for its acronym in Spanish). The COOTAD defines the specific competences, concurring and exclusive, not only of the central government but also of each one of the regional governments.
3. The Monetary and Financial Policy and Regulation Board is a part of the executive branch and is in charge of defining public policies and regulating the country's public and private financial sector, as well as monitoring monetary, credit, exchange, financial, insurance, and securities aspects.
4. Superintendences are technical oversight entities, normally in charge of the oversight, audit, intervention, and control of economic, social, and environmental activities, as well as the services provided by state-owned and private entities.

5. Depending on the scope of their activities, ministries may, within the spheres of their competences, regulate not only their internal affairs but also the activities of public and private third parties.

#### ***D. PPP—Public-Private Partnerships***

For public services, infrastructure must be provided by the state. Infrastructure works related to public services and activities reserved for the state, such as public hospitals, highways, and public schools, must be built either directly by the state or indirectly by forming a partnership with a private-sector entity or granting to the private sector a concession for a specific project.

In certain cases, private undertakings implying infrastructure that does not require the state's prior approval because it does not refer to the activities reserved for the state may be carried out directly by the private sector.

In December 2015, the legislative branch enacted the Organic Law of Incentives for Public Private Partnerships and Foreign Investment (the "PPP Law"). The law establishes the incentives for public-private partnerships to undertake projects, as well as the guidelines and institutional framework for project implementation. The PPP Law applies to public-private partnerships for the provision of goods, works, or services by the central government and decentralized autonomous governments with the participation of the private initiative.

In accordance with the PPP Law, a public-private partnership is a form of management that the central government or decentralized autonomous governments delegate to a private operator for executing a specific public project (including the total or partial funding thereof), involving goods, works, or services. A fee is paid to the private operator to cover its investment, risks, and work. The partnership is subject to the terms, conditions, limits, and provisions contained in the delegated management contract.

As an example, the PPP Law includes a list of the kinds of public projects that can be implemented using the PPP form of contract. Projects could be for the following: (i) the construction, equipment (when required), operation, and maintenance of existing or new public works for the provision of a service of general interest; (ii) the rehabilitation or improvement, equipment (when required), operation, and maintenance of an existing public work for the provision of a service of general interest; (iii) the construction and sale of real estate projects, social housing, and urban development work; (iv) the execution of production, research, and development activities and, in general, activities in which the state participates directly with the private sector.

In order for a contract to be executed for a project under the PPP legal regime, approval from the PPP Interinstitutional Committee is required. The authority signing the contract is the one by whom the project has to be submitted for approval.

The incentives for companies engaging in activities under a public-private partnership include the following: (i) Public projects executed under public-private partnerships may enjoy exemptions from income tax, money outflow tax, and

foreign trade taxes, as well as may be entitled to refunds of value-added tax and other benefits. (ii) Legal stability may be ascribed to the specific sector law declared essential in the concession contract. The term of legal stability will be the same as that of the investment contract. (iii) Imports directly allocated for the execution of public projects under the public-private partnership method and that are made by the private participants enjoy the same tax or other benefits as those applicable to the delegating state-owned entity with respect to its importations. In this case, the total amount of importations must meet the criteria defined by the Committee of Public Private Partnerships for each priority sector. (iv) Companies created or structured for developing public projects under a PPP are exempted from paying income tax for a ten-year period as of the first fiscal year in which they generate the operating income established within the object of the public-private partnerships, based on the economic-financial plan attached to the delegated management contract. In this case, the project has to be carried out in one of the priority sectors defined by the Committee of Public Private Partnerships and meet the requirements found in the law regulating the application of public-private partnership incentives. (v) Dividends or profits that companies organized in Ecuador for developing public projects under a public-private partnership pay to their shareholders or beneficiaries, irrespective of their domicile, are exempt from income tax for a ten-year period as of the first fiscal year in which the company generates the operating income established as part of the object of the public-private partnership. (vi) Companies created for developing public projects under public-private partnerships are entitled to a tax credit for the VAT paid on their local purchases of goods and services employed for executing the public project in question.

### ***E. PPI—Partnership Investment Program***

Unlike other countries in the region, Ecuador does not have an institutionalized partnership investment program. Infrastructure projects of public interest are listed in various documents including, for example, the Catalogue of Investments in Strategic Sectors, promoted by PROECUADOR (Institute Promoting Exports and Investments). Nonetheless, all public projects must be aligned with the National Development Plan, which is drawn up by SENPLADES (National Planning and Development Secretariat) every four years.

Private infrastructure projects generally use financing mechanisms available through the financial system or stock market, whether these include securities or the issuance of stock and bonds, or also trusts (securitization, management, real estate, and other kinds of trusts).

### ***F. Public Procurement***

The standard contract procedure for joining the private sector with the public sector of Ecuador is regulated by the Organic Law for the National System of Public Procurement.

This law contains the entire public procurement regime, called the National Public Procurement System (SNCP, for its acronym in Spanish). Public procurement must observe the principles of legality, fair treatment, equality, quality, technology, opportunity, concurrence, transparency, publicity, and national participation. The Ecuadorian public sector is quite extensive as it includes not only the entities that are part of the central government and autonomous governments, but also all entities however entitled to receive and administer public funds.

Contracts between a private person, whether an individual or company, and a state-owned entity are known as public contracts or administrative contracts. Administrative contracts or public contracts are defined as agreements between a state-run entity, in exercise of its administrative duties, and a private person or entity, for the satisfaction of public purposes. The main differences between a public (or administrative) contract and a civil contract are as follows: (i) In administrative contracts, one of the parties is from public administration and uses public funds; in civil contracts, either party may be an individual or a company; (ii) administrative contracts pursue a common good (public interest) and not just private interests, as is usually the case in civil contracts; (iii) administrative contracts require that a strict procurement system be followed for contract validity, while the conditions in civil contracts may be defined solely on the basis of agreement between the parties; (iv) administrative contracts fall under the scope of public law, while civil contracts under private law. It is important to note that, with regard to administrative contracts, the public sector has specific broad powers which, in certain cases, may be asserted to safeguard the public interest in question, resulting in additional obligations for the private contractor.

Per the new National Public Procurement System, contracts for infrastructure normally require a bidding process. That process starts with an invitation to bid, which in Ecuador is made online.

Tenders must be drawn up in clear, unconditional, unquestionable, confidential, and written form, offering to perform the contract while accrediting the bidder's moral, technical, and financial integrity. Tenders must fulfill the requirements contained in the law. The submission of a tender is an act bearing legal effects and is a manifestation of the participant's will, accepting the conditions defined in the precontractual documents. Bidding processes require the formation of a technical committee with the power to create subcommittees, when deemed necessary. The committee is in charge of the entire bidding and awarding processes. The contract, however, is signed with the highest authority of the contracting entity.

The evaluation and qualification of tenders is understood as the process of analyzing, comparing, and assessing the technical and economic aspects thereof. The score is stated in percentages based on the provisions of the law and regulations. Technical and economic tenders are subject to evaluation, with percentages based on the qualification parameters established in the bidding rules.

A tender may be disqualified due to the following reasons: (i) Failure to meet the requirements, such as in the case of incomplete documents, understood as missing documentation or documents failing to comply with submission requirements or when tenders include conditions other than those stipulated in the precontractual documents (bases); (ii) the bidder does not have legal, technical, economic, or financial ability.

Before initiating the contractual procedure in the case of an emergency, the highest authority of the entity must issue a grounded resolution declaring the emergency. In this case, the entity may directly enter into contracts with nationals and foreigners, under the responsibility of the highest authority, for works, goods, or services, including consultancy services, when required to overcome the emergency situation.

### ***G. Treatment of Foreign Capital***

The constitution and the Production and Investment Code (hereinafter, the Production Code) stipulate that domestic and foreign investors, companies, firms, or entities from cooperative sectors, and their legally established investments, will be given equal treatment and equal conditions with respect to the management, operation, expansion, and transfer of their investments, without arbitrary or discriminatory measures placed on them. Foreign investment and investors enjoy full protection and security and, consequently, receive the same protection as Ecuadorians do in national territory.

Foreign investment, which is subject to applicable law, plays a direct role in complementing the strategic sectors of the economy that are in need of investment and financing to accomplish the objectives outlined in the National Development Plan. Foreign investors may participate directly in the economy's other sectors without the need of clearance, except for a few cases in which foreign direct investment is excluded or limited (i.e., the media). Premised on the Production Code, an investor's property is protected pursuant to the terms and conditions established in the constitution and other relevant laws. Since the constitution prohibits all forms of confiscation, the confiscation of national or foreign investment may not be declared or executed. As an exception, however, and in accordance with the constitution, the state may declare the expropriation of property for the sole purpose of social development plans, sustainable environmental management, and collective well-being. In this case, the defined legal procedure has to be followed in a way that is nondiscriminatory. Appraisal and payment of fair and adequate compensation must be made pursuant to the law.

### ***H. Environmental and Other Licenses***

The constitution provides a model of economic development that is aimed at achieving a balanced development of nature, society, and the economy. The model grants specific rights to nature and creates an environmental liability scheme that includes responsibilities and guarantees. Therefore, environmental controls and permits have become particularly relevant for every activity carried out in the country that affects the public and private sectors. Besides the production sector's other specific responsibilities with nature and the environment, it has the constitutional obligation to restore and regenerate the environment. These two obligations are independent of the obligation that the state, individuals, and companies have with individuals and groups affected by environmental damage.

In representation of the state, the Environment Ministry is in charge of environmental management. The Environmental Management Act regulates all public and private activities that may somehow affect the environment. It defines not only the environmental policy, but also the principles, guidelines, obligations, and responsibilities for public and private sectors to participate in environmental management, setting permissible limits, controls, and sanctions in this regard.

The Environment Ministry is the national environmental authority acting as the governing body in environmental matters and it operates through the National Decentralized Environmental Management System. In Ecuador, most projects, works, or activities require the issuance of an environmental license, which is an authorization granted by the competent authority to individuals or companies to engage in specific activities. For the grant of an environmental license, projects or activities are qualified on the basis of environmental impact, type, location, condition, or alteration of the area where the project will be carried out. Under this perspective, projects or activities are divided into four categories: Category I, minimal or irrelevant impact; Category II, low-impact projects; Category III, medium-impact projects; and Category IV, high-impact projects. Projects in Categories II, III, and IV require an environmental license before they can be carried out. The most important, high-impact projects fall under Category IV. These include projects for the construction of hydroelectric plants, airports, and ports; mining facilities; drilling for oil; certain agriculture, logging, and livestock activities; road construction; and so on.

The requirements for obtaining environmental licenses vary depending on the category of the project. They may include the following: (i) a duly approved Environmental Impact Assessment and Environmental Management Plan and (ii) performance bond concerning the environmental management plan. In certain cases, where necessary, authorization for water use may be mandatory, as well as (iii) registration with the Environment Ministry and Hazardous Waste Generator and (iv) an audit report about the environmental compliance plan.

## ***I. Incentives to Innovation***

The incentives granted by law depend on the type of contract on the basis of which they were established or whether the incentives are public or private. The incentives could be as follows: (i) exonerated importation of goods for the PPP project and (ii) exemption from paying added-value tax, income tax, money outflow tax, and so on, subject to the fulfillment of certain requirements concerning the term of the contract or financing.

## **II. LOGISTICS**

The Ministry of Public Works and Transport is the highest competent authority and defines the domestic logistics policies and programs. Premised on the constitution, all forms of transportation are deemed to be a public service, and the state is responsible

for providing this service by following the principles of generality, uniformity, efficiency, universality, accessibility, regularity, and quality. The prices and tariffs for public services must be fair and the state regulates and controls them.

### **A. Highways**

A supreme decree called the Road Act, issued in 1964, contains the legal framework for highways. The Road Act establishes right-of-way, entitling the competent authority (currently, the Ministry of Public Works and Transport) to take over land when needed for building, maintaining, enhancing, improving, and repairing roads or highways.

The Minister of Public Works and Transport has the power to expropriate land needed for building public national roads and highways. Provincial councils have the power to expropriate land for provincial roads inside their jurisdictions.

The state is solely responsible for building highways, but the private sector may participate only in specific contracts after completing a public procurement process, entering into a public-private partnership or receiving a concession.

### **B. Railways**

The Public Railway Enterprise is in charge of operating the railway system; however, the construction of railway infrastructure may be delegated to the private sector, following a public procurement procedure. Furthermore, it is possible to create a public-private partnership to delegate railway management and operation to the private sector.

### **C. Ports**

The private sector may participate in port construction, operation, and maintenance. Ports are included under the new public-private partnership regime, which means that the private sector may obtain legal and tax benefits when carrying out infrastructure projects, such as for ports. In the last year, foreign investors under the public-private partnership regime were granted the construction of three ports.

In addition, the private sector can participate in public procurement processes for designing and building ports, while the public sector is in charge of port management, operation, and maintenance.

### **D. Airports**

The private sector may participate in airport construction, operation, and maintenance. Airports are included under the new public-private partnership regime, which means that the private sector may obtain legal and tax benefits. In the last decade, approval to construct and operate two airports was granted to foreign investors under

concession contracts. The public sector is only entitled to regulate and oversee the concession agreement.

Nonetheless, there are several airports that have been built by the private sector under a public procurement process and the public sector is in charge of airport management, operation, and maintenance.

## **E. Drones**

The General Aviation Office issued a specific regulation for the Operation of Remote Pilot Aircraft Systems, also known as Unmanned Aircraft Systems. The regulation sets certain limits for using drones, such as no-fly zones, speed, flight altitude, operating times, liabilities regime regarding operation, restricted automated functions, and mandatory insurance.

The use of drones for traffic control and for monitoring marine projects is also regulated. No specific regulations have been issued regarding the construction of drone infrastructure, such as hangars, radio control, and so on.

## **III. OIL AND GAS**

The constitution provides that the state has the exclusive right to administrate, regulate, monitor, and manage strategic sectors, in accordance with the principles of environmental sustainability, precaution, prevention, and efficiency. Strategic sectors are those that, because of their importance and extent, bear a decisive economic, social, political, or environmental impact and must focus on ensuring the full exercise of rights and the general welfare of society. Nonrenewable natural resources, including oil and gas as well as oil and gas transport and refining, are regarded as a strategic sector. The constitution also stipulates that the state has exclusive domain over nonrenewable natural resources.

The Hydrocarbons Law, enacted in 1978, regulates the country's upstream, midstream, and downstream operations. In general, the Hydrocarbons Law provides that, in accordance with the constitution, the state shall explore and exploit oil deposits and transport oil directly through state-owned hydrocarbon enterprises. On an exceptional basis, the state may delegate these activities to national or foreign companies that have proven experience, besides technical and economic capacity. For this purpose, the Hydrocarbons Secretariat may enter into association, participation, or service contracts for oil exploration and production. Another option is the formation of a public-private joint venture between the state and a local company and/or a foreign company with renown competence and that is legally established in the country.

The state-owned enterprises engaged in hydrocarbon activities are Petroecuador, Petroamazonas, and Flopec. The corporate objects of Petroecuador are midstream and downstream activities. In contrast, the only corporate object of Petroamazonas is upstream activities. Flopec is in charge of transporting hydrocarbons by sea, to and from domestic and foreign ports. It also provides hydrocarbon and hydrocarbon-

derivative commercial, maritime, and fluvial transport services, as well as all other related activities.

The Hydrocarbons Ministry crafts and implements policies in the hydrocarbon sector, in accordance with the constitution and the law. The Hydrocarbons Secretariat (SHE, for its acronym in Spanish) is the entity in charge of managing nonrenewable natural resources (hydrocarbons) and accompanying substances. The SHE oversees the execution, administration, and amendment of oil contracts, as well as oil areas. For this purpose, the SHE has the power to define the areas in which state-owned enterprises directly operate and the activities to be delegated to public-private joint ventures companies; on an exceptional basis, those activities may be delegated to private, national, or international companies.

The Hydrocarbons Regulatory and Oversight Agency is the technical-administrative entity responsible for regulating, overseeing, and supervising technical and operational activities in the different phases of the hydrocarbon industry.

These activities are carried out by state-owned or private companies, whether national or foreign, joint ventures, consortiums, associations, or other contractual forms of companies involved in hydrocarbon activities in Ecuadorian territory.

## ***A. Upstream: Exploration, Drilling, and Production***

Ecuador's contemporary economic history is strongly marked by oil production, mainly due to the crude oil exploration and production that began in 1973. This sector accounts for a chunk of the country's production structure, contributing an average of 12.7 percent to the GDP (between 2000 and 2012).

Ecuador is the fifth largest oil producer in South America. Oil exports account for 50 percent of the nation's total exports.

Private investment in the upstream sector is made using the current contract models for exploration, drilling, and production. As mentioned, although only Ecuador's state-owned enterprises may explore and produce oil deposits, there are exceptions when the state can delegate those activities to private investment. The Hydrocarbons Law provides the following contract models for private investments in upstream activities:

1. Participation Contracts: Sharing contracts for oil exploration and production
2. (Association Contracts: Contracts by which the Hydrocarbons Secretariat turns over its rights with respect to hydrocarbon areas and deposits or assets, while the associated private company is obligated to make the agreed investments
3. Service Contracts: Contracts for the provision of services for oil exploration and/or production, by which previously qualified national or foreign legally organized companies or stock companies in which the state has at least a 51 percent interest undertake the obligation to perform petroleum exploration and/or production services using their own resources, investing their own

capital and using the equipment, machinery, and technology needed to provide the services for which they were contracted.

## ***B. Midstream and Downstream (Transport, Storage, and Marketing)***

In general, the state is required to transport oil directly through its state-owned petroleum enterprises. State-owned enterprises transport hydrocarbons through oil pipelines, multipurpose pipelines, and gas pipelines, as well as refine, industrialize, store, and market hydrocarbons. On an exceptional basis, these activities may be delegated to national or foreign companies with proven competences in those fields, so long as they are legally established in the country and assume the responsibility and risks inherent to their investment without compromising public resources.

Private pipelines for transporting hydrocarbons, such as the Heavy Crude Oil Pipeline (OCP), require authorization from the president of Ecuador. As a side note, ownership of the OCP will be transferred to the State of Ecuador in 2023 per the OCP build and operate agreement. Furthermore, the agreement has to be made with an authorized company and must stipulate the terms and conditions under which the company will build and operate the pipeline.

The state is also in charge of refining oil. Presently, Petroecuador refines oil at three local refineries: Esmeraldas, La Libertad, and Shushufindi Industrial Complex. The country also has two refineries located in its eastern region and three distillation plants. The country's installed refining capacity is 175,000 barrels a day. The Esmeraldas refinery accounts for over half of the nation's capacity (110,000 barrels a day) for refining light and heavy crude oils. There has been just a 21 percent increase between 2000 and 2012 in the production of derivatives, with gasoline accounting for 25 percent of them, followed by fuel blends, liquefied petroleum gas (LPG), and turbo fuel. Domestic petroleum and natural gas satisfy 80 percent of Ecuador's energy needs.

Ecuador is one of the smallest countries in South America, but has the largest LPG market on the continent. Despite the reforms to end energy subsidies in the country, the local demand for energy is on the rise, especially by the household sector, with a total petroleum consumption of 230,000 barrels a day (2013). Diesel fuel and motor gasoline are the country's most consumed fuels.

## **IV. ENERGY**

The state supplies electricity, preferably through the optimal use of natural resources, which are also state owned. The state directly supplies electricity or may do so indirectly through private or state-owned companies or companies in which the state has an interest. The National Electricity Plan for the 2013–2022 period promotes electricity generation projects that use environmentally clean and nonpolluting alternative energies and low-impact technologies that cannot be detrimental to agriculture or

to the right to water. Nonetheless, Ecuador continues to produce electricity using nonrenewable resources such as petroleum and petroleum derivatives.

Enacted on January 26, 2015, the Organic Law for the Public Service of Electricity contains the legal regime governing electricity generation, as well as the provision of electricity transmission, distribution, and marketing service. As a public service, electricity generation and such services must follow the constitutional principles of obligation, generality, consistency, accountability, accessibility, universality, regularity, continuity, quality, environmental sustainability, precaution, prevention, and efficiency. The state is responsible for all aspects of the service that are regulated by the said law.

At the institutional level, the electricity sector is regulated by: (i) the Ministry of Electricity and Renewable Energy, which represents the state in the electricity sector and has the power to plan, regulate, and oversee the sector; (ii) the Electricity Regulation and Oversight Agency, which is the technical-administrative entity exercising the state's power to regulate and oversee the activities related to the public service of electricity service, safeguarding the interests of the consumer or final user; the agency is part of the Ministry of Electricity and Renewable Energy and has its own legal personhood as well as administrative, technical, and economic autonomy; (iii) The National Electricity Operator: Technical entity forming part of the Ministry of Electricity and Renewable Energy Strategic that acts as the technical operator of the National Interconnected System. It manages business transactions for the continuous supply of electricity, at the lowest possible cost, while maintaining the sector's overall efficiency. It is also in charge of planning the supply of electricity for the short, medium, and long terms, at the lowest possible cost, thus optimizing electricity transactions at both the domestic and international levels; and (iv) specialized institutes.

On the basis of its business structure, the electricity sector may act through the following: (i) state-owned enterprises: companies owned directly or indirectly by the central government or decentralized governments, (ii) state-owned/private stock companies: companies in which the central government or decentralized governments are the majority shareholder, (iii) private companies, (iv) consortiums or associations, and (v) companies from the people's and solidarity economy sector.

Through the Ministry of Electricity and Renewable Energy, the state may authorize (i) state-owned enterprises created under the Organic Law of State-Owned Enterprises to engage in electricity generation, transmission, distribution, marketing, importation, and exportation; (ii) joint ventures, in which the state is the majority shareholder, to engage in electricity generation, transmission, distribution, marketing, importation, and exportation; (iii) joint ventures with other state-owned companies from other countries to engage in electricity generation, transmission, distribution, marketing, importation, and exportation; (iv) on an exceptional basis, delegation of electricity-sector activities to private companies, consortiums, associations, and companies from the people's and solidarity economy sector.

The National Electricity Plan includes electrification projects for which the Ministry of Electricity and Renewable Energy must hold a public bidding process to select the company to carry out the project under conditions that are more favorable for national interests. Projects using renewable energy may qualify for an incentive scheme established in applicable legal regulations, and the concession contract is

subject to the Ecuadorian constitution, general law regulations, and the agreement directly granted. In the case of self-excited generators, the term of the authorization certificate is determined considering the useful life of the technologies to be used but not the principle of reasonable profit. Profits, investment, and operating and maintenance costs are financed by the self-excited generation business and must be included in a financial analysis.

A concession contract signed with the Ministry of Electricity and Renewable Energy is required to delegate, on an exceptional basis, electricity-sector activities that are included in the National Electricity Plan to private companies, consortiums, associations, and companies from the people's and solidarity economy sector. The postapproval requirements and procedures for the grant of the concession contract, as well as the rights and obligations of the concession grantor and holder, are established in each case. The requirements and procedures are covered in the bidding process documents and license, as may be the case. At the end of the concession term, all assets and facilities must be reverted and compulsorily transferred to Ecuador at no cost. If the state is not interested in the assets or facilities, the concession holder will have to remove them at its cost. In the case of concessions for hydroelectric generation, all assets must necessarily be transferred to the State of Ecuador, without cost or exception.

Prior authorization from the National Environmental Authority is required for using nonconventional renewable energies or renewable energy resources for energy projects, which must comply with environmental regulations.

## **A. *Electric***

To ensure energy sustainability while discouraging the use of nonrenewable resources in electricity generation, Ecuador has promoted and built several hydroelectric projects and electricity generation in recent years that use alternative renewable resources, such as wind, solar, biomass, and geothermal power. The Ministry of Electricity and Renewable Energy is the only state entity with the power to grant concessions or to delegate or authorize the generation, transmission, distribution, and marketing of electricity from any source. In recent years, the state has constructed several hydroelectric generation plants under the National Energy Plan. By 2030, the state plans to generate the electricity in demand by using hydroelectric power.

## **B. *Nuclear***

Although Ecuador has signed agreements for developing nuclear energy, projects for exploring and producing radioactive materials, such as uranium and thorium and their possible uses in power generation, will be in the long term. There are no current projects of this type.

### ***C. Solar, Wind, and Others***

While small advances in renewable energies, such as solar and wind, have been made in Ecuador, the projects now in place are small and marginal. If these projects are included in the National Electrification Plan, the Ministry of Electricity and Renewable Energy may be authorized to use them, following the same mechanism as that for power generation in general.

## **V. MINING**

Minerals and products underground are the state's inalienable, indefeasible, and non-seizable property and may be mined by strictly following the environmental principles contained in the constitution and secondary legislation. The state has the right to a share in the revenue from mining such natural resources in an amount that cannot be less than that for the mining company. It should be noted, however, that projects for mining in protected areas or that affect water sources must first undergo a process that could involve a referendum in which potentially affected inhabitants will vote on whether or not to approve the project. For this purpose, the state and the potential awardee of the project have to publicly disseminate the project, explaining how they will prevent contamination, and, if contamination will be produced, the manner in which they will repair the damage. If the project is approved, the company awarded the concession must comply with stringent environmental requirements and report on its compliance with the environmental management plan. If the company fails to abide by that plan, the concession will be reverted.

The public mining sector is formed by the following entities: (i) Ministry-Coordinator of Strategic Sectors, (ii) Mining Ministry, and (iii) Mining Regulation and Oversight Agency.

Ecuadorian legislation organizes the mining industry into four groups depending on the level of production: artisanal, small-scale, medium-scale, and large-scale mining.

### ***A. Surface Mining***

Surface mining can be used to mine metallic minerals, nonmetallic minerals, and petrous materials. There are no specific regulations regarding infrastructure construction for surface mining. Depending on the volume of production (large, medium, or small), however, there are regulations in place for minimum investment plans, operating volumes, installed capacity for processing minerals, and technological requirements by the Mining Ministry.

### ***B. Underground Mining***

Underground mining can be used to mine metallic minerals, nonmetallic minerals, and petrous materials. There are no specific regulations regarding infrastructure

construction for underground mining. Depending on the volume of production (large, medium, or small), however, there are regulations in place for minimum investment plans, operating volumes, installed capacity for processing minerals, and technological requirements by the Mining Ministry.

### **C. *Highwall Mining***

In Ecuador, highwall mining is done only for petrous materials (such as clay, limestone, sands, and so forth). The mining of coal is not well developed, since the local industry does not consume high volumes of this mineral. In view of the fact that the regulations for highwall mining are established in municipal ordinances, they may vary from one jurisdiction to another. Regulations, however, cover the development of mining, transport, water use, waste disposal, and environmental issues. There are no specific regulations concerning infrastructure construction.

## **VI. SANITATION**

### **A. *Water Supply***

The constitution sets forth that the state, through the sole water authority, is directly responsible for planning and managing water resources delivered for human consumption, irrigation, food, ecological flow, and production activities. Based on this legal provision and the National Development Plan, the National Secretariat for the Supply of Water (SENAGUA, for its acronym in Spanish) is the steward of water resources in Ecuador. Besides SENAGUA, there are other entities with jurisdiction in one or more aspects of water management. These include MIDUVI, the Environment Ministry, the Public Health Ministry, the National Irrigation Institute, municipalities, and provincial councils.

All forms of water are deemed to be a strategic sector under the exclusive management of the state or the community. On an exceptional basis, that management may be delegated to the private sector. Each municipality is in charge of the supply of potable water in its jurisdiction, while each provincial government undertakes the supply of water for irrigating crops or for cattle or other livestock.

Nonetheless, it is the discretion of the Sole Water Authority to (i) direct the National Strategic System for Water, (ii) draw up the National Water Resources Plan, (iii) grant authorization for all water uses, (iv) define the mechanisms for coordinating and supplementing decentralized autonomous governments with respect to the provision of the public service of irrigation and drainage, potable water, sewage system, sanitation, waste water depuration, and so forth.

Presently, concessions have been granted to private enterprises for the provision of potable water, sewage systems, and sanitation in the cantons of Guayaquil and Samborondón in the province of Guayas. The public water enterprises of each

canton are entities that oversee and monitor the activities of companies holding this kind of concession.

### ***B. Sanitation and Hygiene***

Decentralized autonomous governments manage sanitation and hygiene activities inside their jurisdictions. They regulate these activities by issuing ordinances for local application.

### ***C. Recycling***

Decentralized autonomous governments manage the recycling of residue, debris, waste, toxic elements, and other materials within the scope of their jurisdictions. These activities are regulated by way of ordinances for local application.

## **VII. URBAN MOBILITY**

The constitution defines the state's territorial organization, which is decentralized and consists of decentralized autonomous governments. Each decentralized autonomous government has its own jurisdiction, powers, and operations that are independent from, though coordinated with, the central government. Consistent with the constitution, the Organic Code of Territorial Organization, Autonomy, and Decentralization (COOTAD, for its acronym in Spanish) establishes that both the central government and decentralized autonomous governments have privative powers. Furthermore, it stipulates the creation of the National Competences System for organizing institutions, plans, programs, policies, and activities related to the exercise of the competences corresponding to each level of government, following the principles of autonomy, coordination, complementarity, and subsidiarity.

For urban mobility matters, (i) provincial governments have exclusive powers for planning, building, and maintaining the road system within their provinces, excluding urban zones; (ii) decentralized autonomous governments have exclusive powers for planning, building, and maintaining the urban road system; and (iii) rural parish district governments have exclusive powers for planning and maintaining the road systems within their districts, in coordination with provincial governments.

The central government has the power to steer, regulate, plan, and execute the road system formed by national trunk roads, as well as with respect to road signs. Regional decentralized autonomous governments have the power to plan, build, regulate, oversee, and maintain the road system in their regions, in compliance with national policies. Provincial decentralized autonomous governments have the power to plan, build, and maintain the road system in their provinces, except for urban zones. Municipal decentralized autonomous governments have the power to plan, build, and maintain the urban road system. Parish district decentralized autonomous governments have

the power to plan and maintain their parish district and neighboring road systems, in coordination with the provincial decentralized autonomous government.

In view of the separation of powers stated earlier, and since all road projects are regarded as public, such road projects are undertaken by either the central government or decentralized governments within the scope of their jurisdiction. When services are hired for building a new road or for maintaining existing roads, the rules found in the Public Procurement Law, analyzed earlier, have to be followed. This does not mean that other contract mechanisms, especially for financing, such as public-private partnerships, concessions, and so forth, cannot be used. The private sector may directly or indirectly participate in road construction, as well as in the provision of transport services. In any case, their contracts must comply with all applicable rules, including the resolutions and ordinances of decentralized governments.

### **A. Subways**

The city of Quito is in the process of building its first subway system, and there are no other subway projects in Ecuador. For this reason, there are no legal or regulatory rules for this matter on a national or other level.

An international bidding process was held for the construction of the Quito subway system, following a regular public procurement process.

### **B. Light Rail Vehicles**

In the year 2000, different municipalities of the province of Pichincha proposed the construction of a light rail vehicle system to their inhabitants for connecting the city of Quito with neighboring cities, many of which have become commuter suburbs of the capital. The construction of this kind of public transportation, however, has yet to be undertaken.

The city of Cuenca is building a tramway to provide better public transportation to its inhabitants. An international bidding process was held for the construction of the Cuenca tramway, following a regular public procurement process. In addition, the city of Guayaquil has plans to build a light rail.

### **C. Bicycle Ramps**

Various municipal decentralized governments have opted for building basic infrastructure on public sidewalks to provide safety and access to people who use bikes as a means of transportation. The regulations for this kind of infrastructure depend on the section government and vary from one jurisdiction to another.

### ***D. Helicopter Ramps***

This kind of public transportation is not in use. There are, however, regulations in place for private helicopter operations, as well as for private transportation services.

### ***E. New Forms of Transportation***

The city of Quito is looking to implement aerial trams, as opposed to vehicles or trains, as part of its public transportation for connecting the city's high areas with its main urban roads that already offer different types of public transportation.

## **VIII. EDUCATION**

The constitution recognizes education as a right and a service that must be granted and protected by the state; for this reason, free public education up to the college level is guaranteed in Ecuador. The state must include a mandatory preallocation to the education sector in its general budget that will be gradually increased by at least 0.5 percent per annum, until the preallocation equals 6 percent of the GDP. Currently, the percentage of the mandatory preallocation is 3.07 percent of the GDP.

The Ministry of Education oversees and regulates education, which is divided into public, public/missionary, municipal, and private; secular or religious; Spanish or intercultural bilingual. All levels of public education are secular.

The Organic Law of Intercultural Education defines three levels of education: initial, basic, and high school. Initial education is divided into two sublevels: (i) Initial 1, for children up to 3 years of age, though this level does not imply going to a school; and (ii) Initial 2, which is for children of 3 to 5 years of age. General basic education consists of ten years of mandatory education, divided into Preparatory: kindergarten; Elementary Basic: grades 1, 2, and 3; Middle Basic: grades 4, 5, and 6; and Higher Basic: grades 7, 8, and 9. High school education consists of three years of specialization in general sciences (physics, chemistry, and social sciences). Students study general subjects and may opt for one of the following: (i) high school diploma entailing a specialization in science or (ii) a high school diploma with a trade learned.

### ***A. Elementary Schools***

Elementary schools are part of the National Education System. The National Educational Authority is responsible for granting permits to run a school, approving curricular plans, and setting a range for tuition and registration fees. In Ecuador, it is forbidden to restrict access to education to those students whose legal representatives are late in paying tuition. Private and public missionary schools are required to grant scholarships, using at least 5 percent of their income from tuition.

Schools under the National Education System and Higher Education System must have all permits prior to operation. Furthermore, their educational plans must

be approved. Personnel in charge of managing an educational center and permanent staff are subject to certain requirements.

The Infrastructure Department of the Ministry of Education is the regulatory body that decides which state educational centers need to improve their infrastructure to achieve optimal levels of quality. The current government policy for education is to set up millennium educational units to guarantee the country's most vulnerable areas access to education by investing in infrastructure.

The Infrastructure Department not only has the power to decide which educational centers should become a millennium educational unit, but also to standardize architectural and structural designs for the construction of these units nationwide. The Ecuadorian government delegates the development of millennium educational unit projects to private investors after completing a public procurement process. In contrast, private educational centers are not standardized and their infrastructure is not regulated by the Ministry of Education. There is no specific procedure for entering into contracts with investors for the construction of infrastructure of private education establishments.

Private education centers must comply with the norms and regulations issued by each municipality of the different decentralized autonomous governments in Ecuador; for example, in Quito, municipal ordinance Nos. 0172 and 0127 define the main rules on educational infrastructure.

## ***B. Technical Schools and Universities***

Universities and technical institutes are part of the Higher Education System, which is regulated by the Higher Education Council and the Council of Higher Education Evaluation, Accreditation, and Quality Assurance. In order to become part of the Higher Education System, universities and technical institutes must be nonprofit organizations and have to reinvest their revenue in their own infrastructure development. If an educational center closes down, its infrastructure and assets will be allocated for ensuring and developing the Higher Education System.

## ***C. Research Institutes***

Research institutes fall under the category of universities and, therefore, no specific regulations have been issued for this kind of institute.

# **IX. HEALTH**

The Ecuadorian constitution recognizes health as a right and a service that must be granted and protected by the state. This means permanent and timely access to health care. Consequently, the state regulates and oversees all health-related activities as well as the operations of entities involved in the field of health. Furthermore, the constitution clearly establishes that the state is directly and solely responsible for building

up health services, which is the state's responsibility pursuant to the constitution, by hiring the required workforce and providing the necessary physical infrastructure and equipment for public health institutions. According to the Ecuadorian Ministry of Health, in the last nine years, the state has invested approximately US\$13,500,000 in infrastructure construction, acquisition of new equipment for health institutions, and human resources reinforcement.

Public financing in health must come from the state's general budget. The state guarantees that it will finance health state institutions, including private and autonomous health institutions, provided they do not reap profits from their business and that they guarantee free services. Additionally, they must comply with public policies, assure quality and safety, and respect health-related rights. These institutions are subject to the state's oversight and regulation.

It is forbidden to deny medical care in the case of an emergency. The head physician when medical care is denied, as well as the health institution, will be held liable for the patient's health.

The public health system in Ecuador is divided into two major branches: health care provided by the Ministry of Health, which is available to everyone in need of medical care, irrespective of whether or not they are enrolled with the Ecuadorian Institute of Social Security or have private insurance; and the health care provided by the Ecuadorian Institute of Social Security to its enrollees and their families.

Since health care is deemed to be a public service in accordance with the constitution, the cost thereof is included in the State General Budget. The taxes the Ecuadorian Institute of Social Security collects, however, are used to cover the cost of health care to its enrollees and their families.

The infrastructure where the public health insurance service is provided in Ecuador depends strictly on the public hospital. Nonetheless, the Social Security Institute has signed several agreements with private parties to enable anyone under the social security system to receive care at private hospitals and certain types of treatment at specialized centers.

Anyone with access to patient information within the Ecuadorian health system is subject to special measures to ensure confidentiality. Therefore, for disclosing patient information in a medical consultation through telemedicine, the physician who first saw the patient must provide an express and informed consent signed by the patient or the patient's legal representative. The opinion issued by the telemedicine doctor will be regarded as a second opinion, while the first physician is responsible for the patient's health.

## **A. Hospitals**

The regulations for constructing public or private hospitals and clinics are issued from time to time by the Ministry of Health, and will depend on section regulations to be issued by the municipality in question. In private institutions, the majority shareholders must be physicians. The minimum requirements that a private institution must meet are the following: (i) data and file department, (ii) accommodation for patients,

(iii) sterilization and surgery area, (iv) auxiliary services, and (v) disposal of wastes and health implements.

## ***B. Health Insurance***

The Health Insurance and Assistance Companies Act was enacted in October 2016. This act establishes the minimum requirements for health insurance companies to operate in Ecuador: (i) They can have just one corporate object, (ii) share capital must equal at least US\$1 million, and (iii) the duration of the company must be at least fifty years.

In addition, this kind of company must meet the minimum requirements to be issued by the appropriate authority from time to time, with respect to solvency, equity, technical reserves, and provisions.

## ***C. Telemedicine***

Telemedicine is a permitted health mechanism, but does not have substantial regulations concerning the minimum requirements for infrastructure or operation.

# **X. AGRIBUSINESS**

According to the constitution, one of the objectives of the state is to guarantee food sovereignty. For this purpose, the constitution contains a series of principles and responsibilities that the state has to take on to guarantee permanent self-sufficiency for people, communities, and nations in terms of healthy and culturally appropriate food.

Therefore, the constitution grants the state the power to regulate the use of, and access to, land by following social and environmental principles. It prohibits latifundiums and the concentration of land, as well as the monopolization or privatization of water and water sources.

The regulation is included in the Organic Law of Food Sovereignty, which defines the mechanisms and controls for agribusiness sectors so they may gradually comply with the constitutional principles and rights applicable to this sector. The regulation also introduces the obligation of the agribusiness industry to respect the rights of nature, in particular nature's right to restoration, and the obligation to reduce environmental impacts.

The Organic Code of Production, Commerce, and Investment contains rules regarding access to land and the full promotion of agricultural production. It sets forth that the state, through its different competent governmental entities, must encourage and facilitate access to land for farmers and farming communities that have no land. They must be given preference in land redistribution processes, through land title registration mechanisms, the transfer of state-owned land, mediation for the purchase/sale of land available at the market, reversion, or other mechanisms defined by the constitution and the law.

The Ministry of Agriculture, Animal Husbandry, and Fisheries is the national agrarian authority directing the agribusiness industry. It also is in charge of coordinating and regulating public policies concerning rural lands with respect to agricultural production and guaranteed food sovereignty. For this purpose, the competencies and powers assigned to the National Agrarian Authority include the following: (i) Ensuring that rural lands comply with their environmental and social functions; (ii) Regulating sustainable soil use for farming and forestry; (iii) Authorizing and approving the sale or expropriation of privately owned rural lands failing to fulfill their social function or environmental function or that form a latifundium; (iv) Awarding rural lands that are state owned or privately owned, but expropriated by the state for agricultural production purposes; (v) Regulating and controlling the use of products and technologies that could affect the physical, chemical, or biological characteristics of soil; (vi) Providing technical assistance, training, and technological innovation for boosting productivity and facilitating market access; and (vii) With the environmental authority, defining the requirements for sustainable production on property located inside the National System of Protected Areas.

The National Land Fund created by the law is intended to provide equal access to land for legally organized farming organizations and agricultural producers.

Decentralized autonomous governments are in charge of regularizing rural lands and, in coordination with the National Agrarian Authority, have to define agrarian development zones. Furthermore, they are responsible for crafting soil use and management plans for promoting, among other things, the regularization of rural lands and efficient soil use, on the basis of the criteria of national planning, regionalization, equity, priority, integrality, and sustainability. Production activities carried out in fragile ecosystems require clearance from the Environment Ministry.

Presently, Ecuador's primary agribusiness exports are flowers, bananas, cacao, coffee, and seafood, including tuna, shrimp, and others. In 2014, these represented 33 percent of all of the country's nonpetroleum exports. According to official estimates, the impact this business has had on the creation of job opportunities is enormous—over 700,000 direct jobs and around 2,000,000 indirect jobs.

## ***A. Acquisition of Rural Land***

Premised on the constitution, any land declared ancestral by a competent entity will be under the responsibility of the indigenous community in question and cannot be transferred to a third party.

The state acknowledges and guarantees the right to own rural land, regardless of the form and method of ownership, whether public, private, associative, cooperative, community, or a combination thereof. The sale of rural lands among Ecuadorian or foreign individuals or companies is guaranteed, though with the following limitations: (i) In order to guarantee food sovereignty, the purchase/sale, lease, or usufruct of productive rural lands must be authorized by the National Agrarian Authority when for over 200 hectares in the Sierra (highlands) and foothill regions, 1,000 hectares in the coastal area, and 1,500 hectares in the Amazon region or Galapagos Islands. The authorization

will be based solely on whether or not the sale affects food sovereignty; (ii) To guarantee food sovereignty, foreign state-owned enterprises may purchase or lease rural land or take rural land under usufruct for agrarian production projects, with prior clearance from the National Agrarian Authority; (iii) Foreign investment for purchasing or leasing rural land or taking rural land under usufruct to a degree that does not trigger either a concentration of land or speculation; (iv) It is forbidden to transfer the ownership of rural lands, which are located within 20 kilometers parallel to borders and to foreign individuals or companies. Furthermore, foreign individuals or companies cannot acquire rural areas in either safety or protected areas.

Immovable rural property is subject to the following taxes:

1. Annual Rural Property Tax: The tax beneficiary is the municipality or metropolitan district of the jurisdiction where the property is located and the taxpayer is the property owner or holder. The following are exempt from this tax: (a) primary forests, wetlands, and lessee's livestock and machinery; (b) property not worth more than 15 times the monthly base salary; (c) property owned by the state and other public-sector entities; (d) property of social and higher education institutions whose profits are reinvested for such purposes; (e) property of foreign governments or entities that are not private companies; (f) community lands; (g) land with primary forests or that are reforested with forest native plants; (h) land belonging to religious missions set up in the Amazon region; (i) property owned by the solidarity economy sector.
2. Tax Band: A percentage not under 0.25 percent or above 0.3 percent of the property value is applied. The percentage is set in an ordinance by each municipality. For determining the taxable amount, the values of the properties that an owner has in the same canton are added up. The rate is applied to the sum after subtracting the deductions to which the taxpayer is entitled.
3. Annual Rural Land Tax: The tax beneficiary is the Internal Revenue Service and the taxpayer is the property owner or holder. For calculating the tax, the taxable base is the area of the property recorded in a cadastre to be drawn up by municipalities together with the Ministry of Agriculture, Animal Husbandry, Aquaculture, and Fisheries for such purpose. The following are exempt from this tax: (a) property located in high plateau ecosystems; (b) property located in public or private protected areas or ecological reserves; (c) wetlands and natural forests; (d) property fulfilling an ecological function and that is located in voluntary conservation areas in forests and ecosystems; (e) territory falling under the category of Ecuador's Wealth of Natural Areas; and (f) private forests.

## **B. Agriculture**

Both the Andes Mountain Range and equator cross through Ecuador. For this reason, the country has various ecosystems allowing for different kinds of year-round

crops, including banana, cacao, coffee, broccoli, strawberries, gooseberries, and other berry crops.

Many of these crops are now being exported. Since the use of technology in certain areas is low, production is not optimum. Nonetheless, there are climate advantages that make Ecuador a country with a lot of agricultural potential for supply both domestically and otherwise. The country is looking to become a worldwide food supplier.

Agricultural infrastructure construction regulations are issued by municipal governments. The National Water Authority is in charge of granting authorization for water collection, use, and disposal.

### **C. *Livestock***

Dairy farming has considerably improved in Ecuador and, in many situations, is the only source of daily income for small farmers. Production has made Ecuador self-sufficient; part of the production goes to the dairy industry, in particular the cheese industry. The beef industry is being developed in Ecuador, mainly in the coastal area. Although beef cattle raising is getting better, the same cannot be said about sheep raising or wool production. It should be noted that llamas and alpacas (camelid), which are fiber-producing animals, are in danger of extinction.

Regulations for the construction of animal husbandry infrastructure are issued by municipal governments.

## **XI. ITC—INFORMATION TECHNOLOGY AND COMMUNICATIONS**

Ecuadorian legislation regarding technology and communications is quite technical and complex. Information technology and specifically communications are regarded by the law as a strategic sector. Therefore, legislation concerning investment in ITC infrastructure has its own particularities, which are analyzed in the following paragraphs. The constitution has declared telecommunications to be a public service; therefore, all investment in these areas requires clearance from the appropriate authority. Prior to making an investment, the interested party has to secure a license from the authority, after meeting general requirements: (i) a formal request to the authority made by the investor's legal representative; (ii) a detailed technical description of the proposed service, providing the geographical scope and implementation timeline; (iii) a complete technical and detailed description to demonstrate the project's technical viability; (iv) access or interconnection request (if needed); (v) analysis of the general demand for services, detailed in the request; (vi) the detailed costs of the project; and (vii) five-year investment plan.

The following table presents the key aspects for the most important license services, pursuant to the legislation we have discussed.

Service	Construction Deadline	Duration of license	Type of license	Geographical area of license	Payment for license	Payment of frequency rate	Performance Bond	All-risk insurance policy
<b>Fixed telephone line</b>	1 year	15 years for private companies. 20 years for state-owned companies.	Administrative grant for private companies. Authorization for state-owned companies.	National, Regional, and Cantonal	Yes, for private companies. No, for state-owned companies.	Yes, for private companies. No, for state-owned companies.	Yes, for private companies. No, for state-owned companies.	Yes
<b>International transportation</b>	1 year	15 years for private companies. 20 years for state-owned companies.	Administrative registration for private companies. Authorization for state-owned companies.	Areas set by the Authority with respect to the specific service.	Yes, for private companies. No, for state-owned companies.	No	Yes, for private companies. No, for state-owned companies.	No
<b>Mobile satellite communications</b>	1 year	15 years for private companies. 20 years for state-owned companies.	Administrative registration for private companies. Authorization for state-owned companies.	National	Yes, for private companies. No, for state-owned companies.	Yes, for private companies. No, for state-owned companies.	Yes, for private companies. No, for state-owned companies.	No
<b>Value added</b>	1 year	10 years for private companies. 20 years for state-owned companies.	Administrative registration for private companies. Authorization for state-owned companies.	National	Yes, for private companies. No, for state-owned companies.	Yes, for private companies. No, for state-owned companies.	Yes, for private companies. No, for state-owned companies.	No
<b>Internet</b>	1 year	15 years for private companies. 20 years for state-owned companies.	Administrative registration for private companies. Authorization for state-owned companies.	National	Yes, for private companies. No, for state-owned companies.	Yes, for private companies. No, for state-owned companies.	Yes, for private companies. No, for state-owned companies.	No
<b>Audio and video subscription</b>	1 year	15 years for private companies. 20 years for state-owned companies.	Administrative permit for private companies. Authorization for state-owned companies.	Cantonal	Yes, for private companies.	Yes, for private companies.	Yes, for private companies.	No

## XII. FINANCING OPPORTUNITIES

### A. *Public Financing*

The constitution establishes that the state has exclusive competence in the planning, construction, and maintenance of the physical infrastructure for education and health. Moreover, the state has exclusive decision-making and oversight powers with respect to the strategic sectors established in the constitution, including the strategic sectors of energy, nonrenewable natural resources, ports, transportation, hydrocarbons refinement, telecommunications, and public services.

Public investment in Ecuador comprises transactions carried out with public resources to maintain or boost the country's wealth and social capacities for accomplishing planning objectives. Every four years, the state issues a National Development Plan, which contains the primary political and administrative guidelines for crafting and implementing public policies and investment. Compliance with the National Development Plan is mandatory for the public sector.

A project is eligible for receiving public funding only if it is included in the national ledger of projects, which is the official ledger containing the investment programs and projects presented to the Planning and Development National Secretariat for public funding eligibility. The national ledger of projects includes all relevant information for monitoring and evaluating public investment. The registration of a project in the ledger does not necessarily imply an allocation or transfer of public resources. No program or project may receive public funding if not duly posted in the national ledger of projects.

The Organic Code of Planning and Public Finances states that, in order to achieve complementarity between public and private investment initiatives, the state through the Participatory Planning National System may apply the required coordination mechanisms following all current legal rules.

Per the National Development Plan (2013—2017), the state will invest a total of US\$47.612 billion in certain areas of interest, such as the development of the national economic policy, production, employment, competitiveness, strategic sectors, security, and health and education, pursuant to applicable constitutional guidelines.

The following are the constitutional objectives of the Ecuadorian economic policy: (i) to encourage national production, productivity, systemic competitiveness, strategic insertion in the global economy, and complementary production activities in regional integration; (ii) to achieve balanced development in national territory and integration among regions; (iii) to maintain economic stability; and (iv) to promote fair and a complementary exchange of goods and services at transparent and efficient markets.

In addition, the main constitutional objectives of the Ecuadorian fiscal policy are as follows: (i) financing services, investment, and public property and goods; and (ii) the creation of incentives for investment in different sectors of the economy and the production of goods and services.

The public financial entities of the public financing sector are the Ecuadorian Development Bank (Banco de Desarrollo del Ecuador B.P., former Banco del Estado), the Banecuador Bank (former Banco Nacional de Fomento), the National Finance

Corporation (Corporación Financiera Nacional), the Social Security Institute Bank (Banco del Instituto Ecuatoriano de Seguridad Social), the National Corporation of People's Finances (Corporación Nacional de Finanzas Populares), and the Central Bank.

With respect to public funding for infrastructure projects, the constitution stipulates that planning and budget guidelines apply to contracting public debt at all levels of the state. Public debt is authorized by the Debt and Financing Committee, in accordance with the Organic Code of Planning and Public Finances. The Ministry of Finance is the entity in charge of managing public-debt matters.

The Organic Code of Planning and Public Finances establishes that the total amount of the balance of public debt of all public-sector entities may not exceed 40 percent of the GDP. On an exceptional basis, approval by the National Assembly is required when debt for public investment programs and/or projects of national interest is required, but exceeds the limits.

Pursuant to the mentioned Code, funds from public debt must be used by public-sector entities solely for financing investment in infrastructure projects and programs with payment ability. Public debt cannot be used to cover permanent expenses.

In addition, the Organic Code of Planning and Public Finances provides that the state may grant sovereign guarantees to public-sector entities that contract public debt for financing investment for infrastructure projects and programs or cost-effective projects and investment programs. A sovereign guarantee is authorized only when the public-sector entity demonstrates that it (or the project) has the ability to repay the debt.

## ***B. Private Sector Financing***

The Ecuadorian constitution sets forth that the state must encourage domestic and foreign investment. The state also has to craft the specific regulations directed to the different kinds of investment, giving priority to domestic investment. Investments have to be made on the basis of the criteria of diversification of production and technological innovation, striking a balance among regions and sectors.

There are two kinds of private investment in Ecuador. The first kind is investment in public-sector projects; for this type of financing, the constitution provides that foreign investment must play a direct role in complementing the strategic sectors of the economy in need of investment and financing to achieve the objectives outlined in the National Development Plan, subject to applicable laws.

The second area of private funding is directed at the other sectors of the economy that are not included as strategic sectors but are private initiatives for the most part.

In view of this constitutional principle, and pursuant to the laws and regulations in effect, the private sector can participate in the financing of projects, including infrastructure projects, promoted by the public sector through diverse mechanisms, such as (i) financing mechanisms and forms of contract and (ii) public-private partnerships.

Premised on the constitution and the National Development Plan, it is national policy to change the production matrix, which is a fundamental pillar for the country's cross-sectional development and the creation of basic industries that will enable the

economy to take a quantum leap, enhancing the use of natural resources, adding value, and boosting the competitiveness of Ecuador. The change in the production matrix will spark growth and a high potential for exports, substitute imports, and productive chaining in the short, medium, and long terms. For this reason, Ecuador has promoted public policies focused on the creation of incentives for foreign investment through innovative contract models and the promotion of responsible governance of natural resources. Consequently, public-private partnerships, as well as the Foreign Investment Law and its regulations, constitute the legal framework for carrying out and implementing more infrastructure projects using long-term financing.

The Organic Law of Public Enterprises stipulates that state-owned companies may form any type of association, strategic alliance, and public-private joint ventures with national or foreign public or private sectors, pursuant to the legal framework contained in the Ecuadorian constitution, to secure funding for accomplishing their business objectives.

The private financial sector's lending and borrowing transactions are governed by the Monetary and Financial Code and the regulations of the Superintendence of Banks. Loans from private banks target private sectors and, in general, are not directed toward financing public infrastructure or public works. Ecuadorian law and regulations, however, allow and even encourage public private partnerships and strategic alliances, as mentioned earlier.

### ***C. Project Finance***

This long-term financing mechanism has been implemented in several infrastructure projects in Ecuador. One recent example is the construction and operation of the Quito international airport, with its main focus on generating cash flows from the project to cover the debt. This type of financing mechanism is now governed by the PPP Law, enacted last year, and its regulation.

In June 2016, a foreign company and the State of Ecuador signed an agreement for the financing, modernization, expansion, and improvement of the Posorja port terminal to make it competitive at the global shipping market. The port is located in the province of Guayas. The contract complies with the PPP Law and includes a 50-year concession, for a total investment of US\$1.2 billion

Pursuant to the constitution and the National Development Plan, the PPP Law and its regulations form the legal framework for developing and implementing more infrastructure projects using long-term financing.

## **XIII. CONCLUSION**

The current legal framework has enhanced the investment conditions in Ecuador for developing infrastructure projects. Recent changes in legislation make it easier to set up corporations, as well as to grant legal stability and tax incentives under certain conditions.

The constitution, as well as the National Development Plan, put a new development scheme in place for the country that gives priority to investment in infrastructure in strategic sectors. The change in the production matrix drives strategic sectors to redefine the composition of the supply of goods and services, aimed at diversifying production while adding value, increasing exports, and continuously improving productivity and competitiveness.

The change of the production matrix in Ecuador calls for foreign investment to contribute to the country's development by diversifying production, generating added value, and transferring knowledge. Therefore, it is necessary not only to diversify products and markets, but also to enter into strategic alliances.

Current Ecuadorian legislation allows for an interaction between the public and private sectors through a diversity of legal structures and mechanisms ascribing legal stability to the parties involved.

The inclusion of new forms of contract, such as public-private partnerships, demonstrates that Ecuador is interested in keeping up with global trends. The absence of secondary legislation, however, sparks a downturn in the development of large infrastructure projects.

Legislation related to public procurement has undergone many amendments for achieving more transparent processes. One example is the implementation of technological platforms and public bidding processes.

Because of the diversity of its climate conditions and its favorable geography, Ecuador is a country of interest in terms of its potential for developing large projects using renewable energies, such as geothermal, wind, and solar power.