

Private Banking & Wealth Management

Contributing editors

Shelby R du Pasquier, Stefan Breitenstein and Fedor Poskriakov



2017

GETTING THE
DEAL THROUGH

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Private Banking & Wealth Management 2017

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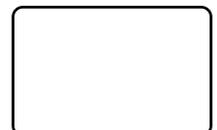


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Private banking and wealth management

1 What are the main sources of law and regulation relevant for private banking?

In Ecuador, the main source of law regulating banking and financial business is the Monetary and Financial Code 2014 (COMF). There is a large quantity of secondary legislation issued by the Monetary and Financial Regulation Board (JRMF) (formerly, the Banking Board). The JRMF also has the power to issue securities market rules (this power was formally conferred on the National Securities Council).

2 What are the main government, regulatory or self-regulatory bodies relevant for private banking and wealth management?

In accordance with the COMF, the JRMF within the Executive Branch is the highest authority for issuing the policy and rules for the financial and banking sector. The Superintendency of Banks (SB) is the regulatory agency of the national banking and financial system, which is in charge of overseeing and supervising financial institutions. The Superintendency of Companies, Securities and Insurance (SCVS) is the oversight agency for the securities market. Both superintendencies belong to the Social Oversight and Transparency Branch.

3 How are private wealth services commonly provided in your jurisdiction?

In Ecuador, there are various entities with specific powers concerning the services they may offer. Trust managers provide fund management services (public and private funds), as well as services for managing private portfolios. Securities firms provide investment banking services and are the only ones authorised to transact at the exchange market. Private banks manage financial products (certificates of deposit, time deposits, etc).

There are no entities that may autonomously engage in all of the activities listed above, such as private wealth services.

4 What is the definition of private banking or similar business in your jurisdiction?

There are two types of banks: (i) multiple banks, which are authorised to carry out different loan transactions in two or more segments, and (ii) specialised banks, which operate in one loan segment without surpassing the thresholds set by the JRMF.

Financial business is understood as a set of transactions and services involving supply, demand and users, in order to facilitate the circulation of money and provide financial intermediation. Its purpose includes maintaining deposits and addressing financing requirements for accomplishing the country's development objectives.

5 What are the main licensing requirements?

In order for a company to participate in the private financial sector, it must comply with the following general rules:

- it has to be a stock company;
- it must complete the process for reserving the company's name, reflecting its nature and individuality, while referring to the type of company it will be;
- it must provide economic-financial feasibility studies on the private entity to be incorporated and a market analysis demonstrating

the viability of the entity's incorporation and insertion, in line with its capacity and selected specialisation, and its impact on other entities of the system; and

- it must have a minimum capital of US\$11 million. Capital has to be paid only in cash.

6 What are the main ongoing conditions of a licence?

Financial entities must regularly complete the following activities:

- capital advertisement: banks may only announce their capital that has been subscribed and paid;
- they must maintain a legal reserve fund equal to at least 50 per cent of their subscribed and paid-in capital;
- they have to keep sufficient levels of high-quality liquid assets, clear of encumbrances or restrictions, which may be converted into cash in a certain period of time without significant value loss, compared to its obligations and contingencies;
- they must always maintain a ratio of not less than 9 per cent between their technical equity and risk-weighted assets and contingents; and
- the ratio between technical equity and total assets and contingents may not be below 4 per cent.

Authorised capital is the sum up to which the entities of the public and private financial sectors may accept share subscriptions or issuances, as the case may be. Subscribed and paid-in capital must be at least 50 per cent of the sum of authorised capital.

Technical equity is formed by the following, among other items:

- the sum of subscribed and paid-in capital;
- reserves;
- total earnings or surplus of the year in progress, once labour and tax obligations have been met;
- undistributable funds in the legal reserve;
- accrued earnings from previous fiscal years;
- contributions to future capitalisations; and
- unsecured convertible bonds.

7 What are the most common forms of organisation of a private bank?

The COMF accepts the following forms of companies for financial institutions:

- subsidiaries: they have their own legal personhood. The bank's direct or indirect stockholding must be over 50 per cent of the company's subscribed and paid-in capital;
- affiliate: they have their own legal personhood. The bank's direct or indirect stockholding must be between 20 and 50 per cent of the subscribed and paid-in of capital or the bank must exert influence in the company's management in terms of common shareholders, directors, administrators and employees;
- branch of a foreign company, which may carry out financial activities;
- representation office, which must act strictly as a customer information centre and:
 - grant mortgages and pledges, with or without titles issued, as well as unsecured loans and any other kind of loan authorised by the JRMF;
 - grant credit in checking accounts, whether or not contracted;

- make deposits at financial entities in and outside of the country; and
- domestic companies organised under the laws of the Republic of Ecuador.

8 How long does it take to obtain a licence for a private bank?

The process for a private bank to obtain a licence may take up to two years.

9 What are the processes and conditions for closure or withdrawal of licences?

The proposal must be submitted to the SB. The entity does not have any liabilities. The SB will intervene in the entity in order to duly repay all customers and creditors.

However, the SB can also request ex officio the withdrawal of a licence if the entity:

- does not meet the minimum number of transactions established by the SB, for a period of six months; or
- submits false and incomplete information or does not disclose relevant information, thus affecting the grant of the licence.

10 Is wealth management subject to supervision or licensing?

All of the activities that are part of wealth management are subject to supervision and licensing by the corresponding oversight entity, the SB or the SCVS.

The differences between discretionary management and non-discretionary advisory service are not clear under Ecuadorian legislation. Management services are necessarily related to advisory services; however, advisory activities are not limited to financial institutions.

11 What are the main licensing requirements for wealth management?

Depending on the type of service to be offered, the company will have to fulfil the following requirements:

- securities firms must:
 - be stock companies; and
 - have a certificate of equity contribution in one of the stock exchanges (Quito or Guayaquil); and
- fund managers and trusts must:
 - be stock companies;
 - have physical, technical and human resources structures for providing quality services; and
 - have computer systems, programs and independent equipment.

12 What are the main ongoing conditions of a wealth management licence?

The following monthly information must be delivered within 15 days of the close of each month:

- financial statements cut at the end of each month;
- description of the 'investment' account;
- description of all securities maintained in position through underwriting contracts, in any of their forms;
- description of securities acquired under activities involving advisory, information and consultancy services regarding securities portfolio trading and structuring;
- description of the 'other assets' account;
- description of managed third-party portfolios, respecting stock exchange secrecy. The amount and type of securities, classified as fixed income and variable income, must be stated;
- description of all brokerage transactions completed; and
- description of brokerage transactions made at the over-the-counter market.

The following annual information should be submitted within 90 days from the close of the fiscal year:

- audited financial statements with explanatory notes referring to the above points; and
- an administration report.

In addition, each month fund managers, trusts and securities firms must provide investors with a summary or statement of their transactions and portfolio evolution statement, as well as the composition or

valuation of their portfolio, quote variations, return and other information of interest.

Fund managers and trusts are required to deliver the following information from time to time:

- monthly information to be delivered within 15 days from the close of the month:
 - financial statements cut at the end of each month;
 - description of commissions received from each one of the funds and trust businesses they manage;
 - description of the manager's own portfolio;
 - description of investment of fund managers in investment funds;
 - market value of the quotas of the different collective funds they manage;
 - description of contracts for correspondents or representation, made with national or foreign entities. The counterpart and type of contract must be stated; and
 - additional information established for maintaining the registration of investment funds and trust businesses; and information required from trust businesses not listed in the Securities Market Register; and
- annual information to be submitted within 90 days from the close of the fiscal year:
 - audited annual financial statements;
 - sworn statement by the managers and each one of the members on the corresponding investment committee, stating they have not incurred the disqualifications established in the Securities Market Law;
 - administration report;
 - internal auditor's report;
 - update of the manuals in the case of changes; and
 - description of annual income from their business as investment fund managers, trustee, and agent handling the securitisation processes, classified by city, depending on the domicile of the participants, settlors, or originators, respectively.

Anti-money laundering and financial crime prevention

13 What are the main anti-money laundering and financial crime requirements for private banking in your jurisdiction?

Premised on the COMF, entities of the national financial system have the obligation to establish internal control systems for the deterrence of crime, including money laundering and the financing of crimes, such as terrorism, in all financial transactions.

These controls include:

- registration of all operations and transactions made in the month, including accounts and commercial correspondence files. The entity's own national or international operations and transactions must be reported; and
- the 'know your customer' policy has to be applied to all potential, current, permanent and occasional customers. The following minimum measures must be taken for identifying and verifying customer identity:
 - when the business or contractual relationship starts;
 - when the customer's data change;
 - when occasional operations, transactions, or processes are made;
 - when there is doubt about the truthfulness or congruency of customer identification information; and
 - registers must be kept and updated for 10 years after the date of the last economic operation or transaction by the customer;
- politically exposed persons (PEPs);
- the 'know your employee' policy by which employee conduct must be properly selected and supervised, especially conduct of employees in jobs related to customer management, money receipt, and information control. In addition, an employee profile must be defined and updated during the employment relationship;
- the 'know your market' policy identifies risks arising from transactions, operations or processes forming part of the course of business for later establishing prevention controls; and
- the 'know your correspondent' policy requires a register of the parties obligated to report on correspondent relationships kept because of their business. They must provide sufficient information about the company they represent for its complete identification.

There is also a brand new Anti-Money Laundering and Financial Crime Prevention Law that was enacted on 21 July 2016. In accordance with the Law, the JRMF is in charge of the anti-money laundering and financial crime prevention system. The Law also establishes the Economic and Finance Analysis Unit (UAFE) as the technical entity for oversight and compliance.

14 What is the definition of a politically exposed person (PEP) in local law? Are there increased due diligence requirements for establishing a private banking relationship for a PEP?

A PEP is a person who carries out or has carried out major public duties in the country or abroad, and who, because of their profile, may expose the entity to a higher degree of the risk of money laundering, financing of terrorism, and other crimes.

Business relationships with relatives within the second degree of blood relation or the first degree of family relation and staff members of a PEP require the financial system institution to apply increased due diligence procedures.

15 What is the minimum identification documentation required for account opening? Describe the customary level of due diligence and information required to establish a private banking relationship in your jurisdiction.

In general terms, the following information is required:

- identification document (identification card or passport);
- marital status;
- address of domicile or residence;
- utility bill showing the address of the person (water, electricity, or telephone bill); and
- commercial references accrediting level of income.

For moral persons, evidence of the following must be submitted:

- certificate of legal existence;
- declaration of the shareholders chain;
- appointment of the legal representative; and
- company by-laws.

16 Are tax offences predicate offences for money laundering? What is the definition and scope of the main predicate offences?

Under Ecuador's Organic Criminal Code (COIP), tax offences are not predicate offences for money laundering. Money laundering and tax offences are dealt in separate subchapters of the Code. Ecuador has, to date, not included tax predicate offences in its domestic criminal law, despite being a signatory to the UN Palermo Convention.

17 What is the minimum compliance verification required from financial intermediaries in connection to tax compliance of their clients?

For individuals, there is no minimum compliance verification with respect to their tax obligations. However, for corporate clients, the financial intermediaries must require the client's income tax return to be filed each year with the competent authorities along with their taxpayer identification registration if there has been any modification in the company's legal status or change of its legal representatives.

In addition, when making offshore transfers on behalf of their clients, financial intermediaries act as withholding agents of the capital outflow tax. Aside from sending the tax to the Internal Revenue Service (IRS), they must fulfil reporting obligations regarding the client, the amount transferred and a description of the payment.

18 What is the liability for failing to comply with money laundering or financial crime rules?

In the event of the late filing of the reports of operations or transactions exceeding US\$10,000, the administrative liability for natural or moral persons that deliver a late report of operations or transactions will be sanctioned with a fine from one to 10 times the unified base salary. If the person fails to submit the report, the fine will be from 10 to 20 times the unified base salary.

Criminal liability for failure to comply with anti-money laundering rules and regulations is as follows:

- one to three years' imprisonment when the amount involved in money laundering is less than 100 times the unified base salary for workers in general;
- five to seven years' imprisonment when the commission of the crime does not presuppose association for the offence;
- seven to 10 years' imprisonment in the following cases:
 - when the amount involved in money laundering is equal to or greater than 100 times the unified base salary for workers in general;
 - when the commission of the crime presupposes association for the offence, without the creation of companies or without using companies legally organised; or
 - when the crime is committed using financial system institutions or insurance companies, public institutions or dignitaries, or director positions, duties or jobs in such systems;
- 10 to 13 years' imprisonment in the following cases:
 - when the amount involved in money laundering is greater than 200 times the unified base salary for workers in general;
 - when the commission of the crime presupposes association for the offence by creating companies or using companies already legally organised; or
 - when the crime was committed using public institutions or dignitaries, a public office or public employees.

In the cases listed above, money laundering is also punishable with a fine equal to double the amount of the assets involved in the crime. Punishment also includes the confiscation of property when a legal person in dissolution or liquidation was used.

Client segmentation and protection

19 Does your jurisdiction's legal and regulatory framework distinguish between types of client for private banking purposes?

The traditional manner for classifying customers is:

- customer: individual or company with whom an institution of the financial system directly or indirectly establishes a financial, economic, or business contractual relationship, whether temporary or permanent;
- occasional customer: individual or company who, under contract, occasionally does business with a financial institution;
- permanent customer: individual or company who, under contract, has an ongoing business relationship with an institution of the financial system; and
- potential customer: individual or company inquiring about the services or products of an institution of the financial system and possibly interested in having access to a different or new product or service.

Ecuadorian regulatory legislation defines special customer categories based on the level of risk posed by the customer:

- customers dealing in high-risk industries or activities;
- customers whose equity exceeds US\$400,000 or the equivalent thereof in other currencies; and
- non-resident customers.

20 What are the consequences of client segmentation?

If the customer meets any of the above criteria, the financial institution will have the obligation to apply increased due diligence procedures, understood as a set of more stringent, exhaustive and reasonably designed and differentiated policies, processes and procedures, depending on the results of risk identification, assessment and diagnosis, applied by the entity for the deterrence of money laundering, the financing of terrorism and other crimes.

21 Is there consumer protection or similar legislation in your jurisdiction relevant to private banking?

The Consumer Defence Law, which regulates the different areas of services provided by financial institutions. The highlights are:

- regulation of accession contracts, which must be performed within certain parameters for the validity thereof;
- the possibility that the consumer will always have the right to pay everything due in advance or to make partial advance payments

in amounts over the instalment in all sales or provision of services on credit. In such cases, interest is paid solely on the outstanding balance;

- the obligation to report on the operation of the banking system, as well as the transactions that the user makes;
- a prohibition on charging interest over interest (anatocism);
- customer privacy protection and transparency in collection action by the financial institution; and
- the price of a good must be the same, irrespective of whether payment is made in cash or by credit card.

Exchange controls and withdrawals

22 Describe any exchange controls or restrictions on the movement of funds.

The COMF grants the JRMF the power to set the conditions and limits on the position in offshore assets that financial entities, securities firms and insurance companies, as well as non-financial loan entities, have outside the country.

The JRMF may also set the external debt conditions and limits for financial entities, securities firms and insurance companies, and non-financial loan entities, which the country contracts abroad. Furthermore, it may also order the entry into the country of currency from the transactions it determines. In addition, it may set fines up to the amount of the currency that does not enter the country, in the event such obligation is not met.

23 Are there restrictions on cash withdrawals imposed by law or regulation? Do banks customarily impose restrictions on account withdrawals?

In order for an entity of the national financial system to deal in currencies other than the dollar, it must secure authorisation from the Central Bank of Ecuador. Entities are required to report in the manner and frequency determined by the JRMF about the sums and types of exchange of the transactions made and to provide the information the bank requires with respect to movements in their currency accounts. Nonetheless, exchange transactions may be made at the free market.

24 Are there any restrictions on other withdrawals from an account in your jurisdiction?

In Ecuador, cheques are only means of payment and cannot be used as a means of credit. Therefore, they cannot generate any kind of interest.

Gold is recognised as a currency, but cannot be deposited in bank accounts or freely used. This is because the Central Bank of Ecuador may intervene in the purchase, sale or trading of gold and may make futures transactions in currency or gold or through other derivatives.

In addition, securities may be managed from a securities clearing-house, which keeps custody of dematerialised securities and securities in book entry form.

Cross-border services

25 What is the general framework dealing with cross-border private banking services into your jurisdiction?

Domestic financial entities may engage in cross-border activities, with the prior authorisation of the SB and in accordance with the rules issued by the JRMF.

26 Are there any licensing requirements for cross-border private banking services into your jurisdiction?

With the prior authorisation of the SB, financial entities of the private financial sector may participate as shareholders in the capital of foreign financial entities of the same type, whether already organised or to be organised, subject to the conditions defined in a regulation to be issued by the JRMF.

Nonetheless, said financial entities and their shareholders that have influential equity ownership are barred from participating as shareholders in financial entities already organised or to be organised in tax havens or jurisdictions with lower taxes compared to Ecuador (defined by the IRS), or at places with oversight standards below national standards.

Investment in the capital of foreign financial entities exceeding 50 per cent of subscribed and paid-in capital will convert such

entities into a subsidiary of the investor. Investment between 20 and 50 per cent will make them an affiliate.

27 What forms of cross-border services are regulated and how?

With the prior authorisation of the SB, private financial sector entities may carry out the following activities in or outside Ecuadorian territory:

- make deposits at financial entities in and outside of the country;
- trade documents resulting from foreign trade transactions;
- trade securities and discount documentary remittances abroad or make advances thereon; and
- receive loans and accept credit from financial entities in or out of the country.

28 May employees of foreign private banking institutions travel to meet clients and prospective clients in your jurisdiction? Are there any licensing or registration requirements?

It is not possible for employees of foreign private banking institutions to promote financial services if the foreign bank is not domiciled in Ecuador. Only entities duly authorised by the SB may promote financial services by any method or procedure.

29 May foreign private banking institutions send documents to clients and prospective clients in your jurisdiction? Are there any licensing or registration requirements?

See question 28.

Tax disclosure and reporting

30 What are the main requirements on individual taxpayers in your jurisdiction to disclose or establish tax-compliant status of private banking accounts to the authorities in your jurisdiction? Does the requirement differ for domestic and foreign private banking accounts?

Taxpayers who are individuals owning assets worth more than US\$400,000 must disclose their equity by filing an equity declaration each year. This requirement does not differentiate between domestic and foreign private banking accounts. Therefore, all accounts must be included in the equity declaration.

31 Are there any reporting requirements imposed on the private banks or financial intermediaries in your jurisdiction in respect to their domestic and international clients?

Under the COIP, tax offences are not predicate offences for money laundering. Money laundering and tax offences are dealt with in separate subchapters of the Code. Ecuador has, to date, not included tax predicate offences in its domestic criminal law, despite being a signatory to the UN Palermo Convention.

32 Is client consent required to permit reporting by the private bank or financial intermediary? Can such consent be revoked? What is the consequence of consent not being given or being revoked?

When opening an account, customers are required to sign a consent form to authorise the financial intermediary to verify the documentation filed by them and allowing the private bank or financial intermediary to report to the relevant oversight authorities all public information required by law. Such consent cannot be revoked. Financial intermediaries also have reporting obligations for complying with anti-money laundering measures and must report any unusual transactions that their customers make.

Structures

33 What is the most common legal structure for holding private assets in your jurisdiction? Describe the benefits, risks and costs of the most common structures.

The most common legal structure in Ecuador is the trust, followed by private equity funds and portfolios.

The benefit of having a trust is that the assets transferred to this legal structure are protected against encumbrances and seizures. However, the administrative expenditures and fees for their management and maintenance are considerable, resulting in this structure being used mostly for large equities.

Private equity funds are managed by trustees that invest the funds in securities traded at the stock exchange. This is especially true for the acquisition of bonds and debt. It is not common to invest in stock or equity of companies.

Portfolios are managed by securities firms, which only invest in stocks traded at stock exchanges.

In all of these cases, the fees are regulated by the competent public entity.

34 What is the customary level of know-your-customer (KYC) and other information required to establish a private banking relationship with a structure?

With respect to customer information, in general, financial entities are required to:

- define mechanisms for compiling, verifying and updating customer identity;
- define the monthly transaction profile of the subject under analysis, considering as a minimum the information obtained about the economic activity, the products to be used, the purpose of the business relationship, the historical transaction banking at the institution, if any, and the analysis conducted;
- establish the behaviour profile, considering all of the analysed customer's own and habitual characteristics associated with general information, way of using the institution's services and products, and so on; and
- permanently conduct processes for monitoring all transactions so as to determine whether the customer's transaction banking is in line with the defined transaction and behaviour profiles.

In the case of companies, knowing your customer also means knowing the identity of the individuals who own the shares or equity interests, or the identity of the person having the ultimate control of the company that is the customer, especially by applying increased due diligence to persons who directly or indirectly own 25 per cent or more of the subscribed and paid-in capital of the institution or company.

35 What is the definition of controlling person in your jurisdiction?

A person with equity ownership with influence, as established by the COMF, is an individual or company that directly or indirectly, has the lesser of:

- 6 per cent or more of subscribed and paid-in capital or capital stock; or
- shares or equity interests in a sum equal to or greater than 600 times the basic fraction exempt from income tax (the amount of the exempt basic fraction changes from year to year; it is US\$11,170 for the 2016 fiscal year).

36 Are there any regulatory or tax obstacles to the use of structures to hold private assets?

In general, the structures for holding private assets have no tax obstacles. However, structures for holding private assets in tax havens or lower-tax jurisdiction countries have a different treatment, which normally implies more tax reporting obligations and higher rates.

Contract provisions

37 Describe the various types of private banking contract and their main features.

There are various types of contracts and the most important are:

- checking account, which allows for managing money with less hassle (may generate interest for the account holder);
- savings account for managing money (always generates interest for the account holder);
- credit card, which may be issued or managed by the financial institution;
- certificate of deposit, which may be used as a guarantee mechanism for contracts or liabilities; and
- fixed-term deposit, which is a financial instrument that generates fixed interest for an established term, in favour of the account holder (may be endorsed over to third parties).

38 What is the liability standard provided for by law? Can it be varied by contract and what is the customary negotiated liability standard in your jurisdiction?

In general, shareholders in entities of the private financial sector are liable for the entity's solvency up to the value of their shares.

In the case of the mandatory liquidation of a private financial entity, the shareholders who directly or indirectly are persons with equity ownership with influence shall be liable with their own equity in the event they have acted in negligence, gross negligence or ordinary negligence.

39 Are any mandatory provisions imposed by law or regulation in private banking contracts? Are there any mandatory requirements for any disclosure, notice, form or content of any of the private banking contract documentation?

The Consumer Defence Law regulates accession contracts, defined as contracts with clauses established unilaterally by the supplier and that are printed contracts or forms, without the consumer having discussed the contents thereof before signing them.

These contracts must be written up in legible font not smaller than 10 points. Furthermore, they cannot refer to documents that have not been submitted by the customer or that the customer is unaware of and to which the customer has free access.

They have to be written up in Spanish, except for technical words or terms. In addition, clauses containing rules that do the following are deemed to be prohibited clauses:

- release, attenuate or limit the liability of suppliers for any kind of defect in the goods or services provided;
- imply a waiver of the rights that the law recognises to consumers or that in any way restricts the exercise of such rights;
- invert the burden of proof to the customer's detriment;
- impose the mandatory use of an arbitrator or mediation, except if the consumer expressly gives his or her consent;
- permit the supplier to unilaterally change the price or any condition of the contract;
- exclusively authorise the supplier to unilaterally terminate the contract, suspend the performance thereof or revoke any consumer right stemming from the contract, except when such termination or modification is conditioned to non-compliance imputable to the consumer;
- include blank spaces that have not been filled or used before the contract is signed or that are illegible;
- imply the consumer's waiver of procedural rights established in the law; and
- any other clause or stipulation making the consumer defenceless or that are contrary to public policy and good practices.

40 What is the applicable limitation period for claims under a private banking contract? Can the limitation period be varied contractually? How can the limitation period be tolled or waived?

The statute of limitations for oversight agencies to place penalties for very serious offences is eight years, for serious offences five years, and for minor offences three years, as of the date of the offence. The statute of limitations is interrupted when a penalty procedure is initiated.

Confidentiality

41 Describe the private banking confidentiality obligations.

Deposits received and any other kind of fundraising received by entities of the national financial system are subject to banking confidentiality. Therefore, no information concerning such transactions may be provided, except to the account holder or to the person expressly authorised by, or legally representing, the account holder.

Other transactions are subject to banking confidentiality and the entities of the national financial system may only give information to persons demonstrating a legitimate interest therein and so long as it is not foreseeable that knowledge of such information might be detrimental to the customer.

Reports on audits, inspections, and analyses are reserved documents, as are the documents that the Superintendent rates as such, in order to safeguard the stability of state-owned and private financial entities. Documents issued by the servants and officers of the

Update and trends

Although still weak, there are certain signs of greater openness to foreign investment in the banking sector, but this remains subject to a series of local debates and subsequent legislative processes in order to crystallise.

Superintendency in fulfilment of their oversight duties are also reserved documents. Reports forfeit their reserved nature 180 days after the date of the resolution ordering the liquidation of the entity.

However, in Ecuador private banks are not allowed to maintain accounts, investments or any other financial service under a pseudonym or anonymously. All of the financial services must be in the name of the account holder.

42 What information and documents are within the scope of confidentiality?

Deposits received and other kinds of fundraising by entities of the national financial system. Reports on audits, inspections and analyses are reserved documents, as are the documents that the Superintendent rates as such.

43 What are the exceptions and limitations to the duty of confidentiality?

- Background regarding transactions by persons who are a party or under investigation in cases aired at the courts or the Ecuadorian Prosecutor's Office;
- information about the holders of checking accounts closed because of cheques drawn without funds, required by the legitimate bearer of the cheques;
- any information required by oversight entities and the IRS, within the scope of their competencies;
- information required by the JRMF, which may be channelled through the oversight agency;
- information to be delivered by oversight entities to inform the public about the equity and financial position of financial entities;
- information required from oversight entities, within the scope of their competencies, by governments or the relevant authorities of

countries with which Ecuador has reciprocal and legitimate agreements for fighting crime, in the terms and conditions of such agreements; and

- financial information constituting an exchange with banking, financial and tax oversight authorities of other countries, provided there are reciprocal and legally executed agreements in effect.

44 What is the liability for breach of confidentiality?

Individuals or companies who disclose all or part of information subject to banking confidentiality will be punished with a fine equal to 25 times the unified base salary, in addition to criminal liability consisting of one to three years' imprisonment.

Disputes**45 What are the local competent authorities for dispute resolution in the private banking industry?**

There are different levels of authority, depending on the type of dispute:

- claims made against the same entity, through its claims department, with regard to the provision of financial services;
- the duty of the customer ombudsman is to protect the rights and interests of financial users. Every entity of the financial system must have at least one customer ombudsman. The ombudsman processes claims at each financial entity that were not addressed directly by the entity;
- cases may be reported to the SB when the customer ombudsman does not have jurisdiction and the dispute deals with practices or conduct beyond or in violation of legal or regulatory rules; and
- judicial action at regular courts, depending on the subject matter of the claim (civil, administrative, or criminal).

46 Are private banking disputes subject to disclosure to the local regulator? Can a client lodge a complaint with the local regulator? How are complaints investigated?

Claims filed with the entities mentioned in question 45 are confidential, except in court cases. The SB has the structure for addressing claims and reports filed against financial entities.



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Getting the Deal Through

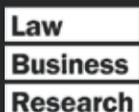
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