Ecuador
Legal Provisions

Compiled by:

Embassy of Switzerland in Ecuador
Quito, September 2021

GENERAL REMARKS

The purpose of this document is to give an overview of trade-related legal provisions and regulations, particularly those relevant for small and medium sized Swiss companies operating from outside the target country. It outlines the current state of legislation and, to the extent possible, its practical application.
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CUSTOMS LAW AND DUTIES

To start in the activity of foreign trade is necessary to register in the public entity known as the Internal Revenue Service "SRI" who grants the Single Registry of Taxpayer "RUC" enabling document to obtain the registration of importer or / and exporter whether natural or legal person, and to become a Foreign Trade Operator, requires obtaining the electronic signature "TOKEN" this can be purchased in the public or private sector; Once this process is completed, you are registered as a Foreign Trade Operator "OCE", thus registering as an Importer or Exporter and once all these steps have been completed, Importer/Exporter has access to the Customs System called ECUAPASS.

The Customs Law is made up of substantive, adjective and operative laws and it is worth mentioning that in the operative part, which is what is most interesting, there are the different regimes for goods to enter Ecuador, such as:

In import: Import for consumption, temporary admission, temporary admission for inward processing, replenishment of duty-free goods, processing under customs control, customs warehouses and replenishment in the same state.

In export: Definitive export, temporary export for re-import in the same state and temporary export for outward processing.

There are also other customs regimes such as: Conditioned return, free warehouses, special, international fairs etc. Etc.

The penalties contemplated by the COPCI are: Offences such as smuggling, contraventions and regulatory offences.

APPLICABLE LEGISLATION:

In Ecuador the Law that contemplates the entry and exit of goods into the national territory for import and export is the "ORGANIC CODE OF PRODUCTION, COMMERCE AND INVESTMENT" known as "COPCI" approved by the Legislature on December 29, 2010 and incorporated in the Official Register 351. This Law has its Regulation which is in the Official Registry No. 452 of May 19, 2011.

IMPORT REGULATIONS / NON-TARIFF RESTRICTIONS

It is important to point out that for the clearance of goods, whether by natural or legal persons, an authorized Customs Agent who manages the ECUAPASS system is required from two thousand dollars.

Prohibited imports - Within the Ecuadorian foreign trade we have several goods whose description and tariff value can be found in the tariff of imports and are considered legitimate and lawful before the Organic Law of customs of Ecuador.

But there are goods that by their nature, composition or use are considered sensitive or ultimately unsuitable for import among them we can cite used vehicles and spare parts, weapons, psychotropic
2.1 Documentation required for importation

1. Air, sea, land bill of lading
2. Commercial invoice that must contain: date, complete data of the exporter and importer. In the case of Ecuador, please state the RUC, then the description of the product, unit value, total value, INCOTERMS, Country of Origin
3. Packing list and previous documentation in case the merchandise requires certificate of Origin for countries with agreements such as ALADI, MERCO SUR, PACTO ANDINO, EUROPEAN UNION AND COUNTRIES WITH BILATERAL AGREEMENTS
4. Insurance taken out in Ecuador in order to be able to collect in the event of a claim.

2.2 Temporary importation

The COPCI does contemplate temporary importation as a Customs Regime Art. 148 of the COPCI and Art. 123 of the Regulations.

The terms for this Regime are of two types if it is the Contract with the State up to the duration from the work. All others up to one year.

2.3 Importing Samples and Catalogues

Samples without commercial value are considered within the limits and conditions established by SENAE National Customs Service of Ecuador.

These samples may enter the country as long as their value does not exceed four hundred dollars, or three units per item or per commercial presentation, taking into account the unit of measurement of the specific subheading of the national import tariff and that they are not intended for sale and that they comply with the following conditions:

a) That it is clearly identified as a sample of no commercial value or that it is demonstrated that the merchandise is not intended for sale.

b) For the purpose of being used in market research, research, development, laboratory testing, testing, or obtaining prior control or other similar requirements.

In Ecuador the importation of catalogs is not contemplated but these are called books or brochures of any kind and are recorded with 0% tariff rate.

2.4 Import Taxes

The calculation for the payment of taxes in Ecuador is made on the basis of the CIF value, which is the sum of the value of the goods (cost) plus the value of (freight) plus the (insurance) that must be contracted in Ecuador and if it does not have customs establishes 1% of the value of freight cost.

Ecuador has tariff rates ranging from 0%, 5%, 10%, 15%, 20%, 30% and 40% there are also specific tariffs with value to the goods such as televisions that has part of the tariff pay an extra fee.

Shoes of tariff item 6403.59.00.00.00 also have an advalorem tariff of 10% and a specific value of USD 6.00 per pair.

The same happens with the liquors of the heading 2208.20.21.00 has 1% of advalorem, USD 7.18 of specific ICE this is a value to the special consumptions a specific tariff of USD 0.25 by liter or.5% of FODINFA that is a fund for the childhood and the family and a 12 of tax to the added value.

2.5 Preferential Taxes for imports
It should be noted that Ecuador through international treaties enjoys tariff rates of 0% or with percentages of reduction with some countries such as the European Union, Andean Pact, Merco Sur and CAN and bilateral treaties.

2.6 Tax collection

The tax calculation for customs is always based on the CIF value whatever the INCONTERMS is, that is:

Total cost of goods
The value of the insurance premium
The value of the freight

Example:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>PARTIDA ARANCELARIA</th>
<th>CANTIDAD</th>
<th>DESCRIPCION</th>
<th>BASE IMPONIBLE</th>
<th>% ADV</th>
<th>ARANCEL</th>
<th>FONDO INF</th>
<th>IVA</th>
<th>TOTAL PARCIAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>8518400000</td>
<td>400</td>
<td>AMPLIFICADORES</td>
<td>22,750.00</td>
<td>5</td>
<td>1,137.50</td>
<td>113.75</td>
<td>2800.15</td>
<td>4,131.40</td>
</tr>
</tbody>
</table>

TOTAL LIQUIDACION: 4,131.40
APPLICABLE LAW


PRODUCT REGISTRATION AND TECHNICAL STANDARDS

The articles or products that need import licenses can be obtained online directly with the institutions that are required through ECUAPASS for example: machine to make ice cream requires authorization from the Ministry of Production (MIPRO), another example if it is articles for human or animal consumption requires license or sanitary authorization that extends the ARCSA Institution attached to the Ministry of Public Health (National Agency for Regulation and Health Surveillance) which is responsible for controlling and monitoring the hygienic-sanitary conditions of products for human use and consumption and finally INEN which is the Ecuadorian National Institute of Standardization that plans, organizes, directs, controls and evaluates the services of certification and validation of product requirements and confirms that a product complies with a standard or technical regulation.

CURRENCY REGULATIONS AND OTHER TRANSFER RESTRICTIONS

Since March 2000, the U.S. dollar was established as the official currency of Ecuador. Ecuador only mints coins that are only legal tender in this country and that correspond to the following denominations: one cent, five cents, ten cents, twenty-five cents and fifty cents.

There is a foreign exchange departure tax (ISD) which is a fixed rate of 5%. The Ecuadorian importer is responsible for the payment of the referred rate at the moment of sending the dollars from the United States of America abroad. There are exemptions for the importation of goods and services, which must be verified by the financial responsible of the importer.

COMMERCIAL REGISTER AND OTHER SOURCES OF COMPANY INFORMATION

The Commercial Register is the registering body for commercial and corporate acts at cantonal level (cities). Every company acquires legal personality from the moment of its registration in the Commercial Register of the canton where it is domiciled. To obtain a certification of registered corporate acts, the National Directorate of Public Data Registry offers the GOB.EC Platform, link https://www.gob.ec/dinardap/tramites/certificacion-actos-societarios-inscritos .

The Superintendence of Companies, Securities and Insurance is the national control entity of the companies in Ecuador, and through its webpage it makes available to the general public the corporate and financial information of companies legally constituted and/or domiciled in the country. [https://www.supercias.gob.ec/portalcv/](https://www.supercias.gob.ec/portalcv/)

The Internal Revenue Service - SRI, is the tax control entity at the national level, and through its website it makes available to the general public the tax information of individuals and legal entities (companies). [https://www.sri.gob.ec/web/intersri/home](https://www.sri.gob.ec/web/intersri/home)

Finally, the Judiciary Council is the judicial administration body at the national level and makes available to the general public through its website the active and passive judicial processes of natural and legal persons (companies). [https://www.funcionjudicial.gob.ec/](https://www.funcionjudicial.gob.ec/)

**LEGAL FORMS OF COMPANIES**

According to Article 2 of the Companies Law, in Ecuador there are six species of commercial companies that constitute legal persons:

1. The company in collective name;
2. The limited liability company and the company divided by shares;
3. The limited liability company;
4. Anonymous company;
5. The mixed economy company; and,
6. The simplified joint-stock company.

The most commonly used types in the country are the limited liability company, the joint stock company and the simplified joint stock company.

The main characteristics of the **LIMITED LIABILITY COMPANY** are:

a. It may carry out all kinds of civil or commercial acts and mercantile operations permitted by law, except banking, insurance, capitalization and savings operations.

b. Minimum capital USD400.00. If the legal representative and/or employees are going to be foreign citizens it must have a minimum capital stock of USD40,000.00.

c. Capital divided into shares, are transferable by act between living persons, for the benefit of another or other partners or third parties if the unanimous consent of the partners is obtained at a General Meeting.

d. Shareholders are liable only for the amount of their shares.

e. The minimum number of shareholders is 2 and maximum 15. They can be natural or legal persons, nationals or foreigners.

f. It is constituted by means of a Public Deed granted before a Notary Public.

g. The supervisory body is the Superintendency of Companies.

h. And it requires registration in the Commercial Registry of the Canton where it is located (eg: Quito).

The main characteristics of the **ANONYMOUS COMPANY** are:
a. It can have as its corporate purpose any lawful activity, developing its operations locally and/or internationally.
b. It cannot carry out activities related to financial operations, stock market, insurance and others that have a special treatment, according to the Law.
c. Minimum capital USD800.00. If the legal representative and/or employees are going to be foreign citizens, it must have a minimum capital stock of USD40,000.00.
d. Capital divided into freely negotiable shares.
e. Shareholders are liable only for the amount of their shares.
f. The minimum number of shareholders is 2, with no maximum limit. They can be natural or legal persons, nationals or foreigners.
g. It is constituted by means of a Public Deed granted before a Notary Public.
h. The supervisory body is the Superintendency of Companies.
i. And it requires registration in the Commercial Registry of the Canton where it is located (eg: Quito).

The main characteristics of the SIMPLIFIED STOCK COMPANY - SAS are:

a. This is a new type of company.
b. It can have as its corporate purpose any lawful activity.
c. It cannot carry out activities related to financial operations, stock market, insurance and others that have a special treatment, according to the Law.
d. It does not require a minimum capital, it can be USD 1. If the legal representative and/or employees are going to be foreign citizens, it must have a minimum capital stock of USD 40,000.00.
e. Capital divided into freely transferable shares by means of a transfer note.
f. Shareholders are liable only for the amount of their shares.
g. Shareholders can be one or several persons with no maximum number. They can be natural or legal persons, nationals or foreigners.
h. It is constituted by means of a Private Document and does not require a Public Deed.
i. The supervisory body is the Superintendency of Companies.
j. It is not registered in the Mercantile Registry, it is only registered in the Superintendence of Companies.

FOREIGN SUBSIDIARIES.

In addition, the law allows the establishment of branches of foreign companies in the country.

The domiciliation procedure is carried out before the Superintendency of Companies, Securities and Insurance, which grants the Operating Permit.

Among the requirements necessary for the direct debit process are:

a. The Articles of Incorporation of the parent company duly Apostilled and translated into Spanish if applicable.
b. A CERTIFICATE OF LEGAL EXISTENCE of the company issued by the respective Ecuadorian Consulate, stating that the company (parent company) is legally established in the country and is authorized to operate abroad.
c. Resolution of the DIRECTORY ACT duly apostilled and translated, issued by the company authorizing the opening of the branch in Ecuador.
d. A GENERAL POWER OF ATTORNEY without limitations, duly apostilled and translated, by which the company grants all the necessary powers to a General Power of Attorney, legal and extrajudicial representation, and the power to sign acts, contracts and answer claims filed by third parties.
The indicated documents are submitted to the Superintendence of Companies, together with the application for domiciliation signed by an attorney and the General Power of Attorney indicating that he/she accepts and agrees to hold such power of attorney.

Once approved by the Superintendence of Companies, an extract of the Resolution and the power of attorney is published in one of the main Ecuadorian newspapers, among other steps.

Subsequently, the Foreign Branch is registered in the Commercial Register.

The Single Registry of Taxpayers - RUC is obtained in the Internal Revenue Service - SRI and finally the Municipal Patent which is a commercial operating license in the Municipality.

**APPLICABLE LEGISLATION.**


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**REGULATIONS GOVERNING SALES AGENTS AND COMMERCIAL REPRESENTATIVES**

**Historical data in Ecuadorian legislation.**

In 1976, through Supreme Decree No. 1038-A, was issued for the Protection of Representatives or Agents of foreign companies, a series of rules that protected the licensees in the event of the termination of a business relationship.

These rules indicated that despite the contract having clauses for the parties to freely suspend the commercial relationship, neither party could terminate the contract without proving before a judge the existence of a "just cause" allowing the aforementioned termination.

According to Decree 1038-A, such causes originated by the grantor or concessionaire could be:

- Serious breach of contract by the concessionaire with regard to the obligations set out in the Agreement or in the Law.
- Any action or omission by the concessionaire that may seriously affect the interests of the company.
- Bankruptcy or insolvency of the concessionaire.
- The liquidation or the end of the activities.

If the case was not approved, the concessionaire had to be paid for damages, which were established by certain parameters. These parameters were: the cost invested by the concessionaire, the cost of the purchased goods that could not be marketed, the capital gain of the company, the number of years that the agent had been with them, etc.

Decree No. 1038-A was amended in 1996 and a maximum limit was established for the indemnities to be paid, which could not exceed the result reached in the application of one of the two formulas established in Law No. 125 of Decree No. 1038-A.

On September 19, 1997, Decree 1038-A was revoked, leaving the contracting parties free to establish the contractual conditions, as established in article three.

"Art. 3. - Private contractual relations between nationals and foreigners shall be subject to the principle of contractual autonomy and freedom. Consequently, without prejudice to the provisions set forth in the applicable Civil and Commercial Legislation, it corresponds solely to the contracting parties to anticipate the contractual conditions and the causes for termination of contracts, as well as the indemnities, if any".

For its part, the Civil Code in its Article 8, paragraph 18 provides that each executed contract is understood to incorporate the regulations in force at the time of its execution.
Therefore, if the contract was executed while Decree 1038-A was in force, the other party could claim indemnity and compensation under that law.

In 1997, in Law No. 22, Decree 1038-A and Law No. 125 were expressly repealed.

In accordance with the provisions of article three of the above-mentioned Law, “private contractual relations between national and foreign entities shall be subject to the principles of autonomous will and contractual freedom”.

Consequently, without prejudice to the applicable stipulations in the Civil Code and commercial law, it was solely up to the parties to establish the terms of the contract and the reasons for termination of the contract, as well as any compensation. Moreover, our legislation provides that all contracts incorporate "the laws in force at the time of signing".

**News - Current regulations.**

The new Commercial Code was issued on May 9, 2019 and became effective as of its publication in the Official Gazette No. 497 Supplement, dated Wednesday, May 29, 2019.

Within the aforementioned body of law, the **AGENCY AGREEMENT** is regulated in articles 481 to 500.

An Agency Contract is understood to be that in which a businessman, called agent, assumes in a stable and permanent manner the task of promoting, exploiting and/or concluding commercial business, which may be specific to a specific territory, in the name and on behalf of another person, national or foreign, called principal.

The agent receives remuneration for the provision of his services, without assuming, unless otherwise agreed, the risk of the commercial operations that he carries out personally or through his dependents.

The agency contract terminates for the same reasons as the mandate.

Additionally, Title Seven of the Commercial Code regulates distribution systems and other related contracts. The following is a brief analysis.

In the **DISTRIBUTION CONTRACT**, the grantor or principal grants the concessionaire or distributor the possibility of selling the products he manufactures or, in turn, distributes with the capacity to delegate the distribution to third parties, in a determined territory; in a continuous or stable manner, acting as a businessman or independent trader and assuming the risk.

Distribution contracts may adopt the characteristics that the parties agree upon as to territory, exclusivity, volumes and periodicity of purchases, forms of remuneration, and others that they deem appropriate.

- **Exclusivity.** In exclusive distribution contracts the entrepreneur undertakes to purchase and resell products under certain conditions, and the principal grants a certain exclusivity in a certain area or other consideration.

  Exclusivity must be framed within the provisions of the law of control of market power, since in Ecuador exclusivity clauses are a very special issue.

  In the distribution contract, the conducts to be taken by the parties in their commercial relationship must be thoroughly analyzed, since its main subject matter is the potential restriction to free competition, and that is why the level of market power of the distributor or supplier must be taken into account in order not to fall into the conducts established in the Organic Law of Regulation and Control of Market Power. Art. 9, No. 11 and 19.1

  It is important to consider that all distribution contracts must have duly justified agreements between the parties, so that they do not lead to the creation of vertical agreements that restrict free competition, the entry of new competitors and the possibility of imposing prices on consumers.
• **Territory.** The distributor may be authorised to market the goods, either directly or through its own distribution network, in a specific geographical area. The distributor may engage sub-distributors only if this is expressly provided for in the distribution contract.

• **Independence.** Both the supplier and the distributor retain their economic independence and legal autonomy.

• **Form and content.** They are concluded in writing, clearly indicating the scope of the exercise of the distribution, and the complementary rights.

The main clauses are:

a) **INTERVENING PARTIES.** - Precise identification of the parties, names and surnames, valid and current identification document, domicile and the capacity in which they hold and with which they concur to the signing of the contract by each intervening party;

b) **OBJECT** - Describe the content and characteristics of the business object of commercial distribution;

c) **TERM.** - Duration of the contract, as well as the conditions for its renewal and modification;

d) **REMUNERATION.** - Forms of remuneration for the supplier and economic advantages for the distributor;

e) **TERMINATION.** - Causes and effects of the termination of the contract, including the cases and the manner in which either or both parties may terminate it; and,

f) **PLACE.** - Place of execution of the contract.

The existence of a distribution contract shall be presumed, even in the absence of any of these clauses, with the exception of the parties and the subject matter, and the interpretation shall be made in accordance with the usages, procedures and customs that the parties have been using in their relations. Where the written formalization has not been carried out for reasons attributable to one of the parties, the burden of proving the existence of contractual conditions other than those provided for in the Commercial Code shall be on the latter.

In addition, the parties may include the following aspects:

a) **Direct distribution:** Whether distribution must be done directly by the distributor or whether the distributor may delegate this power to third parties who will act under its responsibility. The supplier may not prohibit the distributor from access to internet sales, except for reasons of public health, consumer safety or legal prohibition;

b) **Confidentiality:** Obligations of the parties to maintain the confidentiality of information;

c) **Industrial property:** That relating to distinctive signs and other elements susceptible of protection in accordance with intellectual property legislation. Unless otherwise agreed, intellectual property rights shall be understood to be the exclusive property of the principal;

d) **Exclusivity:** Exclusivity agreements with respect to a range of products, or to a group of customers, always within the conditions established by the law regulating the control of market power.

e) **Customer indemnity:** in the event of unilateral termination of the contract, the parties may agree on customer indemnities at the end of the contract, for the security of either party.

f) **Conditions of supply:** obligations assumed by the parties to supply or place orders, conditions of sale and purchase, form of payment and pre-established price.

g) **Applicable law:** to establish the law applicable to the contract, generally the law of the distributor's country applies, in order to be able to exercise injunctive and enforcement measures in the event of non-performance.
h) **Dispute resolution:** It is generally recommended that disputes be resolved by arbitration.

And in general, all the agreements that arise from the will of the parties and that are related to the nature of the distribution contract may be introduced.

- **Supply.** The supplier is obliged to communicate to the distributor as far in advance as possible, the facts that may substantially affect the development of commercial activity, or the levels of supply of the distributor, or effects on the products that may cause damage to buyers, consumers, or third parties. The distributor, with the same advance notice, is obliged to communicate to the supplier, the facts of which it has knowledge that may affect the image, prestige and safeguard of the industrial or intellectual property rights or the access of the consumers to its products.

With regard to the minimum stock, reserves or quotas of goods in the warehouse, they shall be established on the basis of acceptable forecasts in the market and which are necessary for the fulfilment of the operating methods of the distribution system. The distributor shall organise its orders on a volume basis according to the circumstances of the moment and shall be responsible for the fulfilment of its commitments to third parties.

The supplier may not force the purchase of lots or supply series with products not required by the distributor, or purchase volumes that exceed the actual demand of the distributor or the possibilities of supply of the distributor in the conditions in which it is at a given time.

- **Right to Direct Selling.** The supplier is entitled to exercise his right of direct sale, unless otherwise agreed.

- **Product Warranty.** The supplier, especially when it is a manufacturer, must expressly authorize the distributor to pass on to those to whom it sells the product, whether wholesale or directly to consumers, the factory warranties of such products.

- **Advertising.** In advertising matters, the parties submit to what is established in the contract, to the laws that regulate communication and consumer protection. We will expand on this point later on.

- **Remuneration and Benefits.** The form of remuneration must be detailed in the distribution contract, it can be expressly agreed that it be established through subsequent communications between the supplier and the distributor. If the remuneration is not stated and determined, the contract is terminated even though it has been signed between the parties.

Discounts and bonuses on the sale price may be established prior to their application, which shall be stated in the invoice, respecting the provisions of the law that regulates the Control of Market Power.

- **Assignment.** The total or partial assignment of the distribution contract requires the consent of the supplier and the distributor.

Assignment may be prohibited by the supplier, and any legal mechanism that changes the person of the distributor is a breach of contract.

- **Term.** The distribution contract may be for a fixed or indefinite period of time. If no term has been fixed, it is understood to be indefinite.

In fixed-term contracts, if after the term has elapsed it continues to be executed by both parties, it is considered to be transformed into an indefinite-term contract.
• **Termination.** Both in contracts for a fixed or indefinite period of time, when a party has seriously or repeatedly breached, in whole or in part, the legal or contractual obligations, and provided that the breach is not remedied to the satisfaction of the performing party within the period established in the contract - in the absence of a stipulation, there are 15 days to remedy the breach -, the performing party may terminate the contract at any time, without observing a prior notice period, and shall also be entitled to compensation for damages.

A fixed-term contract is terminated on expiry of the term or for just cause.

In the termination of a **fixed-term contract** without just cause before the end of the agreed term, the affected party shall have the right to demand adequate compensation to compensate for all damages that it proves to have suffered as a consequence of such termination, which shall include: the unamortized balance of the investments that have been made; and, in view of the circumstances, the damage derived from the labor relations to be terminated arising from the termination of that item of distribution.

In the **contract for an indefinite period** either party may give notice of termination with a notice period of 90 days, counted from the day following the date of notification. During this time, the acts and contracts entered into must be previously consulted with the supplier, unless otherwise agreed.

The termination of the contract for an indefinite period of time without respecting the agreed or legally established notice periods, without a reasonable period of time having elapsed to make possible the amortization of the specific investments, the affected party shall be entitled to demand an adequate indemnity to compensate for such lack of amortization, and damages derived from contracts that have been entered into up to that time, including those that are in the negotiation phase as long as they are perfected within the following 30 days after the termination notice has been given the damage derived from the labor relationships to be concluded resulting from the termination of that distribution item.

• **Indemnities.** Unless otherwise agreed, the termination of distribution contracts does not oblige the supplier to indemnify the distributor for any customers that the latter may have acquired during the contractual relationship.

The aforementioned indemnity, if agreed, may not exceed, in any case, the annual average of the distributor's pre-tax profits plus the 15% that corresponds to the workers, attributable to the line or product in question. The period to be counted is the period corresponding to the last 5 years, or, in case it is less, the time of duration of the commercial relationship, multiplying the profit by the time of duration of the commercial relationship.

This indemnity may be claimed together with general damages, and the action is barred by the statute of limitations one year after the termination of the contract.

The indemnities provided for in this Chapter shall not be payable by the principal who terminates the contract when the reason for termination is a serious breach of the contractual or legal obligations of the other party; or when with the consent of the principal the rights and obligations of which he was the owner under the distribution contract have been assigned to a third party, in which case the agreement shall apply.

**APPLICABLE LEGISLATION.**

In a general and non-limiting manner, the applicable legislation for sales agents, distributors and sales representatives operations are currently as follows:

ENTRY CONDITIONS FOR STAFF PERFORMING MAINTENANCE OR REPAIR SERVICES

General Entry of Foreigners to Ecuador:

a. Foreigners may enter Ecuador as tourists for 90 days within a period of one year from the date of their first entry, and may extend their tourist visa once for up to 90 additional continuous days.

b. Foreigners who stay for 180 days as tourists may apply for a special tourist visa that authorizes them to stay as tourists for up to the full year. This type of special visa is granted once every 5 years.

c. **Exception:** Nationals of Afghanistan, Bangladesh, Eritrea, Ethiopia, Kenya, Nepal, Nigeria, Pakistan, Somalia, Senegal, Cuba, Democratic People's Republic of Korea, Angola, Cameroon, Gambia, Ghana, Guinea, India, Iraq, Libya, Democratic Republic of Congo, Syria, Sri Lanka and Venezuela, must obtain a Tourist Visa from the Diplomatic Missions or Consulates of Ecuador abroad prior to their travel to Ecuador to enter the country.

Temporary Visitor Admission:

a. The reform of February 2021 to the Organic Law of Human Mobility, included in the migratory categories of temporary visitors to the acts of trade and other lawful activities. This visa is ideal for personnel who perform maintenance or repair services for a short period of time.

b. Foreigners entering the country to carry out acts of commerce, business, establish contacts with companies and natural persons, carry out administrative or judicial procedures; and, sports, volunteer, study, academic purposes, or in the field of science, technology, innovation, art and culture, may opt for a Temporary Visitor Visa for acts of commerce for a period of up to 180 days.

c. This Visa may be granted only once per chronological year counted from the date of its issuance.

d. The requirements for this visa will be determined in the Regulations of the Law, which to date have not been amended to regulate the Temporary Visitor Visa for Commercial Acts.

Residents in Ecuador:

A resident is any foreign person who has acquired a migratory category for temporary or permanent residence in Ecuador.

a. The **Temporary Residency** is the immigration condition that authorizes the stay of up to 2 years in the country, renewable for multiple times. This type of visa is appropriate for personnel who will reside for long periods in the country.
b. The categories of the Temporary Residence are:

1. Job
2. Renter
3. Retired
4. Investor and Legal Representatives, Attorneys-in-Fact, Business Representatives or similar positions
5. Scientist, researcher or academic
6. Athlete, artist or cultural manager
7. Religious or religious volunteer
8. Volunteer-Missionary
9. Students
10. Professional, technician, technologist or craftsman
11. Governmental Cooperants, Non-Governmental Organizations and Foreign Press
12. Resident by agreement
13. Persons covered by the holder of the migratory category
14. Persons under international protection - asylum-seekers, refugees or stateless persons
15. Marine Crewmember

Temporary Residency allows multiple entries and exits during the validity of the visa and does not limit the stay outside the country.

d. **Permanent Residency** is the migratory condition that authorizes the stay in the country indefinitely to people who meet at least one of the following conditions:

1. To fulfill at least twenty-one continuous months of permanence as a temporary resident, ideal for people who wish to settle permanently in the country;
2. To have contracted marriage or maintain a legally recognized de facto union with an Ecuadorian or foreign person with permanent residence;
3. Being a foreign child or adolescent, or a person with a disability who depends on an Ecuadorian person or a foreigner with permanent residence; or,
4. Be a relative up to the second degree of consanguinity or affinity of an Ecuadorian citizen or of a foreign citizen with permanent residence in Ecuador.

e. The Permanent Residence allows the foreigner to be absent and return to the country, but may not remain abroad for more than 180 days in each year counted from the date of obtaining the visa, during the first two years, non-compliance generates sanctions and fines. After the first two years, the foreigner may be absent from the country for up to two continuous years; after this time he/she loses the permanent residence.

**APPLICABLE LAW**

PROTECTION OF INTELLECTUAL PROPERTY

Applicant: individual or legal entity, national or foreign citizen. **Foreigners and nationals not living in the country:** must appoint a legal representative by a legalized power of attorney. **Trademarks of foreigners:** national or foreign trademark owners have the same rights. **Definition:** trademarks are distinctive marks of authenticity through which the products of particular companies or the vendible commodities of particular merchants may be distinguished from others. **Service mark:** registrable. **Not registrable:** marks which consist of (a) usual shapes of the products or containers, or in the characteristic natural form of such products or services; (b) forms or indications making direct reference to the species, quality, quantity, destination, value, place of origin or other characteristics of the products or services; (c) marks contrary to law, morals, public order, good customs; (d) marks that appropriate the rights of others; (e) marks producing confusion amongst the consumer public. **Priorities:** in concordance with the Buenos Aires Agreement, the Andean Pact, and the Intellectual Property Law, acceptance of a trademark application in another member country gives an applicant a six-month priority in which to apply for registration in Ecuador. **Classification:** International Classification (Nice Agreement, 1957). The registration of a mark and its protection extend to only one class per application. To register a mark in several classes, separate applications are required for each class, with separate taxes and processing fees. **Electronic filing:** available; online procedure in force since May 2014. **Territory covered:** the entire country.

**TRADEMARKS:**

**Filing requirements** to file an application (to be sent to resident agent):

All applications should now be submitted online. Therefore, in order to file a trademark application it is essential for the applicant to obtain a virtual box for future notifications.

The required data and documents are the following:

1. Power of attorney, authenticated by Apostille;
2. Applicant's full name, address and nationality;
3. For devices and mixed trademarks only: .jpg format of device;
4. Trademark name;
5. Trademark type;
6. International classes or protected types;
7. Priority documents;
8. Payment fees.

**For renewals:**

1. Power of attorney, authenticated by Apostille.

**For assignments:**

1. Power of attorney, authenticated by Apostille;
   Written Assignment Agreement signed by assignor and assignee (legalization at an Ecuadorian Consulate is advisable but not compulsory).

**For change of name:**

Document certifying name change;
 Affidavit of name change (legalization at an Ecuadorian Consulate is advisable but not compulsory).

**TRADEMARKS REGISTRATION PROCEDURE**

**Examination:** The National Authority is SENADI (National Service of Intellectual Rights). Trademark Office examines the application for compliance with the above requirements and Ecuadorian law. **Amendment of application:** if after examination, it appears that the application does not comply with
the requirements of the law (including the documents referred to above), the applicant will be given thirty days to amend the application and submit all proper documents and/or make necessary corrections. **Disclaimers:** available. **Letters of consent:** are accepted. **Publication:** if the application meets all the document and legal requirements, an extract of the application is published in the Industrial Property Gazette. **Opposition:** must be made within thirty days of the application's publication in the Industrial Property Gazette, by anyone presenting well-founded observations which put into question the registrability of the trademark. Once an opposition has been filed at the Trademark Office, the applicant will be notified of the opposition and be given thirty days to answer the opposition (further extension of thirty days no longer available). If the Trademark Office finds, after reviewing the applicant's answer, that the opposition has merit, this entity will order the applicant to submit further proof in defense of his application. The applicant can appeal the decision. **Appeal:** the decisions of the Trademark Office may be appealed to the Administrative Conflicts Tribunal.

**Delivery of document:** the title of registration is issued within eight and ten months after filing. Since October 2019 the Ecuadorian Authority started to issue digital registration titles, which can be reviewed in the following link: [http://servicios.propiedadintelectual.gob.ec/validador/index.xhtml](http://servicios.propiedadintelectual.gob.ec/validador/index.xhtml) **Beginning of protection:** from the issuance date of the title of registration. **Duration:** ten years. **Renewal:** for periods of ten years. **Grace period:** six months. **Working use:** Article 220 of the Intellectual Property Law mandates that the working of a trademark is compulsory. A third party may request the cancellation of a trademark for lack of use during three years from the registration date of the trademark. Correspondingly, the computation of the first non-use period starts with the registration date of the trademark. Ecuadorian law does not allow for the ex officio cancellation of a trademark. Consequently, cancellation applications must be brought by third parties. Article 224 of the Intellectual Property Law considers using a trademark that is essentially non-diverging from the registered trademark to be valid working of the registered trademark. Affixing the trademark to the product or its package is also considered working the registered trademark. Exportation and importation of goods marked with the trademark, use at exhibitions/fairs, and trademark renewals are considered valid working of the trademark. Use of the trademark in anyone of the Andean Pact countries constitutes valid working of the trademark in Ecuador. **Nominal use:** (publication and/or advertisement of the trademark in newspapers or periodicals) is not deemed working the registered trademark. Similarly, use of the trademark on invoices or stationery is also not sufficient to constitute working. **Licenses and assignments:** trademark or service mark owners may transfer or license their rights to third parties only by means of a written contract. Assignment and transfer of trademarks must be registered at the Trademark Office. Every license agreement must contain a provision assuring the quality of the products or services and be approved at the Trademark Office. The Trademark Office will not register contracts containing clauses that impede free competition.

**RIGHTS DERIVED FROM A REGISTERED TRADEMARK**

The following rights are conferred upon the trademark holder after securing registration: (a) to use or apply the trademark as intended by its nature; (b) to prevent third parties from using, registering or appropriating the trademark (or confusingly similar marks or names) without the express consent of the trademark holder; (c) to prevent third parties from applying, selling, promoting, storing or introducing trade products or services using the trademark (or confusingly similar marks or names) without the express consent of the trademark holder; (d) to encumber, license or otherwise dispose of the trademark as the holder sees fit.

**PATENTS:**

**FILING**

**Applicant:** individual or legal entity, national or foreign citizen. **Foreigners and nationals not living in the country:** must name a legal representative. **Naming of inventor(s):** not necessary. **Name of invention:** necessary. **Notion of the invention:** new products or procedures in every technological sector, which are susceptible of industrial application, which constitute an improvement and contain an inventive step. **Novelty:** is defined as being state of the art, that is, if it has not been made available to
the public, by means of an oral or written description, or by use, or by working, or any other means sufficient to permit its execution before the day of the presentation of the patent application; no novelty grace period. **Exceptions to protection:** (a) inventions contrary to public order, morals, good customs or sustainable development of the environment; (b) animal species, races and procedures for their cloning or reproduction; (c) inventions concerning the human body and its genetic identity; (d) inventions related to pharmaceutical products appearing on the World Health Organization’s list of essential medicines; (e) inventions relating to nuclear or fusion materials; (f) scientific discoveries, principles, and theories; (g) mathematical methods; (h) already existing natural materials; (i) literary and artistic works and any other aesthetic creations; (j) computer programs and games; (k) formats for the presentation of information; (l) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (m) polymorphs, metabolites, pure forms, particle size and isomers; (n) genetic resources that contain biological diversity and agro-biodiversity, as such; and (o) a new form of a substance, including salts, esters, ethers, complexes, combinations and other derivatives. **Priorities:** are given to (a) the first application for a patent of invention previously filed in another Andean Pact, WTO and Paris Convention jurisdictions; (b) the patent owner (who has a one-year priority right from the application filing date); (c) a one-year priority right is allotted to signatory countries of the Convention on Patents of Inventions, Design and Industrial Models. **Electronic filing:** available; online procedure in force since May 2014. **Territory covered:** the entire country.

**Filing requirements** to file an application (to be sent to resident agent):

All applications should now be submitted online. Therefore, in order to file a patent application it is essential for the applicant to obtain a virtual box for future notifications.

The required data and documents are the following:

1. Applicant’s full name and address (or those of the inventor);
2. Title of the invention;
3. Object or purpose of the invention;
4. Power of attorney, authenticated by Apostille;
5. Drawings and plans;
6. Description of the invention. The description must be clear and complete enough so that a person versed in the subject could produce it;
7. 1 or more claims that indicate the extent of the invention’s novelty and its industrial application;
8. 1 copy of the patent's first application if priority is claimed;
9. Access agreement when genetic products are used;
10. Authorization of traditional resources when products have been developed from such traditional knowledge.

**PCT applications:** time limit for entering the national phase: 31 months for both Chapters I and II.

**EXAMINATION PROCEDURE**

**Amendment of application:** modification of claims, specifications, plans or drawings may be made until the application’s abstract has been published. However no enlargement of the invention’s scope will be accepted. If applicant files new amendments an administrative fee is required. **Prior user:** a prior user may oppose the application on lack of novelty grounds. It is important to note in this area that priority documents allow inventors a prior protection mechanism, which enables them to experiment with or build something, based on their ideas, for public consumption without losing their invention rights and patentability. This certificate serves as the basis for submitting, within one year, the registration of the corresponding patent while complying with corresponding requirements. **Examination:** the Patent Office examines the presented documentation to verify that they conform to the law's requirements. The patent's substance is examined after the application’s publication. No accelerated examination available. **Division:** the application can be divided into several ones whilst it is being processed. A patent will be granted only if it deals with one creation or invention, or consists of a group of inventions directly related to each other constituting a united entity. **Publication of the application:** an extract of the patent application is published in the Industrial Property Gazette within one month of the
application's submission. An applicant can request the postponement of the abstract's publishing for a period of up to eighteen months from the application or priority date. **Opposition to patent application:** must be made within thirty business days of the application's publication, plus thirty extendible days upon express request. An opposition may be brought by anyone presenting well-founded observations which may disqualify the invention's patentability. When an opposition has been filed, the Patent Office must notify the applicant of the opposition and give the applicant thirty business days in which to respond or modify the application, plus thirty extendible days upon express request. If needed, an expert Examiner is appointed to study and report on the opposition.

**GRANTING AND PROTECTION**

**Certification document:** a certificate documents the grant of a patent. The grant of the patent often takes place one to two years after the application's submission. **Duration:** twenty years, starting from the international filing date. **Annuities:** yearly fees are required. **Annuity grace period:** six months with a surcharge of 50% of default amount beginning the first day delay of rate payments for maintenance per month or fraction of a month's delay. **Protection:** the patent confers the holder the right to prevent others from exploiting his patent without consent. **Assignment:** patent holders may transfer their rights gratis or for any amount of consideration, through a public document. Patent rights of the holders may be transferred to their heirs upon the death of the holders. There is a corresponding transfer fee. **License for exploitation:** patent holders may license their rights to another person only by a written contract. Licensing contracts must be approved and registered by the Patent Office. **Working - use:** Decision 486 of the Cartagena Agreement requires that the working of a patent is compulsory. Non-use/working of a patent can lead to cancellation or grant of a compulsory license to a third party. For patents that have not been used/worked since their registration, a petition for a compulsory license may be filed three years from the registration date of the patent. The computation of the first non-use period starts with the date of registration of the patent. Working conditions of the patent include manufacture, importation and sales. Use of the patent in any one of the Andean Pact countries constitutes valid working of the patent in Ecuador. **Nominal use:** (publication and/or advertisement of the patent in newspapers) is not enough to constitute working of the patent. **Compulsory licenses:** if the patent has not been worked within the territory once the term of three years starting from the date of granting has lapsed, or four years after the date of application, whichever is greater, the competent National Agency may issue a compulsory license, to an interested third party who has not obtained a contractual license under reasonable conditions, provided that certain regulations have been followed, that is, (a) the holder of the compulsory license must pay adequate compensation to the patent holder; (b) the compulsory license holder must obey the Patent Offices' determination of the license's scope, duration, purpose, monetary consideration and royalty payment conditions; (c) the compulsory license holder may not transfer or grant sub-licenses without the express written consent of the patent holder; and (d) the compulsory license holder must exploit the invention within two years of the concession date. By the Executive's Decree No. 118, issued on October 23, 2009, the Ecuadorian President, Rafael Correa, declared of public interest the access to medicine used to treat illnesses that affect the Ecuadorian population and that are priority for public health. On behalf of such Decree, if necessary, the national authority can grant compulsory licenses to medicine patents of human use. The Ecuadorian Intellectual Property Authority should state the reach, objective and time for each compulsory license, and also the amount and conditions of payment of the royalties of such license.

**GEOGRAPHICAL INDICATIONS**

Ecuadorian Law protects geographical indication as a sign used for products that have a specific geographical origin and whose qualities, reputation and characteristics are essentially due to their place of origin. To constitute a geographical indication, a sign must identify a product as originating in a specific place. Furthermore, the qualities, characteristics or reputation of the product must be essentially due to the place of origin. Since the qualities depend on the geographical.

**NATIONAL IP AUTHORITY**

Switzerland Global Enterprise - Legal Provisions
19/24
National Service of Intellectual Property SENADI.
Address: Av. República and Almagro. Ed. Forum

APPLICABLE LAW

- Decision 486 of the Cartagena Agreement, entitled Common Industrial Property Regulations, replacing - Decision 344, was adopted by Ecuador in September 2000. This Decision regulates patents, trade and service marks in the country.

MEMBERSHIP IN INTERNATIONAL CONVENTIONS

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to which Ecuador acceded as a member of the WTO on June 28, 1996.
- Decision 486 of the Cartagena Agreement, in effect since December 1, 2000.

PROCEDURES FOR COLLECTING PAYMENT
Financial, legal information and previous commercial references of the Ecuadorian importer should be requested before establishing a commercial relationship. A quick check can be made through the web page of the Superintendency of Companies, Securities and Insurance, (https://www.supercias.gob.ec), an institution that receives reports, controls and monitors the companies under its jurisdiction. Similarly, you can access the web page of the Internal Revenue Service, SRI (https://srienlinea.sri.gob.ec), which reflects the status of compliance with taxpayer obligations. An additional step is to verify in the judicial function if the importer has litigations, this is done through the web page (http://consultas.funcionjudicial.gob.ec).

It is recommended that the commercial relationship is reflected in a contract and as part of the process the corresponding invoices are issued, which will be a legal support in case of default of payment by the Ecuadorian importer. In the contract the parties must be subject to Ecuadorian jurisdiction and to a mediation and arbitration process in a recognized center in Ecuador, this to avoid the ordinary justice which is slow and not very transparent.

In the event of default, the following steps should be taken:

1. Sending written communications to the importer expressing its non-compliance and requesting the pending payment.
2. Sending of a communication from the lawyer of the Swiss company, requesting the payment, prior to the start of the legal action.

Invitation to a mediation process in the arbitration and mediation centre established in the contract that supports the commercial relationship.

3. If no agreement is reached in the mediation process, initiate arbitration and subsequent enforcement of the arbitral award.

**ENFORCING COMMERCIAL CONTRACTS AND RESOLVING DISPUTES**

We recommend that the contracts establish the procedure of Arbitration and Mediation as a more expeditious means of execution as opposed to judicial execution subject to longer periods of time.

The Mediation and Arbitration Law was issued on November 29, 2006 and became effective as of its publication in the Official Gazette 417 dated December 14, 2006, its subsequent amendments and its Regulations published in the Official Gazette, Supplement 524 of August 26, 2021.

**Mediation:** It is possible to include the possibility of resolving any conflict through mediation between the parties before a Mediation Center in Quito, for example as follows:

"All disputes, controversies or differences that may arise between the parties shall be dealt with in a mediation process at the Arbitration and Mediation Center of the Ecuadorian-American Chamber of Commerce of Quito, Ecuador. In the event that the parties are unable to resolve their disputes, controversies or differences in the aforementioned mediation process within thirty (30) days after entering into the mediation process, all disputes, controversies or differences that may arise between the parties hereto or in connection with this Agreement shall be resolved by arbitration in accordance with the arbitration clause".

**Local Arbitration:** In the event of any divergence or dispute in the interpretation or execution of the contract, the arbitration process would be binding on the parties in order to avoid resolution of the dispute before the ordinary courts/jurisdiction.
Under the Ecuadorian Arbitration and Mediation Law, the parties may determine a specific arbitration clause for local or international arbitration. However, in the absence of an arbitration clause, the agent may file a local claim for damages before the Ecuadorian courts.

For their part, Ecuadorian courts must respect the agreement regarding arbitration that the parties established in the contract, if any. The law determines that if a party files a lawsuit against the other party with an arbitration clause and the defendant informs the judge of such exception, the latter does not have the competence to continue with the case, unless the defendant does not propose the arbitration clause exception, in which case the judge would have the competence to continue with the lawsuit.

**International Arbitration:** The Law of Arbitration and Mediation establishes in its Art. 41, the possibility of International Arbitration when the parties agree and when the legal requirements are met:

- **a)** That the parties at the time of the execution of the arbitration agreement have their domiciles in different states;

- **b)** Where the place of performance of a substantial part of the obligations or the place to which the subject matter of the dispute is most closely connected is situated outside the state in which at least one of the parties is domiciled; or,

- **c)** When the subject matter of the dispute concerns a transaction in international trade which is susceptible of settlement and which does not affect or damage national or collective interests.

According to Article 42 of the Arbitration and Mediation Law, International Arbitration is regulated by treaties, conventions, protocols and other acts of international law signed and ratified by Ecuador.

Any natural or juridical person, public or private, without any restriction whatsoever, is free to stipulate directly or by reference to arbitration rules all matters concerning the arbitration procedure, including the constitution, procedure, language, applicable law, jurisdiction and seat of the tribunal, which may be in Ecuador or in a foreign country.

In the case of the State and public sector institutions, they may submit to international arbitration and shall be subject to the provisions of the Constitution and laws of the Republic. They also require the express authorization of the highest authority of the respective institution, after a favorable report from the Attorney General of the State, unless the arbitration is provided for in international instruments in force.

**OVERVIEW OF PUBLIC PROCUREMENT SYSTEM**

In order to contract with the State, any natural or legal person, national or foreign, must be registered in the Single Registry of Suppliers - RUP, which is the database managed by the National Public
Procurement Service - SERCOP, and contains the records of the Suppliers authorized to contract with the State.

Once the natural person or company is qualified, it may provide goods, execute works and render services, including consulting services, required by the Contracting Entities, by participating in contracting processes (Bids, Direct Contracting, Auctions, etc.).

Registration as a State Supplier.

a. The supplier registration is computerized, the process is done online, providing the system with the information and documents required to register as a supplier. No physical documents are required for the registration and qualification process.

b. When registering, the supplier must search for the category or categories of products and/or services that are within its economic activities that are included in its Single Taxpayer Registry - RUC or Articles of Incorporation.

c. They can register in the RUP Foreign Companies Domiciled and Foreign Companies NOT Domiciled, the latter in case of being awarded must be domiciled.

d. It is important to mention that some public procurement documents require the company to have been legally established in Ecuador.

e. The following are the basic requirements to become a State vendor:
   1. Complete the registration process.
   2. Be up to date with the tax obligations administered by the SRI. Verification is carried out through the interconnected computer system.
   3. If you are an employer, you must be up to date with your employer's obligations with the IESS. The verification is done through the interconnected computer system.
   4. Deed of Incorporation or Domiciliation registered in the Mercantile Register.
   5. Appointment or General Power of Attorney of the Legal Representative registered in the Commercial Registry.

f. The benefits that registered suppliers have, is to access the Mandatory Bidding Forms free of charge without having to pay any value to the contracting entities.

g. SERCOP publishes on its web portal, https://portal.compraspublicas.gob.ec/sercop/, the different models of Mandatory Specifications, which describe in full the responsibilities of contracting entities and suppliers, facilitating transparent participation in contracting processes carried out by the State and entities subject to the Organic Law of the National Public Procurement System.

h. The Organic Law of the National Public Procurement System gives priority to small entrepreneurs over medium-sized ones, and to these over large entrepreneurs, thus giving equal opportunities among the different suppliers so that they can contract with the State, giving priority to local producers before provincial ones, and to these before national ones; the above is regulated through the different tools of the Portal.

i. In case of non-compliance with the contracts or the signing of the same once awarded, the suppliers will be sanctioned, declaring them failed awardee or contractor in default, being disqualified from contracting with the State for a period of 3 and 5 years respectively.

APPLICABLE LEGISLATION.

SOURCES OF INFORMATION AND REFERENCES


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Date September 1, 2021

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