



ECUADOR  
INVESTMENT CLIMATE STATEMENT  
2015

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## **Executive Summary**

Ecuador is a country straddling the equator on South America's west coast. Ecuador is relatively open to foreign investment in most sectors; however, foreign direct investment (FDI) inflows are very low in comparison to other Latin American countries. Economic, commercial, and investment policies are often contradictory and subject to frequent changes. The legal uncertainty resulting from inconsistent application and interpretation of existing laws complicates enforcement of contracts and increases the risks and costs of doing business. Systemic weaknesses in the judicial system and its susceptibility to political or economic pressures are issues for U.S. companies investing in or trading with Ecuador. The existing U.S.-Ecuador Bilateral Investment Treaty (BIT) provides guarantees for national treatment; unrestricted remittances and transfers; prompt, adequate, and effective compensation for expropriation; and the resolution of investment disputes through international arbitration. The Government of Ecuador's (GOE) ongoing actions could lead to the termination of its BITs, placing uncertainty on the future of Ecuador's investment treaties.

Foreign investors may remit 100 percent of net profits and capital, subject to a capital exit tax currently set at five percent. Ecuadorian law requires private companies to distribute 15 percent of pre-tax profits to employees each year.

A number of U.S. companies operating in Ecuador, primarily in regulated sectors such as petroleum and electricity, have filed for international arbitration due to investment disputes.

In April 2015, the United States Trade Representative moved Ecuador from Watch List to Priority Watch List in its annual Special 301 Report on intellectual property. This decision was based on Ecuador's 2014 repeal of its criminal IPR provisions. GOE officials said the criminal IPR provisions would be reinstated to bring Ecuador back in compliance with its international obligations but, as of April 2015, no such legislation had been passed.

U.S. embassy recommends exerting caution when considering investment in Ecuador.

### **1. Openness To, and Restrictions Upon, Foreign Investment**

#### **Attitude toward Foreign Direct Investment**

Ecuador is relatively open to foreign investment (FDI) in most sectors. Its overall investment climate remains challenging and uncertain as Ecuador's economic, commercial, and investment policies are often contradictory and subject to change. The regulatory framework has specifically targeted the banking and media sectors, negatively affecting these industries. Frequent changes in Ecuador's tax code make business planning difficult.

In general, the legal complexity resulting from the inconsistent application and interpretation of existing laws complicates enforcement of contracts and increases the risks and costs of doing business in Ecuador. Business disputes with U.S. companies can become politicized, especially in sensitive areas such as the energy sector. Several high level investment disputes involving U.S. companies, mostly linked to the energy sector, are under international arbitration.

## **Other Investment Policy Reviews**

In the past three years, Ecuador has not conducted an investment policy review with the Organization for Economic Cooperation and Development (OECD), World Trade Organization (WTO), or United Nations Conference on Trade and Development.

## **Laws/Regulations of Foreign Direct Investment**

The Organic Law for Production Incentives and Tax Fraud Prevention, passed in December 2014, includes provisions to improve tax stability and lower the income tax rate in the mining sector. The law also included provisions intended to increase tax revenues; it eliminated the tax exemption for income derived from the occasional sale of shares in Ecuadorian entities and it limited advertising expenses companies are allowed to deduct for tax purposes to four percent of revenue.

Systemic weakness in the judicial system and its susceptibility to political and economic pressures constitute important problems faced by U.S. companies investing in Ecuador.

The Superintendence of Companies, Securities, and Insurance offers information for registering businesses on its website at <http://www.supercias.gob.ec/>.

## **Industrial Promotion**

The Coordinating Ministry of Strategic Sectors publishes a catalogue of investments in strategic sectors on its website at <http://www.sectoresestrategicos.gob.ec/>. The Coordinating Ministry for Production, Employment, and Competitiveness offers information on investing in Ecuador on its website at <http://www.produccion.gob.ec/>.

## **Limits on Foreign Control**

One hundred percent foreign equity ownership is allowed without the need for authorization or prior screening in the sectors open to domestic private investment. Articles 313 through 315 of the 2008 Constitution establish that the state is responsible for management of strategic sectors through state-owned or controlled companies. The sectors identified include: energy in all its forms, telecommunications, non-renewable natural resources (includes petroleum, natural gas, and mining), transportation, hydrocarbon refining, media, water, biodiversity, and genetic patrimony. In the last few years, new state companies were formed in mining, pharmaceuticals, and to import goods required by the executive branch.

For license and franchise transactions, no limits exist on royalties that may be remitted. All license and franchise agreements must be registered with the Ecuadorian Intellectual Property Institute (IEPI). In addition to registering with the Superintendence of Companies, Securities, and Insurance, foreign investors must register investments with Ecuador's Central Bank for statistical purposes.

## Selected Strategic Sectors:

### Petroleum

Per the 2008 Constitution, all subsurface resources belong to the state. Ecuador permits investment by foreign oil companies, but has not allowed production sharing agreements since 2009. Only the state is authorized to participate in domestic fuel distribution, refining, and transport activities. Most fuel prices are controlled and subsidized by the central government.

### Mining

The mining sector is relatively open to foreign investment, but investment in mining continues to be modest. Foreign companies have the same access to large-scale mining concessions as domestic investors, but are prohibited from investing in small-scale mining operations.

In 2014, the Government of Ecuador introduced several changes to its mining tax regime in an attempt to attract investment in the sector. Presidential Decree 475, published in October 2014, altered the windfall tax calculation. The Organic Law for Production Incentives and Tax Fraud Prevention included provisions to improve tax stability and lower the income tax rate in the mining sector. The Government of Ecuador also created a separate ministry of mines, which was previously within the Ministry of Non-Renewable Resources.

### Electricity

The Organic Law for the Public Service of Electric Energy, which took effect on January 16, 2015, permits some private sector participation and foreign investment in Ecuador's electricity sector. Per the 2008 Constitution, the electricity sector is a public service and strategic sector.

### Telecommunications

In February 2015, Ecuador's National Assembly passed a telecommunications law that requires telecommunications companies to pay a percentage of revenue to the government. This requirement applies to providers of cellular and fixed line telephone service, internet service, and subscription television with more than 30 percent of market share. The payments range from 0.5 to 9 percent of revenue.

In February 2015, the Government of Ecuador finalized the sale of spectrum rights to the country's two largest cellular service providers. Corporación Nacional de Telecomunicaciones, a public enterprise, is the monopoly provider of landline telephone services and also provides cellular service.

### Media

The 2013 Communications Law prohibits partial or total ownership of media businesses by foreign companies or citizens that do not reside permanently in Ecuador. This provision applies to all media owners (radio, subscription video, audio, television, and printed press) with products that reach at least 30 percent of the population. Implementing regulations for the law softened this prohibition to allow citizens or companies from countries that have signed bilateral commercial or economic agreements with Ecuador to own media companies. The United States has no such agreement with Ecuador. The Communications Law also introduced a requirement that advertising disseminated in Ecuador must have 80 percent domestic content. It also requires

that television and radio frequencies are distributed 33 percent to private media, 33 percent to public media, and 34 percent to community media.

The government controls a large share of radio, television, and other press holdings. Article 312 of the Constitution prohibits financial institutions, their shareholders, board members, and legal representatives from media ownership. In addition, the Organic Law for Regulation and Control of Market Power, enacted in October 2011, prohibits anyone possessing more than a six percent interest in a media company from investing in any other business sector.

### Fishing

Foreign investment in domestic fishing operations is subject to approval by the National Fisheries Development Council. Extractive fishing by foreign companies is permitted provided that the catch is processed in Ecuador.

### Privatization Program

Information not available.

### Screening of FDI

One hundred percent foreign investment in domestic companies is allowed without prior authorization or screening in sectors open to domestic private investment.

### Competition Law

The Superintendence of Control of Market Power reviews transactions for competition-related concerns.

### Investment Trends

In 2013, Ecuador received the lowest foreign direct investment (FDI) inflows relative to GDP in South America, and the second lowest in the Western Hemisphere. FDI inflows remained low in 2014. According to the Central Bank of Ecuador, total FDI inflows were USD 774 million in 2014, or .77 percent of GDP of USD 100.5 million, with USD 10 million coming from the United States.

Table 1

Measure	Year	Index or Rank	Website Address
<b>TI Corruption Perceptions index</b>	2014	110 of 175	<a href="http://transparency.org/cpi2014/results">transparency.org/cpi2014/results</a>
<b>World Bank's Doing Business Report "Ease of Doing Business"</b>	2015	115 of 189	<a href="http://doingbusiness.org/rankings">doingbusiness.org/rankings</a>
<b>Global Innovation Index</b>	2014	115 of 143	<a href="http://globalinnovationindex.org/content.aspx?page=data-analysis">globalinnovationindex.org/content.aspx?page=data-analysis</a>
<b>World Bank GNI per capita</b>	2013	USD 5,760	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

## 2. Conversion and Transfer Policies

Not applicable/information not available.

### Foreign Exchange

In the year 2000, Ecuador adopted the U.S. dollar (USD) as the official currency. Foreign investors may remit 100 percent of net profits and capital, subject to a five-percent capital exit tax. There are no restrictions placed on foreign investors in transferring or repatriating funds associated with an investment.

#### *Remittance Policies*

In 2012, Ecuador recognized Delaware, Florida, Nevada, and Wyoming as pre-eminent corporate tax havens. They also designated Puerto Rico, the U.S. Virgin Islands, American Samoa, and Guam as part of that list. (LLCs based in these locations are excluded from competing for Ecuadorian government procurement contracts.) In February 2015, the Ecuadorian tax authorities published a resolution with a new list of tax havens that included no U.S. states, although some U.S. jurisdictions remained. The resolution introduced the concept of jurisdictions of lower taxation, which are not specifically listed but may be applied on a case by case basis.

The Financial Action Task Force (FATF) released a public statement in February 2015 indicating that Ecuador remains on the list of jurisdictions with strategic anti-money laundering/combating the financing of terrorism (AML/CFT) deficiencies that have not made sufficient progress in addressing the deficiencies. The release also noted that Ecuador has taken steps to improve its AML/CFT regime, including by issuing CFT regulations for the freezing of terrorist assets and AML/CFT regulations for the supervision of credit and savings cooperatives.



### **3. Expropriation and Compensation**

The Constitution establishes that the state is in charge of managing the use and access to land, while recognizing and guaranteeing the right to private property. It also provides for the redistribution of land if it has not in active use for more than two years. Access to land for the landless is a major theme of the government's agricultural policy; to date, however, there have not been any public seizures of private assets under the current administration. The 2010 Organic Code for Commercial Production and Investment (Production Code) includes expropriation as a way to improve the distribution of production factors and enhance opportunities for the rural population. Pending land-reform legislation was delayed given the highly charged political nature of the issue. The 2015 Telecommunications Law does allow expropriation of private land in accordance with the rules and procedures of the law when necessary for the installation of network infrastructure.

Under Ecuador's BIT with the United States, expropriation can only be carried out for a public purpose, in a nondiscriminatory manner, and upon payment of prompt, adequate, and effective compensation.

Some local and foreign mining companies have had their concessions occupied by informal miners, who have subsequently sought a share of the concessions or have carried out mining activities without repercussions.

Property, whether land or mobile assets, jointly owned by several persons or companies, can be seized by Ecuadorian courts through judgments or seizure orders. Resolution and compensation typically require many years and significant legal costs. In addition, the Organic Law for the Defense of Labor Rights, approved in September 2012, allows property to be seized by state entities (tax administrator, state-owned banks, and municipal governments) when debts have not been serviced. The law eliminated the protections provided to LLCs by extending corporate debts to their shareholders, their heirs, or third parties that have a relationship with the debtor. In 2012, the tax authority used the law's mandate to seize the assets of an export-oriented conglomerate. Some of these assets were auctioned off in December 2013 while others, including a banana plantation, were sold to the workers through government-granted loans.

### **4. Dispute Settlement**

#### **Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts**

Ecuador has a civil codified legal system. Systemic weakness in the judicial system and its susceptibility to political and economic pressures constitute challenges faced by U.S. companies investing in Ecuador. The local judicial system is hampered by political pressure, delays, and inconsistent rulings in both civil and commercial cases. Enforcement of contract rights, equal treatment under the law, Intellectual Property protections, and unstable regulatory regimes are concerns.

According to the 2014 Rule of Law Index of The World Justice Project, which uses survey data to measure the extent to which countries adhere to the rule of law in practice, Ecuador ranked 77 out of 99 within the countries surveyed.

## **Bankruptcy**

Ecuador is ranked 151 out of 189 in the category of Ease of Resolving Insolvency in the 2015 World Bank's, Doing Business Report.

## **Investment Disputes**

A number of U.S. companies operating in Ecuador, most notably in the petroleum sector, have filed for international arbitration due to investment claims. The GOE has treated these disputes as a political issue, speaking negatively about investors involved these cases.

## **International Arbitration**

U.S Investors guarantees under the U.S.-Ecuador BIT include the access to dispute mechanisms to resolve any investment claim arising out of the treaty. The treaty names the International Centre for the Settlement of Investment Disputes (ICSID) as the venue. In September 2008, Ecuador's constitution was amended to prohibit the ceding of sovereign jurisdiction in disputes with private companies before international tribunals. In January 2010, Ecuador withdrew from the ICSID Convention. In March 2013, President Correa requested that Ecuador's National Assembly terminate the U.S.-Ecuador BIT, arguing it was inconsistent with Ecuador's 2008 Constitution. Efforts to terminate the BIT have progressed slowly, to this day the treaty still remains in place.

### *ICSID Convention and New York Convention*

Ecuador was formally a member state to the International Centre for the Settlement of Investment Disputes (ICSID convention). Ecuador withdrew from the ICSID Convention in 2010. Ecuador is a signatory to the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention).

## **Duration of Dispute Resolution**

The Ecuadorian judicial system is influenced by political pressure, delays in the process, and inconsistent rulings. Systemic weakness in the judicial system and its susceptibility to political and economic pressures constitute important problems faced by U.S. companies investing in or trading with Ecuador.

## **5. Performance Requirements and Investment Incentives**

### **WTO/TRIMS**

In 2014, the government negotiated over 900 import substitution agreements with companies. The companies were committed to reducing their imports and to start substituting imported goods with locally producing goods. In exchange, the government relaxed import regulations for those companies to import products that are restricted under quality and standards regulations enacted in December 2013. These contracts have not been publicly released.

Under the Andean Community Common Automotive Policy, Ecuador imposes local content requirements on automobiles assembled in country in order for assemblers to qualify for reduced duties on imports. The WTO Agreement on Trade-Related Investment Measures (TRIMS) prohibits such requirements. Although under the TRIMS Agreement Ecuador was obliged to eliminate local content requirements by 2000, the local content requirement is still in place. In 2012, the requirement was set at 24.3 percent, but current requirements are unclear, as new guidelines are pending.

### **Investment Incentives**

The Organic Law of Production Incentives and Tax Fraud Prevention, which took effect on December 30, 2014, provides for tax incentives related to depreciation calculations and income tax rates, which could benefit some foreign investors.

The country's Production Code establishes tax incentives to attract both domestic and foreign investment in certain priority sectors: fresh and processed food, forestry, agro-forestry, metalworking, petrochemical products, pharmaceuticals, tourism, renewable energies, logistical services, biotechnology, applied software, and those determined by Ecuador's president to be strategic import substitution sectors. Some incentives, which may take the form of tax exemptions, income tax deductions, as well as a five-year tax holiday, are mostly applicable for investments made outside of Quito and Guayaquil and for new investments. To qualify for the tax incentives, a Technical Secretary of the Sectoral Council for Production must approve an investment proposal. To date, few companies have applied for these incentives. Implementing regulations for the Production Code were published in April 2011.

In May 2011, Ecuador launched the Institute for Export and Investment Promotion (PRO ECUADOR), which to date has focused on export promotion.

#### *Research and Development*

Information not available.

### **Performance Requirements**

Visa and residence requirements are relatively relaxed and do not inhibit foreign investment.

Committee of Foreign Trade (COMEX) Resolution 011-2015, which took effect March 11, 2015, applied tariff surcharges from 5 to 45 percent on almost 3,000 tariff lines. In its notification to the World Trade Organization, Ecuador argued the tariff surcharges were necessary to protect Ecuador's balance of payments in response to decreased oil prices and the appreciation of the U.S. dollar. The tariff surcharges are to remain in effect for up to 15 months.

### **Data Storage**

Information not available.

## **6. Right to Private Ownership and Establishment**

Foreign and domestic private entities can own business enterprises and engage in almost all forms of business activity.

## **7. Protection of Property Rights**

### **Real Property**

There have been cases where the judicial system has not adequately protected property owners' rights.

Ecuador currently ranks 80 out of 189 in the World Bank's Doing Business Report's category for Ease of Registering Property.

With the goal of protecting consumers and preventing a real estate bubble, the National Assembly approved in June 2012 a law that allows homeowners to default on their first home and car loan without penalty if they forfeit the asset. The provisions do not apply to homes with a market value of more than USD 146,000 or vehicles worth more than USD 29,200.

### **Intellectual Property Rights**

Enforcement against intellectual property infringement remains a serious problem in Ecuador. In April 2015, the United States Trade Representative downgraded Ecuador from Watch List to Priority Watch List in its annual Special 301 Report on intellectual property. This decision was based on Ecuador's 2014 repeal of its criminal IPR provisions. Government of Ecuador officials said the criminal IPR provisions would be reinstated to bring Ecuador back in compliance with its international obligations but, as of April 2015, no such legislation had been passed. One of Ecuador's largest outdoor markets, La Bahia in Guayaquil, is listed in the United States Trade Representative's Notorious Markets report.

Piracy of computer software and counterfeit activity in brand name apparel is widespread. Pirated CDs and DVDs are readily available on many streets and in shopping malls. Weak copyright enforcement remains a significant problem, especially concerning sound recordings, computer software, and motion pictures. In contrast, piracy of Ecuadorian music and movies has declined significantly. This is due in part to improvements in legitimate local production and distribution and to government-sponsored public awareness campaigns focused on reducing piracy of Ecuadorian produced content.

The Ecuadorian Intellectual Property Institute (IEPI) was established in January 1999 to handle patent, trademark, and copyright registrations. IEPI reports information on its activities on its website at <http://www.propiedadaintelectual.gob.ec/>. The IEPI website includes little information on seizures of counterfeit goods.

In 2010, Ecuador established compulsory license regimes for pharmaceutical and agrochemical products. At least five compulsory licenses were issued in 2014, including two for medicines

that treat non-fatal illnesses. The compulsory licenses allow local firms to import or manufacture patented drugs. IEPI is reviewing additional compulsory license applications.

The Ecuadorian National Police and Customs service are responsible for carrying out IPR enforcement, but do not always enforce court orders. IEPI can take enforcement actions through an administrative process that can result in sanctions and/or confiscation of counterfeit goods.

#### *Resources for Rights Holders*

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>.

Embassy point of contact: [ecuadorcommercial@state.gov](mailto:ecuadorcommercial@state.gov).

Local lawyers list: <http://ecuador.usembassy.gov/service/assistance.html>

Camara de Comercio Ecuatoriano Americana (AmCham) Quito: <http://www.amchamec.org/>

Camara Ecuatoriano Americana de Comercio (AmCham) Guayaquil:  
<http://www.amchamgye.org.ec/>

## **8. Transparency of the Regulatory System**

Ecuador enacted the Organic Law for Regulation and Control of Market Power in October 2011. The implementing regulations for the law include mechanisms to prevent, control, and sanction market power abuses, restrictive market practices, economic concentration, and unfair competition. The regulatory body, the Superintendence of Control of Market Power, can fine companies found to be in violation of the law up to 12 percent of gross revenue.

## **9. Efficient Capital Markets and Portfolio Investment**

In March 2014, Ecuador enacted the Law to Strengthen and Optimize Business Partnerships and Stock Markets, which reformed nine previous laws governing Ecuador's stock markets. The law created an executive branch regulatory board to oversee the stock markets. Ecuadorian government officials said the new law was also intended to allow businesses to be created more quickly.

### **Money and Banking System, Hostile Takeovers**

The GOE is openly hostile towards private banks and financial institutions, considering them enemies of President Correa's Citizen's Revolution. Between 2012 and 2013, the financial sector was the target of numerous new restrictions. By 2012, most banks had sold off their brokerage firms, mutual funds, and insurance companies to comply with constitutional changes following a May 2010 referendum. The amendment to Article 312 of the Constitution required banks and their senior managers and shareholders with more than six percent equity in financial entities to divest entirely from any interest in all non-financial companies by July 13, 2012. These provisions were incorporated into the Anti-Monopoly Law passed in September 2011.

The Organic Monetary and Financial Code, published in the official registry September 12, 2014, created a five-person Monetary and Financial Policy and Regulation Board of presidential appointees to regulate the banking sector. The law gives the Monetary and Financial Policy and Regulation Board the ability to prioritize certain sectors for lending from private banks. The law also created an electronic currency to be administered by Ecuador's Central Bank and backed by its assets.

Ecuador's Central Bank was established in 1927. Since Ecuador's dollarization in 2000, the Central Bank has played a much smaller role in that it is no longer the lender of last resort.

The Central Bank issued Regulation 29 in July 2012, requiring all financial transfers (inflows and outflows) to be channeled through the Central Bank's accounts. In principle, the regulation increases monetary authorities' oversight and prevents banks from netting their inflows and outflows to avoid paying the five-percent capital exit tax.

In November 2012, the National Assembly passed a law that would severely restrict the operations of private credit risk rating agencies (bureaus). The law has not yet been fully implemented. It grants exclusive rights to credit-related data to a state-run entity. If implemented as written, private credit bureaus, while not prohibited from operating, would be obliged to give up their databases to the government and could no longer receive data directly from the financial sector.

In November 2013, the Banking Committee issued Resolution 2694 setting ceilings on salaries and fringe benefits of financial sector employees, legal representatives, and executives. Resolution 2839, passed in March 2014, partially eased the limitations imposed in November 2013.

## **10. Competition from State-Owned Enterprises**

The 2009 Organic Law of Public Enterprises regulates state-owned enterprises (SOEs). SOEs are most active in areas designated by the 2008 Constitution as strategic sectors, especially non-renewable natural resources, telecommunications, and transportation.

Regulations allow SOEs greater flexibility in the use of public resources. SOEs follow a special procurement regime with greater flexibility and limited oversight. The Law of Public Enterprises requires SOEs to follow generally accepted accounting principles; however, SOEs are not required to follow the same accounting practices as the central government, nor do they have to participate in the electronic financial management system used in most of the public sector for budget and accounting management. SOEs are eligible for government guarantees, and face lower tax burdens than private companies.

The Production Code softened some of the restrictions on the private sector introduced in the Constitution and in the Organic Law of Public Enterprises by allowing private investment in strategic sectors. However, the Production Code is secondary to the relevant laws governing strategic sectors.

## **OECD Guidelines on Corporate Governance of SOEs**

Third-party analysts generally assess that SOEs maintain some degree of independence from the government. Ecuadorian courts generally favor SOEs and court processes are often nontransparent.

## **Sovereign Wealth Funds**

Ecuador does not have a sovereign wealth fund.

## **11. Corporate Social Responsibility**

There is substantial awareness of corporate social responsibility (CSR) among the large businesses operating in Ecuador. Many multinational and large domestic companies maintain corporate social responsibility strategies, following generally accepted CSR principles. They are active in areas such as sustainability, clean environmental practices, and education. Consumer awareness of CSR is less pronounced than producer awareness.

## **OECD Guidelines for Multinational Enterprises**

Ecuador is not included on the list of adherents to the OECD Guidelines for Multinational Enterprises.

## **12. Political Violence**

Ecuador does not have a tradition of frequent violence as a result of demonstrations or political instability. Crime is a serious concern, especially in the larger cities.

Student, labor union, and indigenous protests against government policies have been a regular feature of political life in Ecuador. While disruptive, especially to transportation, violence is usually limited and localized. Protesters often block city streets and rural highways, and public transportation tends to be disrupted during these incidents. Popular protests in 1997, 2000, and 2005 contributed to the removal of three elected presidents before the end of their terms.

Some indigenous communities opposed to development have blocked access by petroleum and mining companies.

## **13. Corruption**

Corruption is a serious problem in Ecuador. Transparency International consistently ranks Ecuador poorly among countries it surveys in the region. Ecuador ranked 110 out of 175 countries surveyed for Transparency International's 2014 Corruption Perceptions Index and received a score of 33 out of 100.

Ecuador has laws and regulations to combat official corruption, but they are inadequately enforced. Illicit payments for official favors and theft of public funds reportedly take place

frequently. Dispute settlement procedures are complicated by the lack of transparency and inefficiency in the judicial system.

Offering or accepting a bribe is illegal and punishable by imprisonment for up to five years. The Controller General is responsible for the oversight of public funds and there are frequent investigations and occasional prosecutions for irregularities.

*UN Anticorruption Convention, OECD Convention on Combatting Bribery*

Ecuador ratified the UN Anticorruption Convention in September 2005. Ecuador is not a signatory to the OECD Convention on Combating Bribery. The 2008 Constitution created the Transparency and Social Control branch of government, tasked with preventing and combating corruption, among other things. In December 2008, President Correa issued a decree that created the National Secretariat for Transparency to investigate and denounce acts of corruption in the public sector. Both entities can conduct investigations into alleged acts of corruption. Responsibility for prosecution remains with the Office of the Prosecutor General.

*Resources to Report Corruption*

Through the Function of Transparency and Social Control, alleged acts of corruption can be reported by dialing 159 within Ecuador. The Council for Citizen Participation and Social Control also maintains a web portal for reporting alleged acts of corruption:  
<http://www.cpccs.gob.ec>.

#### **14. Bilateral Investment Agreements**

In 1993, the United States and Ecuador signed a BIT, which entered into force in 1997. This treaty provides for national treatment; unrestricted remittances and transfers; prompt, adequate, and effective compensation for expropriation; and access to international arbitration to resolve any investment dispute. In September 2009, the GOE requested approval from the National Assembly to terminate the treaty, along with the BITs of another 12 nations. The GOE claims the treaties' international arbitration provisions for resolution of investor-state disputes conflicts with the 2008 amended Constitution.

In 2013, the GOE formed a committee, made up of government officials and private citizens, to produce a report on Ecuador's current BITs, playing close attention to the investment dispute mechanism itself. The committee has released some interim findings with no clear impact on the status of Ecuador's BITs and pending international investment arbitration cases.

In 2014, Ecuadorian officials announced the intention to renegotiate Ecuador's BITs to remove aspects of the treaties that conflict with the Constitution. Officials did not announce if negotiations have begun and no negotiations have begun with the United States.

#### **Bilateral Taxation Treaties**

Ecuador does not have a bilateral taxation treaty with the United States.



## 15. OPIC and Other Investment Insurance Programs

Since 1986, Ecuador has had an Investment Guarantee Agreement with the Overseas Private Investment Corporation. Ecuador is also signatory to the Multilateral Investment Guarantee Agreement.

## 16. Labor

Ecuador's population is about 16 million. Semi-skilled workers are relatively abundant at low wages. The National Wages Council and Ministry of Labor Relations set minimum compensation levels for private sector employees annually. The minimum basic salary for 2015 is USD 354 per month. Mandatory bonuses and other contributions pushed total compensation to over USD 400 per month. Ecuador's Production Code requires that workers be paid a dignified wage, defined as an amount that would enable a family of four with 1.6 wage earners to be able to afford the basic necessities. The cost and the products that are considered basic necessities is determined by Ecuador's Statistics Institute (INEC). In March 2015, the cost of basic necessities was USD 657.68, while the official family wage level is at USD 660.80. As of December 2014, INEC estimated Ecuador's unemployment rate at 3.8 percent and underemployment at 46.69 percent.

The Law for Labor Justice and Recognition of Work in the Home, which included several changes related to labor and social security, took effect April 20, 2015. The law eliminated the requirement that the government contribute 40 percent of pension obligations to Ecuador's Institute of Social Security (IESS). The requirement was replaced with a government guarantee that it will provide funding to IESS in the case that IESS does not have the resources from employee and employer contributions to make the payments. The law also lowered the yearly percentage increase in pension payments to match inflation. The law limited the yearly bonus paid to employees, which is equal to 15 percent of companies' profits and is required by law, to 24 times the minimum wage. Any surplus profits are to be handed over to IESS. The law also limits the tax deduction for salaries companies are allowed to pay top executives to a multiple of the lowest salary paid to a company employee. The multiple will be set considering the size of the company, income, number of employees, sector, and other factors. The law also mandates that employees' thirteenth and fourteenth month bonuses, which are required by law, be paid in installments throughout the year instead of in lump sums. Employees have the option to opt out of this change and continue to receive the payments in lump sums. The law eliminates fixed-term employee contracts and replaces them with indefinite contracts, which shortens the allowable trial period for employees to 90 days. The law also allows participation in social security pensions for non-paid work at home.

Trained financial professionals and engineers can be difficult to attract and many graduates require additional training to reach international standards. Little post-graduate education exists in Ecuador, and scientists and medical professionals are nearly all foreign-trained. Masters-level degrees are widely offered, but relatively few are competitive with international quality levels. Upper-level Ecuadorian business managers have frequently been educated abroad and often in the United States.

The Labor Code provides for a 40-hour work week, 15 calendar days of annual paid vacation, restrictions and sanctions for those who employ child labor, general protection of worker health and safety, minimum wages and bonuses, maternity leave, and employer-provided benefits. There is special legislation regulating labor in export processing zones. Most workers in export processing zones are hired on temporary contracts, and, while technically covered by the Labor Code, enforcement is weak.

The 2008 Constitution bans child labor, requires hiring workers with disabilities, and prohibits strikes in most of the public sector. Unpaid internships are not permitted in Ecuador.

Most workers in the private sector and at SOEs have the constitutional right to form trade unions and local law allows for unionization of any company with more than 30 employees. Private employers are required to engage in collective bargaining with recognized unions. The Labor Code provides for resolution of conflicts through a tripartite arbitration and conciliation board process. The Code also prohibits discrimination against union members and requires that employers provide space for union activities.

Workers fired for organizing a labor union are entitled to limited financial indemnification, but the law does not mandate reinstatement. The Public Service Law enacted in October 2010 prohibits the vast majority of public sector workers from joining unions, exercising collective bargaining rights, or paralyzing public services in general. The Constitution lists health; environmental sanitation; education; justice; fire brigade; social security; electrical energy; drinking water and sewerage; hydrocarbon production; processing, transport, and distribution of fuel; public transport; and post and telecommunications as strategic sectors. Public workers who are not under the Public Service Law may join a union and bargain collectively since they are governed by the provisions under the Labor Code.

### **17. Foreign Trade Zones/Free Ports/Trade Facilitation**

The 2010 Production Code authorized the creation of Special Economic Development Zones (ZEDEs) that are subject to reduced taxes and tariffs. The government considers the extent to which projects promote technology transfer, innovation, and industrial diversification when granting ZEDE status. The municipality of Quito prioritized development of a ZEDE near Quito's international airport in 2014. Turisfranca and Metrozona are ZEDEs located in Quito. There are also ZEDEs located in Yachay and Manta.

### **18. Foreign Direct Investment and Foreign Portfolio Investment Statistics**

Host country data is from the Central Bank of Ecuador. The Central Bank only publishes FDI calculated as net flows.

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

Economic Data	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
	Year	Amount	Year	Amount	
<b>Host Country Gross Domestic Product (GDP) (\$B USD)</b>	2013	94.5	2013	94.5	<a href="http://www.worldbank.org/en/country">www.worldbank.org/en/country</a>
<b>Foreign Direct Investment</b>	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
<b>U.S. FDI in partner country (\$M USD, stock positions)</b>	n/a	n/a	2013	449	BEA data available 3/19/14 at <a href="http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm">http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm</a>
<b>Host country's FDI in the United States (\$M USD, stock positions)</b>	n/a	n/a	2013	8	BEA data available 3/19/14 at <a href="http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm">http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm</a>
<b>Total inbound stock of FDI as % host GDP</b>	n/a	n/a	2013	0.48%	

\* Host country data is from the Central Bank of Ecuador. The Central Bank only publishes FDI calculated as net flows.

*Table 3: Sources and Destination of FDI***Direct Investment from/in Counterpart Economy Data****From Top Five Sources/To Top Five Destinations (US Dollars, Millions)**

Inward Direct Investment			Outward Direct Investment		
Total Inward	774	100%	Total Outward	n/a	100%
Canada	229	29.6%			
China	79	10.2%			
Spain	77	9.9%			
The Netherlands	76	9.8%			
Uruguay	62	8.1%			
"0" reflects amounts rounded to +/- USD 500,000.					

*Table 4: Sources of Portfolio Investment*

Portfolio investment data are not available for Ecuador.

**19. Contact for More Information**

Please contact Embassy Quito at [ecuadorcommercial@state.gov](mailto:ecuadorcommercial@state.gov)