

INTERNATIONAL TRUST LAWS AND ANALYSIS

Company Laws, Wealth Management,
& Tax Planning Strategies

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of Texas A&M University School of Law



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FOREWORD

ALTERNATIVE RISK TRANSFER

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MISCELLANEOUS

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International trusts have been a popular mechanism in estate planning since the early Roman days when emperors hoped to retain plundered treasures for their descendants. These trusts were later refined by the Crusaders when they left their homes for foreign ventures. However, it is only since the 1980s trusts have leaped to the forefront as a prime avenue in offshore financial planning.

International Business Companies (IBCs), Limited Liability Companies (LLCs), Foundations and Offshore Life Insurance are also vehicles used in offshore financial planning.

For Americans, use of international trusts or entities may comply with Regulation S of the 1933 Securities Act allowing access to worldwide investments. Some investments are closed to Americans because the foreign funds do not want to register under the 1933 Securities Act and the Regulation S exemption can be met if the acquirer, such as a trustee of an international trust, is classified as a non-US person.

International trusts are commonly referred to as offshore trusts, offshore asset protection trusts or foreign asset protection trusts.

FOREWORD

FUNDS INVESTED IN FOREIGN TRUSTS

Trillions of offshore funds are placed in tax havens of the world (or offshore financial centers, as they are widely known) and a substantial portion of these funds are moved abroad for safekeeping through foreign trusts, foreign entities and offshore life insurance. Multinationals, professionals, individuals, and entrepreneurs in every corner of the globe have learned to rely on these tax haven financial centers more than ever to secure their profits, savings, property, and other assets.

As of the mid 1980s, the so-called asset protection trust (APT) has emerged as one of the most dependable vehicles in the expanding world of cross — border trusts. Of the trillions of assets now converted into international trusts, approximately is represented by transfers to APTs. The remaining balance of offshore investment funds, consists of deposits in private financial institutions, real and personal property, captive insurance companies, ships and marine installations, aircraft and other leasing equipment, and various miscellaneous funds.

Leading Offshore Investment Centers. Some of the leading financial centers include the Cayman Islands, Switzerland, Luxembourg, Liechtenstein, Hong Kong, Singapore, the British Virgin Islands, The Bahamas, United Arab Emirates (particularly Dubai and Abu Dhabi) and the Channel Islands.

Offshore Outlook. Considerable attention was focused on a new element that may support an expanding offshore industry as a result of a Boston College research project based on a modest assumption covering transfer of wealth to younger generations. The latest study released estimates that \$41 trillion will be transferred between generations by 2050 based on a 2% annual inflationary indexation and \$136 trillion assuming a 4% annual real growth rate as adjusted for inflation. The revelation of the vast size of present wealth to be transferred to younger generations in the next 50 years opens up a huge market for the offshore industry heretofore overlooked by many persons providing off-shore services to clients. Based on statistics showing that roughly 10% of world wealth is placed in offshore accounts, a minimum of \$4.1 trillion over a 50-year period, or \$80 billion annually, would be added to offshore coffers.

However the high cost-of-living in certain of shore jurisdictions, especially in Bermuda, Hong Kong and Singapore, is behind the slowdown in the pace of globalization and will affect expansion of the financial services industry in the future, according to a survey of Pricewaterhouse Coopers. This study also found that 50% of the companies reported that that between 10% and 20% of their current activity was a result of outsourcing. Financial service entities provide offshore employment as a cost savings strategy or as a way to benefit from greater operational efficiency and increased shareholder value.

Asset protection trusts and other types of trust entities will continue to be the big drawing card in the 2000s. One may expect various new versions of offshore trusts to emerge in addition to the frequently used purpose, spendthrift, charitable, protective, special, unit, bare, blind, honorary, inter vivos, grantor, simple, testamentary, and support or accumulation trusts.

Government's View of APT. The incredible rush of overseas companies and individuals to establish trusts and other operations in the British Virgin Islands continues despite the decision of the government not to adopt an APT law. This sudden reversal in direction primarily is a result of (1) the government's decision not to disturb the course of the highly successful International Business Company Law and (2) the conflict between the business community and government officials on the time limit before a creditor's action to bring suit is no longer permissible. After several drafts of a proposed new trust act in which the business community sought

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a Belize-type trust of “instant immunity” versus a government preferred “Cayman Islands six — year period” for a creditor to bring suit, a three-year agreement was reached, and then the bill was finally phased out altogether.

MAJOR CONSIDERATIONS WHEN CREATING FOREIGN TRUSTS

Surveys show that nine out of ten major legal and accounting firms in the key cities of the world (particularly in the United States and the United Kingdom) frequently are reluctant to recommend a specific nation among the tax havens that have adopted foreign trust legislation unless they have the actual laws as approved by the respective governments in their possession. With this in mind, *International Trust Laws and Analysis* is designed to fulfill these needs.

Analysis and Comparative Country Charts. To facilitate the selection of the offshore center most suitable for the potential settlor, we analyze 29 of the leading issues for each of the countries that should be considered by practitioners before a decision can be made. In an effort to further ease any anxiety a lawyer may confront, a comparison chart at the beginning of the text analyzes each of the 29 vital elements required to make a recommendation with confidence.

Statute of Limitations. The strategy of a settlor or his or her professional adviser may be to select a politically stable offshore center with a reasonably short statute of limitations period for protection against a creditor’s suit.

The Cook Islands, the sophisticated Polynesian island country in the South Pacific, might be the adviser’s first choice with a two-year statute. In contrast, the Central American republic of Belize (known as British Honduras prior to independence in 1969) because of its desire to become the world’s most advantageous APT center, offers instant immunity from court action by creditors. Still the adviser may have reason to choose the Cook Islands with its two-year time limit. Even though liberal asset protection features of Belize’s 1992 Trusts Act have made this Central

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FOREWORD

ECUADOR

This chapter is up-to-date as of 1 October 2017

ECUADOR

ECUADOR

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ECUADOR

ECUADOR***ANALYSIS OF THE COMPANY LAWS**

¶1] **Company Types.** The Companies Law and its Regulation recognizes five types of companies in Ecuador:

- (1) Limited Liability Company (Referred to as “Compañía Limitada Cia. Ltda”)
- (2) Corporation (Referred to as “Sociedad Anónima S.A.”)
- (3) Closed Limited Partnership (Referred to as “Comandita Simple”)
- (4) Limited Partnership by Shares (Referred to as “Comandita por Acciones”)
- (5) Company Under a Collective Name (Referred to as “Comandita en nombre Colectivo”)

In addition, there are subsidiaries of foreign companies, and Civil and Commercial Companies that are regulated by civil judges.

The most widely used types of companies are Limited Liability Companies and Corporations, as there is limited liability in both of these corporate forms.

The following table summarizes the most important characteristics of Corporations and Limited Liability Companies, as well as their obligations:

General Aspects	Corporation (S.a.)¹	Limited Liability Company (Cia. Ltda.)²
Control	The controlling entity is the Superintendence of Companies, Bonds and Insurance (hereinafter “Superintendence of Companies”).	The controlling entity is the Superintendence of Companies Bonds and Insurance (hereinafter “Superintendence of Companies”).
Liability	The shareholders are liable up to the amount of their contribution to the share capital. In case there is a final judgment from a judge determining that the Corporation has committed fraud, it could be possible to pierce the corporate veil if the judge finds it necessary.	The shareholders are liable up to the amount of their contribution to the share capital. In case there is a final judgment from a judge determining that the Corporation has committed fraud, it could be possible to pierce the corporate veil if the judge thinks it’s necessary.

*Chapter written by Agustin Acosta Cárdenas, partner at Paz Horowitz in Quito. He can be reached at aacosta@pazhorowitz.com or by phone at 593 2 3982900 Ext. 5421. Mr. Cárdenas was assisted by two junior lawyers at his firm: Isabel Samaniego and Esteban Vivero.

¹Companies Law. Chapter Corporations. Official Gazette No. 312, published 05 / nov / 1999. Articles 143 – 307.

²Companies Law. Chapter Corporations. Official Gazette No. 312, published 05 / nov / 1999. Articles 93 – 142.

General Aspects	Corporation (S.a.)¹	Limited Liability Company (Cia. Ltda.)²
Shareholders	At least two shareholders are required for incorporation. These shareholders must be registered in the records of the Superintendence of Companies and in the Shareholder Register of the Company. There is no limit to the number of shareholders.	At least two shareholders are required for incorporation. These shareholders must be registered in the records of the Superintendence of Companies and in the Shareholder Register of the Company. There is a maximum of fifteen shareholders.
Persons authorized to be shareholders	Any person or legal entity may become a shareholder.	There is a prohibition for: financial institutions, insurance companies, capitalization and savings companies, and foreign limited corporations.
Shareholders Meeting	At least one general shareholder meeting must be held by April of each year.	At least one meeting must be held by April of each year.
Board of Directors	Not legally required, but it may be included in the bylaws or a shareholders agreement.	Not legally required, but it may be included in the bylaws or a shareholders agreement.
Corporate Governance	General Manager generally acts as the legal representative. The President could act as legal representative if the General Manager is not able to participate.	General Manager generally acts as the legal representative. The President could act as legal representative if the General Manager is not able to participate.
Minimum Initial Share Capital	The minimum initial capital is: USD 800.00 If there are foreign shareholders, they must register their capital contribution at the Central Bank of Ecuador as a foreign investment. At least 25% of the initial capital must be paid-up at the time of the incorporation; the remaining amount must be paid within the next 24 months.	The minimum initial capital is: USD 400.00 If there are foreign shareholders, they must register their capital contribution at the Central Bank of Ecuador as a foreign investment. At least 50% of the initial capital must be paid-up at the time of the incorporation; the remaining amount must be paid within the next 12 months.

General Aspects	Corporation (S.a.)¹	Limited Liability Company (Cia. Ltda.)²
Shareholders' Rights	Those set forth by Ecuadorian statutory provisions and the bylaws of the company. Additionally, there are rights included in the Shareholders Agreement. The Shareholders Agreement must be aligned with the bylaws, and if there are changes, the bylaws must be reformed as well.	Those set forth by Ecuadorian statutory provisions and the bylaws of the company. Additionally, there are rights included in the Shareholders Agreement. The Shareholders Agreement must be aligned with the bylaws, and if there are changes, the bylaws must be reformed as well.
Maximum Authority	Shareholders General Assembly.	Shareholders General Assembly.
Shareholder Indebtedness	Shareholders can lend funds to the Company; however, this must be registered for accounting purposes as a contribution for future capitalization or a loan. These funds should generate interest with the corresponding tax implications.	Shareholders can lend funds to the Company; however, this must be registered for accounting purposes as a contribution for future capitalization or a loan. These funds should generate interest with the corresponding tax implications.
External Debt	Free indebtedness in equal conditions.	Free indebtedness in equal conditions.
Share Titles	Only nominative shares to be issued and registered with the formalities of Ecuadorian law.	Only nominative shares to be issued and registered with the formalities of Ecuadorian law.
Transfer of Shares	The shareholders may transfer their shares freely. The transfers must be reported to the Superintendence of Companies within 8 days of the transfer.	The transfer of shares requires a unanimous consent of the shareholders. The transfer must be done through public deed. The transfer will be registered at the Mercantile Registry and notified to the Superintendence of Companies within 8 days of the transfer.

General Aspects	Corporation (S.a.) ¹	Limited Liability Company (Cia. Ltda.) ²
	<p>In accordance with Resolution 536 of the Tax Regulation Entity (SRI), when the obligated subject presents a change in shareholding composition, it must present such information by the 28th of the following month when the shares were transferred. If the company does not comply with this obligation, the Tax Regulation Entity (SRI) may collect 25% of its taxable base at the end of the year even if the company does not have any shareholders located in a tax haven.</p> <p>In the case of foreign investment, transfers must be registered with the Central Bank. Late registration of the investment will incur fines. The company must keep a record of transfers, which will be checked occasionally by the Superintendence of Companies.</p>	
Income Tax. Tax Rate	<p>The Tax at the finalization of the year will be 22% of the income of the company, but if a shareholder or indirect shareholder is located in a tax haven, then the percentage increases to 25%.</p>	<p>The Tax at the finalization of the year will be 22% of the income of the company, but if a shareholder or indirect shareholder is located in a tax haven, then the percentage increases to 25%.</p>
Obligations with the Superintendence of Companies	<p>The following documents must be submitted to the Superintendence of Companies each year: Financial statements, Manager report, Commissioner report, List of Shareholders, and in some cases, independent auditor's report (when the company has over 1,000,000.00 in assets).</p>	<p>The following documents must be submitted to the Superintendence of Companies each year: Financial statements, Manager report, Commissioner report, List of Shareholders, and in some cases, independent auditor's report (when the company has over 1,000,000.00 in assets).</p>

General Aspects	Corporation (S.a.) ¹	Limited Liability Company (Cia. Ltda.) ²
Nationality of the Company's Officers	<p>Regarding foreign shareholders, the legal representative of such shareholders must provide certain information, such as shareholders list, good standing certificate from the country of origin, and a list of the existing attorneys in fact, and record these with the Superintendence of Companies.</p> <p>The President and General Manager may be Ecuadorian or foreign. However, a foreign General Manager must have a special visa.</p>	<p>With respect to foreign shareholders, the legal representative of such shareholders must provide certain information, such as shareholders list, good standing certificate from the country of origin, and a list of the existing attorneys in fact, and record these with the Superintendence of Companies.</p> <p>The President and General Manager may be Ecuadorian or foreign. However, a foreign General Manager must have a special visa.</p>
Social Security for the Officers	<p>The General Manager must be a member of the Ecuadorian Social Security Institute and the Company must be registered at such entity.</p>	<p>The General Manager must be a member of the Ecuadorian Social Security Institute and the Company must be registered at such entity.</p>
Information to report to Internal Revenue Service (Tax Regulation Entity)	<p>Every corporation has the obligation to register themselves with the Internal Revenue Service (SRI) and obtain a RUC (Taxpayer Registration Number); issue and deliver invoices that have been authorized by SRI (Tax Regulation Entity), for all of their transactions and present tax declarations in accordance with their economic activity, as the pertinent annexes. Additionally, they must provide the fiscal domicile or legal address of the company to the SRI, as well as the identity and address of its shareholders.</p> <p>The shareholders, who are legal entities, must indicate their domicile or legal address, and the identity of the shareholders until the ultimate beneficial owner is identified.</p>	<p>Every corporation has the obligation to register themselves with the Internal Revenue Service (SRI) and obtain a RUC (Taxpayer Registration Number); issue and deliver invoices that have been authorized by SRI (Tax Regulation Entity), for all of their transactions and present tax declarations in accordance with their economic activity, as the pertinent annexes. Additionally, they must provide the fiscal domicile or legal address of the company to the SRI, as well as the identity and address of its shareholders.</p> <p>The shareholders, who are legal entities, must indicate their domicile or legal address, and the identity of the shareholders until the ultimate beneficial owner is identified.</p>

[¶2] Licensing of Corporate Agents. Any person (natural person or legal entity) can incorporate a company in Ecuador. There is no need to have an attorney. The process is rather simple, and in June 2014, the Superintendence of Companies issued its Resolution No. 8 in which it created a new way of incorporating a company. This new process allows any person to incorporate a company by a Simplified Constitution Process online at the website of the Superintendence of Companies.

[¶3] Company name. The Companies Law establishes that the Company Name must be clearly distinguished from any other existing Company Name. Furthermore, the law states that a company's name is part of the company's property, and therefore it can't be used by other companies.³

The Superintendence of Companies, which is the controlling entity, uses the following parameters to reserve and register the name of a company. The elements of a Company name must include:

- (1) Objective Name: Name that reveals the activity that conforms the social object of the company. Example: Automotive
- (2) Company name: It consists of the name or surname of one or more of the partners of the company. Example: Ford
- (3) Peculiar Expression: Word invented that does not exist in any language.
- (4) Type of company: It is the kind of company.⁴
 - (a) Limited Liability Company (CIA. LTDA. or C. LTDA.)⁵
 - (b) Corporation (S.A. or C.A.)⁶

Reservation Process:

- (1) The reservation request must be made through the institutional web portal: www.supercias.gob.ec.
- (2) The system will accept a nomination proposal for each of the areas, and the system will validate it when they meet the requirements. Afterwards, the Superintendence system will send a confirmation email automatically.
- (3) The reservation of a proposed Company Name must distinguish at least 25% of the peculiarities reserved or existing.
- (4) Once the denomination has been reviewed, the system will issue the corresponding reservation document.⁷

[¶4] Fees. The expenses for registering a company vary according to the company's capital at the time of its constitution. There are 2 expenses that must be paid. Those are: i) Notary Public expenses, and ii) Mercantile Registry expenses.

The rates may vary, but here are general expenses that the Mercantile Registry and the Notary charge:

³ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 16.

⁴ Superintendence of Companies, Instructive "How to Structure my Denomination".

⁵ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 92.

⁶ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 143.

⁷ Judicial Review, Law Ecuador. Incorporation of Companies: Reservation of Denominations. Recovered from <http://www.derechoecuador.com/articulos/detalle/archive/doctrinas/derechosocietario/2014/11/04/constitucion-de-companias---reserva-de-denominaciones->.

(1) Mercantile Registry Expenses:⁸

Corporate Act:	Cost:
Company Constitution	The amount will be calculated taking into account a fixed value of USD 25.00 plus 0.05% of the value of the amount of the corporate act. Example: Constitution of a Corporate S.A. – Initial Share Capital = USD 800 Cost Calculation: – Fixed Value = USD 25 – Addition Value = 0.05% of USD 800 = USD 40 – Total = USD 65

(2) Notary Public Expenses:⁹

Rate of the Corporate Act:	Expense:
Company Constitution. Capital USD 0 – USD 800.00	USD 76.16
Company Constitution. Capital USD 800.01 – USD 2000.00	USD 114.24
Company Constitution. Capital USD 2,000.01 – USD 5,000.00	USD 133.28
Company Constitution. Capital USD 5,000.01 – USD 10,000.00	USD 171.36
Company Constitution. Capital USD 10,000.01 – USD 250,000.00	USD 228.48
Company Constitution. Capital USD 25,000.01 – USD 50,000.00	USD 285.60
Company Constitution. Capital USD 50,000.01 – onwards.	USD 380.80

[¶5] Registered Office and Registered Agent. All Ecuadorian Companies must have their main domicile in Ecuadorian territory.¹⁰ The domicile must be defined in the bylaws of the company.¹¹ All this information must be updated in the controlling entity, and the company must notify the Superintendence of Companies and SRI if there are any changes.

All national or foreign companies that negotiate or contract in Ecuador must have a representative that can answer claims and fulfill the respective obligations that the company may have. If the company's activities involve the execution of public works, the provision of public services or the exploitation of natural resources, the company is required to follow special normative.¹²

⁸Commercial Register. Table of Fees.

⁹Judiciary Council. List of Fees and Rates "Notary Table".

¹⁰Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 5.

¹¹Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 4.

¹²Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 6.

¶6 Registration. The company must be incorporated by public deed, which must be registered in the Mercantile Registry of its main domicile. The company acquires legal personality the moment it is registered in the Mercantile Registry.

Once the company is registered in the Mercantile Registry, the public deed is sent to the Superintendence of Companies, which publishes the company's information and finalizes the registration process.

Finally, the company must obtain a RUC (Taxpayer Registration Number) granted by the SRI.¹³ Once the company obtains the RUC, it is allowed to operate.

As of May 13, 2014, a new simplified process for company registration was established; the process is called "Online Registration".¹⁴ This registration process has been carried out with text of a model of corporate bylaws drawn up by the Superintendence of Companies, and following all the steps for the registration of a new company¹⁵, this process does not need the sponsorship of any lawyer.

¶7 Reporting and Recordkeeping. Annual Filing. The Shareholders' General Meeting is the governing body of the company, representing the shareholders' will.¹⁶ The law requires the Shareholders' General Meeting to meet at least one time per year, and in this assembly the agenda should address:¹⁷

- (1) The approval of the annual accounts, the balance sheet, the reports presented by the administrators, directors and commissioners, if applicable. If the company has independent audits, the Board should also approve the independent auditors' reports.
- (2) Determination of the remuneration of the commissaries, administrators and members of the administration.
- (3) Resolve on profits of the company.¹⁸

Resolution No. SCVS-INC-DNCDN-2016-011, submitted by the Superintendence of Companies, establishes the companies that require foreign audits, which are:

- (1) National mixed-economy companies and corporations in which shareholders are juridical persons of public or private law with social or public purposes. For both National mixed-economy companies and the corporations mentioned above, assets must exceed USD 100,000.
- (2) Foreign subsidiaries or foreign companies organized as legal entities that have been established in Ecuador, whose assets exceed USD 100,000.
- (3) Corporations or Limited Liability Companies, whose assets exceed USD 500,000.
- (4) Companies forced by the Superintendence of Companies to present consolidated balance sheets.
- (5) Public interest companies defined in the relevant regulations.¹⁹

¶8 Formative Documents. There are two main documents needed for the constitution of a company; the founding members must sign the deed of incorporation, and the company's bylaws. Once the deed of incorporation is signed, it must be registered, as mentioned in section six, in the Mercantile Registry.²⁰

¹³ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 136.

¹⁴ Resolution Superintendence of Companies Values and Insurance No. 8, published in the Official Gazette Supplement 278 of June 30, 2014.

¹⁵ Superintendence of Companies. User's guide. Recovered from <http://www.supercias.gob.ec/portalConstitucionElectronica/>.

¹⁶ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 230.

¹⁷ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 234.

¹⁸ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 231.

¹⁹ Superintendence of Companies. Resolution No. SCVS-INC-DNCDN-2016-011.

²⁰ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 146.

Article 150 of the Ecuadorian Companies Law establishes the information that must be detailed in the deed of incorporation and bylaws.²¹ The required information is:

- (1) The place and date when the contract was signed.
- (2) The name, nationality and domicile of the natural or juridical persons that constitute the company and their will to found it.
- (3) The corporate purpose, duly specified.
- (4) Its name and duration.
- (5) The amount of the share capital, with the expression of the number of shares in which it is divided, the nominal value, its class, as well as the name and nationality of the subscribers of the capital.
- (6) The indication of what each partner subscribes and will pay in money or other goods.
- (7) The domicile of the company.
- (8) The form of administration and the powers of the administrators.
- (9) The form and times of convening general meetings.
- (10) The form of appointment of the administrators and the clear enunciation of the officials who have the legal representation of the company.
- (11) The rules of distribution of profits.
- (12) The determination of cases in which the company must be dissolved in advance.
- (13) How to proceed with the appointment of liquidators.

[¶9] Powers. The deed of incorporation normally establishes the powers of the legal representative in order to carry on with the normal operation of the company. However, the Legal Representative may grant, on behalf of the company, powers to other people, especially lawyers so that they can act in the name of the Company with public authorities.

[¶10] Shareholders/Members. As a general rule, companies in Ecuador must have at least two shareholders or partners that subscribe all of the shares or quotas comprising the share capital of the company. There are specific rules that govern shareholders in corporations and partners in limited liability companies, which will be analyzed hereunder.

Regarding Corporations, there must be at least two shareholders, which can be individuals or corporate entities. However, article 147 of the Companies Law states that national legal entities may be founders or shareholders of anonymous companies, but foreign companies may only be shareholders if their capital is represented exclusively by shares or nominative shares, that is, issued for, or on behalf of, their shareholders, partners, members or shareholders, and in no way to the bearer. Shareholders in a Corporation are liable up to the extent of their capital holding.²²

With respect to limited liability companies, there must be at least two partners, which can be either individuals or corporate entities; however, article 110 of the Companies Law states that banks, insurance companies, capitalization and savings companies, and foreign public limited companies cannot be partners of a limited liability company. A foreign limited company may be a member of a limited liability company when its capital is represented exclusively by registered shares, that is, issued to its partners or members, and in no way to the bearer. Partners in a Limited Liability Company are liable up to the extent of their capital holding.²³

²¹ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 150.

²² Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 147.

²³ Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 110.

¶111 Single Member Companies. Ecuadorian Law does not recognize single shareholder or single member companies. According to the Companies Law, a company is essentially a contract, and according to the Ecuadorian Civil Code, a contract requires at least two parties in order to exist.²⁴ Furthermore, Article 147 of the Companies Law states that “A corporation cannot subsist with less than two shareholders, except for companies whose capital belongs entirely to a public sector entity.” Regarding limited liability companies, Article 92 of the law states that a limited liability company is contracted between two or more persons, who are solely liable up to the amount of their individual contributions.

¶112 Share Capital. The capital of corporations is divided into shares, each representing a fraction of the company’s capital, as well as political and economic rights. In corporations, there are two types of shares, “common shares” and “preferred shares”, depending on what the company’s bylaws state. According to Article 170 of the Companies Law, “Common Shares” confer all the fundamental rights that the law recognizes to shareholders. In contrast, “Preferred shares” do not have voting rights, but shareholders that own “preferred shares” have special rights in the payment of dividends and in the liquidation of the company.²⁵

It is important to note that Article 171 of the Companies Law states that no more than 50% of the company’s subscribed capital can be “preferred shares”.

¶113 Directors and Officers. In Ecuador, the administration and management of a Corporation or Limited Liability Company is controlled by different bodies, and these bodies depend on the faculties that the bylaws grant them. It is important to establish that all administrators are jointly responsible to the company and third parties regarding:²⁶

- (1) The truth of the subscribed capital and the truth of the delivery of the assets contributed by the shareholders.
- (2) The actual existence of declared dividends.
- (3) The existence and accuracy of the company’s books.
- (4) The exact fulfillment of the agreements of the general meetings.
- (5) In general, compliance with the formalities prescribed by the Law for the existence of the company.

The main governing bodies of a Corporation and a Limited Liability Company are:

- (1) **General Meeting of Shareholders:**
 - (a) The general meeting formed by the shareholders, legally convened and called to order, is the maximum authority of the company.²⁷ This general meeting has the power to resolve on all matters relating to the business, and to make the decisions deemed appropriate in defense of the company.
 - (b) It is the responsibility of the general meeting to:²⁸
 - (i) Appoint and remove the members of the administrative bodies of the company, commissioners, or any other person or official whose office was created by the bylaws.
 - (ii) Annually review the accounts, balance sheet, and reports of the administrators, directors and commissar, and the independent auditors’ reports.

²⁴Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 1/ Civil Code. Official Gazette No. 46, published 24 / jun / 2005. Art.1454.

²⁵Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 170.

²⁶Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 256.

²⁷Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 230.

²⁸Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 231.

- (iii) Determine the remuneration of the commissaries, administrators and members of the administration and control bodies.
 - (iv) Resolve on the distribution of social benefits.
 - (v) Resolve on the redemption of shares.
 - (vi) Define all modifications to the bylaws.
 - (vii) Resolve on the merger, transformation, spin-off, dissolution and liquidation of the company.
 - (viii) Designate any liquidator.
- (2) **General Manager/Legal Representative:**
- (a) Our legislation establishes that a General Manager is a person that manages the company.²⁹ In Ecuador, it is common for the General Manager to hold the status of Legal Representative, having a lot of power within the company. The most important faculties they have include:³⁰
 - (i) Taking care, under their responsibility, of the corporate ledgers, such as the minutes of general meetings and directories, the accounting books and the register of shareholders.
 - (ii) Delivering to the commissioners and submitting at least every year to the general meeting, a duly-founded report on the company's situation, accompanied by the balance sheet and the detailed and accurate inventory of the stocks, as well as the profit and loss account.
 - (iii) Convening general meetings of shareholders in accordance with the Law and the bylaws.
 - (iv) Intervening as secretary in general meetings.
- (3) **Board of Directors:** The company can also constitute a Board of Directors in its bylaws. The obligations and responsibilities of the decisions made by the Board of Directors shall be attributable to all members.³¹ This Board of Directors may be aware of all the points described above (General Manager) and those conferred in the bylaws.
- (4) **Commissioners:**
- (a) Commissioners have the unlimited right to inspect and supervise all social operations, without interference from administration, and to ensure that the company is following its purpose as established in the bylaws.³² For this, the commissioners must supervise, in all its parts, the administration of the company, ensuring that it is adjusted not only to the requirements, but also the rules of good administration. Within this capacity, they must:³³
 - (i) Ensure the constitution and subsistence of the guarantees of the administrators and managers.
 - (ii) Require the administration of the delivery of a monthly balance of verification.
 - (iii) Examine the books and papers of the company in the cash and portfolio statements.
 - (iv) Review the balance sheet and the profit and loss account and submit a duly substantiated report to the general meeting.

²⁹Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 117.

³⁰Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 263.

³¹Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 271.

³²Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 274.

³³Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 279.

- (v) Request that administrators include the points they deem appropriate in the agenda.
- (vi) Attend the general meetings, with an informative voice.
- (vii) Monitor company operations at all times.
- (viii) Ask the administrators for reports when they deem necessary.
- (ix) Reasonably propose the removal of the administrators.
- (x) Submit complaints received about the administration to the general meeting, accompanied by the report relating to them.

¶14 Meetings. The main governing body of a Corporation is the Shareholders' General Meeting. A Shareholders' General Meeting can be ordinary or extraordinary.³⁴ Corporations are obliged by law to hold at least one Annual Ordinary Shareholders Meeting, which must be held during the first three months following the end of the fiscal year to deliberate, at a minimum, the following issues (as mentioned in section 7). During this meeting, the General Shareholders must approve the following agenda:

- (1) The approval of the annual accounts, the balance sheet, the reports presented by the administrators, directors and commissioners, if applicable. If the company has independent audits, the Board should also approve the independent auditors' reports.
- (2) Determination of the remuneration of the commissaries, administrators and members of the administration.
- (3) Resolve on the Company's profit.³⁵

Extraordinary meetings can be held at any time of the year. However, in both ordinary and extraordinary shareholders meetings, only the matters mentioned in the calling may be discussed.

Limited Liability Companies have the same rules regarding ordinary and extraordinary Partners Meetings. This means that this type of company is also required by law to hold an annual meeting during the three months following the end of the fiscal year.

For both corporations and Limited Liability Companies, shareholders may attend personally or be represented by another person. It is also important to note that, with regards to corporations, decisions are made in accordance with the majority stated in the company's bylaws or in the law, based on the shares with voting rights and proportionally to their paid-up amount. On the other hand, with respect to Limited Liability Companies, resolutions will be made in accordance with the majority established in the Bylaws or in the Law, which will be computed in relation to the share capital attending the session.

¶15 Resolutions. An approval resolution made by the Shareholders' General Meeting is necessary in order to enact the following corporate acts: increase or decrease in capital, capitalization of profits or reserves, transformation, merger, spin-off, early dissolution, reactivation, liquidation, and, in general, any modification to the bylaws. The Shareholders' General Meeting must be conformed by at least half of the paid-up capital. If the Shareholders' Meeting cannot meet due to a lack of quorum, a second calling of the Shareholders' Meeting can be completed with one-third of the paid-up capital. If with the second calling for the Shareholders' Meeting does not have the necessary quorum, the third and final calling should be made, in which any number of shareholders present at such meeting will suffice.³⁶

³⁴Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 119.

³⁵Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 231.

³⁶Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 240.

¶16] General Accounting Practices. The general accounting practices are the routines for the financial activities of companies. Additionally, they can be the accounting practices implemented and adhered to, typically by an accountant.

An accounting practice is intended to enforce a guideline. It exists as recording of financial issues that are important for the monitoring of economic activities. In this sense, the accounting practice must be understood as the normal practical application of accounting that occurs within a business. In accounting practices, there are some obligations to comply with in order to avoid taxes issues:

In Ecuador, companies must comply with the followings requirements: pay income taxes, file the declaration and advance payment of income taxes, file a declaration and payment of income tax credit and value-added tax.

Regarding purchases and acquisitions, there are other requirements with respect to the economic period (360 days). This is a requirement for all companies in Ecuador, as this step generates a transactional annex that must be reported.

In addition, companies must file all information regarding their shareholders in order to identify the ultimate beneficial owners of the company. This process is important as it is necessary to provide information to the competent authorities regarding the beneficiaries of economic activities within the accounting processes, and the justification of these acts.

¶17] Mergers & Acquisitions. The M&A of a company occurs:³⁷

- (1) When two or more companies come together to form a new company.
- (2) When one or more companies are absorbed by another company that continues to subsist.

In Ecuador, for the merger of any company, the absorbing company must approve the operation and the reform of the bylaws in a special meeting convened especially for such purpose.³⁸ After this, dissolution of the absorbed company will be agreed upon, which must be accepted by the Superintendence of Companies. If this is agreed upon, the respective assets will be transferred to the new company.³⁹ It is important to establish that the transfers of assets, whether tangible or intangible, may be made at present or market value.⁴⁰

The shareholders of the absorbed company will participate in the new company, as the case may be, and they will receive the number of shares or acquire share capital proportional to their respective shares.⁴¹

¶18] Liquidations/Dissolution. According to Article 361 of the Companies Law, there are thirteen (13) causes for a company to enter into Dissolution, including:

- (1) By expiration of the term of duration established in the corporate contract;
- (2) Due to the transfer of the principal address to a foreign country;
- (3) By bankruptcy ordered by the company, legally enforced;
- (4) By conclusion of the activities for which it was formed or because of manifest impossibility of fulfilling the corporate purpose;
- (5) Due to losses of fifty percent or more of the share capital, or with regards to limited liability companies, corporations, due to a loss of all the reserves and at least half of the capital;

There is a special regulation from the Superintendence of Companies that specifies the liquidation and dissolution process of companies in Ecuador.

³⁷Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 337.

³⁸Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 340.

³⁹Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 338.

⁴⁰Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 339.

⁴¹Companies Law. Official Gazette No. 312, published 05 / nov / 1999. Art. 338.

According to this regulatory document, the Superintendence of Companies ex officio, or at the request of a party, will declare a company inactive when it is verified that it has not complied with the presentation of the annual documents set forth in the Companies Law for two consecutive years. The Superintendence will publish the corresponding resolution on its institutional webpage.

Within thirty days of publication of the inactivity resolution on the Superintendence webpage, the Company must present the annual documents listed in Article 20 of the Companies Law.

Upon verification of compliance with the provisions stated in the preceding paragraph, the Superintendent, or its delegate, shall issue the inactivity resolution if it is a single company, or in the event of a mass resolution, a resolution issued by the Superintendence in which it declares, at the same time, that many companies shall be dissolved.

If after the aforementioned thirty-day term the company does not present the required documents, the Superintendent, or its delegate, may declare ex officio the dissolution and order the liquidation of the company.

If the dissolution results from an agreement of the partners or shareholders, a request shall be presented to the Superintendence of Companies, which must include a public deed containing the minutes of the general meeting that resolved said dissolution.

The liquidator will be appointed by the Superintendence. Regarding the case of voluntary dissolution, the appointment will be made according to the provisions of the company's bylaws, or what was resolved at the shareholders' general meeting. If the general meeting does not appoint a liquidator, the Superintendence will appoint the liquidator.

[¶19] Governing Law. The main laws that govern companies in Ecuador are:

- (1) The Constitution.
- (2) The Companies Law
 - (a) Corporation (Starting at Article 144)
 - (b) Limited liability Company (Starting at Article 92)
- (3) The Civil Code.
- (4) Companies Law Regulations.
- (5) Production Code.
- (6) Resolutions issued by the Superintendence of Companies and the Mercantile Registry.

[¶20] Forms. Certain forms are available in Spanish at <http://www.supercias.gob.ec/>.