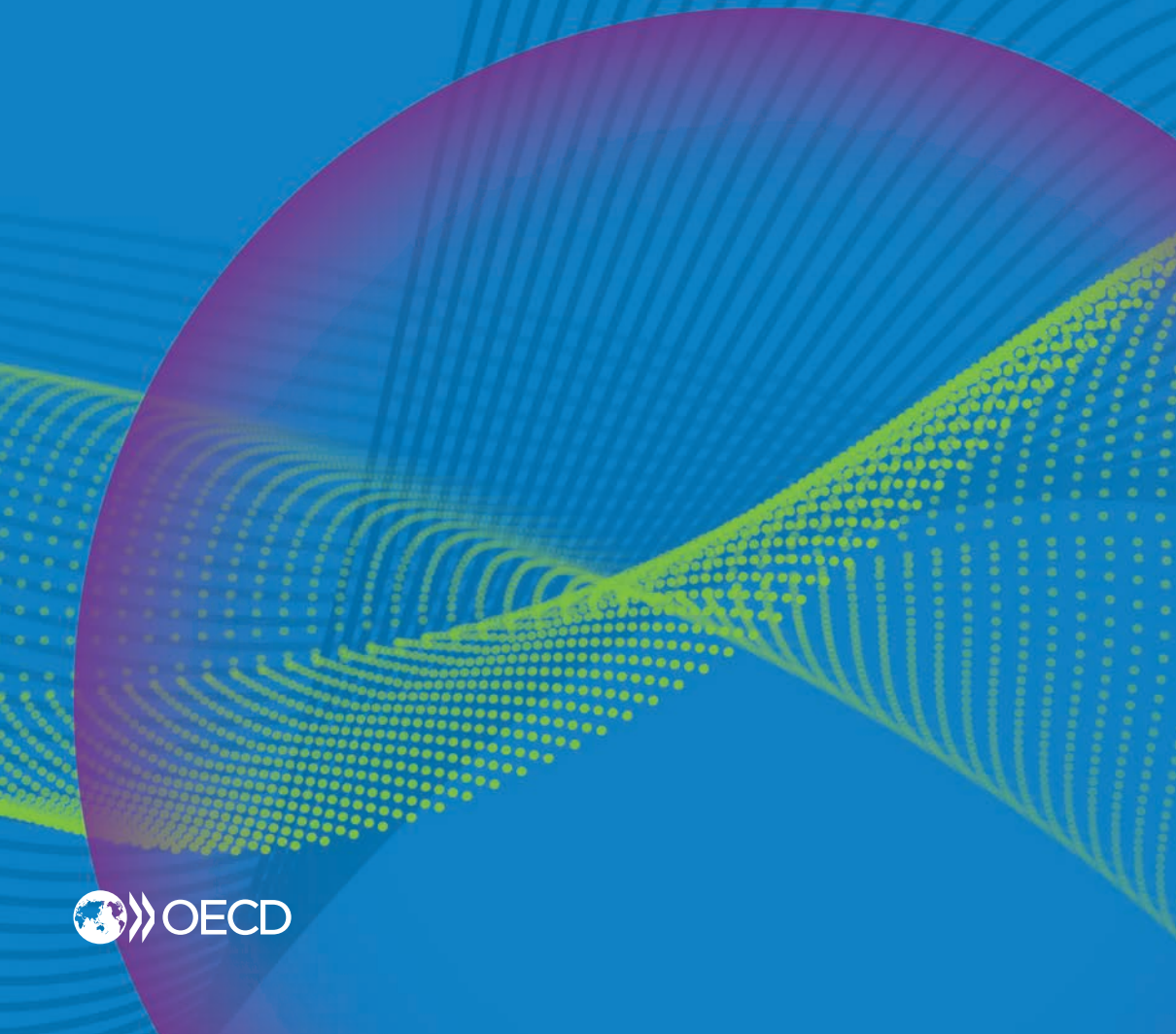
GLOBAL FORUM ON

TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

ECUADOR

2022 (Second Round, Phase 1)



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Ecuador 2022 (Second Round, Phase 1)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST



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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 160 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, Annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2016 TOR	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
AML Law	The Ecuadorian AML law, namely Ecuadorian Organic Law on the Prevention, Detection and Eradication of the Crime of Money Laundering and the Financing of Crimes (*Ley Orgánica de Prevención, Detección y Erradicación del Delito de Lavado de Activos y del Financiamiento de Delitos*)
AML Regulation	Regulation to Ecuadorian AML Law
APS report	Report on Shareholders, Participants, Partners, Board Members and Administrators *(Anexo de Accionistas, Partícipes, Socios, Miembros de Directorio y Administradores)*
ARLAFDT	Compliance Norm for the Management of the Risk of Money Laundering and Financing of Crimes, such as Terrorism (*Norma de Control para la Administración del Riesgo de Lavado de Activos y Financiamiento de Delitos, como el Terrorismo*) by the Ecuadorian Superintendency of Banks
BCE	Central Bank of Ecuador (*Banco Central del Ecuador*)
CDD	Customer Due Diligence
COMYF	Ecuadorian Monetary and Financial Organic Code (*Código Orgánico Monetario y Financiero*)
DTC	Double Taxation Convention
EOI	Exchange of Information
EOIR	Exchange of Information on Request

FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IFRS	International Financial Reporting Standards, accounting standards issued by the IFRS Foundation and the International Accounting Standards Board.
LC	Ecuadorian Company Law (*Ley de Compañías*)
LOEPS	Ecuadorian Organic Law of the Popular and Solidary Economy (Ley Orgánica de la Economía Popular y Solidaria)
LRTI	Ecuadorian Internal Tax Regime Law (*Ley de Régimen Tributario Interno*)
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
ROTEF	Report on Financial Economic Operations and Transactions (*Reporte de Operaciones y Transacciones Económicas Financieras*)
RUC	Ecuadorian Taxpayers Unique Registry (*Registro Único de Contribuyentes*)
SAS	Ecuadorian Simplified Stock Company (*Sociedad por Acciones Simplificada*)
SB	Ecuadorian Superintendency of Banks (*Superintendencia de Bancos*)
SBU	Ecuadorian Unified basic salary (*Salario básico unificado*)
SCVS	Ecuadorian Superintendency of Companies, Securities and Insurances (*Superintendencia de Compañías, Valores y Seguros*)
SEPS	Ecuadorian Superintendency of Popular and Solidary Economy (*Superintendencia de Economía Popular y Solidaria*)
SRI	Ecuadorian tax administration (*Servicio de Rentas Internas*)
TIEA	Tax Information Exchange Agreement
UAFE	Ecuadorian Financial Information Unit (*Unidad de Análisis Financiero y Económico*)

Executive summary

1. This report analyses the implementation of the standard of transparency and exchange of information on request in Ecuador on the second round of reviews conducted by the Global Forum. Due to the COVID-19 pandemic, the assessment team's on-site visit could not take place. The present report therefore assesses the legal and regulatory framework in force as of 22 April 2022 against the 2016 Terms of Reference (Phase 1 review). The assessment of the practical implementation of the legal framework of Ecuador will take place separately at a later time (Phase 2 review).

2. Ecuador joined the Global Forum in 2017. Hence, the current report is the first assessment of the legal and regulatory framework for transparency and exchange of information on request in Ecuador.

3. This report concludes that Ecuador has a legal and regulatory framework that broadly ensures the availability of, access to and exchange of relevant information for tax purposes, but that this framework requires improvement in the areas of availability of information.

Summary table of determinations on the legal and regulatory framework of Ecuador

Element		Determination
A.1	Availability of ownership and identity information	Needs improvement
A.2	Availability of accounting information	Needs improvement
A.3	Availability of banking information	Needs improvement
B.1	Access to information	In place
B.2	Rights and Safeguards	In place
C.1	EOIR Mechanisms	In place
C.2	Network of EOIR Mechanisms	In place
C.3	Confidentiality	In place
C.4	Rights and safeguards	In place
C.5	Quality and timeliness of responses	Not applicable
	OVERALL RATING	Not applicable

Note: The three-scale determinations for the legal and regulatory framework are In place, In place but certain aspects of the legal implementation of the element need improvement (needs improvement), and Not in place.

Transparency framework

4. Since joining the Global Forum in 2017, Ecuador has made efforts to improve its legal and regulatory framework in order to comply with the standard, including to ensure the availability of information on the legal and beneficial owners of legal entities and arrangements.

5. The Ecuadorian Company Law ensures that the Superintendency of Companies, Securities and Insurance (responsible for the Company Register) has up-to-date legal ownership information for all domestic companies. The Tax Administration also has legal ownership information for all the relevant entities and arrangements through reporting requirements.

6. The availability of beneficial ownership information is addressed mainly through a provision introduced in November 2021 establishing a registry of beneficial owners, in the process of being implemented, and through anti-money laundering (AML) obligations, even though there is no legal requirement for all relevant entities and arrangements to engage on a continuous basis with an AML-obliged subjects.

7. Ecuador's company and tax laws place the necessary requirements of maintaining reliable accounting records with underlying documentation on all Ecuadorian legal entities and arrangements and for foreign entities carrying out economic activities in Ecuador. In addition, under the Tax Code, taxpayers are required to keep records, including accounting documents, to substantiate their tax obligations. However, some gaps exist in case a company ceases its economic activities in Ecuador (due to its dissolution or to the relocation of its activities abroad).

8. Banking information is generally available in Ecuador in line with the standard with some aspects connected to beneficial ownership of the accounts that need to be improved.

Key recommendations

9. The key recommendations raised by this report relate to gaps identified regarding the availability of beneficial ownership information (Elements A.1 and A.3) and the availability of accounting information (Element A.2).

10. Despite the requirements in several domains (AML Law, Tax Law, Company Law), there is at present no reliable source to ensure that beneficial ownership information is available in all cases. In this regard, a recent Organic Law includes provisions for the introduction of a general register of beneficial owners, to be held by the tax administration. The relevant implementing regulations are awaited to be able to conclude that this legal framework is in line with the standard.

11. In respect of maintenance of reliable accounting records with underlying documentation, Ecuador is recommended to ensure that they remain available for a period of at least five years after the dissolution or relocation abroad of the company.

Exchange of information

12. Ecuador has EOIR instruments with 146 partners, through 20 double taxation conventions (DTCs), 4 Tax Information Exchange Agreements (TIEAs), 1 regional agreement and the Multilateral Convention. Ecuador has in place a legal framework allowing for an effective access to and exchange of information, with only limited deficiencies identified.

13. Over the last few years, on average Ecuador received 5 EOI requests per year, mainly from/to jurisdictions in South America and Europe. The assessment of EOI in practice is not covered by this report and will be subject to a future Phase 2 review.

Next steps

14. This report assesses only the legal and regulatory framework for transparency and exchange of information for tax purposes in Ecuador, which is determined to be "in place" for elements B.1, B.2, C.1, C.2, C.3 and C.4 of the standard and "in place but needs improvement" for elements A.1, A.2 and A.3. Compliance with each element will be rated and the overall rating given at the conclusion of the Phase 2 review.

15. This report was approved at the Peer Review Group of the Global Forum on 7 July 2022 and was adopted by the Global Forum on 5 August 2022. Unless the Phase 2 review is organised by then, a follow up report on the steps undertaken by Ecuador to address the recommendations made in this report should be provided to the Peer Review Group no later than 30 June 2023 and thereafter in accordance with the procedure set out under the Methodology for Peer Reviews and Non-Member Reviews.

Summary of determinations, ratings and recommendations

Determinations	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but needs improvement	Recent tax obligations provide for a general requirement on all legal entities and arrangements to provide beneficial ownership information to the Ecuadorian tax administration, but the legal and regulatory framework is still incomplete as the 2021 Organic Law only provides for the general requirements on the establishment of the Registry of Beneficial Owners and on the related due diligence and filing obligations, whereas for the system to be operational, regulatory acts are expected. The company law requirement for entities to maintain information on their beneficial ownership is also largely incomplete to be operational. Beneficial ownership information is also required to be collected by AML-obliged subjects in Ecuador when engaged by legal entities and arrangements, which is not mandatory. In addition, the method to identify the beneficial owners is not fully in line with the standard and the AML legal framework does not include for all AML-obliged subjects a specific definition of beneficial ownership for trusts and for legal arrangements without legal personality. Furthermore, there is no specified frequency of updating beneficial ownership information; hence, there could be situations where the available beneficial ownership information is not up to date. Finally, the binding guidelines applicable to the various types of AML-obliged subjects lack uniformity.	Ecuador should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard.

Determinations	Factors underlying Recommendations	Recommendations
	There is no explicit provision that ensures the availability of legal and beneficial ownership information where foreign trusts are administered in Ecuador or have a trustee resident in Ecuador, unless the economic activities carried out in Ecuador constitute a permanent establishment, in which case it would be subject to the tax filing requirements applicable to companies.	Ecuador is recommended to take measures to ensure that information is available that identifies the parties and beneficial owners of foreign trusts with a nexus with Ecuador.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but needs improvement	For foreign trusts that are administered in Ecuador or in respect of which a trustee is resident in Ecuador, there is no explicit provision that ensures the availability of accounting information, unless the economic activities carried out in Ecuador correspond to one of a permanent establishment, in which case it would be subject to the tax requirements applicable to companies, including the general the provisions on accounting.	Ecuador is recommended to take measures to ensure that accounting information and underlying documents are available for foreign trusts with a nexus with Ecuador.
	Although there is a requirement to keep accounting records and supporting documents for at least seven years, it is not clear (except for cases where a specific “abbreviated” process of voluntary dissolution is undertaken) who would be legally responsible to keep them and where they should be kept if the entity itself ceases to exist. Financial statements and tax returns will nonetheless be available with public authorities.	Ecuador is recommended to ensure that in all cases accounting information and underlying documents are available for a minimum of five years after the entity ceases to exist.

Determinations	Factors underlying Recommendations	Recommendations
	Legal entities may redomicile out of Ecuador and there are no legal obligations to support the availability of full accounting records and underlying documentation in Ecuador for a minimum period of five years. Financial statements and tax returns will nonetheless be available with public authorities.	Ecuador is recommended to ensure that accounting information and underlying documents are available for a minimum period of five years in relation to legal entities that redomicile out of Ecuador.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place but needs improvement	The method of identification of the beneficial owners presents some uncertainties that appear to limit the scope of the definition. Furthermore, there is no specified frequency of updating beneficial ownership information; hence, there could be situations where the available beneficial ownership information is not up to date.	Ecuador should ensure that adequate, accurate and up-to-date information on the beneficial owners of all account holders is available in all cases in accordance with the standard.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place	The scope of professional privilege is not defined in Ecuadorian law and could go beyond the scope allowed under the standard, although Ecuador indicated that there is no record of any case in which professional secrecy has been invoked to prevent the gathering of the requested information by the Competent Authority.	Ecuador is recommended to clarify that the scope of professional privilege is in conformity with the standard.

Determinations	Factors underlying Recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place	-	-
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place	-	-
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place	-	-
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place	-	-
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place	The scope of professional privilege is not defined in Ecuadorian law and could go beyond the scope allowed under the standard, although Ecuadorian authorities indicated that there is no record of any case in which professional secrecy has been invoked to prevent the delivery of the requested information.	Ecuador is recommended to clarify that the professional privilege is in conformity with the standard.
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	

Overview of Ecuador

16. This overview provides some basic information about Ecuador and serves as context for understanding the analysis in the main body of the report.

17. Ecuador is a country in north-western South America, bordering the Pacific Ocean and having land borders with Colombia (north) and Peru (south-east).

18. Ecuador has a population of just over 17.5 million inhabitants and a high (0.759 in 2020) human development index according to the United Nations Development Programme parameters. It is an upper middle income country with a Gross Domestic Product (GDP, at current prices) just above USD 96.5 billion in 2020.[1] The economy is led by agriculture and the exploitation of mineral resources, with industry playing a more limited role. The services sector is led by transportation and tourism (in particular in the Galapagos islands).

Legal system

19. Ecuador is a republic with a civil law legal system based on the continental Romano-Germanic system.

20. The Constitution of the Republic is the supreme rule and, together with international human rights treaties ratified by the State that recognize more favourable rights than those enshrined in the Constitution, prevails over any other norm in the legal system (art. 424 of the Constitution). The current Constitution has been in place since 2008 and is the twentieth constitution since the country's independence in 1830.

1. Data are extracted from https://data.worldbank.org/indicator/SP.POP.TOTL?locations=EC, https://hdr.undp.org/system/files/documents//hdr2020pdf.pdf and https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=EC.

21. Below the Constitution and the international human rights treaties ratified by the State with more favourable rights, the following normative hierarchy applies (art. 425 of the Constitution):

1. (other) international treaties and conventions
2. organic laws (e.g. the AML organic law)
3. ordinary laws (e.g. tax legislation)
4. regional regulations and district ordinances
5. decrees and regulations
6. ordinances
7. agreements and resolutions
8. other actions and decisions taken by public authorities.

22. Organic laws cannot be amended or prevailed over by ordinary laws. The Constitution (art. 133) establishes the matters that must be regulated by organic laws. Taxation is not contemplated among them and is regulated by ordinary laws.[2]

23. For the interpretation of tax laws, Ecuador applies the principle of *lex specialis*, that is when dealing with tax-related matters, tax laws prevail over other norms of the same rank on different matters.

24. Ecuador is a unitary state.[3] Powers are divided into five functions or branches of government: Legislative; Executive; Judicial; Electoral; and Transparency and Social Control.

25. Laws are enacted at national level by the unicameral National Assembly (Legislative branch). The national level has exclusive legislative jurisdiction, among others, on policies over the following matters (pursuant to art. 261 of the Constitution): economic, tax, customs and tariff, fiscal and monetary. Decentralised and autonomous territorial jurisdictions (Provinces and Cantons) have certain powers, granted by the Constitution and regulated in accordance with the law, which include the power to issue normative and administrative acts (including the power to levy, amend or eliminate duties and special contributions for improvements, pursuant to art. 264(5) of the Constitution).

2. As confirmed by Ecuadorian Constitutional Court with Judgment No. 010-18-SIN-CC.

3. with two levels of territorial subdivisions: 24 Provinces and 221 Cantons. Another administrative subdivision is the District, which is the basic unit for planning and delivering public services (140 districts have been established in the country, with an average of 90 000 inhabitants, whereas for Cantons with a high population, such as the capital city Quito, districts are established within them).

26. The President of the Republic performs the duties of the Executive Branch and is in charge of public administration, including the administration of taxes. Operationally, the administration of taxes is under the management of the *Servicio de Rentas Internas* (SRI), the Ecuadorian tax administration.

27. The Judicial Branch is made up of jurisdictional bodies, administrative bodies, auxiliary bodies (e.g. the notarial service, the judicial auctioneers and the judicial depositaries) and autonomous bodies (Ombudsman Office and State Attorney General's Office). The law determines the organisation, the scope of competence, the functioning of the judicial bodies and everything necessary for the adequate administration of justice. The Judicial bodies in charge of administering justice consist of: the National Court of Justice; the provincial Courts of justice; other courts and tribunals established by law; the justices of the peace. The Council of the Judiciary is the governing, administrative, supervisory and disciplinary body of the Judicial Branch.

28. For tax litigations, the provincial courts are competent as judges of first instance. The National Court of Justice is made up of six Specialised Chambers, including one Tax Litigation Chamber, which intervenes as a higher instance with cases dealt by the provincial courts only through cassation proceedings filed by the procedural parties. The Special Tax Litigation Chamber has also other competences such as hearing challenges to tax regulations of a rank lower than law.

29. The Electoral function and the Transparency and Social Control function was introduced by the Constituent Assembly in 2008 and are independent from the other three functions. For the Electoral function, comprising the National Electoral Council and the Electoral Dispute Settlement Court, the Constitution (art. 217) provides, among other attributions, that it has to guarantee the exercise of the political rights that are expressed through suffrage, as well as those referring to the political organisation of the citizenry. The attributions of the Transparency and Social Control function, as provided in the Constitution (art. 204) include promoting and stimulating the control of public sector entities and organisations, and of natural or legal persons belonging to the private sector that provide services or carry out activities of public interest, so that they conduct them with responsibility, transparency and equity. It consists of the Council of Citizen Participation and Social Control, the Ombudsman, the Comptroller General of the State and the superintendencies.

30. Ecuador is a member of the Andean Community (*Comunidad Andina*), an international organisation composed with three other South American member countries, namely Colombia, Peru and the Plurinational State of Bolivia (Bolivia). The Andean Community (which was called the Andean Pact until 1996) was established with the signature of the Cartagena Agreement in 1969 and has the aim of promoting the balanced

and harmonious development of the member countries under equitable conditions, through economic and social integration and co-operation greater economic integration amongst its members. According to Article 3 of the Treaty creating the Court of Justice of the Cartagena Agreement (*Tratado de Creación del Tribunal de Justicia del Acuerdo de Cartagena*) of 1979, decisions of the Andean Community, once published in the official gazette of the Cartagena Agreement, are directly applicable in the member countries, and thus in Ecuador. Article 4 of the same treaty sets out that member countries must refrain from adopting any measures contrary to the provisions of these decisions or that would restrict their application. Therefore, in the event of a conflict with a domestic law (being it organic or ordinary), a decision of the Andean Community will take precedence in Ecuador. One of the pieces of legislation adopted by the Andean Community is Decision 578, published on 5 May 2004,[4] which establishes a regime for preventing double taxation and preventing tax evasion. Article 19 of Decision 578 contains a provision allowing exchange of information on tax matters.

Tax system

31. Pursuant to the Ecuadorian Constitution (art. 135 and 301), taxes may be levied, amended, exempted or abolished only through legislation passed by the National Assembly and at the initiative of the Executive Branch.[5] Besides the principle of the rule of law, the Constitution also provides (art. 300) that the tax system is governed by the following principles: generality, progressivity, efficiency, administrative simplicity, non-retroactivity, equity, transparency and revenue collection adequacy, and that priority must be given to direct and progressive taxes.

32. The main taxes in Ecuador, all administered by the SRI, are:

- Income tax
- Value Added Tax (VAT), with rates from 0 to 12%
- Special Consumption (Excise) Tax (*Impuesto a los Consumos Especiales*), applied to the consumption of the goods (national or imported) and services specified in article 82 of the Internal Tax Regime Law (e.g. tobacco, fizzy drinks, alcohol, perfumes, videogames, firearms)

4. www.comunidadandina.org/DocOficialesFiles/Gacetas/Gace1063.pdf.
5. Whereas, always according to the Constitution, duties and special contributions may be levied, amended, exempted or abolished only through a regulatory ruling passed by a competent body, according to the law.

- Foreign Currency Outflow Tax (*Impuesto a la Salida de Divisas*), applied to the transfer of currency abroad
- Tax on assets abroad (*Impuesto a los Activos en el Exterior*), levied on a monthly basis on Ecuadorian financial institutions on the financial assets held abroad.

33. Income tax is applied to resident individuals and undivided estates on their worldwide income with progressive rates from 0 to 35%. In 2021, income tax is due paid if the tax base is greater than USD 11 212. Pursuant to article 4.1 of the Internal Tax Regime Law (LRTI), individuals are considered tax resident in Ecuador for a given tax year if they are in any of the following conditions:

- presence in the country for 183 days or more, consecutive or not, in the same tax year
- having the principal centre of economic activities or interests settled in Ecuador, directly or indirectly
- presence in the country for 183 days or more, consecutive or not, in any period of 12 months within 2 fiscal years, unless the individual records a tax residency status for the corresponding period in a third country or jurisdiction
- not having stayed in any other country or jurisdiction for more than 183 calendar days, consecutive or not, in the fiscal year concerned, if the closest family ties of such individual are situated in Ecuador.

34. Income tax is applied to domestic companies and permanent establishments in Ecuador of foreign companies with a 25% rate. The income tax rate can rise to 28% in case the obligation to report the chain of property of the company is not fulfilled (see paragraph 124). For non-resident subjects with income not attributable to permanent establishments, income tax is generally levied applying a withholding mechanism on the income of Ecuadorian source, with the standard withholding rate being of 25%.

35. Pursuant to article 4.2 of the LRTI, a company is considered tax resident in Ecuador when it has been incorporated in Ecuador pursuant to the domestic legislation. A company incorporated abroad cannot be considered as tax resident in Ecuador, unless it redomiciles in the country, adopting a domestic legal type of company. To do this, the company has to deregister abroad (pursuant to art. 419A and 419B of the Companies Law).

36. There are taxes administered at a subnational level, among which the most relevant are real estate property taxes, real estate transfer taxes, public performances taxes and business permits taxes.

37. As regards custom duties, the Andean Community constitutes a customs union operating as a free trade area between its members and with a common external tariff.

Financial services sector

38. The Ecuadorian national financial system is made up of the public financial sector, the private financial sector and the "popular and solidary financial sector" pursuant to article 309 of the Constitution.

39. The public financial sector (comprised of banks and corporations pursuant to art. 161 of the Monetary and Financial Organic Code, "COMYF") is made up of specified entities entirely owned by the state, namely: the Central Bank of Ecuador (BCE), the Development Bank of Ecuador, the Bank of the Social Security Institute, Banecuador, the Recovery and Development Office of the BCE, the National Financial Corporation, the Guaranty National Trust Fund and the IECE-IFTH – SENESCYT (Educational Loans).

40. The private financial sector is comprised of the following entities (art. 162 of the COMYF):

- universal ("multiple") and specialised banks
- financial services providers: general storage warehouses, exchange houses, and mortgage secondary market development corporations and
- financial system auxiliary services providers, such as providers of: banking software, transactional software, transportation of money instruments and securities, payment services, collection services, networks and ATMs, accounting and computing services, other qualified services.

41. The popular and solidary financial sector (art. 163 of the COMYF) is comprised of:

- savings and credit co-operatives
- mutual and saving entities and corporations
- community and central funds
- financial system auxiliary services providers (see paragraph above)
- mutual savings and credit associations for housing.

42. The Ecuador Constitution (art. 309) provides that each of the financial sectors have specific and differentiated rules as well as controlling bodies.

43. The Superintendency of Banks (SB) authorises and supervises the organisation, business activities and termination of the entities that belong to the public financial sector; as well as the incorporation, denomination, organisation, business activities and termination of the entities that belong to the private financial sector (art. 62 of the COMYF).

44. The Superintendency of Popular and Solidary Economy (SEPS) exercises control of the economic activities of the popular and solidary financial sector.

45. The Financial Policy and Regulation Board (*Junta de Política y Regulación Financiera*), comprising three members, formulates the general policy on credit and finance and issues regulations to ensure the integrity, solidity, sustainability and stability of the national financial systems (art. 14 of the COMYF).

46. Ecuador's banking system is currently made up of 27 banks (24 private banks and 3 public banks). As of December 2020, the aggregate amount of deposits in the banking system amounted to about USD 40.6 billion (42% of the GDP at current prices) and the total assets held by banks amounted to USD 56.3 billion (58.3% of GDP at current prices).

47. The entities of the popular and solidary financial sector (art. 163 of COMYF and art. 78 of the Organic Law of the Popular and Solidary Economy, LOEPS) are classified in segments based on the amount of their assets, as summarised in the following table:

Entities of the popular and solidary financial sector

Type of entity	Segment	Number of entities
Savings and credit co-operatives	Assets greater than 80 million	35
	Assets greater than 20 million and less than 80 million	46
	Assets greater than 5 million and less than 20 million	84
	Assets greater than 1 million and less than 5 million	163
	Assets less than 1 million	190
Mutual entities	Assets greater than 80 million	4
Corporations	-	1
Central fund	-	1

48. At present, and as of 16 December 2015, there is a moratorium on authorising the constitution of new savings and credit co-operatives, pursuant to a Resolution (no. 1672015F) of the Financial Policy and Regulation Board.

49. As of December 2020, the aggregate amount of deposits in the popular and solidary financial sector amounted to about USD 14.4 billion (15% of the GDP at current prices) and the total assets held amounted to USD 18.2 billion (18.9% of the GDP at current prices). The size of the popular and solidary financial sector is therefore about one third of the banking system.

50. The insurance sector is separated from the private financial sector. The Superintendency of Companies, Securities and Insurance (SCVS) is the authority that carries out surveillance, audit, intervention, control and supervision on the insurance system. Pursuant to article 2 of the General Insurance Law (Book III of the COMYF), the entities that make up the private insurance system are all companies that carry out insurance operations, reinsurance companies, reinsurance intermediaries insurance experts, and insurance producer advisers.

51. Similarly, the securities market and the stock exchanges are not part of the private financial sector and are supervised by the SCVS. In Ecuador, stock exchanges operate in the form of stock companies, whose sole corporate purpose is to provide the services and mechanisms required for the negotiation of securities (pursuant to article 44 of the Securities Market Law, which is Book II of the COMYF).[6] Ecuador has two stock exchanges, one in the capital city Quito, and the other in Guayaquil,[7] which taken together count 322 companies listed for a total market capitalisation of about USD 8.8 billion as of December 2021.[8]

52. The US dollar (USD) is the only legal tender in Ecuador since 2000.

Anti-money laundering framework

53. In Ecuador, the AML framework is based on the Organic Law for the Prevention, Detection and Eradication of Money Laundering and Crime Financing (AML Law).

6. The Securities Market Law also provides (art. 45) that the stock exchanges must be established and receive an operating authorisation before the SCVS, and that they have to observe the requirements and procedures determined in the rules issued by the Monetary and Financial Policy and Regulation Board. These rules include at least requirements on minimum capital, exclusive purpose and technological systems.
7. Bolsa de Valores de Quito Sociedad Anónima BVQ and Bolsa de Valores de Guayaquil S.A. BVG.
8. Data extracted from the monthly bulletin of stock exchange information in January 2021 (Source: https://www.bolsadequito.com/uploads/estadisticas/boletines/boletines-mensuales/informe-bursatil-mensual.xls).

54. The governing body in matters of money laundering, also responsible for the organisation of the supervisory functions applicable to AML/CFT issues, is the Ecuadorian Financial Information Unit (*Unidad de Análisis Financiero y Económico*, UAFE). As such, the UAFE is responsible for submitting suspicious transaction reports it receives from the AML-obliged subjects to the Attorney General's Office for the initiation of the pertinent criminal investigations.

55. The Superintendencies of Banks; of Companies, Securities and Insurance; and of Popular and Solidary Economy; the SRI; and other public authorities can create complementary anti-money laundering units, which must report to the UAFE the operations and transactions unusual and unjustified of which they are aware. Pursuant to the AML Law (article 16), these anti-money laundering units co-ordinate, promote and execute co-operation and information exchange programmes with the UAFE and the State Attorney General's Office, in order to carry out quick and efficient joint actions to combat crime. In this connection, the Department of Tax Intelligence within SRI has as a mission to plan, organise, supervise, control and evaluate the investigation process and the application of specialised operational techniques.

56. The first AML/CFT evaluation for Ecuador was carried out by the Financial Action Group of South America (GAFISUD, now GAFILAT) in 2007, with a non-compliant rating on recommendation 5 (customer due diligence), and partially compliant ratings on recommendations 33 (beneficial owners of legal persons) and 34 (beneficial owners of legal arrangements). From there, progress was presented in December 2011. The fourth round of FATF evaluations for Ecuador began in September 2021 and will conclude with the approval of the Mutual Evaluation Report in the GAFILAT Plenary in December 2022.

Recent developments

57. The Organic Law of 29 November 2021 for Economic Development and Fiscal Sustainability after the Covid-19 Pandemic provides for a Registry of Beneficial Owners maintained by the SRI. The relevant implementing regulations are in the process of being issued.

Part A: Availability of information

58. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of banking information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

59. The main legal provisions for the availability of ownership and identity information can be found in the Company Law, which is the governing law for the majority of legal entities that can be established in Ecuador, and in the Tax Legislation, both of which include reporting requirements to the relevant authorities. Other relevant provisions can be found in the commercial code and in the AML/CFT laws and regulations.

60. Complete and up-to-date ownership information is available at the Ecuadorian Superintendency of Companies, Securities and Insurances (SCVS), as well as at the tax administration (SRI), whereas the AML/CFT provisions require AML-obliged subjects to identify the shareholders or partners of their clients, together with the amounts of shares or participations. Some information about legal ownership is also publicly accessible in Ecuador, with the publication on registers available online in the "*Catastros*" ("Public Cadastres") held by the SCVS and the other supervisory authorities, that contain the chain of ownership of companies where the ownership exceeds 2% of the share capital.

61. As regards the availability of beneficial ownership information, in Ecuador this is mainly addressed through tax law obligations and AML obligations. In particular, the recent Organic Law of 29 November 2021 for Economic Development and Fiscal Sustainability after the Covid-19 Pandemic requires the SRI to compile and maintain a Registry of Beneficial Owners, while all the relevant implementing regulations are in the process

of being issued. As for the AML obligations, AML-obliged subjects are required to identify the beneficial owners of their clients, but there is no legal requirement for all relevant entities and arrangements to engage on a continuous basis with an AML-obliged subject.

62. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying Factor	Recommendations
Recent tax obligations provide for a general requirement on all legal entities and arrangements to provide beneficial ownership information to the Ecuadorian tax administration, but the legal and regulatory framework is still incomplete as the 2021 Organic Law only provides for the general requirements on the establishment of the Registry of Beneficial Owners and on the related due diligence and filing obligations, whereas for the system to be operational, regulatory acts are expected. The company law requirement for entities to maintain information on their beneficial ownership is also largely incomplete to be operational. Beneficial ownership information is also required to be collected by AML-obliged subjects in Ecuador when engaged by legal entities and arrangements, which is not mandatory. In addition, the method to identify the beneficial owners is not fully in line with the standard and the AML legal framework does not include for all AML-obliged subjects a specific definition of beneficial ownership for trusts and for legal arrangements without legal personality. Furthermore, there is no specified frequency of updating beneficial ownership information; hence, there could be situations where the available beneficial ownership information is not up to date. Finally, the binding guidelines applicable to the various types of AML-obliged subjects lack uniformity.	Ecuador should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard.
There is no explicit provision that ensures the availability of legal and beneficial ownership information where foreign trusts are administered in Ecuador or have a trustee resident in Ecuador, unless the economic activities carried out in Ecuador constitute a permanent establishment, in which case it would be subject to the tax filing requirements applicable to companies.	Ecuador is recommended to take measures to ensure that information is available that identifies the parties and beneficial owners of foreign trusts with a nexus with Ecuador.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.1.1. Availability of legal and beneficial ownership information for companies

Types of companies

63. In Ecuador, companies ("*compañías*" or "*sociedades*") can be either mercantile or civil pursuant to the Civil Code. According to article 1963 of the Civil Code, "mercantile companies are those that are formed for businesses that the law qualifies as commercial acts. The others are civil companies".[9]

64. The definition of commercial acts (art. 8 of the Commercial Code) includes all the acts related to commercial activities or enterprises, and those executed by any person to ensure the fulfilment of commercial obligations, as well as a list of acts specifically identified that comprises:

- the production, transformation, manufacture and movement of goods
- the purchase or exchange of movable property, destined to be alienated, and their alienation
- mercantile activities carried out through physical establishments or virtual sites, where products or services are offered
- credit operations, insurance contracts, operations described and regulated by the COMYF
- the transportation of goods and people, logistics operation contracts, the storage of merchandise and, in general, the possession of assets against compensation
- shops, bazaars, hotels, cafes and others similar establishments.

65. As the definition of commercial acts has been broadened with time, Ecuadorian authorities explained that civil companies are currently of a very restricted nature, essentially limited to the exercise of liberal professions and the activities of artisans, provided they are not rendered through a physical or virtual establishment (see paragraph 220).

9. Besides mercantile companies and civil companies, the LOEPS (art. 5) provides that the acts carried out by the organisations of the Popular and Solidary Economy, as identified therein, within the exercise of the activities of their corporate purpose, do not constitute commercial or civil acts but rather "acts of solidary" subject to the specific provisions of the LOEPS (see paragraphs 222-228 below).

66. As the civil law concepts of *Sociedad de capital* and *Sociedad de personas* do not exactly correspond to the concepts of "companies" and "partnerships" as found in common law tradition jurisdictions, some entity types will be covered in section A.1.3 below, even though they are qualified as companies pursuant to the domestic legislation and do not fully correspond to the concept of "partnership".

67. Five types of companies can be incorporated in Ecuador:[10]

- Stock company (*Compañía Anónima*, SA), whose capital is divided into negotiable shares (art. 143 of the LC), with two or more shareholders only liable for corporate obligations up to the amount of their shareholdings. As of December 2020, 160 307 stock companies existed.
- Limited liability company (*Compañía de Responsabilidad Limitada*), with 2 to 15 shareholders, only liable for the corporate obligations up to the amount of their individual contributions. The transfer of participations in a limited liability company requires a public deed and can only occur, for inter-vivos acts, with the unanimous consent of the shareholders (LC, art. 113). As of December 2020, 73 952 limited liability companies existed.
- Limited Partnership Company Divided by Shares (*Compañía en Comandita por Acciones*), contracted between one or more general partners jointly and unlimitedly liable for the corporate obligations and one or more limited partners supplying funds, whose liability is limited to the amount of their contributions. Only seven limited partnerships divided by shares existed as of the end of December 2020.
- Public-private stock company (*Compañía de Economía Mixta*) are legal entities comprised of public law or semi-public legal entities and by private capital, and can be established for specific purposes established by the law.[11] The provisions relating to stock companies are

10. Ecuadorian law also knows the concept of State-owned companies, which are State entities established by the Constitution of the Republic, legal entities under public law, with their own assets, endowed with budgetary, financial, economic, administrative and management autonomy. As of December 2020, 3 806 state-owned companies existed. As the owners of these entities are public institutions, there is full transparency on their legal and beneficial ownership. The Organic Law of Public Enterprises governing these entities is thus not detailed in this report.

11. In particular, pursuant to art. 309 of the LC, for the development and promotion of agriculture and the industries convenient to the national economy and for the satisfaction of collective needs, the provision of new public services or the improvement of those already established.

applicable to public-private stock companies insofar as they are not contrary to the specific provisions contained in the dedicated section (articles 308 to 317) of the Companies Law (LC). As of December 2020, 140 public-private stock companies existed.

- Simplified Stock Company (*Sociedad por Acciones Simplificadas*, SAS), which can be established by one or more natural or legal persons, who will only be liable up to the amount of their respective contributions and whose legal representation falls on a single person and does not require the figure of "General Manager" and "President" as established by the LC for limited liability companies and stock companies. SAS shares are freely available and negotiable, and can be freely transferred through a transfer note.[12] As of December 2020, 4 370 SAS existed.

68. Stock companies and limited liability companies are by far the most common types of companies in Ecuador and combined make up 95% of the total of domestic companies.

69. All companies have legal personality and are governed by the LC. Companies are also subject to the supervision of, and have reporting requirements to, the SCVS, with the exception of stock companies of the private financial sector that are supervised by and report to the Superintendency of Banks (SB) (LC, art. 431 and 432).[13]

Incorporation and registration of companies

70. The process of incorporation and registration of Ecuadorian companies can occur either in the traditional form by physical submission of the requested documents at the competent registers and administrations or through a simplified electronic process.

12. Pursuant to the unnumbered article "Transfer of shares" after article 317 of the LC. Despite its inter-party validity the transfer of shares by transfer note will take effect, vis-à-vis the company and third parties, as of its registration in the Book of Shares and Shareholders.

13. The SB is responsible, in particular, for the control and supervision of the public and private financial sector entities defined in articles 161 and 162 of the COMYF, the latter, constituted necessarily as stock companies (SA) in accordance with the provisions of article 389 of the COMYF. As regards the entities belonging to the Popular and Solidary Economy, there is no overlap between the scope of SCVS and the scope of SEPS supervision, as the types of entities belonging to the Popular and Solidary Economy are different from the company types listed in paragraph 64.

71. In Ecuador, there is a Commercial Register (*Registro Mercantil*) for every canton, adapted to the commercial reality of its territory. In particular, of the 221 Ecuadorian cantons, 14 have a dedicated Commercial Register whereas for the rest of them the Property Register acts as Commercial Register. Commercial Registers are organised and co-ordinated at the national level through the National Directorate of Public Data Registry, which inter alia establishes technical norms (art. 20 of the Organic Law of National System of Registry and Public Data). All companies, except SAS, have to be registered in the Commercial Register of the canton where they have their principal domicile and will exist and acquire legal personality from the time of such registration (LC, art. 136). The SCVS maintains a single, national and second-tier register – the Register of Companies (*Registro de Sociedades*), which contains information on legal persons registered in all the cantonal commercial registers, as well as information on SAS, which only have to register at the SCVS (LC, art. 18 and 19, see paragraph 78 below). This also ensures no two entities have the same denomination (LC, art. 16). The SAS, which do not have to register in the Commercial Registers of the cantons, exist and acquire legal personality from the date of registration of the incorporation act in the Register of Companies (LC, unnumbered article after art. 317).

72. All companies also have to register at the Taxpayers Unique Registry (*Registro Único de Contribuyentes*, RUC) held by the SRI and cannot operate until such registration is done (LC, art. 136).

73. The traditional physical incorporation and registration process generally requires a public deed before a notary public for the constitutional documents (minutes of incorporation and general deed).[14] The constitutional documents have then to be filed by the applicants or their delegates at the competent Commercial Registry, at the SCVS and at the SRI for the respective registrations.

74. The simplified ("on-line") process of incorporation and registration of companies by electronic means requires the filling of an incorporation form and the submission of the underlying constitutional documents using the SCVS digital system[15] (accessible through the web portal www.supercias.gob.ec). A notary public has to access the system, check and validate the information, and assign a date and time to attest the signing of the deed and

14. limited liability companies (pursuant to art. 136 of the LC), stock corporations (art. 146), limited partnership companies divided by shares (art. 307) and public-private stock companies (art. 311).

15. "Electronic and Dematerialised Incorporation System", *Sistema de Constitución Electrónica y Desmaterializada* regulated by SCVS Resolution No SCV-DSC-G-14-008 of 30 June 2014 and its amendments.

the appointments. Once the documents are signed by the notary, the system forwards them to the National System of Commercial Registry (*Sistema Nacional de Registro Mercantil*) where the competent local Commercial Registrar validates the information.

75. The Commercial Registrars are in charge of checking that the formal requirements established in the law are fulfilled. If this is the case, they register the incorporation; otherwise the process returns to the notary's office for corrections to be made.

76. Once the registration in the local Commercial Register is made, the SCVS generates a file number and reviews the incorporation documents. The application at the SCVS is not complete until the tax registration before the SRI is made.[16] At this stage, the applicant has the option to make a direct request to the SRI (by electronic means) to register the company for tax purposes or to have the request (and the underlying information) sent automatically to the SRI through the SCVS system. The SRI inscribes the company to the RUC, issuing its 13-digit tax identification number.

77. Companies that are registered in the Securities Market Public Registry (*Catastro Público del Mercado de Valores*) have additional requirements, as in this case the corporate acts have to be approved by the SCVS (LC, art. 432).

78. The incorporation process for a SAS is partly different from those described above. Notably, a SAS is generally not required to register its general deed before a notary, nor to register in the local commercial registry (while the registration at the SCVS and in the RUC are required). A public deed before a notary is necessary also for the constitution of a SAS only in the event that the nature of the assets conferred to the company as capital contribution require this form (this is the case for real estate and regulated assets, like ships) (LC, unnumbered article after art. 317).

79. The number of companies registered at the Register of Companies and at the tax administration (RUC) are reported in the following table.

16. Pursuant to article 3 of the Law on the Taxpayers Unique Registry any entity, foundation, co-operative, corporation, or similar entity, regardless of its name, and whether for profit or not, is required to register with the Tax Administration.

Comparisons between the number of companies in the Register of Companies and in the RUC

Type of company	Register of companies (SCVS)	RUC (SRI)	Difference – absolute	Difference – percentage*
Stock companies	160 307	156 777	3 530	2.20%
Limited Liability Companies	73 952	69 650	4 302	5.82%
Limited Partnership Companies Divided by Shares	7	132	125	94.70%
Public-Private Stock Companies	140	148	8	5.71%
SAS	4 370	2 809	1 561	35.72%
Total of companies	**238 776**	**229 516**	**9 260**	**3.88%**

*Percentages based on the maximum value.

Data as of December 2020.

80. Ecuadorian authorities have indicated that, from an initial examination, the discrepancies between the two sets of figures can be attributed to companies registered with the SCVS that had not yet registered with the RUC at the time the data was extracted, and to companies that were classified under a wrong type in the RUC (notably for the case of Limited Partnership Companies Divided by Shares, where the difference is more pronounced). However, while a total mismatch of 3.88% does not appear to be a particularly high figure, other factors must be involved, as it appears unlikely that at a given moment such a high number of companies was in the process of registration (see paragraph 76),and the misclassification of the type of entity should have no impact on the total mismatch.

Inactive companies and companies that cease to exist

81. Companies are classified as inactive if they are in the process of dissolution ("*disolución de pleno derecho*"), liquidation or subsequent cancellation of the company's registration from the Commercial Register, as provided in Section XII of the LC. Companies can be dissolved (art. 359 of the LC) de jure;[17] by decision of the partners or shareholders; by decision of the SCVS (ex officio or at the request of a party); or by final judgement. Among the causes for dissolution by decision of the SCVS there is (art. 377 no. 7) the failure to comply, for two consecutive years (three consecutive years in the case of SAS, pursuant to the unnumbered art. after art. 317), with

17. E.g. on the expiration of the period of duration established in the bylaws; pursuant to a legally enforceable bankruptcy order or due to the failure to raise the capital stock to the minimum established in this law within the term established by the SCVS (art. 360 of the LC).

the requirements on the filing with the SCVS of the financial statements and of information on the administrators, legal representatives, partners and shareholders of the company (art. 20 of the LC, see paragraphs 97 and 244 below).

82. When a company has been dissolved, the SCVS issues a resolution providing for its liquidation (art. 362). The SCVS has to notify the resolution providing for the liquidation of the company to the company itself, to the competent commercial register, to the Notary before whom the deed of incorporation was executed (for registration and annotation at the margin of the act, "*marginación*"), to other public authorities (SB, National Directorate of Public Data Registry, SRI), and it has to publish the resolution in its web portal. The SCVS resolution provides that the legal representative of the company has to start the liquidation process. During the liquidation process, the company retains its legal personality solely for the acts necessary for such process, i.e. it cannot initiate any new operations relating to its corporate purpose. If any such operation or act is undertaken, the legal representative and any partner or shareholder who authorised it are unlimitedly, jointly and severally liable for it (art. 363). The SCVS can, at any time, remove the legal representatives of a dissolved company, and appoint by resolution a liquidator to replace them (art. 364).

83. Once the liquidation process is concluded, upon request of the liquidator or the legal representative(s) in charge of the liquidation of the company, the SCVS will issue a resolution ordering the cancellation of the company's registration from the Commercial Register (art. 407).

84. Whatever the cause of the dissolution, if the liquidation procedure has not been completed within nine months of the registration of the respective resolution in the Commercial Register, the Superintendency may cancel the registration of the company in the Commercial Register, unless the legal representative in charge of the liquidation or the liquidator justifiably requests an extension (art. 410).

85. Companies can be reactivated before they are cancelled from the Commercial Register (from the Register of Companies for the case of SAS), provided that the cause that led to their dissolution has been resolved. There is no time limit for the possibility of reactivating companies (as long as their cancellation has not yet been registered in the Commercial Register), to the extent that the conditions of the process are met prior to the request for cancellation (art. 414.3).

86. As regards the filing requirements, the LC (art. 20) provides that unless required by law, the SCVS or other competent authority, the filing of reports (as well as the full set of financial statements, paragraph 245) is optional for companies in dissolution or liquidation and for companies with

a cancellation resolution not registered in the Commercial Register, as they are not considered operational enterprises. However, in the case of reactivation, the company will be required to submit the information in relation to all previous years that have not been reported.

87. The number of inactive companies at the end of 2020 and 2021 was 86 624 and 62 833 respectively, broken down as detailed below.

	Without activity*	Dissolution	Liquidation	Cancellation process**	Total
No. of companies (2020)	1 126	7 495	68 496	9 507	86 624
No. of companies (2021)	766	6 033	44 544	11 490	62 833

* "Without activity" refers to a status previously foreseen by the LC (presumed when a company had not complied for two consecutive years with the provisions of article 20 of the LC) and now abolished (non-compliance for two consecutive years with the provisions of article 20 of the LC represents one cause for dissolution by decision of the SCVS). There are however companies that have not registered the resolution of dissolution in the Commercial Registry, have ceased their activities before the reform of the LC and due to a transitory provisions in the law which reformed the LC, are still classified under this category.

** "Cancellation process" refers to companies for which the cancellation process has started, but the relevant resolution has not been submitted to the Commercial Registry yet.

88. When comparing the total figures on registered companies (para. 79) and on inactive companies (para. 87), the latter appear to be quite high (36.27% in 2020). Inactive companies are in any case framed in a process aimed at the liquidation and cancellation of the company and in which commercial operations are permitted only if related to such purposes.

89. For tax purposes, article 15 of the Law on the Taxpayers Unique Registry provides that taxpayers which cease their economic activities are obliged to return the registration certificate to the respective registration offices within 30 days of the cessation of the activity, in order to proceed with the cancellation from the RUC.

90. The Regulation to the Law on the Taxpayers Unique Registry (art. 14) provides that, in the case of a company, the cancellation from the RUC is carried out when it has ceased to exist as a legal entity ("*cuando se haya extinguido su vida jurídica*"), according to its type and legal nature. The cancellation can occur upon request of the legal representative of the company or ex officio by the SRI. The cancellation ex officio from the RUC occurs (art. 16 of the relevant Regulation) when the SRI ascertains that the SCVS' (or SB's) resolution providing for the liquidation of the company has been registered in the Commercial Register. Those companies for which the SRI obtains evidence that they have not carried out economic activity in the last two consecutive years are also cancelled ex officio.

91. Furthermore, the SRI can suspend ex officio the registration of a subject from the RUC (art. 15 of the Regulation) in the following cases:

- when it has verified and determined that the taxpayer does not have any premises or activity at the address reported in the RUC
- when the taxpayer has not filed returns for more than 12 consecutive months; or in such period the returns do not record economic activity
- when no evidence of the actual existence of the taxpayer is found, such as subscription to utilities, real estate property in its name, ownership of a vehicle, registration with the Social Security as an employer, nor premises at the addresses indicated in the RUC
- when the taxpayer's establishment has been closed for more than 30 days, as a sanction, according to the provisions of the Tax Code (see paragraphs below 122-125).

92. Companies that are either cancelled or suspended from the RUC are considered in a "passive" status and are not allowed to carry on economic activities. The cancellation (both ex officio and upon taxpayer request) from the RUC represents a definitive cessation of the economic activities. This status cannot be subsequently reversed. The suspension from the RUC can be lifted, once the taxpayer complies with the underlying requirements.[18]

93. The procedures for the registration and cancellation of companies from the Commercial Register and the RUC in practice will be reviewed under the Phase 2 of the review (see Annex 1).

Legal ownership and identity information requirements

94. The legal ownership and identity requirements for companies are found mainly in the company law and in the tax law. The following table shows a summary of the legal requirements to maintain legal ownership information in respect of companies.

Companies covered by legislation regulating legal ownership information[19]

Type	Company Law	Tax Law	AML Law
Domestic companies	All	All	Some
Foreign companies (nexus)	Some	All	Some

18. The detailed rules for the suspension, update and cancellation from the registration in the RUC are established with SRI Resolution No. NAC-DGERCGC21-00000011 of 10 February 2021.

19. The table shows each type of entity and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" means that the legislation, whether or not it meets the standard, contains

Companies Law requirements

95. The deed of incorporation of a company has to include the amount of the stock capital with indication of the number of shares in which it is divided, the nominal value of the same, their class, as well as the identity of the founders/capital subscribers and the indication of their capital contribution. The identity of founders includes their name, e-mail address, nationality and domicile (art. 137 of the LC).

96. Once incorporated, Ecuadorian companies are required to keep up-to-date information on their corporate books, which include the Book of Shares and Shareholders, in which the transfers of share participations or other rights representing capital need to be registered (LC, art. 177). Pursuant to the LC, the legal owner of the shares is considered to be the person (legal or natural) who appears as such in the Book of Shares and Shareholders.[20] Other corporate books are the minutes of the proceedings of the general shareholders' meetings ("*junta general*") (LC, art. 246), and the minutes of the board of directors or directories and board of supervisors, where these bodies exist (LC, art. 263). In Ecuador, legal representatives of companies do not always have to be natural persons; they can also be legal persons (as is established in article 139 of LC). The information recorded in the corporate books includes names and surnames and the identification number in the case of natural persons.

97. The SCVS is in charge of monitoring the compliance with these obligations. Ecuadorian Companies are required to submit to the SCVS information on the administrators, legal representatives, partners and shareholders on an annual basis, in the first four months of each calendar year (LC, art. 20). The transfer of shares and participations also have to be communicated to the SCVS within eight days after registration in the corresponding books, with the indication of the name and citizenship of the transferor and the transferee (LC, art. 21). Companies that are registered in the Securities Market Public Registry are also subject to reporting on a yearly basis through the "Integrated System of the Securities Market" their shareholding structure, also identifying their chain of ownership, with the exception of

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requirements on the availability of ownership information for every entity of this type. "Some" means that an entity will be covered by these requirements if certain conditions are met.

20. Art. 187 and 200 for stock companies, whereas art. 307 and art. 311 extends to Limited Partnership Company divided by shares and to public-private joint stock companies respectively, unnumbered article "Transfer of shares" after article 317 for SAS, for which, as seen above (footnote 12) the transfer of shares by transfer note will take effect, vis-à-vis the company and third parties, as of its registration in the Book of Shares and Shareholders.

companies that are listed in a stock exchange (either an Ecuadorian or a foreign exchange) and shareholders that hold less than 10% of the capital rights (unless they have ties by ownership, management and/or "presumption" with other shareholders, in which case their identity must be reported regardless of the share).[21]

98. Following the amendments introduced to the LC on 29 December 2017 (article 20 b), the information on partners and shareholders (as well as on administrators and legal representatives) includes both legal owners and beneficial owners (for the latter, with the limitations described in paragraph 155).

99. Where a company has a foreign legal entity among its partners or shareholders, the information to be submitted to the SCVS has to include the list of partners, shareholders or members of such foreign legal entity, and, recursively, in case among them there are further non-Ecuadorian legal entities, also report their partners, shareholders or members (LC, art. 115, 131, 137, 150, 263 and the unnumbered article after art. 221).

100. The SCVS has the power to carry out verifications and inspections of, and request information at any time to, the companies (LC, art. 432, 440, 441, 443 and following).

101. Foreign companies (and other foreign enterprises), to carry out economic activity in Ecuador, are required to have permanently in Ecuador at least one representative with broad powers to carry out all legal acts and transactions that have to be concluded or bear effects in Ecuador, and especially to be able to answer claims and fulfil the obligations contracted (LC. art. 415)-.[22] Furthermore, foreign companies that carry out economic activity in Ecuador are required to keep updated information on their corporate books, which include the Book of Shares and Shareholders (see paragraph 96) and submit certain information to the SCVS, which includes the list of proxies and representatives,[23] as well as accounting information (see section A.2) (LC, art. 23), but not the list of their members or shareholders.

21. Art. 15 of Chapter I, Title IV, Book II of the Codification of Monetary, Financial, Securities Resolutions.

22. As the reference here is to companies that carry out economic activity in Ecuador, it is not clear whether all the foreign companies with a nexus to Ecuador are covered by these provisions, to the extent that there might be cases were a company has the place of management in Ecuador but does not carry out economic activity there. However, if there is a gap this is expected to be small, and foreign companies with sufficient nexus are covered by the tax provisions (see paragraph 114).

23. Article 6 of the LC requires that foreign companies (as well as Ecuadorian ones) that negotiate or contract obligations in Ecuador or that have participation in Ecuadorian companies to have a proxy or representative in the country.

102. As regards the retention period, the Registry of Companies held by the SCVS does not have a time limit for the conservation of information. The information is thus permanently available and Ecuadorian authorities have indicated that records are available since 1951.

103. For the ownership information held by the relevant Commercial Register, there is no general requirement for the companies to update the information submitted upon registration, but in some cases this is required due to specific provisions, as it is the case for Limited Liability Companies, for which the transfer of participations (*cesión de participaciones*) must occur by public deed (LC, art. 113). As regard the retention period applicable to the companies themselves, Ecuadorian authorities have indicated that a seven-year minimum retention, as foreseen by the Commercial Code (articles 13 lett e), 31 and 35) on books and accounting records, is applicable to the information in the Book of Shares and Shareholders.

104. For the entities of the private financial sector under the supervision of the SB (see paragraph 69), reporting obligations have to be fulfilled pursuant to the powers conferred by articles 63 and 71 of the COMYF with the technical instructions provided by the SB ("Technical Manual of Information Data Structures for Cadastre Supervision and Control"). With the forms "Direct shareholders of financial institutions" (C31), to be submitted on a monthly basis, and "Indirect shareholders of financial institutions" (C32), to be submitted on a biannual basis. In particular, Form C31, among other information, requires: identification type, member identification code, transaction date, nationality, capital paid and capital subscribed but not paid. Similarly, Form C32 requires, among other information: identification type and code of direct member, identification type and code of indirect member, nationality and percentage of participation.

105. In general, for the SCVS and the SB (as well as the SEPS), article 159 of the COMYF provides that some entity information must be published and kept "permanently up to date" in a registry named "Public Cadastre" (*Catastro Publico*):

> Public Cadastre. – The SB, SEPS and SCVS will organise and maintain a public cadastre that contains at least the following data:
>
> 1. List of entities created or constituted;
>
> 2. List of entities authorised to carry out financial, securities and insurance activities;
>
> 3. List of non-financial legal persons that have received authorisation to carry out credit operations;
>
> 4. List of liquidated entities;

> 5. List of shareholders: In the event of having as shareholders legal persons that represent more than 2% of the share capital, the registry will include the detail of the shareholders until reaching the individuals who represent, directly or indirectly, more than 2% of the share capital of such legal persons. The Monetary and Financial Policy and Regulation Board may reduce this percentage and establish exceptions for listed entities below this percentage. For the entities belonging to the popular and solidary financial sector, the registry will be the list of the representatives to the general assembly, in applicable cases;
>
> 6. List of administrators that includes the members of the board of directors or body acting in their stead and the legal representatives.
>
> The cadastre must be permanently updated, it will be public and easy to consult. The information from the cadastre must be available on the web.

106. The three supervisory authorities provide an access to these registers in their websites.[24] Besides the provisions on the "Public Cadastre", the SCVS maintains information online and publicly available for all companies and sectors of supervision (corporate, securities market and insurance), with information on the outstanding shares, shareholders or partners, financial and accounting information (see paragraph 247 below), as well as incorporation documents (which can be consulted on the website www.supercias.gob.ec).

107. In conclusion, the company law requirements provide for the availability of legal ownership information of Ecuadorian companies, which has to be available with the companies themselves and submitted on an ongoing and on a yearly basis to the SCVS. As regards foreign companies with a sufficient nexus, there has to be always a proxy or representative in Ecuador to whom this information can be requested.

Tax law requirements

108. Companies in Ecuador are subject to yearly reporting requirements to the SRI, which include a "Report on Shareholders, Participants, Partners, Board Members and Administrators" (APS report) as provided in SRI resolution of 28 December 2016 (henceforth "APS Resolution").[25]

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24. For SCVS: https://appscvsmovil.supercias.gob.ec/PortalInformacion/index.html; for SB: https://www.superbancos.gob.ec/bancos/catastro-publico/; for SEPS: https://servicios.seps.gob.ec/gosf-internet/paginas/consultarOrganizaciones.jsf.
25. Resolution no NAC-DGERCGC16-00000536 of 28 December 2016, issued pursuant to the LRTI (provisions on ownership composition in art. 37 a) and 39(2) no. 6)

109. The subjects required to submit the APS report are all Ecuadorian entities and arrangements (more specifically, all "companies" as defined in article 98 of the LRTI),[26] as well as the branches resident in Ecuador of foreign companies and the permanent establishments in Ecuador of non-resident foreign companies (art. 2 of the APS Resolution).

110. The APS report has to be submitted electronically and on a yearly basis, in February with reference to the 31 December of the previous tax year, or in the month subsequent to when a change in the shareholding structure has occurred (art. 9 and 10 of the APS Resolution). Ecuadorian authorities interpret these two requirements as cumulative, i.e. the submission in the month subsequent to when a change in the shareholding structure has occurred does not exempt the company from submitting the APS report in the subsequent February. Furthermore, when the taxpayer is required to file an anticipated income tax return, as it is the case for the termination of business activities, spin-off or merger of companies before the end of the tax year, it must submit the APS at least three working days prior to its advance income tax return.

111. The information to be provided in the APS report includes the entirety of the direct shareholders (with a 2% threshold for companies that list their shares on an Ecuadorian stock exchange), and in cases when a shareholder is a non-resident entity without a permanent establishment in Ecuador (and thus not subject to APS reporting itself), corresponding information (entirety of the direct shareholders) has to be included for such entity (and so recursively for all subsequent levels of ownership, until reaching the last level represented by an individual or a public institution).[27] Furthermore, if the last level of the chain of ownership is a non-resident and the applicable law of a foreign jurisdiction would allow such person to be a nominee shareholder, pursuant to the unnumbered article after article 48 of LRTI, the obliged subject must demonstrate that the last level reported is the beneficial owner (*beneficiario efectivo*).

112. The conservation period applicable for information contained in the APS reports is 15 years.[28] After that period, the information is destroyed according to SRI policy.

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of the LRTI, and art. 51 of the LRTI Regulation) and to the Law Establishing the SRI.

26. Pursuant to article 98 of the LRTI, also for the purposes of APS reporting, the term "company" (*sociedad*) includes: any legal entity; de facto business organisation; mercantile trust; consortium of companies; investment fund; and any entity that, although lacking legal personality, constitutes an economic unit or a patrimony independent from those of its members.

27. APS Resolution, articles 3 and 4.

28. Article 18 of the Organic Law on Transparency and Access to Public Information (LOTAIP) provides that the conservation period of information protected as

113. The term "permanent establishments of foreign enterprises" is defined, in article 9 of the LRTI Regulation as the fixed place in which the enterprise exercises in whole or in part its activity, and includes "any place of management of the activity" ("*cualquier centro de dirección de la actividad*"), "any branch" ("*cualquier sucursal"*) as well as dependent agents and other commonly established circumstances (generally in line with what provided in art. 5 of the OECD Model Tax Convention). Provided that foreign companies cannot be tax resident in Ecuador (see paragraph 35), the definition ensures that all foreign companies with sufficient nexus with Ecuador are covered by the requirements on availability (as well as reporting) of ownership information in line with the standard.

114. The Tax Administration through the APS reports has direct information on the legal ownership of all legal entities and arrangements. While a single APS report generally only contains information on the direct ownership (except for cases when one or more foreign entities are among the shareholders), cross-analysis of multiple APS reports allows the tax administration to have information up to the ultimate level (individuals or public entities).

Anti-money laundering law requirements

115. The AML Law (art. 4) requires financial institutions to record through trustworthy means the identity of their clients including, in case of legal persons, the list of partners or shareholders and the amounts of shares or participations. The AML Regulation requires, in this connection, that the details to be gathered on shareholders include: identification number, passport, RUC, nationality, profession and/or position (art. 7 no. 1.2 g).

116. In conclusion, while there is no general requirement to engage with a bank or other AML-obliged subject, AML requirements can provide a complementary source for legal ownership information on companies in Ecuador.

Legal ownership information – Enforcement measures and oversight

117. The SCVS is responsible for the supervision of compliance with the registration obligations and the maintenance and filing of updated information. It performs these supervisory functions through control plans that include random inspections.

118. For the requirements provided by the LC, the SCVS can impose fines in case of non-compliance, pursuant to article 457 of the LC. The fines are measured in terms of (monthly) "Unified Basic Salary" (*Salario básico*

reserved is 15 years. Since APS reports contain reserved information that the Tax Administration obtains regarding ownership, this conservation period applies.

unificado, SBU), and can amount to up to 12 SBUs. The SBU is determined on a yearly basis and for 2020 and 2021, it amounted to USD 400. The fine in case of failure to comply with obligations established by the LC was therefore, for 2020 and 2021, up to USD 4 800.

119. As regards, in particular, legal ownership information, article 25 of the LC provides for sanctions in case of non-compliance with the filing obligations (i.e. if the Superintendent does not receive in a timely manner the documents referred to in the previous articles, including article 20 b), or if those do not contain all the required data). The SCVS can impose a fine on the legal representative of the company in accordance with article 457 of the LC. These fines are graded (up to a maximum of USD 2 400) based on the amount of the company's assets according to the latest balance sheet filed and they can be repeatedly issued until due compliance by the company with the required obligation.

120. For companies that are part of the private financial sector and have reporting requirements to the SB, this authority can apply (art. 264 of COMYF) a fine of up to 0.01% of assets of the non-compliant entity, the removal of its administrators and/or the revocation of its authorisation(s) in the event of "very serious infractions" (art. 261 of the COMYF). Very serious infractions include the failure to report the biannual shareholders information.

121. For the tax requirement to submit the APS report to the SRI, enforcement measures include:

- deterrent reminders: taxpayers are warned about their obligations before due date.
- notifications issued to taxpayers that have failed to comply with the obligation once the due date is expired.
- controls.

122. Non-compliance with the APS reporting obligation is sanctioned with the temporary closure of the establishment/suspension of the economic activity for failing to provide the information required by SRI, pursuant to the seventh general provision of the Law for Public Finances Reform. The closure/suspension cannot be replaced by financial penalties and is without prejudice to any criminal proceedings.

123. In practice, the SRI requires taxpayers to comply with the tax obligations in arrears or to provide within ten days an objective justification for their non-compliance. In case the taxpayer does not comply with the tax obligation or does not provide a justification in the timeframe indicated, the SRI notifies and executes within one day the sanction of closure of the establishment or suspension of the economic activity, for a minimum period of seven days. This means that in the period of closure/suspension, the taxpayer

cannot carry on its business activity. The closure/suspension is not lifted until the obligations in arrears are met (i.e. the sanction has an indefinite duration), without prejudice to the application of further sanctions.

124. Furthermore, from the year 2015 onwards, amendments to the LRTI (art. 37) and its general regulation (RLRTI) have established an increase of the overall corporate income tax rate applicable to the company by 3%, and an increase of the withholding tax rate from 10% to 14.8% applied to dividends paid by the company to shareholders if the requirements related to the disclosure of shareholders (implemented through the APS report) are not fulfilled.

125. In case the temporary closure of the establishment or suspension of the economic activity is not applicable, a fine of up to USD 1 500 can be applied for non-compliance with the reporting obligation pursuant to article 349 of the Tax Code.

126. Ecuadorian authorities indicated that, after the introduction of these provisions, the level of compliance with these reporting obligations has improved significantly.

127. In general, taxpayers and third parties are expected to comply with their filing requirements with the SRI using online filings, which are monitored through a system called "obligations matrix". If a taxpayer fails to comply with a reporting obligation, including the APS reporting, the SRI can automatically identify the non-compliance through the obligation matrix, which is included on the periodic reports that are used to trigger the appropriate enforcement measures, applied on an ongoing basis. In this regard, SRI has been in a position to extract monthly figures of compliance gap for APS reporting. The gap is generally higher in the month of February when the reporting deadline is set (see paragraph 110) and decreases in the following months, when more taxpayers comply with the reporting.

128. As regards the AML requirements, the sanctions provided for in the AML Law (articles from 17 to 20) on the AML-obliged subjects are mainly connected to the compliance with the reporting to the UAFE of suspicious transactions (art. 17) and of other types of information (art. 18).

129. The consequences for other types of non-compliance appear to be delegated to a self-regulation function within the entities themselves. In particular, the AML Regulation in article 15 details the functions of the compliance officer (of the AML-obliged subjects), which include the execution of the controls established in the Manual on Prevention of Money Laundering and Crime Financing (required to be drafted, approved and implemented by the AML-obliged subject itself) and the carrying out of periodic monitoring of client and user profiles as well as operations and transactions carried out. Non-compliance with these provisions may lead to the suspension of the compliance officer by the UAFE or, in more serious cases, to the cancellation

of the registration of the compliance officer as a person accredited to perform this function (with the obligation of replacement by the AML-obliged subject), as provided in article 16 of the AML Regulation.

130. Further provisions for non-compliance with AML provisions by AML-obliged subjects are provided for in the resolutions issued by the supervisory bodies (SB, SCVS and SEPS). In particular, for financial institutions, a resolution issued by the SB (see paragraph 142 below) provides that the board of directors of the entity must "establish and arrange the internal sanctions for non-observance of the current provisions on the prevention of money laundering and financing of crimes such as terrorism, known by any means, notwithstanding the respective legal actions performed by control bodies and other competent authorities".

131. Enforcement measures and oversight in practice will be reviewed in Phase 2 of the review.

Availability of beneficial ownership information

132. The standard requires that beneficial ownership information be available on companies. In Ecuador, this aspect of the standard is mainly addressed through (i) AML obligations, even though there is no legal requirement for all relevant companies to engage on a continuous basis with an AML-obliged subject and (ii) additional tax obligations (complementing the pre-existing APS report requirements on the ownership chain) introduced in November 2021 and currently in the process of being implemented. This legal regime is analysed below.

Companies covered by legislation regulating beneficial ownership information

Type	Company Law	Tax Law	AML Law
Domestic companies	All	All	Some
Foreign companies (nexus)[29]	None	All	All

Anti-money laundering law requirements

133. The Ecuadorian AML Law provides general know-your-customer requirements and is complemented by the AML Regulation that includes the obligation for AML-obliged subjects to perform customer due diligence

29. Where a foreign company has a sufficient nexus, then the availability of beneficial ownership information is required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR. (Terms of Reference A.1.1 Footnote 9).

(CDD), including the identification of their clients and of the beneficial owners of their clients. This requirement does not lead to a full coverage of all relevant companies in line with the standard, as there is no obligation in Ecuador to have a permanent relationship with an AML-obliged subject.

134. The AML-obliged subjects include, according to article 4 of the AML Law, institutions of the financial and insurance system. Among their obligations, letter a) of article 4 requires them to register, through trustworthy and reliable means, the certification of legal existence of legal persons, capacity to operate, list of partners or shareholders, amounts of shares or participations, corporate purpose, legal representation, address and other documents that allow the establishment of their economic activity.

135. Article 5 of the AML Law extends to other subjects some obligations to report to the UAFE,[30] according to the regulations issued in each case, including:

- subsidiaries under the control of the institutions of the Ecuadorian financial system
- securities exchanges and brokers
- fund and trust administrators
- co-operatives, foundations and non-governmental organisations
- notaries
- property and commercial registrars.

136. The AML Regulation clarifies that both the institutions of the financial and insurance system and the persons listed under article 5 of the AML Law are AML-obliged subjects (art. 2) with the obligation to know their clients in addition to reporting obligations (on suspicious or large transactions).

137. The AML Law does not contain the definition or a reference to beneficial ownership nor to customer due diligence. The definition of beneficial ownership for AML purposes is found in the AML Regulation, which at the final paragraph of article 7 "On measures that obliged subjects must apply" indicates that:

> The subject obligated through the due diligence of the client must identify the beneficial owner(s) as the individual(s) that ultimately owns directly or indirectly as owner or recipient of resources or property or have control of a client, and/or the individual in whose name the transaction is carried out, also

30. operations and economic transactions, whose value is equal to or greater than USD 10 000.

including individuals who exercise the ultimate effective control over a legal entity or other legal arrangement.

138. The definition is generally in line with the standard as it designates that the beneficial owner(s) has to be an individual and that both control through (direct and indirect) ownership interests and control through other means are accounted for.

139. However, the AML Regulation does not further specify how control has to be determined, how the definition has to be applied in practice (e.g. if any threshold is applicable for control through ownership, if a cascade or rather a simultaneous approach has to be applied in relation to the various clauses), and whether the individual who holds the position of senior managing official has to be identified as beneficial owner if there is no natural person that meets the definition. This lack of guidance can lead to a non-uniform application of the definition across AML-obliged subjects (for example, it might appear sufficient to identify only the individuals with an ultimate ownership control even in cases where doubts might arise on the fact that other individuals are controlling the entity through other means).[31] For the above reason, it is unclear whether the definition of beneficial owner(s) in article 7 of the AML Regulation is consistently applied in line with the standard.

140. The AML Regulation does not indicate which information should be collected on the beneficial ownership of clients. On the other hand, for the beneficial owners of an operation or transaction,[32] article 7 of the AML Regulation requires the following minimum information to be collected: a) Full names and surnames or business name of the client, b) Sex, c) Nationality, d) Identity card for Ecuadorians, passport or identification document in the case of a foreign person, and e) Single Registry of Taxpayers in the case of legal persons. In this connection, while these details are in principle adequate, if they were also applied to identify beneficial owners of the client, the indication of "business name" under letter a) and letter e) appear inconsistent with the fact that, according to the definition, beneficial owners have to be individuals. This might generate further inconsistencies in the practical application of this provision of the AML Regulation for the identification of beneficial owners.

31. Interpretive Note to FATF Recommendation 10 (Customer Due Diligence).

32. The beneficial owners of an operation or transaction, as such, is not necessarily information relevant to identify and determine the ownership structure of relevant entities and arrangements. It has only been included in the present analysis to illustrate a case on how the AML Regulation implements the definition of "beneficial owner" provided therein.

141. As regards the Customer Due Diligence (CDD) obligations with a view to identify the beneficial owners, article 7 of the AML Regulation only provides that the due diligence procedures to be applied by the AML-obliged subjects are subject to the guidelines issued by the respective control bodies.

142. For the financial institutions of the private sector, these binding guidelines are contained in the "Compliance Norm for the Administration of the Risk of Money Laundering and Financing of Crimes, such as Terrorism" (ARLAFDT) introduced by the SB with resolution no. 0550 of 29 May 2020, which was last revised on 24 March 2022.

143. The ARLAFDT, after the 2022 revision, defines the beneficial owner ("*Beneficiario final o Beneficiario efectivo*") as:

> 2.7 the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted, directly or indirectly. It also includes those persons who exercise, directly or indirectly, ultimate effective control over a legal person or other legal arrangement.
>
> For the purposes of this rule, beneficial owner means the following:
>
> 2.7.1 The natural person(s) in whose name a business relationship is established;
>
> 2.7.2 The natural person(s) exercising control over the [holding company][33]
>
> 2.7.3 The natural person(s) who ultimately owns or controls, directly or indirectly, the share capital or voting rights.
>
> […]
>
> When no natural person is identified in the terms of sub-paragraphs 2.7.2 and 2.7.3, the legal representative will be the beneficial owner, unless there is a natural person who holds and exercises greater authority in management or direction functions of the legal person.

144. This definition, for the general part in the first paragraph, substantially corresponds to the standard and presents slight differences from the one which can be found in the AML Regulation (see paragraph 137). These differences are not expected to create discrepancies in how the definition is understood, to the extent that they do not contradict, and appear to rather complement, each other (for example, only the definition in the AML

33. Reference is made to the "legal entity under the terms provided in article 429 of the Companies Law", which in turn refers to the Holding Company.

Regulation explicitly refers to direct or indirect ownership). On the other hand, the specifications provided in sub-section 2.7.1 and subsequent provisions might limit the scope of the identification of beneficial owner to only the natural persons that exercise control through ownership.

145. The ARLAFDT requires financial institutions to have a manual on the compliance norm for the administration of AML-CFT risk (section 11) and to maintain the underlying documentation (sub-section 11.4). It also identifies (section 12) due diligence procedures which have to be included in the manuals. The CDD for clients includes the requirement to identify the beneficial owner(s) (sub-section 12.1.1.1.3) and sets minimal identification information required.[34] The ARLAFDT further requires that:

> Special attention shall be applied in the due diligence procedures that must be followed for shareholders, administrators and proxies of legal persons or de facto business organisations, the controls of which shall always fall on their beneficial owners or ultimate beneficiaries, as individuals. In the case of legal entities, knowledge of the client also means getting to know the identity of the individual who owns the shares or participations, or the identity of the person who has ultimate control of the client as legal entity, especially by applying extended due diligence to those who directly or indirectly own 25% or more of the subscribed and paid in capital of the entity or company.

146. The 25% threshold indicated therein does not provide a basis for the controlling ownership interest of the client, but rather indicates a circumstance where extended due diligence has to be applied to the shareholders of the client, thus reinforcing the CDD process.

147. More in general, the ARLAFDT provides that in some circumstances the due diligence has to be extended (sub-section 12.1.1.1.11) based on the risk profile of the client in relation to the exposure to AML-CFT crimes, or rather can be simplified (sub-section 12.1.1.1.14) in specified cases that do not appear to present risks in relation to the availability of beneficial owner information.[35] Furthermore, simplified CDD is applied by the AML-obliged subjects under their own responsibility, and the ARLAFDT specifically provides that "in no case the application of this [simplified] due diligence will imply the non-knowledge of the client ["el desconocimiento del cliente"], the

34. This includes name and surname, date of birth, Ecuadorian ID or passport or other foreign ID, citizenship, city and country or residence, domicile, telephone number (Annex 1 to the ARLAFDT).

35. These are: i. Natural persons who hold a basic account as their only product; ii. Public entities; iii. Enterprises in which a majority shareholding is held by a public entity; and iv. Financial institutions controlled by the SB.

lack of establishment of behavioural and transactional profiles". Ecuadorian authorities have indicated that this formulation implies that the AML-obliged subject is not exempted from knowing the client and thus from the requirement to identify the beneficial owner(s) (pursuant to sub-section 12.1.1.1.3 of the ARLAFDT, see paragraph 145). Therefore, the same information on beneficial owners is expected to be gathered also in case of application of simplified due-diligence.

148. As regards the frequency of updates of the information which has to be gathered pursuant to the CDD, the ARLAFDT requires that the information has to be periodically updated (sub-section 12.1.1.1) but does not specify any interval of time in this regard. It rather mandates that financial institutions establish the periodicity and mechanisms necessary to verify and update the information declared and provided by the client (sub-section 12.1.1.1.4). Specific circumstances where the updating of this information is required (sub-section 12.1.1.1.5) also need to be contemplated, generally based on risk or uncertainty about the consistency of the information already in their possession.[36] The lack of a specified frequency of updates for CDD information could lead to the circumstance that beneficial ownership information in possession of the financial institution is not always kept up to date.

149. As regards the retention period of AML information, the ARLAFDT provides (sub-section 11.5) that the physical registers of the general information of each client, including the respective supporting documents, have to be kept for a period of 10 years from the conclusion of the corresponding operation, whereas the files stored in digital format, of the accounting documents including the respective supporting documents, must be kept for a period of at least 15 years.

150. As noted above (paragraph 142), the provisions in the ARLAFDT are only applicable to entities under the supervision of the SB (financial institutions of the private sector). Other binding guidelines have been issued by the SCVS, the Financial Policy and Regulation Board (formerly Monetary and Financial Policy and Regulation Board) and the UAFE, in particular:

- Financial Policy and Regulation Board Resolution no. JPRF-S-2022-024 of 19 April 2022 – directed to the participants of the securities market (including fund and trust management companies, see paragraph 191)

36. It provides in particular, under no. iii of art. 12.1.1.1.5, that: "when there is a change in the participation of shareholders or partners of internal or external clients, in the terms required in the association form, it is up to the controlled entities to update the information, taking into account the risk profile of each client; and, periodically according to what is determined by the respective procedure".

- Financial Policy and Regulation Board Resolution no. JPRF-S-2022-025 of 19 April 2022 – directed to insurance and reinsurance companies
- Monetary and Financial Policy and Regulation Board Resolution no. 385-2017-A of 26 June 2017 – directed to financial institutions of the Popular and Solidary Economy
- SCVS Resolution no. SCVS-DSC-2018-0041 of 28 December 2018 – directed to AML-obliged subjects under the supervision of the SCVS
- UAFE Resolution no. DG-2020-0089 of 30 September 2020 – directed to AML-obliged subjects which are not under a specific supervisory institution (pursuant to art. 12 lett. k of the AML Law).

151. Each of these regulations contains CCD requirements and includes its own definition of beneficial owner, with some minor differences in wording but broadly in line with the content of the AML Regulation (see paragraph 137).[37]

152. However, limitations reported in paragraph 139 as regards the application of the definitions are not addressed in the guidelines. Similar to what was noted in paragraph 147, simplified due diligence procedures always require the identification of the client, but the frequency with which this information has to be updated is not specified.

153. In conclusion, while the AML requirements represent one of the main sources of beneficial ownership information in Ecuador, there is no requirement that every relevant company engages on a continuous basis with a financial institution or other AML-obliged subjects, and the CDD requirements present some uncertainties (method of identification of the beneficial owners, frequency of updates) in relation to their uniform application for the identification of beneficial owners in line with the standard.

37. In particular, the recent Financial Policy and Regulation Board resolutions no. JPRF-S-2022-024, directed to the participants of the securities market, provides, in terms of CDD (art. 18), that the regulated entity "shall avoid establishing any commercial relationship or any other type of relationship with companies or firms incorporated under foreign laws which allow or favour the anonymity of shareholders or directors, including, in this category, public limited companies whose shares are issued in bearer form or which are bearer shares or where such laws prevent the disclosure of information." For customers that are legal persons, CDD also implies that the identity of the beneficial owner in the organisational structure, applying enhanced due diligence to those who directly or indirectly hold 10% or more of the company's subscribed capital.

Company law requirements

154. The Company Law also requires, among the information that Ecuadorian companies need to submit to the SCVS on a yearly basis (pursuant to art. 20, see paragraph 97 above) on partners and shareholders, both their legal owners and "beneficial owners, in compliance with international standards of transparency in tax matters and the fight against illegal activities, in accordance with the resolutions issued by the Superintendency of Companies, Securities and Insurance for this purpose."

155. This obligation was introduced in 2017. While this provision sets a general requirement for Ecuadorian companies to provide beneficial ownership information to the SCVS, there is no definition of "beneficial owner" in the LC. It also does not appear to be, to date, any resolution by the SCVS that would require the identification and reporting of information on beneficial owners. The implementation of this obligation will be analysed further in Phase 2 (see Annex 1).

156. Information on the full ownership chain of legal entities can be found in the Registry of Companies held by the SCVS and/or by the other supervisory authorities (SB and SEPS), as seen in paragraph 97 and subsequent paragraphs. This provides for some of the beneficial ownership information but does not include information on control through other means.

Tax law requirements

157. At present, the SRI has partial beneficial ownership information, through the APS reports (as seen in paragraph 108 and subsequent paragraphs). The information in the APS reports relates in particular to the ultimate control through ownership chain, but if the last level of the chain of ownership is a non-resident and the applicable law of a foreign jurisdiction would allow such person to be a nominee shareholder, pursuant to the unnumbered article after article 48 of LRTI, it also provides that the obliged subject must demonstrate that the last level reported is the beneficial owner (*beneficiario efectivo*).

158. The recent Organic Law for Economic Development and Fiscal Sustainability after the Covid-19 Pandemic, published in the Official Journal on 29 November 2021, provides for the introduction of a registry of beneficial owners maintained by the SRI (articles 188 and 189 on "Reforms to the Law establishing the SRI").[38]

38. The Organic Law, in particular, modifies the second article of the Law establishing the SRI, by adding to its "powers, attributions and obligations" to "Maintain the registry of beneficial owners" and introduces an (unnumbered) article after

159. The SRI is required to compile and maintain the Registry of Beneficial Owners, as a publicly held data registry, with the function to collect, file, process, distribute, disseminate and record the information, allow the identification of beneficial owners and of parties to the chain of ownership of legal persons and companies (as defined in article 98 of the LRTI, see paragraph 109).

160. The Organic Law explicitly provides that information on beneficial owners may be exchanged with competent authorities of partner jurisdictions, pursuant to the applicable international instruments on international mutual administrative assistance, complying with the provisions on confidentiality, as applicable.

161. The Organic Law defines "Beneficial owner" as

> the natural person who effectively and ultimately, through a chain of ownership or by any other means of control, owns or controls a company, and/or the natural person on whose behalf a transaction is carried out. A beneficial owner is also any natural person who exercises ultimate effective control over a legal person or other legal structure.

162. The organic law provides that companies and their managers must comply with these obligations with due diligence and timely submit the corresponding forms and annexes, but these documents remain to be issued. In particular, the organic law requires natural persons and companies (in the broad understanding of the LRTI, and including in cases of dissolution, liquidation or bankruptcy procedure or agreement) through their legal representatives, managers, trustees or protectors, as the case may be, or through whoever represents them in accordance with the law, to submit to the SRI the relevant declaration and/or annex(es) in which the beneficial owners are fully identified, in the form, terms and conditions to be established by the SRI by means of a regulatory act. The Organic Law also provides that "the information to be submitted must be validated and updated and must contain each part of the chain of ownership or control, in accordance with the due diligence procedures established in the SRI regulatory act in accordance with international standards".

163. At the cut-off date for this report, the Ecuadorian authorities expected that regulations to this new law would be issued by Presidential Decree in the near future. Sanctions reported in paragraphs 122 to 125 will be applicable in case of non-compliance.

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article 21 (in Chapter V, "General Provisions") on the Registry of Beneficial Owners.

164. In conclusion, in Ecuador tax obligations recently introduced provide for a general requirement to report beneficial ownership information to the SRI, but the legal and regulatory framework is still incomplete as the 2021 Organic Law only provides for the general requirements on the establishment of the Registry of Beneficial Owners and on the related due diligence and filing obligations by natural persons and companies. For the system to be operational, and for a complete assessment of its functioning (e.g. on when and how the information has to be submitted or on whether the individual who holds the position of senior managing official has to be identified and reported as beneficial owner if there is no natural person that meets the definition) regulatory acts are expected. The AML obligations and the Company Law obligations also provide for some requirements in relation to the identification of the beneficial owners, but given their scope, they do not ensure that beneficial ownership information is complete, up-to-date and available in all cases as required by the standard. **Ecuador should ensure that adequate, accurate and up-to-date beneficial ownership information is available for all relevant entities and arrangements in accordance with the standard**.

Nominees

165. Nominee ownership is not allowed in Ecuadorian entities. The Criminal Organic Code (article 289) establishes that the simulation of ownership of assets, including shares and participations, is a crime (*testaferrismo*) punishable by imprisonment from three to five years. If liability of legal persons is established, they are also sanctioned with their dissolution and a fine of 500 to 1 000 SBU (equivalent to USD 200 000 to 400 000).

Beneficial ownership information – Enforcement measures and oversight

166. For the enforcement measures and oversight on the availability of beneficial ownership, where applicable, the same provisions and penalties described in paragraphs 117 to 128 for legal ownership are also applicable by the SCVS, the SB, the UAFE and the SRI respectively. Enforcement measures and oversight will be further reviewed in Phase 2 of the review.

A.1.2. Bearer shares

167. In Ecuador, the LC does not provide for the issuing of bearer shares. Ecuadorian authorities have indicated that bearer shares have been abolished since 1975 and since then all shares have to be nominative shares.[39]

39. Article 110 of the Commercial Code provides that bearer securities may only be issued in cases where there is an express authorisation by law. As examples

168. In particular, for stock companies, the LC provides that the owner of the shares is considered to be whoever appears as such in the Book of Shares and Shareholders (art. 187).

169. The LC also provides that foreign companies whose shareholdings are represented by bearer shares cannot be shareholders of an Ecuadorian limited liability company (article 100) or of a stock company (article 145).

170. On the other hand, stock companies have the possibility to issue "*parte beneficiaria*" (art. 222 and following) a title that confers to its owner a right to participate in the company's annual profits. The security representing the *parte beneficiaria* can be in the form of registered or bearer certificate (art. 223). *Partes beneficiarias* can be issued for a maximum duration of 15 years and up to 10% of the company's annual profits for all *partes beneficiarias*. The LC also provides that the holders of *partes beneficiarias* have the right to receive the percentage assigned to them on the profits with preference to any class of shareholders of the company (art. 222) and that, on the other hand they do not benefit from the rights that the law establishes for the shareholders (art. 226). From the analysis it is concluded that *parte beneficiaria* can be assimilated to hybrid bonds and thus out of the scope of bearer shares pursuant to the ToR.

A.1.3. Partnerships

171. The term "partnership" is not defined in Ecuadorian legislation and all the entity types defined and regulated in the LC are considered as companies regardless of their rules on corporate governance and responsibility of the shareholders/partners.

172. Furthermore, pursuant to the LRTI (art. 98), they are treated as companies for tax compliance purposes. The three types of entities described in the present section, namely the company in collective name, the simple limited partnership and the partnership or participation accounts are thus formally not considered partnerships according to the domestic legislation, but on the other hand they present some analogies with the concept of partnerships in other legal systems (e.g. contracts or arrangements *intuitu personae*, presence of partners with unlimited liability).

173. These entities, although not subject to the control and supervision of the SCVS, are established as "mercantile companies" and their acts (and those of their partners acting in such capacity, pursuant to art. 8 lett. d), are "acts of commerce" covered by the Commercial Code. Their record keeping

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of such authorisation, the following cases can be found: the promissory notes, the bills of exchange and the checks, whereas company shares are not included among bearer securities.

period is seven years (see paragraph 103). Also for tax matters, the general record keeping period by the SRI applies (see paragraph 112).

174. The first type of entity is the company in collective name (*Compañía en Nombre Colectivo*), with two or more partners. Only individuals can be partners of a company in collective name (art. 36 of the LC) and its incorporation requires a public deed before a notary public (art. 37 of LC) and approved by a civil judge (art. 38 of the LC). The act of incorporation has to be registered at the cantonal Commercial Register and a relevant extract (which includes the name, nationality and domicile of partners and the indication of the status of general partners) has to be published in one of the newspapers of greater circulation in the company's domicile (art. 38 of the LC).

175. In principle, all the partners have the faculty of managing the company and signing on its behalf (art. 44 of the LC), unless it is otherwise specified in the act of incorporation. The general partners (*administradores*) and the other partners are subject to joint and unlimited liability for all acts performed by any of them under the corporate name (art. 74 of the LC). As of December 2020, 290 companies in collective name existed.

176. The second type of entity covered is the simple limited partnership (*Compañía en Comandita simple*), which is contracted between one or more jointly liable partners and one or more limited partners, whose liability is limited to the amount of their contributions (art. 59 of the LC). Only individuals can be partners of a simple limited partnership (art. 59 of the LC) and its incorporation requires a public deed before a notary public, approval by a civil judge and registration at the Commercial Register (art. 61 of LC, which requires the same requirements applicable for the company in collective name). Seven simple limited partnerships existed as of the end of December 2020.

177. Both the company in collective name and the simple limited partnership are not subject to the supervision of SCVS (pursuant to article 431 of the LC), which therefore does not hold records or information on these type of companies.

178. Information on the identity of partners at the time of incorporation is available at the competent Commercial Register as well as by the notary public who intervened in the incorporation process.

179. When changes in the composition of partners take place, a public deed before a notary is needed if the change involves a change in the business name of the partnership.[40] In such cases, the deed has to be filed by the

40. For companies in collective name, pursuant to art. 36 of the LC, the company name is necessarily the sequence of names ("enunciative formula of the names")

administrators before a civil judge that will order the registration of such changes in the relevant Commercial Register, as established in article 85 of the LC.[41]

180. In this connection, both for the company in collective name (art. 36 of LC) and for the simple limited partnership (art. 59 of LC) the company name (*razón social*) can include the name of all the partners or the name of some partners complemented with the words "*y compañía*" (and company) or "*compañía en comandita*" (limited partnership) respectively. Therefore, as a change in composition of partners does not necessarily involve a change in the business name of the partnership, it appears it is not always the case that the Commercial Registers keeps updated information on all partners.

181. The third type of Ecuadorian entity/arrangement that presents analogies with partnerships are the "Partnership or participation accounts" (*Asociación o Cuentas de Participación*), which is an agreement by which a merchant ("*comerciante*") provides to one or more persons ("*participantes*", participants) the participation in the profits or losses of one or more operations or of all of its business (art. 423 of the LC). Participants do not have any property rights over the assets of the business they are associated to, even if they have been provided to the business by them as capital contribution, since their rights are limited to obtaining returns for the funds they have contributed and of the losses or profits incurred (art. 425 of the LC).

182. These associations are exempted from the general requirements ("formalities") established by the LC for companies (art. 428), and in the absence of a contract by public deed, their existence can be proved by the other means admitted by the commercial law. For tax purposes, they are considered as companies. As of December 2020, 2 611 associations or contracts on participation accounts existed.

183. For tax purposes, the companies in collective name, the simple limited partnership and the partnership or participation accounts are all considered companies pursuant to article 98 of LRTI (see paragraph 109 above)

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of all the partners, or of some of them, with the addition of the words "and company". Only the names of the partners can be part of the company name. Similarly, for simple limited partnership, pursuant to art. 59 of the LC, the company name is necessarily be the name of one or more of the jointly and severally liable partners, with the addition of the words "limited company".

41. Art. 85. – The managers of mercantile companies that vary their business name be it for the admission of new partners, for transferring their rights to another person or company, or for any other causes, will be obliged to present the respective deed to one of the judges on civil matters of the place where the company has had its domicile, so that he is able to order the registration in the Mercantile Registry.

and they are subject to the tax requirements established for companies (in no case taxable income is attributed directly to the partners). Therefore, they are required to file the APS report and to submit information to the SRI with the identification of beneficial owners, that therefore ensures the requirement to have updated legal and beneficial ownership information, for the latter under the definition and with the limitations indicated for companies (paragraph 164 above). **Ecuador should ensure that beneficial ownership information is available for partnerships in accordance with the standard**.

184. Compliance with the obligations related to the availability of ownership information, oversight and enforcement is similar to the ones applying to companies (see A.1.1) and will be assessed in the Phase 2 of the review.

A.1.4. Trusts

185. Ecuadorian law does not recognise the concept of a trust and Ecuador is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. There are, however, no restrictions that prevent an Ecuadorian resident from acting as a trustee, protector or administrator of a trust formed under foreign law. The legal and regulatory framework of Ecuador does not include any provision that would allow the identification of parties to such a foreign trust nor its beneficial ownership.

186. In Ecuador, arrangements similar to trusts exist in the form of mercantile trusts (*fideicomisos mercantiles*), that are autonomous patrimonies with legal personality administered by professional management companies. Mercantile trusts are regulated by the COMYF.

187. The COMYF (art. 112) generally defines fiduciary acts [*negocios fiduciarios*] as "those acts of trust by virtue of which one person [constituent] delivers to another [fiduciary] one or more specific assets, transferring or not the ownership of them so that it fulfils a specific purpose, either for the benefit of the constituent or a third party. If there is a transfer of the property of the goods, the trust [*fideicomiso*] will be called mercantile, circumstance that does not occur in the fiduciary assignments [*encargos fiduciarios*], also arranged pursuant to the rules regarding the mandate, in which there is only the mere provision of the goods." Fiduciary acts can be therefore either mercantile trusts (with transfer of property) or fiduciary assignments (without transfer of property). In either case (art. 114), they cannot be "secret", meaning that a written and express proof of the purpose for which they were intended by the constituent is required.

188. The fiduciary assignment contract, according to article 114 of the COMYF, has to take place with a written and express agreement and has to include the instructions from the constituent to the fiduciary so that the latter

irrevocably, on a temporary basis and on behalf of the former, fulfils various purposes, such as management, investment, possession or custody, alienation, provision in favour of the constituent or of a third party called beneficiary. In the fiduciary assignment contract, article 114, the subjective elements of the mercantile trust contract are present, but unlike the latter, there is no transfer of assets on the part of the constituents, who retain their ownership and only allocate assets to the fulfilment of irrevocably established purposes. Consequently, unlike for mercantile trusts, no legal person is created according to the Ecuadorian law. Considering that the ownership of assets clearly remains on the constituent, fiduciary assignments are not relevant arrangements for the purposes of this review.

189. The mercantile trust contract is described in article 109 of the Securities Market Law (which constitutes the second book of COMYF):

> with the mercantile trust contract one or more persons named constituents or settlors, transfer temporarily and irrevocably the property of assets, movable or immovable, tangible or intangible, existing or expected to exist, to an autonomous patrimony, provided with legal personality, so that the fund and trust management company, which is its trustee and legal representative, carry out the specific finalities established in the contract, in favour of the constituent or of a third party named beneficiary.

190. The mercantile trust contract has to be concluded by public deed before a notary (art. 110 of the Securities Market Law) and it has to include, among other elements, the identification of the constituent(s) and of the beneficiaries (art. 120 no. 1 lett. a of the Securities Market Law).

191. Only fund and trust management companies, which are specialised entities authorised by the SCVS to act as participants on securities exchanges, can act as fiduciaries/trustees of a mercantile trust, to which they also act as legal representatives (it is thus not possible for the trustee of an Ecuadorian trust to be an individual or a non-professional entity).

192. Mercantile trusts can be used as a means to carry out asset securitisation processes, defined as the process by which are issued securities that can be freely placed and traded on the stock market, against autonomous equity (art. 111 and 138 of the Securities Market Law).

Requirements to maintain identity and beneficial ownership information in relation to trusts

193. Identity and beneficial ownership information on mercantile trusts is available with the SCVS, either with the Securities Market Public Registry or through monthly reporting. Some information is also available with the SRI pursuant to tax reporting obligations (pending the implementation of the

BO register), and under the AML obligations. However, these provisions do not ensure that beneficial ownership information is available on Ecuadorian mercantile trusts and on foreign trusts in all cases.

Securities Market

194. The Securities Market Public Registry (*Catastro Público del Mercado de Valores*) established by article 18 of the Securities Market Law and administered by the SCVS, contains the public information regarding issuers, securities and other institutions regulated by the same Law. Number 11 of article 18 requires in particular the registration of some mercantile trust contracts and fiduciary assignments in the Securities Market Public Registry, in accordance with the general rules issued for this purpose by the Securities Market Regulatory Board (*Junta de Regulación del Mercado de Valores*).

195. The relevant regulatory act identifies the mercantile trusts that are required to register to the Securities Market Public Registry as those that serve as mechanisms to carry out a securitisation process, the investment trusts with adherents, the commercial real estate trusts; those that are directly or indirectly related to a real estate project whose financing comes from third parties; and those in which the public sector participates as a constituent, adhering constituent or beneficiary and those in which in any way they are integrated into its assets with public resources or that this possibility is foreseen in the respective contract.[42]

196. The registration request must be submitted by the legal representative of the trustee (i.e. fund and trust management companies) within a period of 15 days counting from the constitution of the trust.

197. Trustees are required to report to the SCVS, at the time of registration in the Securities Market Public Registry, and on a yearly basis by 30 April, both for themselves and for the trusts they manage, the following elements on the ownership structure: identity and domicile or residence of its shareholders, partners or members, as the case may be, and in case these are in turn legal entities (including foreign legal entities) the same has to be done up to the level of the ultimate individuals.[43]

42. Article 6, Section II, Chapter I, Title XIII, Book II of the Codification of Monetary, Financial, Securities Resolution.

43. Resolution no. 385 on the Codification of Monetary, Financial, Securities and Insurance Resolutions and in particular article 15 of Chapter I of Title IV of Book 2 on Common Regulations for the Registration in the Public Register of Securities Exchange.

198. For mercantile trusts, the trustee has to provide to the Securities Market Public Registry information that allows to clearly identify the constituents, adherent constituents (i.e. natural or legal persons who participate in a trust through an adhesion contract) and beneficiaries, and in the case that they are legal persons, the same information indicated in the previous paragraph has to be reported, and the process is repeated until identifying (national or foreign) natural persons.

199. As already seen for the case of companies (see paragraph 97 above) some exclusions apply to this reporting obligation and in particular for shareholders owning a participation of less than 10% or that list their shares on stock exchanges (either an Ecuadorian or a foreign exchange), with some exceptions applicable to the exclusions. In addition, due to its legal nature, this rule is not applicable to public entities.

200. Mercantile trusts and fiduciary arrangements that, pursuant to the rules reported in paragraph 195, do not have to be registered in the Securities Market Public Registry, must report identity and ownership information to the SCVS on a monthly basis:[44]

> a. Name of the fiduciary business, date of subscription and validity.
>
> b. List of the constituents, adhering constituents and beneficiaries, indicating the number of identity card, passport or RUC and address.
>
> c. If a legal person is found in the aforementioned information […] [identity and domicile or residence of its shareholders, partners or members, as the case may be, up to the level of the ultimate individuals.]

Tax law

201. As regards tax law provisions, all legal entities and legal arrangements, including mercantile trusts, are subject to APS reporting (see paragraphs 108 and subsequent), and are thus required to disclose on a yearly basis or when relevant changes occur, their capital composition, that allows the SRI to have information up to the ultimate level of ownership.[45]

202. Trust are also covered in the provisions of the Organic Law of 29 November 2021 establishing a registry of beneficial owners to be

44. Codification of Monetary, Financial, Securities and Insurance Resolutions (numeral 3, art. 8 of Section III, Chapter I, Title XIII, Book II).

45. For mercantile trusts, the APS reports should contain information on their administrators, settlors and beneficiaries, pursuant to art. 5 of the APS Resolution.

maintained by the SRI (provided that they fall within the definition of "companies" pursuant to art. 98 of the LRTI and that trustees are among the subjects required to report the information). It is noted in this connection that the definition of beneficial owners is unique for all types of entities and arrangements (see paragraph 161) and does not specify for trusts that it must include information on the beneficial owners of the settlor(s), trustee(s), and beneficiaries when they are not natural persons. In any case, the registry of beneficial owners is not yet in place.

Anti-money laundering framework

203. Ecuadorian trustees of Ecuadorian fideicomisos (i.e. the fund and trust management companies) are also AML-obliged subjects pursuant to the AML Law (art. 5, see paragraph 135 above). For the case of mercantile trusts the definition of beneficial owner in the AML Regulation is the same as for companies (reported in paragraph 137 above). However, the AML Regulation provides that the AML-obliged subjects have to gather, for clients that are trusts, information that identifies the constituent or settlor, trustee and beneficiaries, up to the natural persons who exercise ultimate effective control over the trust. This ensures availability of the identity of the parties of the trust, but where any of these parties are not natural persons (e.g. if a beneficiary is a company or other entity or arrangement), information in respect of the natural persons who are the beneficial owners of the party of the trust is not covered in the provision (except if it exercises also ultimate effective control over the trust itself).

204. As seen above (paragraph 141), the AML Regulation (art. 7) provides that the CDD procedures to be applied by the AML-obliged subjects are subject to the guidelines issued by the respective control bodies. The SB guidelines applicable to banks and other financial institutions as AML-obliged subjects (ARLAFDT, sub-section 2.7.4), as amended in March 2022, provide that in the case of a mercantile trust, the beneficial owners are the natural person(s) who holds the status of constituent(s) or settlor(s); fund and trust administrator(s) or trustee(s); and/or beneficiary(ies). While this provides a clarification that the subjects who hold such statuses, in case they are natural persons, need to be identified as beneficial owners, it is not specified who, if anyone, needs to be identified in case these subjects are legal persons. While there is no clear provision requiring for beneficial ownership information to include information on the beneficial owners of the settlor(s), trustee(s), all of the beneficiaries or class of beneficiaries of the trust, Ecuadorian authorities have indicated in this connection that, in the interpretation and application of the guidelines by the SB, the AML-obliged subjects are expected to identify the natural person exercising ultimate effective control over the trust parties that are not natural persons. Similarly, the

provision in the guidelines does not include the identification of any natural person other than settlors, trustees, and beneficiaries that exercise ultimate effective control over the trust, but Ecuador considers that this requirement is captured by the AML Regulation as reported in the previous paragraph. The application of the SB guidelines will be further analysed in the Phase 2 Review (see Annex 1).

205. The recent Financial Policy and Regulation Board resolutions no. JPRF-S-2022-024, directed to the participants of the securities market, provides that where the customer is "part of legal arrangements" ("*parte de estructuras jurídicas*"), the AML-obliged subjects have to consider, for mercantile trusts (fideicomisos), the identity of the settlor, trustee, beneficiaries, and of any other natural person exercising ultimate effective control over the trust (including and following the chain of control/ownership). For other legal arrangements, they must consider the natural persons in managerial or similar positions. A similar provision on the identification of the beneficial owners is present in the resolution no. 385-2017-A directed to financial institutions of the Popular and Solidary Economy that requires for trust to "consider all the information that identifies the settlor, trustee, beneficiaries, type of trusts, up to the natural persons exercising effective and definitive control over the trust". Such methods for the identification of beneficial owners of trusts appear in line with the standard, to the extent that the interpretation is that the identification of the natural person exercising effective and definitive control is applied to all the parties of the trust.

206. The guidelines applicable to insurance and reinsurance companies (Financial Policy and Regulation Board Resolution no. JPRF-S-2022-025 of 19 April 2022), to the AML-obliged subjects under the supervision of the SCVS (SCVS Resolution no. SCVS-DSC-2018-0041 of 28 December 2018) and to the AML-obliged subjects which are not under a specific supervisory institution (UAFE Resolution no. DG-2020-0089 of 30 September 2020) do not contain specific provisions on the identification of beneficial ownership for trusts, thus the general definition would apply to it.

Conclusions

207. In conclusion, for Ecuadorian mercantile trusts, identity information is available to the SCVS, to the SRI (through the APS report) and with the trustee (including due to the fact that they are AML-obliged subjects). For beneficial ownership, both the tax requirements on the beneficial ownership registry (for lack of the implementing regulatory acts) and the AML legislation (for lack of a definition of beneficial owners adequate for trusts) present limitations that do not ensure its availability in accordance with the standard. **Ecuador should ensure that beneficial ownership information is available for mercantile trusts in accordance with the standard**.

208. As regards foreign trusts that are administered in Ecuador or in respect of which a trustee is resident in Ecuador, there is no explicit provision that ensures the availability of legal and beneficial ownership information, unless the economic activities carried out in Ecuador correspond to those of a permanent establishment (pursuant to article 9 of the LRTI regulations), in which case it would be subject to the tax requirements applicable to companies, including the general provisions on legal and beneficial ownership information filing requirements. **Ecuador is recommended to take measures to ensure that information is available that identifies the parties and beneficial owners of foreign trusts with a nexus with Ecuador**.

Oversight and enforcement

209. For the enforcement measures and oversight on trusts, the same provision and penalties described in paragraphs 127 to 131 for companies are also applicable by the SCVS, the SB, the UAFE and the SRI respectively.

A.1.5. Foundations

210. Ecuadorian foundations (*fundaciones de beneficencia pública*) are non-profit legal entities that do not fall within the scope of this review. They are governed by the Civil Code and by special laws according to their sector of activity. Foundations may be constituted by the will of one or more founders to promote the common good of society (including activities to promote, develop and encourage said good in the social, cultural, educational, environmental, sports fields, as well as activities related to philanthropy and public charity).[46] The Ecuadorian authorities indicated that this provision is interpreted in that foundations cannot designate beneficiaries.

211. Pursuant to the Civil Code (art. 568), the bylaws of foundations must be approved by the Presidency of the Republic for the recognition of legal personality. This attribution has been delegated to the ministry competent for the matter in question, which approves the bylaws if the applicable requirements are fulfilled (article 12 of the Executive Decree of the President of the Republic no. 193 of 2017 on Regulations for the Granting of Legal Personality to Social Organisations).

212. Foundations and other not-for-profit "Social Organisations" (*Organizaciones sociales*), in accordance with Article 36 of the Social Participation Organic Law need to be registered in the Register of Social Organisations. They are also required to submit to the relevant Ministry, as competent authority:

46. Article 10 of the Executive Decree of the President of the Republic no. 193 of 2017, "Regulation on the legal personality of social organisations".

- when acquiring legal personality: information on complete names, nationality, ID number of each Founder and provisional list of board of directors (Art. 12 of Presidential Decree 193)
- every time there is a change: information on board of directors (Art. 16 of Presidential Decree 193) and inclusion or exclusion of members of the organisation (Art. 17 of Presidential Decree 193).

213. In tax matters, pursuant to the LRTI (art. 9 no. 5) the income generated by these non-profit private institutions is exempted, to the extent that their assets and income are used for the established specific purposes and the surpluses are reinvested at the end of the year for such purposes. To benefit from the income tax exemption, foundations (as well as other non-profit private institutions) must in all cases be registered in the RUC, keep accounting records and comply with other formal duties contemplated in the tax law. In this connection, the SRI has the duty to verify, at any time that such institutions are exclusively non-profit, that they are dedicated to the fulfilment of their statutory objectives, and that their assets and income are used in their entirety for their specific purposes. They are otherwise subject to taxation without any exemptions (art. 9 no. 5).

214. As regards the formal duties of private non-profit institutions, the LRTI regulations (art. 20) include requirements to:

- register in the RUC
- keep accounting
- submit the annual income tax return, in which there is no tax levied (provided the conditions set forth in the LRTI are met) and the VAT return as a tax perception agent, when applicable
- carry out the tax withholdings at source for Income Tax and VAT, where applicable, and submit the corresponding declarations and payments
- provide the information requested by the Tax Administration.

215. Furthermore, as for tax purposes foundations fall in the definition of company, they are subject to the APS reporting requirements.

216. The Civil Code provides that if a foundation is dissolved, its properties will be disposed of in the way that its statute has prescribed and, if the statute does not provide for this case, said properties will belong to the State, which has the obligation to use them for purposes analogous to those pursued by the foundation (art. 579 and 581). The Executive Decree no. 193 of 2017 specifies the causes of dissolution of a foundation (art. 19), distinguishing between the procedures for voluntary dissolution (art. 20) and those for dissolution ex officio or following a complaint ("*por causal*", art. 21, e.g. deviation

from the purposes and objectives for which it was established or having a reduction of the number of members to less than the minimum established in the Decree). The dissolution of a foundation is followed by its liquidation, according to the procedures provided for in the bylaws (art. 22). The legal personality of foundations can be reactivated, by administrative or judicial decision (art. 23).

217. In connection to the liquidation of foundations, Ecuadorian authorities indicated that the bylaws cannot provide for the return of funds to founders or other private persons, as such provisions would be contrary to the social purposes of these organisations and the detachment of property. In that order, Ecuadorian authorities explained that competent ministries may deny the approval of those bylaws for not complying with legal provisions and regulations, or in any case may prevent the return of funds during the liquidation procedure of the foundation. However, this practice does not appear to be a direct reflection of the provisions of the Civil Code and of the Executive Decree no. 193 of 2017, which pose no explicit conditions in this regard.

218. As of 31 December 2020 there were 25 493 active foundations and 36 150 inactive foundations in Ecuador, as from the RUC, where the classification as "inactive" includes both foundations permanently cancelled and those temporarily suspended (see paragraph 92). The suspension from the RUC can be lifted, once the taxpayer complies with the underlying requirements. Ecuadorian authorities have indicated that the number of inactive foundations in the RUC could be explained by the fact that some of them are created for short to medium-term purposes and are dissolved once the purposes and objectives for which they were constituted or the term established in their statutes have been fulfilled.

219. Based on the above consideration (social purposes, governmental approval, regulation for AML purposes, tax exempt status, destination of assets after dissolution), foundations in Ecuador are not "relevant entities and arrangements" for the work of the Global Forum.

Other relevant entities and arrangements

Commercial and civil entities

220. Other relevant entities and arrangements under the commercial law include the following:

- Consortium or consortium agreement (*consorcio* or *acuerdo consorcial*) consists of a contract concluded by public deed before a notary public (art. 604 of LC) whereby two or more persons, either individuals, legal entities or enterprises, join together for the purpose of participating jointly (consortium) in a given tender, project or

contract, or in several ones at the same time (art. 601 of the LC). For the obligations contracted on behalf of the consortium, the members of the consortium are liable in solidary (art. 603 of LC). According to the LC (art. 605), the consortium does not constitute a legal person, but is treated as a company for tax purposes pursuant to the LRTI. There were 308 consortia in Ecuador as of 31 December 2020.

- Joint Venture (*empresa conjunta*) is a contract of associative nature, whereby two or more individuals or legal entities agree to exploit a business in common for a determined period of time, agreeing to participate in the profits resulting therefrom, as well as to respond for the obligations contracted and for the losses (art. 585 of the Commercial Code). Joint Ventures have no legal personality. There were 2 822 joint ventures in Ecuador as of 31 December 2020.
- De facto business organisation (*sociedad de hecho*, art. 1961 of the Civil Code) business activities in the form of a de facto company that cannot legally subsist as company, donation or other type of contract. It has no legal personality, and therefore the rights and obligations are contracted directly by the partners. Each partner has the power to request that the previous operations be settled and to withdraw their contributions. There were 5 956 de facto businesses in Ecuador as of 31 December 2020.
- Civil companies: In accordance with number 29 of article 18 of the Notary Law (art. 18 no. 29), public notaries are responsible to approve the incorporation, changes and others acts related to the life of civil (as well as commercial) companies which are not under the control and supervision of the SCVS, and to notify the Mercantile Registrar for their registration.

221. All of the above entities and arrangements are considered as "companies" pursuant to article 98 of the LRTI and therefore subject to the reporting obligations to the SRI, including APS reporting. The availability of identity information is therefore ensured but there are limitations in the availability of beneficial ownership, and thus the same recommendation made (see paragraph 164) as the register of beneficial ownership is still missing the implementing regulations (see paragraphs 162-163).

Popular and Solidary Economy

222. The Ecuadorian law provides for organisations of the Popular and Solidary Economy, regulated by the LOEPS. A characteristic among the general principles of the organisations of the Popular and Solidary Economy there (art. 4) is the priority of labour over capital and of collective interests over individual ones. The LOEPS (art. 5) provides that the acts carried out with

their members by the organisations of the Popular and Solidary Economy, as identified therein, within the exercise of the activities of their corporate purpose, do not constitute commercial or civil acts but rather "acts of solidary", which are subject to the specific provisions of the LOEPS.

223. The entities of the Popular and Solidary Economy sector are divided into the Popular and Solidary Economy proper (Title II of LOEPS, non-financial) and the Popular and Solidary financial sector (Title III of LOEPS).

224. The organisations of the Popular and Solidary Economy proper are constituted as legal persons. The legal personality is granted through an administrative act of the Superintendent of the SEPS to be registered in the respective Public Registry (art. 9). The Popular and Solidary Economy comprises (art. 8):

- community sector organisations[47]
- associative sector organisations (associations) among natural persons
- co-operative sector organisations (co-operatives) created as partnerships ("*sociedades de personas*") among natural persons and/or legal persons
- Popular Economic Units.[48]

225. The organisations of the Popular and Solidary Economy are regulated and supervised by the SEPS, are subject to registration (art. 9 and 14, see also paragraph 105) and are required to submit to the SEPS periodic information on their economic situation and management activities (art. 12) and to comply with the accounting rules required by the SEPS (art. 13). The LOEPS general regulation also provides (art. 154 no. 3 and 4) that the SEPS, in the framework of its supervisory functions, has the responsibility to register the acquisition or loss of the quality of members (*integrantes*) and to register the appointments of directors and legal representatives of the organisations of the Popular and Solidary Economy. Specific rules are established for their dissolution and liquidation (art. 14 of LOEPS).[49] Considering their nature and purposes, it

47. The set of organisations, linked by territorial, family, ethnic, cultural, gender, environmental care, urban or rural relationships; or, of communes, communities, peoples and nationalities that, through joint labour, have as objective the production, commercialisation, distribution and consumption of licit and socially necessary goods or services, in solidarity and self-managed, under the principles of the LOEPS.

48. Subjects engaged in the personal care; personal, family, domestic, retail and artisan workshops who carry out economic activities of production, marketing of goods and provision of services that are promoted by fostering partnership and solidarity.

49. In particular, for the "social found" of the community sector organisations and the social capital of the associations, immovable property obtained by donation,

appears that the entities of the Popular and Solidary Economy present limited risks in relation to the work of the Global Forum.

226. The Popular and Solidary financial sector is regulated by the LOEPS and by the COMYF and subject to the regulation of the Financial Policy and Regulation Board and to the supervision of the SEPS (art. 444 of the COMYF).[50] It comprises:

- savings and credit co-operatives (*Cooperativas de ahorro y crédito*); at present, and as of 16 December 2015, there is a moratorium on authorising the constitution of new savings and credit co-operatives, pursuant to a Resolution (no. 1672015F) of the Financial Policy and Regulation Board
- central funds (*Cajas centrales*)
- associative or solidary-based entities, community funds and banks and savings funds (*Entidades asociativas o solidarias, cajas y bancos comunales y cajas de ahorro*).

227. The entities of the Popular and Solidary financial sector are AML-obliged subjects.[51] As of December 2021, 99.58% of the clients of the Popular and Solidary Financial Sector were natural persons.

228. For tax purposes, entities of the Popular and Solidary Economy, with the exclusion of the savings and credit co-operatives, are exempted from income tax (art. 9, no. 19) for profits that are reinvested in the organisation itself. All entities of the Popular and Solidary Economy are considered as "companies" pursuant to article 98 of the LRTI and therefore subject to the

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cannot be distributed in the event of dissolution, but must maintained for the social purpose for which the which the donation was made (art. 17 and 20 of the LOEPS).

50. Ecuadorian authorities explained that from the approval of the COMYF (2014), the whole Ecuadorian monetary and financial system (including the Popular and Solidary Financial Sector) was specifically regulated by this code, while the LOEPS (attached) was the legal framework of the entire popular and solidary sector. For this reason, after the approval of the COMYF, the provisions of the LOEPS that dealt with the Popular and Solidary Financial sector were in general moved to the COMYF, repealed, or amended. Art. 442 of the COMYF provides that "The entities of the popular and solidary financial sector, in everything not specifically foreseen for this sector in this Code, will be governed by the provisions of the Organic Law of the Popular and Solidary Economy."

51. Pursuant to Section XI "Standard for the Prevention, Detection and Eradication of the Crime of Money Laundering and of the Financing of Crimes in the Financial Entities of the Popular and Solidary Economy", of Chapter XXXVII "Popular and Solidary Financial Sector", of Title II "National Financial System", of Book I "Monetary and Financial System", of the COMYF.

reporting obligations to the SRI (corporate income tax return and value added tax return). However, the APS Resolution (art. 8) exempts them from APS reporting. Ecuadorian authorities have explained that this exclusion is due to the "collective" nature of ownership, and that in any case the SRI can ask to the SEPS the information that the latter collects on the members of those entities.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

229. In Ecuador, the main provisions for the availability of accounting records are found in the commercial and tax legislation. Companies and fideicomisos are required to apply the International Financial Reporting Standards and to keep accounting records and supporting documents for at least seven years. In the specific cases of and entity that ceased to exist or redomiciled abroad, it does not appear ensured that accounting information remains available in all cases for a minimum five years. This is mitigated partly by the availability of financial statements with the Ecuadorian Superintendency of Companies, Securities and Insurances (SCVS). For foreign trusts that are administered in Ecuador or in respect of which a trustee is resident in Ecuador, there is no explicit provision that ensures the availability of accounting information, unless the economic activities carried out in Ecuador correspond to one of a permanent establishment.

230. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/Underlying Factor	Recommendations
For foreign trusts that are administered in Ecuador or in respect of which a trustee is resident in Ecuador, there is no explicit provision that ensures the availability of accounting information, unless the economic activities carried out in Ecuador correspond to one of a permanent establishment, in which case it would be subject to the tax requirements applicable to companies, including the general the provisions on accounting.	Ecuador is recommended to take measures to ensure that accounting information and underlying documents are available for foreign trusts with a nexus with Ecuador.

Deficiencies identified/Underlying Factor	Recommendations
Although there is a requirement to keep accounting records and supporting documents for at least seven years, it is not clear (except for cases where a specific "abbreviated" process of voluntary dissolution is undertaken) who would be legally responsible to keep them and where they should be kept if the entity itself ceases to exist. Financial statements and tax returns will nonetheless be available with public authorities.	Ecuador is recommended to ensure that in all cases accounting information and underlying documents are available for a minimum of five years after the entity ceases to exist.
Legal entities may redomicile out of Ecuador and there are no legal obligations to support the availability of full accounting records and underlying documentation in Ecuador for a minimum period of five years. Financial statements and tax returns will nonetheless be available with public authorities.	Ecuador is recommended to ensure that accounting information and underlying documents are available for a minimum period of five years in relation to legal entities that redomicile out of Ecuador.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.2.1. General requirements

231. In Ecuador, the Standard to ensure that reliable accounting records are kept for all relevant entities and arrangements is met by a combination of tax law and company law requirements.

Tax Law

232. In Ecuador, the tax laws establish the general accounting record keeping requirements for all types of companies (as defined in the LRTI, i.e. including other type of entities and arrangements). In particular, article 19 of the LRTI on the "obligation to keep accounting records" provides that "all companies are obliged to keep accounts and declare taxes based on the results they produce […]" and article 20 specifies that "the accounting records shall be kept by the double entry system, in Spanish language and in dollars of the United States of America, taking into consideration generally accepted accounting principles, to record the economic movements and determine the statements of financial position and the results attributable to the respective tax year".

233. Pursuant to article 21 of the LRTI, the financial statements serve as the basis for the presentation of tax returns, as well as for their submission to the SCVS and the SB, as the case may be. Financial entities as well as public sector entities and agencies that, for any procedure, need to know about the financial situation of the companies, will require the presentation of the same financial statements that were used for tax purposes.

234. The LRTI regulations provide further details on record-keeping requirements (Chapter V "On Accounting"), including on the fact that the accounting records must be kept under the responsibility and with the signature of a legally authorised accountant and that the relevant supporting documents have to be kept for a period of seven years, as the maximum period provided in the Tax Code for the statute of limitations (*prescripción*) of the tax obligation (art. 37, see paragraph 258).

235. Also, the Tax Code requires,[52] among the formal duties of taxpayers and other obliged subjects, to keep accounting books and records related to the corresponding economic activity, in Spanish language; and to record, in currency of legal tender, their operations or transactions and keep such books and records, as long as the tax obligation is not statute barred (paragraph c), number 1 of art. 96).

Company Law

236. Requirements about accounting records can be found in the Commercial Code and in the LC.

237. The Commercial Code provides that all "merchants" ("*comerciantes*") are required to keep accounting records (art. 28) that reflect their commercial acts (art. 13 a) to be retained for at least seven years (see paragraph 256).

238. The definition of merchants (art. 2) includes the Ecuadorian mercantile companies (see para. 63) and foreign companies or their agencies and branches which carry out commercial acts (see para. 101) in Ecuador.

239. Ecuadorian authorities have indicated that the definition of commercial acts includes day-to-day economic/accounting facts that need to be reflected in the ledgers and books of the merchant, preceding the preparation of the balance sheets/financial reports, even if in the Ecuadorian legislation there is no explicit requirement to keep a journal record or similar.

52. Article 96 of the tax code provides that these requirements are applicable "when required by laws, ordinances, regulations or the provisions of the respective authority of the tax administration". The laws and regulations that pose these requirements are articles 19 and 20 of LRTI and 37 and 38 of LRTI regulations.

240. On the other hand, the previous version of the Commercial Code, in force until 2019, required that accounting records had to include at least four accounting books, namely journal, general ledger, inventory book and cash book whose content and accounting rules for entries were also specified (art. 39, 40, 42 and 43).

241. As regards the accounting methods, articles 293 and 294 of the LC require every company to conform its accounting methods and keep its books and balance sheets in line with the relevant legislation and with the rules and regulations issued by the SCVS. Accordingly, the SCVS determined[53] the accounting principles that must be applied in the preparation of the balance sheets of the companies subject to its supervision.[54] In particular, the SCVS regulations require all companies in Ecuador to adopt the International Financial Reporting Standards (IFRS) since 1 January 2012 (art. 1 of the above mentioned SCVS resolution). Companies that meet the following conditions are required to apply the IFRS for Small and Medium-Sized Entities (SMEs):[55]

- assets value of less than USD 4 million
- gross annual sales registered value not exceeding USD 5 million
- less than 200 workers employed (for this calculation, a weighted annual average is considered).

242. The companies that do not meet the above conditions are required to apply the full IFRS.

243. The LC, at article 290, provides that all companies must keep their accounting records in Spanish.[56] The same article also implies a general requirement to keep the accounting records at their main domicile, provided that only with the authorisation of the SCVS they may keep the accounting record in a place in Ecuador other than the main domicile of the company.

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53. Resolution no. 06.Q.ICI.0004 and, subsequently, no. 08.G.DSC.010 determining a timeline for the adoption of the accounting principles.
54. SCVS resolution n. 08.G.DSC.010 of 20 November 2008.
55. pursuant to SCVS resolution no SC.Q.ICI.CPAIFRS.11 of 12 January 2011, and no. SC.ICI.CPAIFRS.G.11.010 (Official Registry 566, 28 October 2011), which established the same conditions to be met to apply IFRS for Small and Medium-Sized Entities.
56. Article 290 of the LC is in Section VI "About the Stock Company". However, the sections related to other types of companies extend the application of the provisions on Stock Companies to other type of companies. This is the case for the other types of company, namely: Limited Liability Companies (art. 142); Public-private stock companies (art. 311); Limited Partnership Company divided by shares (art. 307) and SAS (unnumbered article after art. 317).

244. Pursuant to article 20 of the LC, the information that Ecuadorian companies need to provide on a yearly basis to the SCVS includes copies of the complete set of financial statements, prepared based on the accounting and financial regulations in force, as well as the reports of the administrators established by the Law.[57]

245. As seen above (see paragraph 86) the same article also provides that, unless otherwise established by the law, the SCVS or other competent authority, the filing of the complete set of financial statements is optional for companies in a state of dissolution or liquidation and for companies that have a cancellation resolution not registered in the Commercial Register, because those are not considered active companies. However, in the event that they are reactivated, the companies must present the information for all the previous years that were not subject to reporting.

246. Foreign companies or their branches carrying out business in Ecuador are considered merchants according to article 2 of the Commercial Code. Pursuant to the LC, they are under the supervision of SCVS (art. 431). They must report yearly to the SCVS a copy of the "complete set of financial statements of its branch or establishment in Ecuador" (art. 23).

247. As seen above (paragraph 106), some information on all companies under its supervision is publicly available on the SCVS web portal at no cost, and this includes the financial records (Financial Statements: Balance Sheet, Statement of Change in Equity, Cash Flow Statement, Profit and Loss Statement, Notes to the Financial Statements).

248. In conclusion, accounting information is available in Ecuador pursuant to the company law, at the company itself and, for the financial statements and other specified records, at the SCVS, that makes it publicly available on its web portal. On the other hand, after the revision of the Commercial Code occurred in 2019 there are no specific rules on what accounting books and ledgers need to be kept by companies, nor specific rules for their maintenance. While record-keeping is a pre-requisite for the preparation of financial statements, this legal framework as such might expose to the risk of a lower reliability of the records maintained at transaction level. This risk is however compensated by the tax requirements on the companies themselves (see previous section, paragraphs 232 to 235).

57. Articles 263 and 289 of LC: a motivated memoir about the company's situation, the balance and the detailed and accurate inventory of stocks, the profit and loss statement and the proposal for the distribution of profits.

Partnerships and trusts

249. Partnerships are not required to adopt the IFRS, as they are not among the entities under the supervision of the SCVS, but they are required to apply the principles on accounting established in tax law.

250. Article 39 of the LRTI regulations provides that "For entities, the relevant control body of which has not laid down provisions in this regard, the accounting shall be kept according to the provisions and conditions established by resolution of the SRI". Ecuadorian authorities have indicated that the SRI has not issued any general resolution on this matter to date, but that a resolution, no. 0140 of 9 September 1999, requires that part of the Ecuadorian Accounting Standards (*Normas Ecuatorianas de Contabilidad*, NEC and in particular from number 1 to number 15), are mandatory for taxpayers required to keep accounts.

251. Besides the applicable general tax legislation, these entities should keep their accounts under the legislation that governs the practice of the accounting profession (Accountants Law and its Regulations), as well as under their bylaws (if available on this matter).

252. While it appears that the above provisions, combined together, require reliable account-keeping for partnerships and other entities not subject to the supervision of the SCVS to comply with their tax obligation, it is unclear whether this fragmented legal and regulatory framework ensures the availability of reliable accounting information in all cases. It appears in particular there can be a disjuncture between the expectation of a general legal requirement (established in the LRTI) and a fragmented regulatory framework (lack of a general SRI resolution on accounting on the entity, reliance on the rules for the accounting procession). Ecuador should monitor that the legal and regulatory framework provides for reliable accounting information for partnerships and other entities not subject to the supervision of the SCVS (see Annex 1). The supervision and enforcement measures on the reliability of accounting information in practice for partnerships and other entities not subject to the supervision of the SCVS will be further reviewed in Phase 2 of the review (see Annex 1).

253. Ecuadorian mercantile trusts are subject to appropriate accounting obligations, with resolution of the National Securities Council (no. CNV010-2009 published in Official Registry 98, of 30 December 2009), that ratifies the adoption of the IFRS (as well as the International Auditing and Assurance Standards) for companies and entities regulated by the Securities Market Law, thus including mercantile trusts pursuant to article 18 of the Securities Market Law.

254. As regards foreign trusts that are administered in Ecuador or in respect of which a trustee is resident in Ecuador, there is no explicit provision

that ensures the availability of accounting information, unless the economic activities carried out in Ecuador correspond to one of a permanent establishment (pursuant to article 9 of the LRTI regulations), in which case it would be subject to the tax requirements applicable to companies, including the general the provisions on accounting. **Ecuador is recommended to take measures to ensure that accounting information is available for foreign trusts with a nexus with Ecuador**.

Entities that cease to exist and retention period

255. As a general requirement, the minimum retention period for accounting records and underlying documentation is at least seven years pursuant to both the Commercial Code and the tax law.

256. In particular, the Commercial Code provides that it is the responsibility of the merchants to keep the information related to their activities at least for seven years (art. 13 lett e) and art. 35).

257. For entities of the financial system (supervised by the SB), article 225 of the COMYF provides that they have to "keep their physical accounting files, including the respective supporting documents, for a period of 10 years from the conclusion of the corresponding operation and for 15 years in digital format authorised by the Superintendencies".

258. For tax purposes, the LRTI regulations (art. 37) impose a seven-year retention period for supporting documents.[58]

259. As regards the entities that cease to exist, under the Commercial Code (art. 35) accounting information and underlying documents must be kept by the merchants and their heirs until the liquidation of the business and seven years thereafter. Provided that the Commercial Code refers to the merchant and their heirs, and requires that the accounting records after liquidation are kept by them, it is unclear how this provision applies in the case of mercantile companies.

58. "The accounting supporting documents must be kept for a minimum period of seven years in accordance with the provisions of the Tax Code as the maximum period for the statute of limitations of the tax obligation, without prejudice to the periods established in other legal provisions." In particular, the statute of limitations (*prescripción*) foreseen for the tax obligation is provided in article 55(1) of the Tax Code: "the obligation and the collection action of tax liabilities and their interests, as well as of the fines for non-compliance with formal duties, shall be statute barred within a period of five years, counted from the date on which they were enforceable; and, in seven years, from the day in which the corresponding declaration was due, if it is incomplete or if it was not filed.".

260. The LC, article 389 (on the responsibilities of the liquidator of a company) provides (under number 3) that the liquidator is responsible for receiving, maintaining and keeping under its custody the books and correspondence of the company. It is not specified however for how long the books and correspondence have to be maintained by the liquidator. Therefore, there is no explicit requirement for the liquidator to maintain the company books after the liquidation of the company.

261. Some provisions on retention period after liquidation of a company are also covered in the procedure on the "abbreviated process of voluntary dissolution, liquidation and cancellation request", that can be requested on a voluntary basis by companies that have no outstanding obligations with third parties. The procedure consists in a request for the SCVS to order the dissolution, liquidation and cancellation of the registration in the Commercial Register in a single act. Among its requirements, it provides (art. 145.5) for the public deed of the resolution of the general shareholders meeting to dissolve, liquidate and request the cancellation from the Commercial Register of the company that "[a]t the time of granting the public deed, the legal representative must ratify and declare, under oath, the veracity of the accounting information, which he is obliged to keep for seven years, in accordance with the Tax Code".

262. Although there is a requirement to keep accounting records and supporting documents for at least seven years, it is not clear (except when the abbreviated process of voluntary dissolution is applied) who would be legally responsible to keep the records and where these should be kept if the entity itself ceases to exist. Financial statements and tax returns will nonetheless be available with government authorities. **Ecuador is recommended to ensure that in all cases accounting information is available for a minimum of five years after the entity ceases to exist**.

263. In the case of mercantile trusts, the COMYF provides that the transfer of assets from the constituents or settlor is temporal (art. 109, see paragraph 189) and that the duration of a mercantile trust cannot exceed 80 years, except if the resolutory condition is the dissolution of a legal person or if it is constituted for cultural or research, altruistic or philanthropic purposes (e.g. establishment of museums, libraries, art. 110). The trustee (*Administradora de Fondos y Fideicomisos*) is responsible towards the constituents (art. 126) and the SCVS (art. 130) to render an audited account of its actions (art. 128) and in particular to "justify, argue and demonstrate, with certainty, through the relevant means, the fulfilment of the task entrusted in the constitutive contract and in the law" (art. 129). As the trustee also acts as liquidator, it appears clearer in this case that the entity responsible for the preservation of the documents (up to seven years according to the commercial and tax law) after the liquidation is the trustee.

264. It is also possible for Ecuadorian legal entities to redomicile out of Ecuador without dissolution, and there are no legal obligations to support the availability of full accounting records and underlying documentation in Ecuador for a minimum period of five years. Also in this case, financial statements and tax returns are available with government authorities. **Ecuador is recommended to ensure that accounting information is available for a minimum period of five years in relation to legal entities that redomicile out of Ecuador**.

A.2.2. Underlying documentation

265. While the relevant legal provisions on accounting records generally do not specify the type of information that need to be maintained as underlying documents, the obligation to keep supporting information recurs throughout commercial and tax legislation.[59] Ecuadorian authorities indicated that since accounting, contractual, commercial and tax-related facts may be very diverse in nature, any list or enumeration of possible types of information or documents may prove to be restrictive.

266. In the Ecuadorian tax system, certain documents are regulated and their issuance, that includes a sequential serial numbers and a validity time, need to be authorised by the SRI. These documents are called "sale and withholding attestation and complementary documents" and include invoices, sale notes, goods purchases and service provision liquidations, cashier machines tickets, public entertainment tickets, credit notes, debit notes and transportation bills.

59. Article 35 of the Commercial Code includes attestations (*comprobantes*) and supporting information (*soportes*) within the obligation to keep accounting books. Further, article 37 states that the merchant: "must keep and back-up the documents and information related to the legal acts that he develops, being them public or private instruments" Finally, articles 30, 31, 33 and 36 of the Commercial Code refer to the information required to be kept in the following general terms: "books", "records", and "accounts". The Tax Code, at number 3 of article 96, establishes the obligations of taxpayers "[t]o present to the respective officials the declarations, reports, books and documents related to facts that generate tax obligations and to provide any clarifications requested." Accordingly, the last paragraph of article 37 (for companies and natural persons obliged to report financial statements) of LRTI regulations, which is similar to the last paragraph of article 38 (for natural persons not obliged to report financial statements) states: "The accounting supporting documents must be kept for a minimum period of seven years." Since depreciation (tangible assets) and amortisation (intangible assets) may have tax consequences for a longer term, unnumbered Article after article 38 of the RLRTI provides that "the retention period for documents shall be counted from the tax period in which the useful life or amortisation time of the asset ended.".

In such sense, tax provisions establish the obligation to use these documents, which are also specifically regulated by the "Sale and Withholding Attestation and Complementary Documents Regulation" issued by presidential decree.

267. Electronic invoicing is a form of issuing attestation documents that meets the legal and regulatory requirements for authorisation by the SRI, guaranteeing the authenticity of its origin and integrity of its content, since it includes the electronic signature of the issuer in each document. Besides invoicing, other attestation documents that can be issued electronically are: Goods Purchases and Service Provision Liquidations, Credit notes, Debit notes, Withholding attestations, and Transportation bills (SRI resolution no. NAC-DGERCGC12-00105 of 9 March 2012). Electronic invoicing and the electronic issuance of the other attestation documents is being implemented as a mandatory requirement pursuant to a ten-year staged process (started in 2014 and up to 2024) regulated by the SRI,[60] where every year new taxpayers are requested to adopt them, having started from the larger, more regulated businesses.

268. In conclusion, the Ecuadorian legal and regulatory framework has adequate provision to ensure the availability of supporting information to accounting records. However, when gaps were identified on the availability of accounting records (see paragraphs 254, 262 and 264), the same gaps apply for underlying documentation.

Oversight and enforcement of requirements to maintain accounting records

269. The compliance with the obligation to keep accounting records pursuant to the commercial law is supervised and enforced by SCVS, as well as by the SB for the entities belonging to the financial system.

270. Both the LC and the COMYF contemplate general penalties for non-compliance which are applicable also on the record-keeping requirements:

- The LC, in Section XVI "About the SCVS and its operation", article 445, establishes that "when a company infringes any of the laws, regulations, bylaws or resolutions the supervision and compliance of which is in charge of the SCVS, and the Law does not contain a special sanction, the Superintendent, in his discretion, may impose a fine not exceeding twelve SBUs [equal to USD 4 800 in 2021], in accordance with the seriousness of the infraction and the amount of its assets, without prejudice to other responsibilities to which it may be subject. […]"

60. SRI resolution no. NAC-DGERCGC18-00000191 of 23 April 2018, as amended by SRI resolution NAC-DGERCGC18-00000431 of 19 December 2018.

- The COMYF, in Section 11 of Book I on Infractions and Sanctions, article 262 no. 3, qualifies as a "serious infraction" the non-observance of the regulations regarding the financial and accounting regime. The amount of the penalty for serious infractions is established in article 264 of the same legal code: as fines of up to 0.005% of the assets of the offending entity, suspension of administrators for up to 90 days and/or reprimand.

271. For the tax requirements, the oversight activities on the maintenance of accounting records is carried out by the SRI in the context of tax assessments, especially on corporate income tax, which is based on the accounting records of the taxpayer. In this connection, a taxpayer that fails to keep accounting records and supporting information, or that fails to provide such information to the SRI, may incur in the "presumptive determination" of the tax obligation (pursuant to art. 92 of the Tax Code, art. 23 of the LRTI and art. 268 of the LRTI Regulation). With the presumptive determination, the tax obligation is quantified by the tax administration through the application of coefficients or based on the facts, indicia, circumstances, and other certain elements. Ecuadorian authorities indicated that this process is likely to result in a higher tax obligation, due to its greater reliance on formulas.

272. Furthermore, pursuant to the Tax Code, tax infringements (*infracciones tributarias*) can be either contraventions (*contravenciones*), if they violate a law provision (or equivalent) or regulatory offences ("faltas reglamentarias") if they violate a regulatory provisions (articles 314 and 315 of the Tax Code). The SRI Manual for the application of pecuniary sanctions, provides that pecuniary sanctions from USD 41.62 to USD 500 (varying based on the type of infringement and graded by type of taxpayer), are applicable in the following cases:

- failure to keep accounting records (contravention)
- keeping accounting records in in a language other than Spanish (contravention)
- failure to keep underlying documents for a minimum period of seven years (regulatory offences)
- failure to keep supporting documents related to income and expenditure accounts for a minimum period of seven years (regulatory offences)
- failure to keep and preserve accounting books and records related to the economic activity, in the manner established by letter c) of number 1 of article 96 of the Tax Code (contravention).

273. Enforcement measures and oversight in practice will be reviewed in Phase 2 of the review.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

274. In Ecuador, the availability of banking information for all account holders is ensured by both the Monetary and Financial Code and by the AML regulations. The latter also includes requirements on beneficial ownership information, but it is not clear whether beneficial ownership information is up to date for all account holders.

275. The conclusions are as follows:

Legal and Regulatory Framework: in place, but certain aspects of the legal implementation of the element need improvement

Deficiencies identified/ Underlying Factor	Recommendations
The method of identification of the beneficial owners presents some uncertainties that appear to limit the scope of the definition. Furthermore, there is no specified frequency of updating beneficial ownership information; hence, there could be situations where the available beneficial ownership information is not up to date.	Ecuador should ensure that adequate, accurate and up-to-date information on the beneficial owners of all account holders is available in all cases in accordance with the standard.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

A.3.1. Record-keeping requirements

Availability of banking information

276. Banks are subject to the accounting obligations pursuant to article 225 of the COMYF: "The entities of the national financial system shall keep their physical accounting records, including the respective supporting documents, for a period of ten years from the conclusion of the corresponding operation and for fifteen years in the digital format authorised by the superintendencies" (see section A.2 above).

277. Banks, as AML-obliged subjects, must record, through trustworthy and reliable means, the identity, occupation, economic activity, marital status, and residential or occupational domiciles of their clients, permanent or occasional. In the case of legal persons, the registration has to include the certification of legal existence, capacity to operate, list of partners or shareholders, amounts of shares or participations, corporate purpose, legal representation, address and other documents that allow the establishment of their economic activity (article 4 of the AML Law). This means that anonymous accounts are not allowed.

278. The AML requirements applicable to banks and other financial institutions also provide for record-keeping requirements. In particular, the AML Regulation provides (art. 7, no. 1.3. and 1.4) that, in the case of transactions, the beneficial owners need to be identified and the following minimal information needs to be recorded:

- value of the operation, economic transaction, act or contracts carried out
- date of its completion
- currency in which the transaction was carried out
- city and date of payment.

279. These provisions are further detailed by the SB with resolution no. SB-2016-698 of 14 July 2016, which also provides the technical details for the conservation of files in physical and digital format.[61] After the closing of an account, which is the termination of the contractual relationship (operation), banks should keep the information for 10 years after the completion date of the transaction or of the contractual relationship (number 11.5 of Article 11 of Chapter VI, Title IX, Book I of COMYF).

280. Banks are also required to submit to the SRI information on all economic operations and transactions whose amount is equal to or greater than USD 5 000, or its equivalent in other currencies, as well as on operations and transactions of a lower value that, as a whole, are greater than USD 5 000 higher than said value, provided that they are carried out for the benefit of the same person and within the same calendar month (SRI Resolution NAC-DGERCGC17-00000473). This information is communicated on a monthly basis with the Report on Financial Economic Operations and Transactions (ROTEF).

61. *Control standard for the conservation of files in storage systems of entities controlled by the SB*, in Chapter II, Title XII of Book I of the Codification of the Regulations of the SB.

281. Based on the above, bank information on all records pertaining to the accounts as well as to related financial and transactional information has to be available in Ecuador for all account holders.

Beneficial ownership information on account holders

282. The standard requires that beneficial ownership information be available in respect of all account holders.

283. In Ecuador, this is ensured through the AML Law and regulations. In particular, article 7 of the AML Regulation provides that banks must require and register through trustworthy and reliable means, the identity on the beneficial owner(s) of their clients, as defined in paragraph 137 above.

284. The Customer Due Diligence (CDD) obligations to be applied by banks are contained in the ARLAFDT. As reviewed in paragraphs 142 to 149 above, the ARLAFDT requires them to have a manual on the compliance norm for the administration of AML-CFT risk and to maintain the underlying documentation (article 11). It also provides that in some circumstances the due diligence has to be extended (art. 12.1.1.1.11) based on the risk profile of the client in relation to the exposure to AML-CFT crimes or rather can be simplified (art. 12.1.1.1.14).

285. For simplified CDD, this can be applied by the bank under its own responsibility, and it is provided in this connection that "in no case the application of this [simplified] due diligence will imply the non-knowledge of the client, the lack of establishment of behavioural and transactional profiles, the absence of procedures for detecting unusual operations and the failure to generate reports in case of unusual and unjustified operations". Ecuadorian authorities have indicated that this formulation implies that with the application of simplified CDD banks are not exempted from knowing the client and thus to the requirement to identify the beneficial owner(s) (pursuant to subsection 12.1.1.1.3 of the ARLAFDT).

286. As regards the frequency of updates of the information which has to be gathered pursuant to the CDD, the ARLAFDT does not specify any timeframe. It rather mandates the banks to establish the periodicity and mechanisms necessary to verify the information declared and provided by the client (sub-section 12.1.1.1.4), which need to contemplate specific circumstances where an update is required (sub-section 12.1.1.1.5), generally based on risk or uncertainty about the consistency of the information already in their possession. This could lead to the circumstance that beneficial ownership information in possession of the bank is not always updated.

287. As regards the retention period of AML information, ARLAFDT provides (sub-section 11.5) that physical accounting files, including the

respective supporting documents, have to be kept for a period of 10 years from the conclusion of the corresponding operation, whereas the files stored in digital format, of the accounting documents including the respective supporting documents, must be kept for a period of at least 15 years.

288. In the Ecuadorian AML Law and Regulation, there is no specific provision on "introduced business", and Ecuadorian authorities indicated that they interpret this as not being permitted. The only provision in the SB guidelines relating to information updating processes contracted with third parties (ARLAFDT sub-section 10.5.17) provides that the entity must implement legal procedures that guarantee the confidentiality and reserve of the client's data. In any case, the SB guidelines (sub-section 12.1.1 of ARLAFDT) also provide that the entities must, among other aspects, adopt mechanisms to carry out due diligence of clients, and its sub-section 12.1.1.1 requires, in relation to the knowledge of the client, that procedures must be in place to obtain effective, efficient and timely knowledge of all its internal and external clients, regardless of the product, service or channel used, and that if the banks have doubts about the client's information, they must verify said information and reinforce control measures, thus placing a general responsibility on the AML-obliged subjects.

289. In conclusion, as determined under section A.1, while the definition of beneficial owner in the AML Legislation is generally in line with the standard for companies and other legal entities, the method of identification of the beneficial owners (ARLAFDT sub-sections 2.7.1 and subsequent, see paragraphs 143-144) present some uncertainties that appear to limit the scope of the definition. Furthermore, there is no specified frequency for updating beneficial ownership information and thus there could be situations where the available beneficial ownership information is not up to date. **Ecuador should ensure that adequate, accurate and up-to-date information on the beneficial owners of all account holders is available in all cases in accordance with the standard.** In addition, there are uncertainties in the definition of beneficial ownership for trusts in the SB guidelines (in case the constituents or settlors; fund and trust administrators or trustees; and/or beneficiaries are legal persons, see paragraph 204) whose application will be further analysed in the Phase 2 Review (see Annex 1).

Oversight and enforcement

290. Applicable sanctions in case of non-compliance with the obligations to preserve bank information are defined in Section 11, Book I, of the COMYF, and in particular in articles 261 no. 2 and 264: for very serious infractions, fines of up to 0.001% of the assets of the offending entity, the suspension of administrators for up to 90 days and/or reprimand.

291. Further provisions for non-compliance with AML provisions are foreseen in no. 10.1.8 the ARLAFDT resolution issued by the SB (see paragraph 142), that provides that the board of directors of the entity must "establish and arrange the internal sanctions for non-observance of the current provisions on the prevention of money laundering and financing of crimes such as terrorism, known by any means, notwithstanding the respective legal actions performed by control bodies and other competent authorities".

292. Enforcement measures and oversight in practice will be reviewed in Phase 2 of the review.

Part B: Access to information

293. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

294. The Ecuadorian competent authority has extensive powers to obtain information, including in order to process EOI requests. The main provisions are contained in the Tax Code, which sets the obligations of taxpayers and third party information-holders. While the overall legal framework for the access to information is in place, the scope of legal professional privilege is not defined in Ecuadorian law and – even if this does not appear to have occurred in practice – there is the possibility that it could go beyond the scope allowed under the standard on the exchange of information on request.

295. The conclusions are as follows:

Legal and Regulatory Framework: in place

Deficiencies identified/Underlying Factor	Recommendations
The scope of professional privilege is not defined in Ecuadorian law and could go beyond the scope allowed under the standard, although Ecuador indicated that there is no record of any case in which professional secrecy has been invoked to prevent the gathering of the requested information by the Competent Authority.	Ecuador is recommended to clarify that the scope of professional privilege is in conformity with the standard.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

B.1.1. Ownership, identity and banking information

Accessing information generally

296. The SRI, the Ecuadorian Tax Administration, is the competent authority for EOIR purposes.[62] Within the SRI, the Director General and the Tax Compliance Deputy Director General have the status of competent authority.

297. The SRI has powers to make enquires, inspect documents and request directly from the taxpayers or from third parties information it deems relevant to carry out the processes arising from the exercise of its duties, without the need to resort to special procedures (administrative, judicial or otherwise) to exercise such powers.

298. In particular, the Tax Code (art. 96 no. 2, 3 and 4) establishes that the taxpayers have the duty to:

- facilitate the inspections or verifications by authorised officers aiming to audit or assess taxes
- exhibit to the respective officers tax returns, reports, books and documents related to the facts generating tax obligations and provide the clarifications that may be requested in that regard
- attend offices of the tax administration, when their presence is required by the competent authority.

299. The Tax Code (art. 98) also establishes duties on third parties, so that upon request of the tax administration, any individual, as such or as a representative of a legal person or of an entity without legal personality, is obliged to appear as a witness, to provide reports or exhibit documents in their possession, for the determination of the tax obligations of another subject.

300. In practice, the most commonly used information sources and information gathering methods are the retrieval of information already in

62. In some DTCs and for the Decision 578 issued by the Andean Community, the Minister of Finance is indicated as competent authority. The Minister delegated this function to the SRI by Ministerial Agreement No. 0077 of 18 April 2016, issued by the Ministry of Economy and Finance (Official Registry No. 815 of 9 August 2016).

possession of the SRI and, if the information is not available there, the collection of information through written information requests to the taxpayer itself or third parties, as the case may be. Ecuadorian authorities have informed that there is no record of a case in which they tried to gather ownership, identity and accounting information from persons formally not required to have the information, but which were in possession of, or have control of and are able to obtain it.

Accessing legal ownership information

301. The competent authority has direct availability and powers to access information regarding the legal ownership information. The following sources are the most frequently used:

- the RUC database
- internal reporting database called "Consolidated Assets Matrix"
- the APS reports
- information publicly available on the SCVS web portal[63]
- requests for information to SCVS, SB or Property Registry
- requests to the taxpayer themselves or to third parties pursuant to the Tax Code.

Accessing beneficial ownership information

302. The competent authority has direct availability and powers to access information regarding beneficial ownership information. The following sources are the most frequently used:

- internal resources through the APS reports (which, as seen in section A.1 contain information in connection to the chain of ownership)
- public information available on the SCVS web portal
- a request to the taxpayer or to an information holder (e.g. AML-obliged subject).

63. Accessible at the address: https://appscvsmovil.supercias.gob.ec/PortalInformacion/sector_societario.html.

Accessing banking information

303. The SRI has direct access to some financial information and can request banking information directly to the financial institutions or through the regulatory body (SB).

304. The sources of banking information directly available to the competent authority are in particular:

- The Report on Financial Economic Operations and Transactions (ROTEF), which corresponds to information sent by the institutions of the national financial system to the SRI on all the economic operations and transactions whose amount is equal to or greater than USD 5 000 (see paragraph 280);[64]
- The Report on International Currency Movement (MID), to which withholding and collection agents of the Foreign Currency Outflow Tax are required to send monthly detailed information on bank transfers, money transfers, remittances or withdrawals made during the preceding month. The information must be reported on a consolidated basis from the parent company and branches.

305. Ecuadorian authorities have indicated that gathering and provision of such information would take about two days.

306. Other banking information is gathered from banks directly, or from the SB. The SB is mainly used when an inbound request for information does not specify the financial institution with which the account is held so that it requires banking information regarding the person(s) involved in the EOI request, by addressing all financial institutions.

307. Where bank information is requested, the following elements would facilitate its gathering by the Ecuadorian Competent Authority:

- names and surnames of the account holders for individual accounts
- complete corporate name of the entity, for entity accounts. The names and surnames of the legal representative, resident or non-resident, would also be useful
- Ecuadorian Tax identification numbers (where available)

64. As well as individual or multiple (accumulated) operations and transactions that, as a whole, are greater than said value, when carried out for the benefit of the same person and within the same calendar month. In order to report operations and transactions, income from interest earned, expenses from commission charges, operating costs and taxes are not considered.

- name of the financial institution from which the banking information is required, in order to reduce the response time
- complete account number, as SWIFT/BIC systems are in use by the banking sector in Ecuador and the account number also assist in identifying the relevant bank.

308. On the timing needed to fulfil a request for banking information in practice, Ecuadorian Authorities have indicated that when the information has to be requested to the SB or to a specific bank, it would generally take between 15 to 30 days to respond to it, possibly more if the name of the bank was not specified in the EOIR request. The practices and timing needed to gather information, including banking information, will be further analysed in the Phase 2 report.

B.1.2. Accounting records

309. The SRI can request accounting information from the taxpayer, the supervisory authority or a third party information holder. The following sources of information are mainly used for the purpose of obtaining accounting information:

- tax return forms and complementary reports submitted to the SRI through its online reporting system
- SRI internal databases powered with information from electronic invoicing
- information publicly available on the SCVS web portal (see paragraph 247)
- written requests issued to the taxpayer itself or to third party information holders.

B.1.3. Use of information gathering measures absent domestic tax interest

310. Taxpayers and third-party information holders in Ecuador are required to comply with their formal duties as established in the Tax Code. The Tax Code, in setting these requirements, does not make explicit reference to the purpose of gathering information in relation to an inbound EOI request from a partner jurisdiction, but it does not mention either the need for a domestic tax interest.

311. Considering that it is sufficient for the tax authority to issue an order to taxpayers to require compliance with the duties reported above, Ecuadorian authorities have indicated that the information gathering measures are also

applicable for EOIR requests from partner jurisdictions, based on an information exchange mechanism that is part of the Ecuadorian legal system.

312. In practice, Ecuadorian authorities have informed that while there might have been cases where the Competent Authority was requested information that had no tax interest to the Ecuadorian tax administration, no information has been denied by the taxpayer or third party information holder for such reason (see also paragraph 361 below).

B.1.4. Effective enforcement provisions to compel the production of information

313. Both the LRTI and the Tax Code contain enforcement provisions to compel the production of information to the tax administration.

314. Article 106 of the LRTI provides for sanctions of an administrative and tax nature in case of failure to deliver information required by the SRI:

> Individuals or legal persons, national or foreign domiciled in the country, who do not deliver the information required by SRI, within the term granted for such purpose, shall be sanctioned with a fine of 1 to 6 SBU [equal to USD 400 to 2 400 in 2021], which shall be decided taking into account the income and capital of the taxpayer, as determined by the regulations.
>
> […]
>
> Financial institutions subject to the control of the SB and organisations of the popular and solidary financial sector subject to the control of SEPS that do not fully and timely comply with the delivery of the information required by any means by SRI, are sanctioned with a fine of 100 to 250 SBU [from USD 40 000 to 100 000 in 2021 for each requirement.

315. Article 97 of the Tax Code establishes the liability for non-compliance of formal requirements (such as the provision of information) by the passive subject (that includes both the taxpayer and a third party, pursuant to art. 24 of the code):

> Failure to comply with formal duties will entail financial liability for the taxpayer of the tax obligation, be it a natural or legal person, without prejudice to any other responsibilities that may arise.

316. The sanction is determined in article 349 of the Tax Code with a fine of up to USD 1 500.

317. The powers of the competent authority do not include the power to seize information from taxpayers or third parties, nor the power to search such information with that purpose; therefore, such powers cannot be used to gather information to respond to an EOI request. The State Attorney General has the powers to search and seize information while investigating conducts that may result in crimes, including tax crimes. In such context, Ecuadorian authorities have informed that the SRI can participate in collaboration with the State Attorney General, each one within the scope of their respective competences, in search and seizure of information events pertaining to tax matters, where the first mentioned authority is investigating a tax crime.

318. On the other hand, besides the pecuniary sanctions, all taxpayers and third parties can be subject to the temporary closure of the establishment or suspension of the economic activity for failing to provide the information required by SRI, as described in section A.1 above (see paragraphs 122-125).

B.1.5. Secrecy provisions

Bank secrecy

319. The COMYF provides in article 155 the right of protection and confidentiality of the personal information of financial users, as required under the terms established by the Ecuadorian Constitution, the COMYF itself and the laws.

320. Article 352 of the COMYF provides that "[t]he personal data of the users of the national financial system that is kept by the entities of said system and their access are protected, and may only be delivered to their owner or to whom he authorizes or by regulation of this Code".[65]

321. Article 353 on "Secrecy [*Sigilo*] and reserve" also provides that "Deposits and other funds of any nature received by the entities of the national financial system are subject to secrecy, for which reason no information related to such operations may be provided, except to their owner or to whomsoever has been expressly authorised by him or to whoever legally represents him". This provision does not refer to authorisations other than from the account holder but article 354 of the COMYF provides that bank secrecy rules cannot be applied to requests from the SRI, even for EOIR

65. Article 272 of COMYF establishes a sanction for disclosure of information: "natural or legal persons who disclose, in whole or in part, information subject to secrecy [*sigilo*] or confidentiality, shall be sanctioned with a fine of 25 SBU [equal to USD 10 000 in 2021], without prejudice to the corresponding criminal liability".

purposes. It establishes that the provisions of article 353 are not applicable, among others, to:

- requests for information from regulatory bodies and the SRI, within the scope of their competences
- financial information that is part of an exchange with foreign banking, finance and tax authorities, provided that there are reciprocal, in force and legitimately concluded treaties.

322. According to the letter of article 354, the non-application of the secrecy provisions with respect to the SRI only refers to the information under "secrecy and reserve" pursuant to the ("previous") article 353, and thus would not cover the "personal data" indicated in article 352. However, Ecuadorian authorities have specified in this connection that article 352, which includes the clause "may only be delivered […] or by regulation of this Code", in combination with the provision of article 354, is interpreted such as no limitation to the delivery of personal data applies to the SRI.

323. Moreover, pursuant to article 220 of the COMYF, the entities of the national financial system "are obliged to give access to the regulatory bodies and the SRI to the accounting, books, correspondence, files or supporting documents of their operations, electronically in real time and physically, without any limitation", whereas article 242 on the delivery of information requires the same entities "to deliver the information required by control agencies and the Internal Revenue Service, directly, without restriction, procedure, or intermediation, in the conditions and forms requested by these entities, exclusively for the purposes under their administration".

324. Based on the above provisions, bank secrecy in Ecuador is not applicable when the SRI requires the information, including to answer to an EOI request, in conformity with the standard.

Professional secrecy

325. In Ecuador, professional secrecy is guaranteed by article 20 of the Constitution.

326. There is, however, no comprehensive regulation on professional secrecy in legislation and its normative treatment is dispersed in sectorial legislation.

327. As an example, article 335, no. 1, of the Organic Code of the Judicial Function, prohibits lawyers in court proceedings from revealing the secret of their clients, their documents or instructions.

328. In tax matters, several provisions refer to professional secrecy. Generally, article 98 of the Tax Code, which establishes the obligation of third parties to appear as a witness, provide information or exhibit documents in their possession for tax assessment purposes, provides the following limits:

> information may not be required […] professionals, insofar as they have the right to invoke professional secrecy; to the spouse, or cohabiting partner, and to the relatives within the fourth civil degree of consanguinity and second degree of affinity.

329. It is not further specified in what circumstances professionals "have the right to invoke professional secrecy" and thus, for the case of lawyers, whether this applies only in court proceedings as provided in article 335, no. 1, of the Organic Code of the Judicial Function (which is privileged communication in line with the standard). The only more specific provision is found in the LRTI, in article 102 on mandatory disclosure rules applicable to promoters, advisers, consultants and legal firms, which indicates that:

> […] The promoters, advisers, consultants and legal firms are obliged to report under oath to the Tax Administration, in accordance with the forms and deadlines that through a general resolution shall be issued for this purpose, a report on the creation, use and ownership of companies located in tax havens or low tax jurisdictions with Ecuadorian ultimate beneficiaries. Each breach of this rule will be sanctioned with a fine of up to 10 basic fractions exempted from income tax, without prejudice to the criminal responsibilities that may arise.

330. This is only one of the cases were the standard requires professional secrecy to be lifted.

331. In practice, Ecuador has indicated that it has requested and gathered information from lawyers, attorneys, accountants, legal representatives and proxies. While Ecuador could not specify whether there were instances in which the information was requested to respond to an EOIR request, it indicated that there is no record of any case in which professional secrecy has been invoked to prevent the delivery of the requested information. **Ecuador is in any case recommended to clarify that the scope of professional privilege is in conformity with the standard on the exchange of information on request**.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

332. In Ecuador, there is no legal obligation to notify the person who is the object of an incoming request for information, prior to or after providing the requested information to the requesting jurisdiction. When the information has to be gathered directly from the taxpayer or by a third party information-holder, the written request from the Competent Authority includes a standard text invoking the formal powers of the SRI as established in the Tax Code, without mentioning the fact that the information is being gathered to answer an EOIR request. Right and safeguards that apply to persons in Ecuador as requested jurisdiction are compatible with effective exchange of information.

333. The conclusions are as follows:

Legal and Regulatory Framework: in place

The rights and safeguards that apply to persons in Ecuador are compatible with effective exchange of information.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

Notification

334. In Ecuador, there is no legal obligation to notify the person who is the subject of a request for information prior to or after providing the requested information to the requesting jurisdiction.

335. The SRI internal EOIR Manual,[66] provides that the Competent Authority must not notify the taxpayer about the fact that it has received an EOI request. The Manual allows, however, the taxpayer to be notified about the EOI request if there is an express request to do so from the competent

66. "INSTRUCTIONS DOCUMENT: Operational management of the international exchange of information on request and spontaneous", version3, ref. no.INS-IPG-INI-001-002, authorised by the SRI Sub-Director General of Tax Compliance.

authority of the requesting jurisdiction. Where the information requested is held by a taxpayer, the taxpayer should be requested to provide the information and the information request letter should contain only the minimum amount of information necessary to enable the taxpayer to respond to the request. In no case should the request letter from the requesting jurisdiction competent authority be provided to the taxpayer.

336. In practice, Ecuadorian authorities have indicated that if the information has to be gathered from a taxpayer or third party information-holder, the written request from the Competent Authority includes a standard introductory text invoking the relevant powers of the SRI, provided in different legal provisions and notably in articles 96 and 98 of the Tax Code, that are the powers used for both domestic and EOIR purposes. The connection to EOIR or the requesting jurisdiction are not included in the written request to the taxpayer or third party information-holder.

Appeal rights

337. In Ecuador, it is not possible to appeal any acts and actions carried out by the competent authority in any EOI procedure, from the gathering of the information to its submission to the requesting competent authority.

338. Documents and actions performed by the Tax Administration are classified as either "official acts" (*actos administrativos*), "simple administration acts" (*actos de simple administración*) or "merely procedural matters" (*cuestiones de mero trámite*).

339. Pursuant to article 217 of the Organic Administrative Code, and article 74 of the Bylaw of the Juridical Administrative Regime of the Executive Branch, only official acts are subject to appeal, as it is the case, in the field of taxation, for the acts listed in article 220 to the Tax Code. Acts issued by SRI to process an EOI request are not of the types listed in article 220 of the Tax Code and are simple administration acts according to the doctrine. Hence, these acts cannot be appealed against by the taxpayer who is the subject of the request nor by the information holder.

340. In practice, in Ecuador there has not been any dispute on the application of the powers of the competent authority pursuant to the Tax Code in connection to an EOI request. There has not been to date any administrative resolution or court ruling related to access to information pursuant to an EOI request.

Part C: Exchange of information

341. Sections C.1 to C.5 evaluate the effectiveness of Ecuador's network of EOI mechanisms – whether these EOI mechanisms provide for exchange of the right scope of information, cover all Ecuador's relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether Ecuador's network of EOI mechanisms respects the rights and safeguards of taxpayers and whether Ecuador can provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

342. The EOI network of Ecuador is made of multilateral, bilateral and regional agreements. Ecuador signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) on 29 October 2018 and ratified it on 26 August 2019. The Multilateral Convention entered into force for Ecuador on 1 December 2019. In addition, the network of bilateral agreements that provides for exchange of information is composed of 20 conventions to avoid double taxation (DTCs) and four Tax Information Exchange Agreements (TIEAs). Furthermore, Ecuador, as a member of the Andean Community, is also part of Decision no. 578, which contains a provision (art. 19) on exchange of information, and thus allows the exchange of information with the other members: Colombia, Peru and Bolivia (see Annex 2).

343. Ecuador and most of its partners can use the Multilateral Convention, which meets the requirements of the standard, as a legal basis for their exchange of information on request. The present section C.1, when reviewing the terms of EOIR agreements, will thus focus on the relationships that cannot rely on the Multilateral Convention, i.e. the DTC with Belarus, the TIEAs with Honduras and the United States and the Andean Decision no. 578 as regards the bilateral relation with Bolivia. As for the references

to the implementation of the standard in practice, reference is made to the interpretation and implementation of all agreements.

344. Exchange of information mechanisms in Ecuador provide for effective exchange of information. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms of Ecuador.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

Other forms of exchange of information

345. Besides exchange of information on request, Ecuador has signed the Multilateral Competent Authorities Agreement for the Automatic Exchange of Financial Account Information on 29 October 2018 and implemented the CRS standard, with the first exchanges that took place in September 2021.

C.1.1. Standard of Foreseeable relevance

346. Exchange of information mechanisms should allow for EOIR where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This concept, as articulated in Article 26 of the OECD Model Tax Convention, is to be interpreted to the widest possible extent, but does not extend as to allow for "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The Commentary on Article 26 recognises that the standard of "foreseeable relevance" can be met when alternative terms are used in an agreement, such as "necessary" or "relevant".

347. Some Ecuador bilateral instruments (including the TIEA with Honduras, whose bilateral relationship is not covered by the Multilateral Convention) and the Andean Community Decision no. 578 use wording which are alternative to "foreseeable relevant", such as "necessary" and "foreseeably pertinent". These alternative terms appear consistent with the considerations in the commentary to Article 26 of the OECD Model Tax Convention (also noting that "foreseeably pertinent" is the literal translation of "foreseeable relevant" from Spanish) and Ecuadorian authorities have confirmed that these wordings are considered as equivalent to "foreseeably relevant" when evaluating the fulfilment of the condition for the incoming requests.

Clarifications and foreseeable relevance in practice

348. Ecuadorian officials informed that the Ecuadorian Competent Authority attends incoming information requests without requiring an established template or any particular information requirement to apply the standard on foreseeable relevance. In case of needing clarifications about such standard related to requested information, such clarification would be directly asked to the requesting Competent Authority through the appropriate channels.

349. In practice, Ecuadorian Competent Authority has no record of denial of an incoming request due to the fact that it was possibly not fulfilling the foreseeable relevance requirement, and it has not asked for clarification on foreseeable relevance in the three year period from 1 October 2017 to 30 September 2020.

Group requests

350. None of the mechanisms signed and ratified by Ecuador include an express exclusion of group requests.

351. The EOIR Manual (in its most recent version of September 2021),[67] contains specific instructions to analyse the foreseeable relevance of Group Requests, which is in line with the content of the Commentary to Article 26 of the OECD Model Tax Convention.[68]

352. In practice, Ecuador has not yet received any group request.

C.1.2. Provide for exchange of information in respect of all persons

353. For exchange of information to be effective, it is necessary that a jurisdiction's obligation to provide information be not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested.

67. "INSTRUCTIONS DOCUMENT: Operational management of the international exchange of information on request and spontaneous", version3, no.INS-IPG-INI-001-002. The Manual covers roles and responsibilities of the SRI officials related to the management of EOI on requests and spontaneous, the treatment of incoming requests, the issuance of outgoing requests, the management of group requests, the handling of information spontaneously received and sent, the communications generated within a mutual agreement procedure with a treaty partner, up to the storage and archiving of confidential documentation generated during the whole process. The automatic exchange of information is excluded from the scope of the document (as separate SRI instructions are applicable in this domain).

68. I.e. paragraph 5.2 of the Commentary to Article 26, in its version updated in July 2012.

354. Of Ecuador's bilateral EOIR relationships that cannot rely on the Multilateral Convention, the DTC with Belarus (art. 28.1) and the TIEAs with Honduras (art. 1) and the United States (art. 2) have a wording that explicitly allow for exchanges not restricted by the residence or nationality of the person of the requested person/information holder.

355. On the other hand, the Andean Decision no. 578 (which is the only instrument available for EOIR purposes with Bolivia) while not restricting the scope of the exchange of information provisions to certain persons, does not explicitly foresee either the possibility to exchange information on non-residents and non-nationals of the parties. Ecuadorian authorities have indicated that they interpret the Andean Decision no. 578 as allowing exchange of information on non-resident and/or non-national parties, also considering the fact that the general criteria for the attribution of tax rights throughout the Decision are based on the source of the income, making the residence and the nationality of the parties involved irrelevant.

356. In practice, no exchange of information on request (incoming or outgoing) has been carried out to date with Bolivia. In addition, all requests for information received by Ecuador related to persons who were either resident in the requesting jurisdiction or in Ecuador in the most recent years.

C.1.3. and C.1.4. Obligation to exchange all types of information and absence of domestic tax interest

357. Exchange of information mechanisms should not permit the requested jurisdiction to decline to supply information solely because the information is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person, as foreseen in paragraph 5 of Article 26 of the OECD Model Tax Convention. Exchange of information mechanisms should, on the other hand, provide that information must be exchanged without regard to whether the requested jurisdiction needs the information for its own tax purposes, as foreseen in paragraphs 4 of Article 26 of the OECD Model Tax Convention.

358. Nine of Ecuador's DTCs (with Argentina, Belgium, Brazil, France, Germany, Italy, Mexico, Romania and Spain) do not include wording equivalent to paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention whereas three others (with Canada, Chile and Uruguay) do not include wording equivalent to paragraph 5 of Article 26 of the OECD Model Tax Convention. In any case, all these relationships are also covered by the Multilateral Convention, which conforms to the standard, and therefore there are no restrictions on the types of information that can be exchanged or a requirement of a domestic tax interest.

359. Of Ecuador's bilateral EOIR relationships that cannot rely on the Multilateral Convention, the DTC with Belarus (art. 28.5) and the TIEAs with Honduras (art. 5.2.) and the United States (art. 5.4.) have a wording that does not permit the requested jurisdiction to decline to supply information solely because the information is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity.

360. On the other hand, the Andean Decision no. 578 (which is the only instrument available for EOIR purposes with Bolivia), while not restricting the scope of the exchange of information provisions based on the information holder, does not prohibit such a refusal. This should not in any case pose a problem for Ecuador,[69] as there are no such limitations in the domestic legislation. In this connection, Ecuadorian authorities have confirmed that information held by a financial institution or person acting in an agency or a fiduciary capacity (while the institution of nominees is not allowed in the Ecuadorian legal system, see paragraph 165) would be exchanged if requested by Bolivia.

361. In practice, Ecuadorian authorities indicated to have received requests for information held by a financial institution or person acting in an agency or a fiduciary capacity and that the information was exchanged. They also indicated that the absence of a domestic tax interest has not prevented the Ecuadorian Competent Authority to gather information from the taxpayer or third party information holder (see paragraph 312).

C.1.5. and C.1.6. Civil and criminal tax matters

362. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in its jurisdiction. In order to be effective, exchange of tax information should not be constrained by the application of the dual criminality principle.

363. All of Ecuador's EOI instruments allow for exchange in both civil and criminal tax matters and none of them contains a dual criminality requirement.

364. In practice, Ecuador has not received EOI requests in relation to criminal tax matters in the most recent years.

69. As Bolivia is not a member of the Global Forum, it is unknown whether it may have a domestic tax interest condition restricting exchange of information for tax purposes.

C.1.7. Provide information in specific form requested

365. Exchange of information mechanisms should allow for the provision of information in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under the jurisdiction's domestic laws and practices.

366. There are no restrictions in Ecuador's EOI instruments or domestic laws that would prevent it from providing information in a specific form.

367. Ecuador has not received EOIR requests to provide information in a specific form in the most recent years.

C.1.8 and C.1.9. Signed agreements should be in force and be given effect through domestic law

368. Exchange of information cannot take place unless a jurisdiction has EOI arrangements in force. Where EOI arrangements have been signed, the standard requires that jurisdictions take all steps necessary to bring them into force expeditiously.

369. In Ecuador, the President of the Republic signs and ratifies international treaties and other international instruments (art. 418 of the Constitution). After having signed an international treaty, the President of the Republic immediately reports this circumstance to the National Assembly (Legislative Branch) with precise indication of its nature and content. The National Assembly has the power to approve or reject international treaties in the appropriate cases (art. 120 paragraph 8 and article 419 of the Constitution), which include when the treaty:

- contains the commitment to issue, modify or repeal a law.
- refers to the rights and guarantees established in the Constitution.
- attributes powers of the internal legal order to an international or supranational body.

370. A treaty can only be ratified by the President of the Republic ten days after the Assembly has been notified of it (art. 418 of the Constitution). To determine if the approval of the National Assembly is required to ratify the treaty, the Organic Law of Jurisdictional Guarantees and Constitutional Control (art. 109) requires that prior to its ratification the treaty be submitted to the Constitutional Court, which decides, within eight days from receipt, whether or not it requires legislative approval. The Multilateral Convention required legislative approval and also the DTCs historically required legislative approval, but in the most recent case (decision no. 0020-19-TI) the Constitutional Court changed position, concluding that a DTC did not require approval by the National Assembly for ratification.

371. As seen above, Ecuador signed the Multilateral Convention on 29 October 2018, and ratified it on 26 August 2019. The Multilateral Convention entered into force for Ecuador on 1 December 2019.

372. Once ratified, treaties and other international instruments are part of the Ecuadorian legal system with no need for further steps for their application.

373. Ecuadorian authorities indicated that, on average, it takes three years from the signing to the effective date of entry into force of an international tax treaty and that delays, when they occur, are generally due to administrative procedures as well as the prioritisation of issues on the political and legal agenda of both the National Assembly and the Constitutional Court.

374. To date, there are no signed Agreement, the ratification of which is pending for a period greater than two years. The DTC with the United Arab Emirates, signed on 9 November 2016 has been ratified on 21 May 2021 (the Constitutional Court of Ecuador, with opinion No 001-18-DTI-CC of 17 January 2018, declared that the Agreement required prior approval by the National Assembly, which approved the DTC with the United Arab Emirates on 11 May 2021).

375. For the TIEA with Costa Rica, the Constitutional Court of Ecuador (with decision no. 0027-13-TI of 12 July 2013) declared that it did not require the approval by the National Assembly, whereas for the more recent TIEA with the United States, signed on 7 April 2021, the Court (with decision no. 4-21-TI/21 of 28 April 2021) declared that the prior approval by the National Assembly was required. For the latter case, the approval of the National Assembly is currently awaited in order to complete the ratification process.

376. The TIEAs with Argentina and with Honduras do not have a treaty status, as they were not concluded with the above described constitutional procedure. They were rather concluded as administrative agreements between the higher authorities of the respective tax administrations. In Ecuador, they have the level of resolutions in the hierarchy of norms. The EOI relationship with Argentina, as seen above, is also covered by the Multilateral Convention.

377. In conclusion, Ecuador's exchange of information mechanisms provide for effective exchange of information.

EOI mechanisms

Total EOI relationships, including bilateral and multilateral or regional mechanisms	146
In force	137
In line with the standard	137
Not in line with the standard	0
Signed but not in force	9*
In line with the standard	9
Not in line with the standard	0
Total bilateral EOI relationships not supplemented with multilateral or regional mechanisms	3
In force	2
In line with the standard	2**
Not in line with the standard	-
Signed but not in force	1
In line with the standard	1***
Not in line with the standard	-

* Benin, Burkina Faso, Gabon, Mauritania, Philippines, Papua New Guinea, Rwanda, Togo and United States.

** With Belarus and Honduras.

*** With the United States.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdiction's network of information exchange should cover all relevant partners, meaning those jurisdictions who are interested in entering into an information exchange arrangement.

378. Ecuador has a large EOI network covering 146 jurisdictions. Ecuador and most of its partners can use the Multilateral Convention, which meets the requirements of the standard, as a legal basis for their exchange of information on request.

379. No Global Forum members indicated, in the preparation of this report, that Ecuador refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Ecuador should continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

380. The conclusions are as follows:

Legal and Regulatory Framework: in place

The network of information exchange mechanisms of Ecuador covers all relevant partners.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

381. Ecuador has legislation and procedures in place to ensure that information received by the Competent Authority in the framework of an EOIR request are adequately treated and that its confidentiality is ensured.

382. The conclusions are as follows:

Legal and Regulatory Framework: in place

No material deficiencies have been identified in the EOI mechanisms and legislation of Ecuador concerning confidentiality.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.3.1. Information received: disclosure, use and safeguards

383. All of Ecuador's EOI instruments have confidentiality provisions based on the OECD Model Tax Convention or the OECD Model TIEA. While the provisions vary in wording, they contain the essential aspects on confidentiality. Similarly, Ecuador's domestic law is in line with the standard.

384. Based on the Constitution, international treaties within the Ecuadorian legal system have a supra-legal hierarchical order. The Constitution also establishes (article 425) that in case of conflict between norms of different hierarchical level, the Constitutional Court, the judges, administrative authorities and public servants, must resolve the conflict through the application of the higher hierarchical norm. For this reason, every public body with regulatory power has the obligation to adapt the application of laws and other legal norms to the provisions of the Multilateral Convention, of the DTCs and of TIEAs

concluded with the ratification procedure reported in paragraphs 369-370 (as it is the case for the TIEA with Costa Rica and the United States). For the TIEAs with Argentina and Honduras, that have the status of administrative agreements (see paragraph 376) and are at the level of resolutions in the Ecuadorian hierarchy of norms, Ecuadorian authorities have indicated that no distinction is made in practice on confidential treatment and on the use of information compared with treaty-level instruments.

385. For all EOI instruments, Ecuador undertakes that the information received in accordance with their provisions is treated as confidential, as the information obtained under its domestic laws.

386. Specifically, Ecuador domestic laws attribute to tax information a "reserved" rather than secret connotation. This norm is provided in article 101 of LRTI, which states that "the declarations and information of the taxpayers, responsible persons or third parties, related to tax obligations, as well as the control plans and programmes carried out by the Tax Administration are reserved and will be used for the purposes of the administration of taxes". In practice, the compliance with the confidentiality obligations in the relevant international instruments, the term "secret" used in said instruments is considered equivalent with the term "reserved" in domestic law and the relevant information is treated accordingly.

387. Besides the SRI, the jurisdictional bodies may access the information in accordance with articles 71 and 365 of the General Organic Code of Proceedings. There is no specific legal provision that expressly limits jurisdictional bodies to access information obtained under EOI instruments, besides the provisions of the EOI instruments themselves, which are part of the Ecuadorian legal framework, with a supra-legal nature. Therefore, unless otherwise provided in the EOI instruments, only in cases related to tax matters (including criminal tax matters) may jurisdictional bodies access that information.

388. Also taking into account the supremacy of international treaties over domestic laws, the uses allowed for the information received from EOI with partners jurisdictions are in Ecuador only those provided in the relevant international instrument. Thus, the information received through the exchange of information is used in Ecuador by the SRI for matters related to the assessment and collection of taxes.

389. The Terms of Reference, as amended in 2016, clarified that although it remains the rule that information exchanged cannot be used for purposes other than tax purposes, an exception applies where the EOI agreement provides that the information may be used for such other purposes under the laws of both jurisdictions and the competent authority supplying the information authorises such use. The Multilateral Convention, in particular, contains this provision (art. 22(4)). Ecuadorian authorities have indicated that to date,

no request of use for other purposes has been received nor sent by Ecuador in application of the Multilateral Convention or other relevant mechanism in force, but that nothing in the domestic law would prevent granting the authorisation to the requesting jurisdictions if information can be used for the requested other purposes under the laws of both jurisdictions.

390. As regards the access within the SRI to information received from EOIR partner jurisdictions, this is restricted based on special permissions and authorisations only to a limited number of employees. In this connection, the SRI internal EOIR Manual provides that the physical files containing information on EOI requests must be kept in secure storage units to which only the designated case handler and the co-ordinator (National Co-ordinator of Mutual Assistance and International Taxation) can have access. Similar provisions apply, as regards electronic files, for the access to the relevant databases.

391. The EOIR Manual also provides that all documents related to an information exchange case must bear a clearly visible confidentiality seal. This is, for printed documents a physical seal stating (in Spanish): "This information has been obtained pursuant to an international tax treaty and its use and disclosure is restricted by the provisions of that instrument". In electronic documents, the same text has to be embedded as a header and/or watermark to the document. The EOI Unit, when sending EOI information to other units within the SRI, must apply a set of rules, including: sorting the information received to ensure that only the specific information needed by the particular department/administrative unit is sent to them (when a large amount of information regarding several taxpayers is received); maintaining a tracking register with indication of the unit to which the information was provided, reference number and date of delivery; the transmission note should state that the information is to be kept confidential, that documents are to be stored in a secure location, and that no copies of material are to be made (or emails containing confidential information forwarded) without the consent of the Competent Authority.

392. The Tax Administration has the ability to impose sanctions on its employees for the unauthorised disclosure of information, not complying with due process and with the rules on disciplinary regime for all public servants in the Organic Law on Public Service and its internal regulations.

393. Pursuant to the Organic Law on Public Service (article 22) among the duties of public servants, there is the requirement to guard and take care of documents and information they have under their responsibility due to their employment, position, and prevent their misuse, subtraction and concealment. Unauthorised disclosure of confidential information is considered a disciplinary infraction (art. 42). Ecuadorian authorities have indicated that as disclosure of information obtained under an EOI instrument (that are

qualified as "reserved Information – highly sensitive" pursuant to the SRI policies) for purposes not foreseen in the relevant exchange mechanism constitutes a breach of the Ecuadorian legal framework, this would qualify as a serious administrative offence.[70] Serious offences, following the required administrative procedure, can give rise to the application of suspension or dismissal sanctions.

394. The SRI's Personnel Special Statute establishes that institution's employees must comply, among others, with the following rules (art. 17): do not access confidential or reserved information without prior authorisation and do not disclose reserved or confidential information, unless otherwise provided by law. The Statute (art. 26) also provides that access to confidential information or confidential procedures, without the proper authorisation granted for the performance of their duties, is punished with a fine. Recidivism, within a calendar year, can be punished with dismissal.

395. For cases of definitive termination or cessation of employment, SRI applies a procedure ("Human Talent Departure") that establishes the actions and processes to be followed, including matters relating to the confidentiality of information. Through the "Notification of Cessation of Duties", the employee is reminded that he/she will not be able to disclose, reveal, commercialise, distribute, reproduce or publicise by any means (verbal, physical, electronic, computer or digital) the confidential or reserved information originated from SRI, and informed that in the case of ascertaining non-compliance, the Tax Administration will exercise all the relevant legal mechanisms available to sanction these actions. The same is explained orally to the employee during an interview.

396. Besides administrative obligations and practices, criminal sanctions can apply to public servants (on duty or retired) as well as third parties, for carrying out actions or omissions that endanger, or that generate harmful results, related to the confidentiality of information guarded by the SRI. In such a case, the issue must be reported to the judicial authority. The most relevant offences in this regard are:

- dissemination of restricted circulation of information: imprisonment for one to three years (art. 180)
- illegal disclosure of database: imprisonment for three to five years (art. 229)

70. Disciplinary infractions are classified in minor offences (those actions or omissions carried out due to negligence or slight oversights, such as non-compliance with working hours during a working day or inappropriate use of property, equipment or materials) and serious offences (those actions or omissions that seriously contravene the legal framework or seriously alter the institutional order).

- illegal interception of data: imprisonment of three to five years (art. 230)
- attack on the integrity of computer systems: imprisonment of five to seven years (art. 232)
- crimes against public information legally reserved: three to five years if the offender who obtains the information is a public official (art. 233)
- unauthorised access to a computer, telematics or telecommunications system: imprisonment for three to five years (art. 234).

397. For employees of the Tax Administration, the Code contains as an aggravating factor for any offence in case it is conducted taking advantage of their status as a public employee. In this case, the penalty will be the maximum provided for each criminal type, increased by one third.

398. The EOIR Manual provides that in specific circumstances confidential information received from a treaty partner can be disclosed to persons outside the tax administration, e.g. to the taxpayer involved or in a public court proceeding. Such disclosures may occur when the information received is used to support a tax charge that must be communicated to the taxpayer or when a tax case against the taxpayer is being decided in court and the information is required by the judicial authorities. The EOI Manual observes in this connection that disclosure rules may vary according to different legal instruments and requires that any disclosure outside the tax administration must be authorised by the competent authority or its authorised delegate, after verifying that such disclosure is permitted by the legal instrument and domestic law. It also provides that, in case of disclosure to persons outside the tax administration, the requested competent authority should be informed.

399. Ecuadorian authorities have indicated that in case a higher tax liability is determined in Ecuador based on information received from partner jurisdictions (in relation to outbound requests from Ecuador), the taxpayer(s) directly concerned with the process may request and obtain certified copies of such information if they justify the request on the need to see the document to pursue further administrative or legal instances. If that is the case, specific procedures are carried out centrally by the EOI unit, to ensure the confidentiality and data safeguarding of the information disclosed to the taxpayer. In particular, the administrative practice is that, if relevant, the information received (including the competent authority letters) is provided to the taxpayer/representative, with the signing of a delivery-reception minute signed by the requesting person and the official of the SRI delegated for that purpose. Such minute would transfer the confidentiality requirements to the requesting person, by invoking article 425 of the Constitution (hierarchy of norms) and reminding that the information must be treated in application of the provisions

of the corresponding international treaty, that is, it must be used only for tax purposes and its inappropriate disclosure would originate the respective civil and criminal sanctions, as provided by the applicable regulations. Ecuadorian authorities have also specified that in the period between October 2017 and September 2020 only in one case certified physical copies of the letter signed by the Ecuadorian competent authority and the response letter from the treaty partner, sealed as confidential, were provided. For incoming requests, when the required information is maintained by a taxpayer, the EOIR Manual provides that in no case should the request letter from the competent foreign authority be provided to the taxpayer and that the request notice to the taxpayer should contain only the minimum amount of information necessary to enable the taxpayer to respond to it.

C.3.2. Confidentiality of other information

400. The confidentiality provisions in Ecuador's EOI agreements and domestic laws do not draw a distinction between information received in response to requests and information forming part of the requests themselves.

401. In application of national laws and international instruments in force in Ecuador, the SRI in its capacity as competent authority, is required to give to communications with other competent authorities (other than the requested information) the same treatment applicable to requested information, that is, the information is kept reserved.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

402. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other legitimate secret arises.

403. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Section B.1 above discusses this issue and considering that the scope of legal professional privilege is not defined in Ecuadorian law and could go beyond the scope allowed under the international standard, it includes a recommendation. This same recommendation is reflected in this section.

404. The conclusions are as follows:

Legal and Regulatory Framework: in place

Deficiencies identified/ Underlying Factor	Recommendations
The scope of professional privilege is not defined in Ecuadorian law and could go beyond the scope allowed under the standard although Ecuadorian authorities indicated that there is no record of any case in which professional secrecy has been invoked to prevent the delivery of the requested information.	Ecuador is recommended to clarify that the scope of professional privilege is in conformity with the standard.

Practical Implementation of the Standard: The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.4.1. Exceptions to the requirement to provide information

405. All Ecuador's DTCs and TIEAs, as well as the Andean Decision no. 578 (art. 19 lett. c) and the Multilateral Convention, generally include a paragraph that provides for the possibility of declining a request for information when it is contrary to public policy. All the above mechanisms, with the exception of the TIEAs with Argentina and Honduras, also generally provide for the possibility of declining a request for information when industrial or professional secrecy is involved.

406. Section B.1 above discusses this issue and considering that the scope of legal professional privilege is not defined in Ecuadorian law and could go beyond the scope allowed under the international standard. However, the TIEAs with Costa Rica, Honduras and the United States clearly reproduce the terms of the standard in this respect:

> Article 9(3). The provisions of this Agreement shall not impose on a Party the obligation to obtain or provide information that would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are: (a) produced for the purposes of seeking or providing legal advice; or (b) produced for the purposes of use in existing or contemplated legal proceedings.

407. International treaties prevail over domestic laws in Ecuador, therefore it is expected that professional privilege would be interpreted in accordance with the standard when information requested pursuant to the agreements is held by a legal professional. This situation has not occurred to date.

408. In practice, the Ecuadorian authorities have indicated that the secrecy clauses have never been invoked or used so far nor have they experienced any difficulties on the basis of the application of rights and safeguards in Ecuador.

409. **Ecuador is recommended to ensure that the scope of professional privilege is in conformity with the standard on the exchange of information on request**.

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

410. As requesting and providing information in an effective manner is a matter of practice, it will be considered in the course of the Phase 2 review.

411. The conclusions are as follows:

Legal and Regulatory Framework

This element involves issues of practice. Accordingly, no determination has been made.

The Global Forum is not in a position to issue a rating on this element, as it involves issues of practice that are dealt with in the Phase 2 review.

C.5.1. Timeliness of responses to requests for information

412. In order for exchange of information to be effective, it must be provided in a timeframe that allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting jurisdiction. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

413. Ecuador's DTCs do not generally specify the timeframes of responses to requests for information, whereas the TIEAs identify a timeframe between 30 and 70 days from the date of receipt of the request to provide a response.[71]

71. In particular: 30 days for the case of Argentina and Honduras, pursuant to art. 4(4)(i) of the respective TIEAs; and 70 days for the case of Costa Rica, pursuant to art. 5(6)(b) of the relevant TIEA. No explicit timeframes are indicated in the TIEA with the United States.

414. The SRI internal EOIR Manual sets out the procedures, including a timeframe, for exchange of information. The SRI, as a general rule, is expected to respond to request received from other jurisdictions by 90 days from the date of receipt if information is already available within the SRI and by 6 months from the date of receipt if the information has to be gathered from other sources. Intermediate times are also established for the various milestones necessary to find and provide the requested information. Moreover, the EOIR Manual provides that within 90 days from the receipt of an inbound request, the Ecuadorian competent authority has to send in any case to the requesting jurisdiction an email containing either a status update, a partial response or a full response (depending on the information that could be collected at that time), with further updates or provisional responses to be issued every 90 days until a final reply is provided. The EOIR Manual requires that exchanges via email are either encrypted or sent through a secure platform (i.e. where unauthorised users cannot access).

415. Statistics provided by the Ecuadorian authorities indicate that, in most recent years, a full response was provided within 90 days in 53% of cases, and for all inbound requests (5 per year on average over a three-year period) a response was provided within 180 days. An analysis of the timeliness of responses to requests for information will be carried out during the Phase 2 review.

C.5.2. Organisational processes and resources

416. It is important that a jurisdiction has appropriate organisational processes and resources in place to ensure a timely response. The competent authority in charge of exchanging information for tax purposes is within the SRI. The unit responsible for the exchange of information is the Co-ordination of Mutual Assistance and International Taxation, under the Department of Tax Risks and Information, which in turn is placed directly under the Tax Compliance Deputy Director General. An analysis of the organisational process and resources implemented by Ecuador in practice will be carried out during the Phase 2 review.

C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

417. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. There are no legal or regulatory requirements in Ecuador that impose unreasonable, disproportionate or unduly restrictive conditions. Whether any such conditions exist in practice will be assessed under the Phase 2 review.

Annex 1: List of in-text recommendations

The Global Forum may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, it should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be stated in the text of the report. A list of such recommendations is reproduced below for convenience.

- **Element A.2**: Ecuador should monitor that the legal and regulatory framework provides for reliable accounting information for partnerships and other entities not subject to the supervision of the SCVS (para. 252)
- **Element C.2**: Ecuador should continue to conclude EOI agreements with any new relevant partner who would so require (para. 379).

Moreover, the Global Forum may identify some aspects of the legal and regulatory framework to follow-up in the Phase 2 review. A non-exhaustive list of such aspects is reproduced below for convenience:

- **Element A.1**: on the procedures for the registration and cancellation of companies in practice (para. 93)
- **Element A.1**: on the implementation of the requirement for companies to provide beneficial ownership information on a yearly basis to the SCVS (para. 155)
- **Elements A.1 and A.3**: on the application of the definition of beneficial ownership for trusts in the SB guidelines, in case the constituents or settlors; fund and trust administrators or trustees; and/or beneficiaries are legal persons (para. 204 and 289).
- **Element A.2:** on reliable accounting information in practice for partnerships and other entities not subject to the supervision of the SCVS (para. 252).

Annex 2: List of Ecuador's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Argentina	TIEA	23-May-2011	24-May-2011
2	Belarus	DTC	27-Dec-2016	01-Jan-2018
3	Belgium	DTC	18-Dec-1996	01-Jan-2005
4	Brazil	DTC	26-May-1983	01-Jan-1989
5	Canada	DTC	28-Jun-2001	01-Jan-2002
6	Chile	DTC	26-Aug-1999	01-Jan-2005
7	China (People's Republic of)	DTC	21-Jan-2013	26-Apr-2014
8	Costa Rica	TIEA	04-Jun-2013	24-Jun-2016
9	France	DTC	16-Mar-1989	01-Jan-1993
10	Germany	DTC	07-Dec-1982	01-Jan-1987
11	Honduras	TIEA	31-Jul-2014	31-Jul-2014
12	Italy	DTC	23-May-1984	01-Jan-1991
		Protocol	13-Dec 2016	not in force
13	Japan	DTC	15-Jan-2019	01-Jan-2020
14	Korea	DTC	08-Oct-2012	01-Jan-2014
15	Mexico	DTC	30-Jul-1982	01-Jan-2002
16	Qatar	DTC	22-Oct-2014	01-Jan-2019
17	Romania	DTC	24-Apr-1992	01-Jan-1997
18	Russia	DTC	14-Nov-2016	01-Jan-2019
19	Singapore	DTC	27-Jun-2013	01-Jan-2016
20	Spain	DTC	20-May-1992	01-Jan-1994
21	Switzerland	DTC	28-Nov-1994	01-Jan-1996
		Protocol	26-Jul-2017	17-Apr-2019

22	United Arab Emirates	DTC	9-Nov-2016	29-Jul-2021
23	United States	TIEA	7-April-2021	Not in force
24	Uruguay	DTC	26-May-2011	01-Jan-2013

Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[72] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

The Multilateral Convention was signed by Ecuador on 29 October 2018 and entered into force on 1 December 2019 for Ecuador. Ecuador can exchange information with all other Parties to the Multilateral Convention.

The Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Armenia, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Bosnia and Herzegovina, Botswana, Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cabo Verde, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[73] Czech Republic,

72. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the Multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

73. Note by Türkiye: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing

Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Eswatini, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), North Macedonia, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Montserrat (extension by the United Kingdom), Morocco, Namibia, Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Benin, Burkina Faso, Gabon, Mauritania,[74] Papua New Guinea, Philippines, Rwanda, Togo, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

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both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

74. Mauritania deposited its instruments of ratification after the date of the report (22 April 2022). The Multilateral Convention will enter into force in Mauritania on 1 August 2022.

Andean Community Decision no. 578

The Andean Community of Nations Decision no. 578 sets a Framework for Avoiding Double Taxation and Prevent Tax Evasion allows the exchange of information between Bolivia, Colombia, Ecuador and Peru. (At the time of publication of the decision, Venezuela was also a Party.) The Decision applies to income tax of the parties.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference and conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and amended in 2020 and 2021, and the Schedule of Reviews.

The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as of 22 April 2022, Ecuador's responses to the EOIR questionnaire, as well as information provided by Ecuador's authorities during virtual meetings.

List of laws, regulations and other materials consulted

Ecuadorian Constitution (Constitucion de la Republica del Ecuador)

Laws (organic and ordinary)

AML Law – Organic Law for the Prevention, Detection and Eradication of Money Laundering and Crime Financing (*Ley Orgánica de Detección, Prevención y Erradicación del Delito de Lavado de Activos y Otros Delitos*)

Civil Code (*Código Civil*)

Commercial Code (*Código de Comercio*)

Companies Law (*Ley de Compañías* – LC)

Criminal Organic Code (*Código Orgánico Integral Penal* – COIP)

Internal Tax Regime Law – (*Ley de Régimen Tributario Interno* – LRTI)

Law Establishing the SRI (*Ley de Creación del Servicio de Rentas Internas*)

Law for Public Finances Reform (*Ley para la Reforma de las Finanzas Públicas*)

Law on the Taxpayers Unique Registry (*Ley del Registro Único de Contribuyentes*)

Monetary and Financial Organic Code (*Código Orgánico Monetario y Financiero* – COMYF)

- Securities Market Law – Book II of the COMYF (*Ley de Mercado de Valores*)
- General Insurance Law – Book III of the COMYF (*Ley General de Seguros*)

Organic Law of the Popular and Solidary Economy (Ley Orgánica de la Economía Popular y Solidaria – LOEPS);

Organic Code of the Judicial Function (*Codigo Organico de la Funcion Judicial*)

Organic Law of Jurisdictional Guarantees and Constitutional Control (*Ley Organica de Garantias Jurisdiccionales y Control Constitucional*)

Organic Law of Public Enterprises (*Ley Orgánica de Empresas Públicas* – LOEP)

Organic Law on Public Service (*Ley Orgánica de Servicio Público* – LOSEP)

Organic Law of National System of Registry and Public Data (*Ley Organica del Sistema Nacional de Registro de Datos Públicos*)

Organic Law on Transparency and Access to Public Information (*Ley Orgánica de Transparencia y Acceso a la Información Pública* – LOTAIP)

Organic Law for Economic Development and Fiscal Sustainability after the Covid-19 Pandemic (*Ley Orgánica para el Desarrollo Económico y Sostenibilidad Fiscal tras la Pandemia COVID-19*)

Tax Code (*Codigo Tributario*)

Decrees and regulations

Executive Decree of the President of the Republic no. 193 of 2017 – Regulation of Legal Personality Social Organisations (*Decreto Ejecutivo 193 – Reglamento Personalidad Juridica Organizaciones Sociales*)

AML Law Regulation (*Reglamento general a la ley orgánica de prevención, detección y erradicación del delito de lavado de activos y del financiamiento de delitos*)

Regulation for Application of the Internal Tax Regime Law (*Reglamento para la Aplicación de la Ley de Régimen Tributario Interno*)

Regulation for the organisation and functioning of the Companies Register (*Reglamento para la Organización y Funcionamiento del Registro de Sociedades*)

Regulation to the Law on the Taxpayers Unique Registry (*Reglamento a la Ley de Registro Unico de Contribuyentes, RUC*)

Resolutions

Financial Policy and Regulation Board Resolution no. JPRF-S-2022-024 of 19 April 2022 – Norms to prevent money laundering and the financing of terrorism and others crimes in the participants of the securities market (*Normas para prevenir el lavado de activos y el financiamiento del terrorismo y otros delitos en los participantes del mercado de valores*)

Financial Policy and Regulation Board Resolution no. JPRF-S-2022-025 of 19 April 2022 – Norms for insurance companies and reinsurance companies on prevention of money laundering, financing of terrorism and other crimes (*Normas para las empresas de seguros y compañías de reaseguros sobre prevención de lavado de activos, financiamiento del terrorismo y otros delitos*)

Monetary and Financial Policy and Regulation Board Resolution No. 385-2017-A of 26 June 2017-Norm for the prevention, detection and eradication of the crime of money laundering and the financing of crimes in the financial institutions of the popular and solidary economy (*Norma para la prevención, detección y erradicación del delito de lavado de activos y del financiamiento de delitos en las entidades financieras de la economía popular y solidaria*)

SB Resolution no. SB-2016-698 – Conservation of files in storage systems of entities controlled by the SB (*Conservacion de los archivos en sistemas de almacenamiento de las entidades controladas por la superintendencia de los bancos*)

SB Resolultion no. SB-2020-0550 – Compliance Norm for the Management of the Risk of Money Laundering and Financing of Crimes, such as Terrorism (*Norma de Control para la Administración del Riesgo de Lavado de Activos y Financiamiento de Delitos, como el Terrorismo*)

SCVS Resolution no. SCVS-DSC-2018-0041 of 28 December 2018 – Issue the rules for the prevention of money laundering, financing of

terrorism and other crimes (*Expedir las normas de prevención de lavado de activos, financiamiento de terrorismo y otros delitos*)

SRI resolution no. NAC-DGERCGC12-00105 on electronic invoicing (*Normas Para el Nuevo Esquema de Emision de Comprobantes De Venta, Retencion y Documentos Complementarios Mediate Mensajes de Datos – Comprobantes Electronicos*)

SRI Resolution no. NAC-DGERCGC17-00000473 – Approval of the ROTEF (*Aprobar el Anexo Reporte de Operaciones Y Transacciones Economicas Financieras ROTEF*)

SRI Resolution no. NAC-DGERCGC16-00000536 (*Condiciones, Plazos Y Las Excepciones Para Informar La Composición Societaria, Y Apruébese El "Anexo De Accionistas, Partícipes, Socios, Miembros De Directorio Y Administradores" Y Su Contenido*)

SRI resolution no. NAC-DGERCGC18-00000191 of 23 April 2018 on the subjects required to adopt electronic invoicing (*establecer nuevos sujetos pasivos obligados a emitir comprobantes de venta, retencion y documentos complementarios, de manera electronica*)

SRI resolution no. NAC-DGERCGC18-00000431 of 19 December 2018 amending SRI resolution no. NAC-DGERCGC18-00000191

SRI resolution no. NAC-DGERCGC21-00000011 of 10 February 2021 on the ex officio suspension and updating of the registration of taxpayers in the single register of taxpayers (RUC).

Resolution no. 385 on the Codification of Monetary, Financial, Securities and Insurance Resolutions (*Resolución de la Junta de Política Monetaria y Financiera 385; Codificación de Resoluciones Monetarias, Financieras, de Valores y Seguros*)

SCVS Resolution no. SCV-DSC-G-14-008 (*Reglamento para el Proceso Simplificado de Constitución y Registro de Compañías por Vía Electrónica*)

UAFE Resolution no. DG-2020-0089 of 30 September 2020 – Norm for the prevention of the crime of money laundering and the financing of crimes directed at the subjects obliged to report under the supervision of the financial and economic analysis unit – UAFE (*Norma para la prevención del delito de lavado de activos y del financiamiento de delitos dirigido a los sujetos obligados a reportar bajo la supervisión de la unidad de análisis financiero y económico UAFE*)

Other materials

SRI EOIR Manual (version no. 3 in use since September 2021)

SRI Manual for the application of pecuniary sanctions (*Instructivo Aplicación de Sanciones Pecuniarias, published on the Official Journal no. 553 of 11 October*)

Current review

Ecuador joined the Global Forum in 2017. This review is the first one conducted by the Global Forum on Ecuador.

Summary of reviews

Review	Assessment team	Period under review	Legal Framework as of	Date of adoption by Global Forum
Round 2 Phase 1	Mr Martín Barreiros Cavaco from Argentina, Ms Sangene Watkin-Diagne from Barbados and Mr Fabio Giuseppone from the Global Forum Secretariat	Not applicable	22 April 2022	5 August 2022

Annex 4: Ecuador's response to the review report[75]

Ecuador wishes to express its distinguished gratitude for the support provided by the Global Forum during this process, for the availability and openness of the assessment team, as well as for its effort to adequately understand the legal and regulatory framework of the country, in order to establish appropriate conclusions.

On the other hand, it is worth mentioning that Ecuadorian public institutions have been also available to cooperate throughout the review, constituting a team that showed leadership and professionalism, as indicated by the successful conclusion of the process.

Ecuador is satisfied with the determinations, underlying factors, recommendations and conclusions of the report, which in general reflect the strengths and weaknesses of its legal and regulatory framework. In this context, Ecuador will undoubtedly consider all the aspects where improvement is needed, including the establishment of a frequency for beneficial ownership information updates, although current standards are not completely clear on this aspect. This commitment will start by planning and executing the respective remedial measures as soon as possible, aiming at a successful Phase 2 Review.

During that phase, the expectation is that the designated assessment team will be able to verify that a strengthened regulatory framework is in place, together with practices in line with the standard.

Ecuador's policy is to achieve maximum tax transparency and, in its objective of continuously expand its network of international EOI agreements, ratified the MAC in 2019, and is now incorporating a very relevant new treaty partner, once there was a unanimous approval by the National Assembly of the TIEA between Ecuador and the USA, on July 14th, 2022.

Finally, Ecuador would like to reiterate its will for cooperation and its decision to continue participating in the international fight against tax evasion and avoidance.

75. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request ECUADOR 2022 (Second Round, Phase 1)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 160 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This publication contains the 2022 Second Round Peer Review Report on the Exchange of Information on Request for Ecuador. It refers to Phase 1 only (Legal and Regulatory Framework).

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