

Company & Commercial - Ecuador

New Information Requirements for Companies

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In an attempt to ensure transparency and create a climate of legal certainty and security, the Ecuadorian Congress passed the Law on Transparency and Access to Public Information on May 18 2004. The new law strengthens principles of transparency and information which, although added to the Constitution in 1998, have largely not been implemented in practice, even in cases before Ecuador's Constitutional Court. The law is part of a global trend to improve the right of access to information.

According to the new law, it is not only public companies that must provide public information, but also the following:

- companies linked to the public administration (eg, private concessionaires providing electricity, water, sewerage or telecommunications, and even petroleum companies);
- companies partially financed (the law does not mention specific percentages) by the government (eg, universities); and
- in general, companies that possess public information.

The law, however, does not clearly define 'public information'.

The effect of the law on the privacy of persons or entities required to provide information is problematic. In general, all information which is not classified or which would not infringe the fundamental rights of the person if disclosed must be released. In this regard, the law could have benefited from the inclusion of further exceptions. Similar laws in other countries have developed and established the right to privacy even for public institutions.

An entity affected by the new law "must create and maintain public registries in a professional manner, so that the right to access information can be effectively exercised". It must provide information on the following, among other things, through a web page or by other means:

- organizational structure;
- board;
- services offered;
- collective contracts that are in force, providing the complete text;
- annual budget;
- manager income;
- expenses;
- financing;
- external audit results; and
- companies and persons that have breached contracts with the institution.

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Affected companies have until May 18 2005 to comply with this requirement.

The process established by the new law for the request and delivery of information is simple and expeditious. Non-confidential information can be requested by writing to the appropriate entity. The request must include the identity of the requesting party and the location of the data required. The requesting party can request information that has not yet been published or the express certification of information that has already been published (eg, on the company's website). The entity then has a 10-day period (extendable to 15 days where justified) to produce the information. If the request is denied or the information not delivered in that period, the requesting party can file a complaint with a local judge and the resolution can be appealed before the Constitutional Court. Failure to provide the requested information within the appropriate timeframe can incur a penalty equal to one month's pay for the manager, or even his temporary or definite suspension.

The new law establishes a number of mechanisms, both *ex ante* and *ex post*, through which public and private companies can protect their confidential information. For instance, companies affected by the law must present a yearly report to the ombudsman on their compliance with the law, as well as a twice-yearly listing of information that is designated as confidential. If a party were to request any information that is not included in that listing, it would be extremely difficult for a company to refuse to provide it.

Therefore, companies doing business in Ecuador which could be affected by the new law (eg, those linked to the public administration or the management of public funds) need to understand its implications to ensure that sensitive data is adequately protected.

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