



## ISSUES RELATING TO FINANCE

### ECUADOR

#### Pérez, Bustamante & Ponce

##### CONTACT INFORMATION

**Diego Pérez-Ordóñez**

Pérez, Bustamante & Ponce

Av. República de El Salvador 1082

(593-2) 2254-323

[dperez@pbplaw.com](mailto:dperez@pbplaw.com)

[www.pbplaw.com](http://www.pbplaw.com)

1. **What instruments are used to create a lien on real estate to secure an indebtedness (e.g., a mortgage or deed of trust)?**

A mortgage or lien public deed granted in front of a notary public is needed; the public deed has to be filed with the Real Estate Registration Office in each County in order for the lien to be valid.

2. **Describe [national] [state] [territorial] [provincial] or local mortgage recording or other similar taxes payable on making a loan secured by real estate or perfecting a lien on real property.**

Local mortgage recording systems are administered by County Real Estate Registration Office which keep records of property and its limitations. This system might change in the near future, with the issuance of a new Constitution in Ecuador.

3. **Describe manner in which a lien secured by real property is foreclosed.**

Under Ecuadorian Civil Law, the beneficiary of the lien secured by real property has to ask a judge or arbitration panel to foreclose and enforce the mortgage. If debtor does not comply with the main obligation, secured by the lien on real estate, the judge will issue a court order to auction the real estate in order to recuperate the money owed to the beneficiary.

**4. Describe any significant costs of or impediments to foreclosing a lien on real property.**

In Ecuador costs are associated with value of the real estate, and include legal fees, judicial fees and expenses.

**5. What is the customary time period for foreclosing a lien on real property?**

The customary time period is 12-18 months, due to the judicial process involved in foreclosure.

**6. Are there [national] [state] [territorial] [provincial] or other local governmental permissions, approvals or licenses required for foreign banks or other foreign lenders to make real estate loans secured by real property? If so, please describe.**

No, as long as the foreign banks or lenders appoint an attorney-in fact, and that there is no financial intermediation involved, such banks and lenders can guarantee their credits by means of a mortgage or other real estate liens. If the bank or the lender wished to operate in Ecuador, a Government authorization is needed.

**7. What legal limits are imposed on the amount of interest which may be charged on a loan secured by real property?**

There are no specific interest rate caps applied to real estate guaranteed operations. In terms of interest rate caps, every month, the Central Bank of Ecuador establishes the maximum interest rate for each credit segment. The established segments are: (A) commercial credit which is divided into (i) corporate commercial credit for enterprises whose annual sales exceed US\$10 million, and (ii) commercial credit for small- and medium-size enterprises whose annual sales are equal to or higher than US\$100,000 but lower than US\$10 million, and for independent professionals earning annual income over US\$40,000; (B) consumer lending which is divided into the following segments: (i) consumer lending which includes operations with individuals in amounts exceeding US\$600, and (ii) minor consumer lending which includes credit operations with individuals in amounts below US\$600; (C) microcredit involving loans not exceeding US\$20,000 to corporations or individuals whose sales are below US\$100,000 per year; it includes three segments: (i) Subsistence microloans in amounts not exceeding US\$600, (ii) simple accumulation microloans in amounts from US\$600 to 8,500, and (iii) expanded accumulation microloans in amounts from US\$8,500 to 20,000; and (D) housing credit extended to individuals for purchase, construction, repairs, reconditioning and improvement of their own houses, always secured by mortgages. The effective reference lending interest rate for each of the above mentioned segments is equivalent to the weighted average by amount of the effective interest rates agreed upon for lending operations with financial system institutions, and is calculated by the Central Bank of Ecuador on a monthly basis.

**8. Describe any laws that restrict the ability to make a borrower or guarantor personally liable for indebtedness secured by real property.**

There are no specific laws. The guarantor can be personally liable for indebtedness secured by real estate, as long as guarantor agrees in writing to act as joint guarantor.