LEGAL FRAMEWORK

National

The most important national laws governing Intellectual Property are the following:

The Organic Code on the Social Economy of Knowledge, Creativity and Innovation in force since December 9, 2016

The Andean Community Decision 486 on a Common Industrial Property Regime in force since December 1, 2000

International

As a member of the Andean Community of Nations (other members are Colombia, Peru and Bolivia) Ecuador must apply Decision 486 on a Common Industrial Property Regime, which states that each Member Country will grant the nationals of the other members of the Andean Community, the World Trade Organization and the Paris Convention for the Protection of Industrial Property, treatment no less favorable that which it grants to its own nationals, subject to the provisions of articles 3 and 5 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and of article 2 of the Paris Convention for the Protection of Industrial Property.

Below we list some of the agreements to which Ecuador belongs:

* Decision 345 of the Andean Community, Common Regime on the Protection of Rights of Breeders of Plant Varieties, in force since October 21, 1993.
* Convention on Biological Diversity, in force since December 29, 1993
* TRIPS, January 21, 1996
* Decision 391 of the Andean Community, Common Regime on Access to Genetic Resources, July 2, 1996
* The Union for the Protection of New Varieties of Plants UPOV, August 8, 1997
* Paris Convention for the Protection of Industrial Property, June 22, 1999
* Patent Cooperation Treaty (PCT), May 7, 2001
* Cartagena Protocol on Biosafety, September 11, 2003
* Nagoya Protocol on Access and Benefit Sharing, December 19, 2017
* Nice Agreement Concerning the International Classification of Goods and Services. Although not a member it uses the Nice Classification.

Ecuador's new Intellectual Property Law **ORGANIC CODE OF THE SOCIAL ECONOMY OF KNOWLEDGE, CREATIVITY AND INNOVATION** has been in force since December 9, 2016.

For your information we are pleased to provide a summary of some of its most important points. For more detailed information please do not hesitate to contact us.

PATENTS

Art. 267. Protectable matter. According to this new legislation a patent will be granted to any invention, be it a product or a procedure, in all fields of knowledge provided it is new, inventive and capable of industrial application.

Traditional knowledge is not considered protectable matter.

Art. 268. The following are not considered inventions:

1. Discoveries, scientific theories and principles and mathematical methods;

2. Living creatures or any part thereof as they are in nature, natural biological processes, biological material existing in nature, or any isolated biological material including genes, proteins, genome or germ plasm of any living creature.

3. A new form of a substance including salts, esters, ethers, complexes, combinations and other derivatives.

4. Polymorphs, metabolites, pure forms, particle size and isomers.

5. The uses or any new characteristic or use of a known substance or use of a known procedure or machine or apparatus.

6. Genetic resources that contain biological diversity and agro-biodiversity, as such.

7. Literary and artistic works or any other protected by copyright.

8. The plans, rules and methods for the exercise of intellectual activities, games or economic-commercial activities.

9. Software as such.

10. The ways of presenting information.

Art. 273. Non-patentable inventions:

1. Inventions whose commercial exploitation must necessarily be prevented to protect public order or morality, including to protect the health or life of people or animals or to

preserve plants or to avoid serious damage to the environment or ecosystem. For these purposes, the commercial exploitation of an invention shall not be considered contrary to public order or morality, due to the sole existence of a legal or administrative provision that prohibits or regulates said invention.

2. Diagnostic, therapeutic and surgical methods for treating people or animals.

3. Plants and animals as well as essentially biological procedures for obtaining plants or animals that are not non-biological or microbiological procedures.

4. The product of polymorphs, metabolites, pure forms, particle size and isomers that have not been investigated in Ecuador.

5. The product of genetic resources containing biological diversity and the agro-biodiversity that have not been investigated in Ecuador.

For the provisions of number 1, the following shall not be patentable, among others:

a. Human cloning procedures.

b. The human body and its genetic identity.

c. The use of human embryos for industrial or commercial purposes.

d. Procedures for modifying the genetic identity of animals when they cause them suffering without obtaining any substantial benefit for humans of animals. art. 273.

Art. 291. Duration of patent registration. The patent will have a term of twenty years counted from the filing date of the application.

Compulsory Licenses

Art. 310. Grant of compulsory license for lack of use. After three years from the granting of the patent or four years counted from the application for it, whichever is greater, the competent national authority on intellectual rights, at the request of any interested party, will grand compulsory license mainly for the industrial production of the product subject to the patent or the full use of the patented procedure, only if at the time of the request the patent had not been exploited, or if it had been suspended for more than a year.

The compulsory license will not be granted if the patent holder justifies his inaction due to restrictions imposed by laws or regulations, or reasons of force majeure.

Art. 314. Grant of compulsory license for reasons of public interest. Previous declaration by executive decree or ministerial resolution of the existence of reasons of public interest, emergency or national security and, only while these reasons remain, the

State may, at any time and without any prior negotiation with the patent holder provide for the non-commercial public use of an invention patented by a government entity or a contractor, or subject to the patent to a compulsory license.

The granting of a compulsory license for reasons of public interest does not impair the right of the patent holder to continue exploiting it.

Art. 315. Compulsory license for anti-competitive practices. Ex officio or at the request of a party, the national authority competent in matters of intellectual rights will grant compulsory licenses when practices that have been declared by the national authority in defense of competition as contrary to the corresponding regulations, particularly when they constitute an abuse of the dominant position in the market by the patent owner.

In these cases to determine the amount of remuneration for the benefit of the patent owner, the need to correct anti-competitive practices will be taken into account.

Art. 316. Compulsory license for dependency. The national authority competent in matters of intellectual rights will grant a license at any time, if this is requested by the holder of a second patent whose exploitation necessarily requires the use of the first patent.

Art. 317. Compulsory license for the holder of a plant variety. When the breeder of a plant variety cannot exploit a breeder's certificate without violating the right resulting from an invention patent, he may request a compulsory license on that patent to the extent that it is necessary to exploit the plant variety that is the object of the certificate.

Art. 318. Compulsory license for lack of agreement. In the case provided for in article 276*, the competent national authority on intellectual rights, at the request of the legitimately interested party, will grant a compulsory license mainly for the industrial production of the product subject to the patent or the full use of the patented procedure, if at the time of the petition, the co-owners of the patent have not agreed on the terms and conditions of a voluntary license.

***Art. 276. Distribution of ownership, benefits of inventions and royalties made in educational and research centers.** In the case of inventions made during research or academic activities in higher education institutions or public research institutes, the ownership and distribution of benefits derived from the patent exploitation must be negotiated between them and the inventors involved, such as: professors, researchers or students. However, the latter must at least receive forty percent of the value of the ownership of the patent, so that inventors will receive the royalties generated from the patent exploitation. The holders, by prior agreement, may license or transfer their rights.

Art. 277. Ownership developed in fulfillment of a contract. The power to acquire the right to a patent on an invention developed in fulfillment of a contract belongs to the principal or the employer, unless otherwise stipulated. However, the inventors may not receive less than twenty-five percent of the value on the ownership of the patent, so that

the inventors will receive the royalties generated from their exploitation. The holders, by prior agreement, may license or transfer their rights.

When an employment contract does not require the employee to carry out his own inventive activity, but makes an invention using the resources or confidential information of the employer, the ownership will correspond to the employee, but the employer will have the right to a non-exclusive, non-transferable and free license of the patent.

When an employment contract does not require the employee to carry out his own inventive activity, and the invention is made without using the resources or confidential information of the employer, the ownership will belong to the employee.

UTILITY MODELS

Art. 321. Protectable matter under utility model. A utility model patent will be granted to any new shape, configuration or arrangement of elements of any artifact, tool, instrument, mechanism or other object or any of its parts, which allows a better or different operation, use or manufacture of the object that incorporates it or that provides it with any utility, advantage or technical effect that it did not previously have.

Art. 322. Non-protectable matter under utility model. Procedures shall not be protected as utility model nor shall be protected as utility models matters excluded from protection as patents of invention.

Art. 325. Term of protection for utility models. The term of protection of the utility model will be ten years from the date of submission of the application for the utility model.

INTEGRATED CIRCUIT LAYOUT DIAGRAMS

Art. 326. Originality of a layout diagram. A layout diagram will be protected when it is original. A layout diagram will be considered original when it results from the intellectual effort of its creator and is not common among creators of layout diagrams and manufactures of integrated circuits at the time of its creation.

A layout diagram consisting of a combination of elements or interconnections that are current, will only be protected if the combination, as a whole, meets the conditions mentioned in the previous paragraph.

Art. 332. Layout diagram protection duration. Protection of a registered layout diagram will have a duration of ten years from the earliest of the following dates:

1. The date on which the first commercial exploitation was carried out anywhere in the world; or,
2. The date on which the application for registration was submitted.

The protection of a layout diagram will expire in any case upon expiration of a term of fifteen years from the last day of the year in which the layout diagram was created.

INDUSTRIAL DESIGNS

Art. 345. Protectable Matter. The particular appearance of a product that results from any meeting of lines or color combinations, or from any two-dimensional or three-dimensional external form, line, contour, configuration, texture or material, will be considered as industrial design, without changing the destination or purpose of said product.

Art. 346. Protection requirements. An industrial design is acquired as long as it is new.

An industrial design is not considered new if, before the application or the priority dates, it had been made accessible to the public at any place or time, through its description, use, trading or by any other means.

An industrial design shall not be considered new by the mere fact that it presents secondary differences to previous designs or because it refers to another class of products different from said previous designs.

Art. 352. Duration of the industrial design registration. The registration of an industrial design will have a duration of ten years counted from the filing date of the application or the filing date of the application whose priority is claimed.

TRADEMARKS

Art. 359. Trademark registration. [Definition of trademark]. A trademark is any sign that is suitable to distinguish products or services in the market. Signs that are capable of graphic representation may be registered as trademarks.

The nature of the product or service to which a trademark must be applied will in no case be an obstacle to its registration.

The following signs or means may constitute trademarks among others:

1. Words or any combination thereof;

2. Images, figures, symbols, graphics, logos, monograms, portraits, labels, emblems and shields;

3. Sounds, smells and tastes;

4. Letters and numbers;

5. A color delimited by a shape or a color combination;

6. The shape of products, their packaging or wrappings;

7. Reliefs and textures perceptible by the sense of touch;

8. Animations, gestures and movement sequences;

9. Holograms; and

10. Any combination of the signs or means indicated in the previous sections.

Art. 360. Absolute prohibitions on trademark registration. The following signs will not be able to register as trademarks;

1. Cannot constitute a trademark according to the first paragraph of the previous article;

2. Lack of distinctiveness;

3. Consist exclusively of usual forms of products or their packaging, or in forms or characteristics imposed by the nature or function of said product or the service in question;

4. Consist exclusively of forms or other elements that give a functional or technical advantage to the product or service to which they are applied.

5. Consist exclusively of a sign or indication that may be used in commerce to describe the quality, quantity, destination, value, geographic origin, production dates, or other data, characteristics or information of the products or the services for which said sign or indication is to be used, including laudatory expressions referring to those products or services.

6. Consist exclusively of a sign or indication that is the generic or technical name of the product or service in question.

7. Consist exclusively or would have become a common or usual designation of the product or service in question.

8. Consist of a color set apart from others, without being delimited by a specific shape.

9. May mislead the commercial media or the public, in particular regarding the geographical origin, nature, mode of manufacturing, characteristics, qualities or fitness for use of the products or services in question.

10. Reproduce, imitate or contain a protected designation of origin for the same products or for different products, when their use could cause a risk of confusion or association with the designation; or implies an unfair use of its notoriety.

11. Consist of a protected designation of origin for wines or spirits.

12. Reproduce or imitate, without permission from the competent authorities, either as trademarks or as elements of the aforementioned trademarks, the name, the coats of arms, flags, emblems and any imitation from the heraldic point of view of the States and of any international organization. However, these signs may be registered when they do not lead to confusion about the existence of a link between the applicant and the state or organization in question.

13. Reproduce or imitate, without permission from the competent authorities, either as trademarks or as elements of the aforementioned trademarks, the official control or guarantee signs, seals or punches adopted by the States when its use could cause a risk of confusion or association.

14. Reproduce or imitate the name of the State (Country), local governments or their official symbols, as well as the names, acronyms and official symbols of public institutions, agencies and entities, or the signs that constitute a country trademark, unless their registration is requested by the competent authority.

15. Reproduce or imitate technical standards signs, unless their registration is requested by the national competent agency in standards and qualities of the country.

16. Reproduce coins or banknotes of legal tender in the territory of the country, or of any country, securities and other commercial documents, seals, stamps or fiscal species in general.

17. Reproduce, imitate or contain the name of a protected plant variety in the country or abroad, if the sign is intended for products or services related to that variety or its use is likely to cause confusion or association with the variety.

18. Are contrary to the law, morality, public order or good customs; y

19. Contain the name of a protected guaranteed traditional specialty.

The signs mentioned in numerals 2, 5, 7 and 8 that are not intrinsically capable of distinguishing the relevant products or services may be registered as a trademark when they have acquired distinctiveness due to their constant use in the country to identify the products or services of the applicant.

Likewise the usual three-dimensional forms of product packaging, which would have acquired distinctive aptitude due to its constant use in the country to identify said products, may be registered as a trademark as long as they do not constitute forms imposed by the nature of the product; are necessary to obtain a technical result; or the form contributes a substantial value to the product.

Art. 364. Right to exclusive use of the trademark. The right to the exclusive use of a trademark will be acquired by its registration before the national competent authority on intellectual rights.

Art. 365. Trademark registration duration. The acquisition of a trademark will have a duration of ten years from its granting date and may be renewed for successive periods of ten years.

Art. 372. Marketing ban on products and services identified with a foreign trademark. When in a country that is a member of the Paris Convention, TRIPS or with which Ecuador has some kind of industrial property agreement, a trademark identical or similar to that registered in the country is registered, but in the name of a different owner, to distinguish the same products or services, marketing in the country of the products or services identified with the foreign trademark is prohibited, unless the owners of the trademarks sign agreements allowing said marketing.

Art. 378. Cancellation of trademark registration due to lack of use. The registration of a trademark will be canceled at the request of any interested party when, without justified reason, the mark has not been used by its owner, its licensee or another person authorized to do so, during the three consecutive years preceding the date on which the cancellation action was initiated.

The cancellation of a registration for lack of use of a mark may also be requested as a defense in an opposition proceeding based on the unused mark.

Notwithstanding the provisions of the preceding paragraph, the cancellation action may not be initiated before three years from the date of the trademark registration.

COLLECTIVE TRADEMARKS

Art. 401. Definition. Collective trademark shall be any sign that is apt to distinguish the origin or any other common circumstance of products or services belonging to two or more different people or companies and that use it under the control of a proprietor.

CERTIFICATION TRADEMARKS

Art. 406. Definition. Certification trademark shall be any sign intended to be applied to products or services whose quality, origin or other characteristic has been certified by the owner of the mark.

Art. 409. Certification mark authorization. Without prejudice to community or national provisions on commercial practices restrictive of free competition, the owner of a certification mark may authorize its use to any person whose product or service meets the conditions established in the rules of use of the mark.

TRADENAMES

Art. 415. Definition. A tradename is any sign that is apt to identify a person or commercial establishment in the exercise of its economic activity and distinguish it from others that carry out identical or similar activities.

A person or commercial establishment may have more than one tradename. May constitute a tradename, among others, a company name or other designation registered in a register of persons or companies.

Tradenames are independent of company names both of which may coexist.

Art. 416. Tradename registration. The exclusive right over a tradename is acquired by its first public, continuous and in good faith use in commerce, and as long as it does not violate prior rights duly established in the country, and will end when the use of the tradename ceases or the activities of the person or business establishment that uses it terminate.

The owner of the tradename may register it before the competent national authority on intellectual rights. However, the right to the exclusive use of a tradename will only be acquired in the terms provided in the previous paragraph.

Art. 420. Duration of the tradename registration. The registration of a tradename will have a duration of ten years from the date of its concession and may be renewed, after proof of use, for successive period of ten years.

TRADE DRESS

Art. 426. Definition. Trade dress shall be any set of colors, shapes, presentations, structures and designs characteristic and particular to a commercial establishment or a product on the market, provided they are apt to distinguish it in the presentation of services or the sale of products.

Art. 427. Trade dress acquisition and exercise. Trade dress will be acquired and rights will be exercised in the same way as trademarks, as long as they have acquired distinctiveness in the Ecuadorian market, in accordance with the respective regulations, or are inherently distinctive.

DENOMINATIONS OF ORIGIN

Art. 428. Definition. Denomination of origin shall be a geographical indication constituted by the denomination of a country, a region or a specific place, or constituted by a denomination that, without being that of a country, a region or a specific place, refers to a specific geographic area, used to designate a product originating from them, when a certain quality, reputation or other characteristic of the product is exclusively or essentially attributable to the geographic environment in which it is produced, extracted or processed, including natural and human factors.

Art. 430. Declaration of Protection. A denomination of origin will be protected from the declaration issued for this purpose by the competent national authority on intellectual rights.

Art. 433. Duration of the declaration of protection of a denomination of origin. The duration of the declaration of protection of a denomination of origin will be determined by the subsistence of the conditions that motivated it, in the opinion of the competent national authority on intellectual rights.

Art. 435. Use authorization. People who are directly engaged in the extraction, production or processing of products designated by a protected denomination of origin and carry out such activity within the geographical area determined in the respective protection declaration, may request the national competent authority on intellectual rights, authorization to use said denomination of origin.

Art. 437. Duration of the use authorization. The authorization to use a protected denomination of origin will have a duration of ten years and may be renewed for equal periods indefinitely.

GUARANTEED TRADITIONAL SPECIALTIES

Art. 447. Definition. A Guaranteed Traditional Specialty (ETG) shall be any agricultural or food product that has specific characteristics because it has been produced from traditional raw materials or ingredients, or has a traditional or artisan composition, elaboration or production or transformation that corresponds to the traditional practical cultural identity applicable to that product or food.

An agricultural or food product whose specific characteristics are limited only to its origin or geographical origin may not be registered as a guaranteed traditional specialty.

Art. 449. Unprotectable products. Those agricultural products that have been previously registered as a plant variety may not be registered as a guaranteed traditional specialty.

INDICATIONS OF ORIGIN

Art. 455. Definition. An indication of origin shall be a name, expression, image or sign that designates or evokes a specific country, region, locality or place.

Art. 456. Use restrictions. An indication of origin may not be used in commerce in relation to a product or service, when it is false or misleading regarding its origin or when its use could cause the public to be confused regarding the origin, provenance, quality or any other characteristic of the product or service.

WELL-KNOWN DISTINCTIVE SIGNS

Art. 459. Definition. A well-known sign shall be one that is recognized as such in the country or in any country that is a member of the Paris Convention, TRIPS, or with which Ecuador maintains industrial property treaties by the relevant sector, regardless of the manner or the means by which it would have become known.

Art. 461. Special conditions. The declaration of notoriety to a sign will not be denied due to the sole fact that:

1. It is not registered or pending registration in the country or abroad;

2. It would not have been used or is not being used to distinguish products or services, or to identify establishments or activities in the country; and,

3. It is not notoriously known abroad.

Art. 462. Relevant sectors. To declare the notoriety of a distinctive sign, shall be considered as relevant sectors of reference, among others, the following:

1. The actual or potential consumers of the type of products or services to which it is applied; or,

2. Business circles that act in lines related to the type of products, services, establishment or activity to which it applies.

For the purposes of the declaration of notoriety of a sign, it must suffice that it is known within any of the sectors referred to in the preceding paragraphs.

PLANT VARIETIES

Art. 471. Protectable matter. The protection extends to varieties belonging to all plant genera and species as long as their cultivation, possession or use is not prohibited for reasons of human, animal or plant health, food sovereignty, food safety and environmental safety.

No protection is granted to species:

a). In the wild, natural or native;

b). That result from a mere discovery, except mutations, as long as the natural mutation steps, selection and registration processes are followed. In any case, they must comply with the requirements of distinctiveness, homogeneity and stability; and,

c). In which there is or implies a process of plant improvement derived from the simple long term symbiotic relationship between the species and the human being.

If applicable, for the protection of the breeder's right it is mandatory to comply with the protection of the biological and genetic heritage of the country, for which prior to the

presentation of the application for the breeder's right, the corresponding access permits must have been obtained, which will be filed together with the application.

Art. 485. Duration of the breeder's right. Once a breeder's right has been granted, it will have a term of eighteen years in the case of varieties of vines and forest, fruit and ornamental trees, including their rootstocks, and fifteen years for other varieties, counted from the date of granting of the certificate.

For those varieties that have not yet been marketed in the country, the term of the breeder's right, initially registered in the country of origin, will last for the time remaining to complete the period of validity of the first registration of that country.

OTHER MATTERS RELATED TO INTELLECTUAL PROPERTY

Art. 506. Undisclosed information. Undisclosed information has effective protection against disclosure to third parties and against unfair practices.

Art. 508. Test Data. Undisclosed test or other data on the safety and efficacy of pharmaceutical products and agricultural chemicals are protected, in accordance with the provisions of Art. 7 number 7 of the Organic Law on Market Control, when information contained in the data meets the following conditions:

a). It is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known or easily accessible to people that belong to circles where the type of information in question is normally used;

b). It has a commercial value for being secret; y

c). Has been subjected to reasonable measures, in the circumstances, to keep it secret, taken by the person that legitimately controls it.

Art. 509. Test data exclusivity. When the competent authority requires as a condition to approve the marketing of pharmaceuticals or agricultural chemicals that contain new chemical entities, the presentation of test data or other undisclosed information on safety and efficacy, the preparation of which involves a considerable effort, will be granted a exclusivity period of five years from the date of marketing approval for pharmaceuticals, and ten years for agricultural chemicals.

TRADITIONAL KNOWLEDGE

Art. 511. Definition. Is all collective knowledge, such as practices, methods, experiences, abilities, signs and symbols of peoples, nationalities and communities that are part of their cultural heritage and that have been developed, updated and transmitted from generation to generation. Traditional knowledge is, for instance, ancestral and local knowledge, the intangible component of genetic resources and traditional cultural expressions.

Traditional knowledge may refer among others to ecological, climatic, agricultural, medicinal, artistic, craftsmanship, fishing, hunting aspects that have been developed from the close relationship of humans with their territory and nature.

The acknowledgement and protection of collective rights on the intangible component and the traditional cultural expressions are complementary to legislation on access to genetic resources, cultural heritage and other related legislation. The aim at exercising these rights is to preserve and perpetuate the traditional knowledge of communities, peoples, nationalities and communes seeking its expansion and to protect them from undue commercial appropriation.

Art. 514. A legal person cannot be a holder of traditional knowledge. In no case may a legal person have rights over traditional knowledge. This implies that a legal person can never have the quality of legitimate holder of traditional knowledge.

In those cases where access to a genetic resource is authorized or consent is granted to access to traditional knowledge in favor of a legal person, this does not grant possession rights over traditional knowledge or over genetic resource, but only authorization to use it in the terms indicated in the authorization or in the contract.

Art.- 522. Protection. The effective and positive protection of traditional knowledge against undue access, use or exploitation by unauthorized third parties is guaranteed, expressed in the prevention, monitoring and sanction mechanisms generated in the regulations that will be issued for this purpose. The recognition of the collective rights of the legitimate holders of their traditional knowledge is not subject to any formality or registration in order to guarantee its protection, validity and exercise since this lies in the legitimacy of the community sphere.

Art. 523. Voluntary registration of traditional knowledge. Legitimate holders may register their traditional knowledge with the competent national authority on intellectual rights. This registration may be confidential and restricted to the public at the request of the legitimate holders. The objective of this registration will be to avoid illegitimate appropriations of said cognitive heritage, as well as, it will be a means of verification for the recognition of collective rights over traditional knowledge that may be infringed in any intellectual property rights application.

Art. 529. Requests for access, use and exploitation of traditional knowledge. Applications for access, use and exploitation of traditional knowledge must have the free, prior and informed consent of their legitimate holders, within which a fair and equitable

distribution of monetary and non-monetary benefits will be established. This without prejudice to the rights that correspond to the State when it comes to genetic resources, in accordance to the provisions of the Constitution and the Law.

Art. 534. Dispute Settlement. In the event of discrepancies or conflicts regarding the agreements arising from a contract for access, use or exploitation of traditional knowledge, this will necessarily be resolved in Ecuadorian jurisdiction and through the most favorable mechanisms for legitimate holders.