

# thebusiness|year

## playing BY THE RULES

With Ecuador's mines attracting more international investors, Ecuador's government needs to work on laws and legal procedures related to the sector.



Javier Robalino Orellana  
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Can you give us some background on the company, along with some of the current investment trends?

FERRERE is one of the two largest firms in the country and one of the three largest firms in South America, with 1,300 employees in the region and 13 offices throughout Ecuador, Uruguay, Paraguay, and Bolivia. In Ecuador, we currently have more than 75 lawyers and 170 employees in our three offices in Quito, Guayaquil, and Manta. We are active in areas such as hydrocarbons, mining, and different forms of activity related to natural resources. This footprint gives us a great position to measure changes in the investment climate, as we are involved in the development of our clients' activities related to new investments and existing ones. In Ecuador, the changes in the Productive Development Law of 2018 were positive. Various provisions on arbitration and the participation of the private sector were included, which targeted the creation of a more attractive environment for investment. There are more decisive steps to be taken; for example, it is necessary to revive bilateral investment agreements, which were all reneged on in 2017.

What other changes are still due to further dynamize the economy?

Ecuador must continue on a path of openness and integration, following a clear set of changes. First, Ecuador should continue working to become a full member of the Pacific Alliance, then resume discussions to sign bilateral investments with countries vital for our economy such as the US, Spain, Canada, Australia, and Mexico. Second, Ecuador must develop an international arbitration law that strengthens the recognition and enforcement of foreign awards, which would help our country generate a greater in-

tegration of Ecuador into the international arbitration system. Third, our country needs to see a much more holistic simplification of the tax regime, especially regarding the reduction and subsequent elimination of the tax on the exit of foreign currency (ISD). Despite its name, ISD also acts as a tax on the entry of capital. Since it is expensive to repatriate earnings, investment does not come. Fourth would be to speed up investment processes, including approvals for investments, environmental permits, approval of assignments of state contracts, and others.

As mining becomes the driving force behind FDI into Ecuador, what are your views on the sector and its future? All Ecuadorians should understand that mining is a key revenue generator in the country, as is the case in Chile or Peru, where mining has had an imperative role for development of the country in terms of job generation and state revenue. Mining allows sustained growth to the point of dynamizing the economy in such a way that national per-capita income grows substantially as well. For Ecuador to achieve parity with its neighbors, we need at least a decade of continuous growth. Mining growth in Ecuador requires the attraction and long-term presence of responsible companies that encourage the adequate distribution of mining wealth through responsible mining, which in turn allows the payment of taxes, the payment of royalties, environmental control, and more and better employment. If mining continues on a positive track, it is expected to exceed oil investment in the coming years, which will have other effects. First, mining will boost other parallel investments such as infrastructure and construction. Additionally, unlike oil, mining distributes the income much faster among society. The export of oil generates extremely important revenues but does not generate infrastructure and parallel projects like mining does. Second, large-scale mining takes a longer time to develop, creating a broader and more diverse process. The highly needed changes include the reopening of the mining cadastre so Ecuador remains attractive for the development of projects. In general, Ecuador must work on providing legal certainty and full protection to existing investments to attract new ones. ■

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*Advises international mining and oil companies on Ecuador's operation, M&A, labor, tax, litigation, and corporate affairs*

**BIO**  
Javier Robalino Orellana has been a partner at FERRERE and a member of the firm's global executive committee since 2015. He also co-chairs the arbitration practice and acts as managing partner for Ecuador. He earned an LL.M. from Duke University in 2006 and obtained an SJD from Universidad Católica de Quito. He represents many multinationals in various local and international commercial and investment disputes. He has participated in many cases under CIADI, CNUDMI, CIAC, CCI, and CAM-Santiago rules. He also participates in international public law cases under the WTO, Andean Community of Nations (CAN), and the Inter-American Convention on Human Rights rules, among others.

21

**PUBLIC ADMINISTRATION & REGULATION**  
Ecuador is creating a sustainable and responsible future for itself through its extractive sectors

41

**KICKSTARTERS**  
Various mining projects are coming onstream in Ecuador in the coming years whose export prospects are promising

50

**EXPLORATION & PRODUCTION**  
A new wave of mining discoveries are set to enter production, including world-class deposits of silver, gold, and copper