



THE SUPERINTENDENCE OF COMPANIES IN ECUADOR: CURRENT STATUS AND PROSPECTS

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ABSTRACT

Since September 14, 2015 in accordance with the transitional provisions of article 78 of the Organic Monetary Code, the agency controls and supervises the entire private insurance system in Ecuador; under the current name of Superintendency of Companies, Securities and Insurance. It is in charge of corporate and securities market activities in the country, among its main functions are adequate supervision and advice to the different market participants. With the aim of ensuring compliance with legal and regulatory standards aimed at protecting investors through adequate training and the effective dissemination of its products and services. Committed to serving its citizens, it is one of the leading public institutions in simplifying processes through technology. This work translates into greater operational efficiency, greater competitiveness and agility in approaching processes, which allows users to have a satisfactory process execution experience using the virtual platform.

Keywords: *Monetary Organic Code, Superintendency; sure; investor; operating efficiency*

INTRODUCTION

On April 20, 1964, by supreme decree of January of the same year, the first office called Intendencia de Empresas Anónimas was created, with headquarters in the city of Quito. The establishment was constituted a department dependent on the Superintendency of Banks, but with functions of control, surveillance and surveillance of anonymous and limited companies. Dr. René Bustamante Muñoz was responsible for this new entity, positioning himself as the first Intendant of Anonymous Companies. On September 14 of that same year, the Subintendencia of Anonymous Companies was created in the city of Guayaquil and Dr. Ramón Vela Cobos was appointed subintendant. The creation of the Superintendencia of Companies is carried out through the approval of the Political Constitution of the Ecuadorian State of May 25, 1967, by the National Constituent Assembly 1966 - 1967 (articles 232 to 234).

Since July 25, 2008, through Resolution No. 08.G.DSC.001, as part of the entities that were decentralized, it changes its headquarters to the city of Guayaquil, which at the request of the Organic Law for the Strengthening and Optimization of the Corporate and Stock Exchange Sector, on May 20, 2014 takes the current name of Superintendencia of Companies and Securities. In summary, the entity was born from the specific need to monitor and control the organization, operation, activities, liquidation and dissolution of companies and other companies under the terms and conditions established by law (Companies Law, 1999).

Its importance lies in the fact that, under the current legal system, transparency is guaranteed in the management of institutional resources and a constant willingness to render accounts to the general public. Currently, although it is not 100% equipped in the offices, the control entity has satisfied the needs of citizens with its virtual channels and is constantly innovating so that its processes are increasingly flexible and efficient.

However, on August 31, 2022, the Economic Development Commission of the National Assembly with 8 votes in favor approved the second debate report on the draft reform of the business law. In the report for the first debate of the commission, it was proposed that the SAS (Sociedad por Acciones Simplificadas) have the power to issue shares through its participation in the stock market and another very important point to highlight from the same report is that it reduced the time of subsequent control carried out by the Superintendence of Companies since it could only exercise subsequent control one year after the constitution of a enterprise. For this reason, it is worth highlighting and substantiating the important role played by the Superintendence of Companies in Ecuador to avoid creating corporate chaos.

METHODS

The research was carried out based on the qualitative modality, because a subjective phenomenon of reality and quantitative is studied through the analysis and processing of constant information in the accountability reports presented by the Superintendence of Companies, Securities and Insurance during the years 2020 and 2021, which includes the creation of physical and electronic SAS in the course of the two years. On the other hand, the analysis of the accountability reports corresponding to the years 2019, 2020 and 2021 that contain the detail of files entered in for sanctioning procedure through the administrative process will also be carried out. In this way, it will be possible to demonstrate the Superintendence of Companies, Securities and Insurance within the scope of the securities market, exercises in an adequate, timely and efficient manner the necessary sanctions to the entities that it regulates.

According to the authors Hernández, Fernández and Baptista (2010), the investigative scope was descriptive and not experimental, exposing the behavior that the administrative sanctioning procedure has had until reaching the current situation of the same, applied to the participants of the stock market and the increase in the creation of the SAS in the country with the passage of time on administrative sanctions and comply with constitutional guarantees achieving Thus, concise recommendations to improve sanctioning procedures.

Thus, the quantitative analysis was carried out based on the administrative sanctioning processes in matters of the securities market carried out by the Superintendence of Companies, Securities and Insurance included in the periods 2019 to 2021, obtaining in this way that the year 2021 was in which the pecuniary sanction amounted to more than one million dollars.

RESULTS

In the first place, the results obtained in terms of the sanctioning administrative procedures reflected in the 2019 accountability report, shows the following:

Table 1. Disciplinary proceedings - Stock Market.

#	ADMINISTRATIVE SANCTIONING PROCEDURE	TOTAL
1	Initial report	56
2	Offices with which initial order is served	34
3	Final report and opinion	28
4	Resolution sanction file	38

Source: Superintendency of Companies, Securities and Insurance, 2019.

With regard to the 38 resolutions mentioned in Table 1, it is necessary to determine the penalties imposed for the commission of administrative infractions in this type of procedure, which amount to seventy-eight thousand United States dollars.

Table 2. Resolutions- Stock Market.

BREAKDOWN OF 38 RESOLUTIONS		TOTAL	VALUE
1	Financial penalty	2	\$78,618.00
2	Written reprimand	24	
3	File	12	

Source: Superintendency of Companies, Securities and Insurance, 2019.

On the other hand, in the accountability report for the year 2020, 74 requirements are established as a result regarding the administrative sanctioning procedure.

Table 3. Detail of files entered for sanctioning procedure.

NUMBER	ADMINISTRATIVE SANCTIONING PROCEDURE	TOTAL
1	Initial report	16
2	Offices with which initial order is served	16
3	Final report and opinion	21
4	Resolution, sanction or archiving	25

Source: Superintendency of Companies, Securities and Insurance, 2020.

The monetary penalty value of administrative penalty decisions amounts to one hundred million United States dollars.

Table 4. Resolutions for administrative sanctions.

NUMBER	BREAKDOWN OF XX RESOLUTIONS	TOTAL	VALUE
1	Financial penalty	8	\$107,066
2	Written reprimand	14	
3	File	3	

Source: Superintendence of Companies, 2020.

In another order of ideas, in the accountability report corresponding to the year 2021, 104 requirements of the sanctioning procedure are established.

Table 5. Detail of files entered for sanctioning procedure.

NUMBER	ADMINISTRATIVE SANCTIONING PROCEDURE	TOTAL
1	Initial report	25
2	Offices with which initial order is served	36
3	Final report and opinion	26
4	Resolution, sanction or archiving	40

Source: Superintendency of Companies, Securities and Insurance, 2021.

- According to the reform of the rule of application of previous actions and sanctioning administrative procedure in the field of Securities market through resolution No. SCSV-INMV-DNFCDN2021-0011, the preparation of the initial report within the procedure was suppressed. The initial report was stopped once the aforementioned reform was published in official registry No. 513 on August 11, 2021.

That is to say that for the accountability report of the year 2022 it will no longer carry out the initial report within the procedures. Next, it is reflected that the pecuniary penalty for the year 2021 exceeds one million dollars of the United States of America.

Table 6. Resolutions for administrative sanctions.

NUMBER	BREAKDOWN OF RESOLUTIONS	TOTAL	VALUE
1	Financial penalty	22	\$1,120,035
2	Written reprimand	3	
3	File	5	
4	Nullity	10	

Source: Superintendency of Companies, Securities and Insurance, 2021.

Now with respect to the SAS in Ecuador, these are a type of company that is constituted by one or more natural or legal persons, through a simplified procedure at no cost. It aims to boost the economy through the formalization of enterprises, constituting them as credit subjects and thereby expanding their production processes (Ministry of Telecommunications and the Information Society, 2022). This tool was implemented since October 2020.

Table 7. SAS registered in the Registry of Companies at national level.

ADMINISTRATION	CONSTITUTED QUANTITY
AMBATO	155

BASIN	311
GUAYAQUIL	1172
LOJA	95
MACHALA	101
PORTOVIEJO	115
QUITO	1445

Source: Superintendency of Companies, Securities and Insurance, 2020.

This result is given without taking into account the registrations of the SAS by electronic means, since added those, the total of registrations of 4188.

Subsequently, in 2021, there is evidence of potential growth in terms of registrations of Simplified Share Companies.

Table 8. SAS Registration.

2021	SAS PHYSICS	SAS ELECTRONICS
JANUARY	314	331
FEBRUARY	338	319
MARCH	486	443
APRIL	353	409
MAY	352	643
JUNE	385	671
JULY	318	710
AUGUST	349	715
SEPTEMBER	348	723
OCTOBER	407	681
NOVEMBER	295	620
DECEMBER	391	641
TOTAL	4336	6906

Source: Superintendency of Companies, Securities and Insurance, 2021.

In total 11,242 SAS registered in 2021, presented at the offices of the Superintendence of Companies, Securities and Insurance or through the virtual reception channels and the SAS electronic constitution system.

DISCUSSION

To begin with, it is worth mentioning the Superintendency of Companies, Securities and Insurance issued "THE NORM FOR THE APPLICATION OF THE PREVIOUS ACTIONS AND THE ADMINISTRATIVE SANCTIONING PROCEDURE BY THE SUPERINTENDENCY OF COMPANIES, SECURITIES AND INSURANCE IN THE FIELD OF THE SECURITIES MARKET", indicating in article 3 of Chapter I "General Provisions" that the competent body to order the initiation of the sanctioning procedure as well as to carry out the investigative function of the same is the National Directorate of Inspection, Consultations and Regulatory Development of the National Securities Market Administration, through its holders or those who take their place, within the scope of their respective competences. In addition, article 30 of Chapter III of the resolution *ibid.*, states that the competent administrative control unit will be the agency responsible for issuing the act of initiation of the procedure and the respective report.

It is worth noting that by means of resolution No. SCVS-INMV-DNFCDN-2021-011 dated July 16, 2021, which was published in Official Gazette No. 513 dated August 11, 2021, the amendment to resolution No. SCVS-INMV-DNFCDN-2018-0039 dated November 16, 2018, was made, ratifying that the investigative function of the sanctioning administrative procedure will be exercised by the National Directorate of Inspection, Consultation and Regulatory Development and the Regional Directorate of the Securities Market within the scope of its competences. In addition, this resolution eliminated the preparation of the initial report within the administrative sanctioning procedure. It should be noted that the investigation stage includes the legal analysis with which the pertinence of initiating the



Administrative Process, adopting administrative measures, such as corrective and sanitation, preventive or corporate measures, or archiving the file is concluded.

In another section, it deals with the corresponding Simplified Joint Stock Companies that have more lax requirements to be incorporated, unlike the other companies in Ecuador. The objective of the SAS has been to eliminate barrier to open new businesses, however, it is the option most used by people who wish to be constituted since the advantage is that it is a very flexible society, equally practical for an enterprise or for a large corporation, demands less time and can be constituted physically or electronically, through the available channels. All these processes are carried out in accordance with the following legal bodies: Constitution of the Republic of Ecuador (2008), Companies Law (1999), Commercial Code (2019), Civil Code (2005), General Code of Processes (2015), Notarial Law (1966), Law of the National System of Public Data Registry (2010), Organic Law of the National Public Procurement System (2008), Organic Administrative Code (2017), Organic Law on Entrepreneurship and Innovation (2020), Preventive Bankruptcy Law (2006), other complementary regulations, various regulations, among others.

CONCLUSIONS

- The most worrying part is that the reform reduces the time of subsequent control that the Superintendence of Companies can make to companies, public limited companies and Simplified Joint Stock Companies (SAS). One year is insufficient to evaluate the more than 140,000 companies in the country. In this context, the reform could open the door to a use and abuse of the Law, create a feast or corporate debauchery.
- The electronic incorporation of companies undoubtedly means an advance in computer law and electronic commerce because the company incorporation contract is an electronically generated legal document that in addition to being governed by the provisions of the Companies Law, the Commercial Code, and the Civil Code must take into account the provisions of the Electronic Commerce Law in force in Ecuador.
- SAS were created with entrepreneurs in mind and therefore have benefits. Among them, they do not require an external auditor, they do not have minimum capital to open and shareholders do not respond to damages.
- Now, the Act prohibits an SAS from going public. But, in the reform, the Assembly proposes that these SAS, which have more lax requirements to be constituted and operate, go out to the stock market. That is, that they go out to play with public faith, to play with investors who buy securities in good faith and who tomorrow can be scammed in the stock market.
- The reform proposal should be improved and the debate should include the Superintendence as a main actor in the discussion, which has not been done so far. Since it is always good to reform, change and above all improve.

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