



ORGANISATION  
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**Country Report: Voluntary Corporate  
Governance Code in Colombia**

The OECD asked several consultants, regulators, corporate governance institutes and other relevant stakeholders to elaborate reports regarding the development and implementation of voluntary corporate governance codes in each of their countries/regions. The reports, as well as a synthesis report elaborated by the OECD Secretariat based upon them, is provided to the Roundtable participants as background for the meeting's discussion.

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Further information regarding the code as well as its integral text can be found at: <http://www.superfinanciera.gov.co/Codigopais/presentacion.htm>

## BEST PRACTICE CODES IN COLOMBIA

### Introduction

There are three driving forces in the short history of corporate governance in Colombia: regulation, best-practice codes and private initiatives to facilitate the improvement of corporate governance. To understand the best-practice codes in Colombia it is imperative to have the other two elements in mind since they have been constantly related and interacting. This document is focused on the drivers, incentives and obstacles to use of best practice codes in Colombia<sup>1</sup>.

There are four corporate governance best-practice codes in Colombia: the Confecamaras [issuers] code<sup>2</sup> (2001); the SME's Code of Corporate Governance [small and medium enterprises] (2003); the Andean Code [listed and non listed companies] (2004); and finally the new Colombian Corporate Governance Code [listed companies] (May, 2007).

The development of corporate governance codes in the country has been strongly influenced by regulation. Three regulations related to corporate governance should be highlighted: Law 222/1995; Resolution 275/2001; and Law 964/2005.

On the other hand, the private sector has played a key role in the effort to implement international practices of corporate governance. The programs coordinated by Confecamaras and the Colombian Stock Exchange to promote corporate governance have a greater impact. Both programs have received technical assistance from international institutions such as the Center for International Private Enterprise (CIPE), the International Finance Corporation (IFC), the Andean Finance Corporation (CAF), Inter American Development Bank (IADB) and the Organization for the Economic Cooperation and Development (OECD).

The best-practice codes are product of many factors that played a role in these processes. This document describes the achievements and lessons learned from the process of creating corporate governance best practice codes in Colombia. It is divided into three periods of time to facilitate its reading: 2000-2001; 2002-2004; 2005-2007.

### 2000 – 2001

In 1995, Law 222 modified the Colombian Commercial Code including some practices of corporate governance in the legal framework. All these compulsory rules govern Colombian public and private companies. Some of the most relevant rules for corporate governance are: standards defining directors' duties; a compulsory mechanism for the election of boards of directors (*cuociente electoral*); disclosing rules of financial and non-financial information; distance meetings; and parent-subsidiary rules.

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<sup>1</sup> The document is based on personal knowledge of the author and interviews with the key actors of the process. As some of the interviews are not quoted, the author expressly thanks the following people for helping in the reconstruction of facts required to create this document: Eugenio Marulanda, Andres Gaitan, Paola Gutierrez, Sandra Perea, Andrea Ramirez, Rebeca Herrera, Carlos Fradique, Harvey Rodriguez, Carlos Jimenez, Alvaro Clarke, Jose Vargas, Clemente del Valle, Armanda Mago, Juan Pablo Cordoba and Jeannette Forigua.

<sup>2</sup> This code was written for a private sector committee integrated by: Asofondos (national association of pension funds); Colombia Stock Exchange; SpencerStuart; Universidad de los Andes; Bogota and Cartagena Chamber of Commerce; Revista Dinero; KPMG and Confecamaras.

In 1998, Law 446 facilitated the enforcement of minority shareholders rights, giving Supervalores<sup>3</sup> judicial power to investigate complaints from minority shareholders' groups. This law facilitated the protection of minority shareholders in public markets, transferring shareholders controversies from the judicial system to an executive body specialized in financial matters<sup>4</sup>.

At the beginning of 2001 there were no codes of corporate governance in the Colombian market and the concept of corporate governance was unknown to the majority of the companies, government and business associations. The first corporate governance survey<sup>5</sup> asked companies to indicate the extent to which they complied with international standards for good corporate governance and showed the average company scoring just 34 out of 100. The study showed strengths in some board practices and shareholders rights and showed a long path that the country needed to initiate.

At this time Confecamaras supported by CIPE, started a program<sup>6</sup> to promote the OECD Principles of Corporate Governance in Colombia. The objective was to create awareness of the importance of corporate governance for the economic development of the country.

Eugenio Marulanda, Confecamaras' President said *"The Federation has been leading this process with a sense of anticipation. Our commitment is to the country's competitiveness and the entrepreneurial system. For this reason we are promoting corporate governance from different perspectives including listed, family and state-owned enterprises. The objective is to socialize the knowledge within our companies to increase the business productivity and improve the social conditions in Colombia"*.

In May 2001 Colombia adopted a systematic approach to encourage corporate governance in the capital markets. Resolution 275 of Supervalores established that issuers seeking to receive investments from the pension funds shall adopt a corporate governance code. This resolution has been the cornerstone of corporate governance in the country. Resolution 275 created a completely new model of requiring corporate governance with the following characteristics:

- A regulation directed to issuers but restricting pension funds investments.
- Every issuer has a freedom to choose its governance practices but needs to describe it in a corporate governance code.
- The issuer's code shall describe the governance practices but also the measures needed to be included in the by-laws of the company.

The legal approach embodied by Resolution 275/2001 has some strengths and weaknesses. The first advantage was the introduction of corporate governance as a systematic concept that requires a shared responsibility of investors, companies and supervisors. The introduction of the

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<sup>3</sup> Supervalores is an abbreviation for Superintendencia de Valores. In 2006 Supervalores merged with the banking superintendence to create Superintendencia Financiera de Colombia (Superfinanciera).

<sup>4</sup> Carvajal and Del Valle, *Gobierno Corporativo en Colombia: desarrollos y perspectivas*. Claves del Gobierno Corporativo, 2005.

<sup>5</sup> *Leading Corporate Governance Indicators 2001: Colombia Survey*. Confecamaras, CIPE, Davis Global Advisors, 2001.

<sup>6</sup> Confecamaras program receive support and technical assistance from CIPE, IFC, CAF and OECD. Since 2001 Confecamaras has been working with the government, universities, other business associations and companies to promote, assist and facilitate the incorporation of corporate governance in Colombia. Confecamaras has been focused in working to implement best practices in all kind of companies, including: closely held companies, state owned, cooperatives and public companies. Confecamaras has worked in a national strategy through the Chambers of Commerce of Bogota, Medellin, Cali, Barranquilla, Cartagena and Bucaramanga in three main activities: advising companies; organizing activities to promote within regional business communities; and training directors, managers and consultants in corporate governance.

words “corporate governance” in early 2001 was a great advance for the Colombian market. In quantitative terms the resolution 275 had significant achievements: more than 91% of the securities offerings between 2002 and 2004 were done for issuers with a corporate governance code<sup>7</sup>.

Carlos Fradique, a Financial Lawyer, spoke of the benefit of resolution 275 in the following terms: *“It was a step forward to promote self-regulation in the capital market and create awareness within the investor’s community about the importance of corporate governance. Resolution 275 helped to open the discussion and analysis about corporate governance, and this helps companies to understand the benefits of implementing best practices”*.

On the other hand Resolution 275 does not establish a guideline of what is considered a good governance practice and the broad language made every practice acceptable. The requirement to include the governance provisions in the by-laws resulted, in some cases, in governance codes consisting merely of a long description of these by-laws or a duplication of the corporate law.

### **Confecamaras Code**

At the end of 2001 Confecamaras responded to Resolution 275 by forming a private sector committee to build a general benchmark on corporate governance. This involved the participation of the Colombian Stock Exchange, Asofondos, Bogota Chamber of Commerce, Cartagena Chamber of Commerce, KPMG, Universidad de los Andes, SpencerStuart, Revista Dinero and Confecamaras. In early 2002 the Confecamaras code for issuers was released.

Paola Gutierrez, former program manager of Confecamaras, described the building of Confecamaras’ code in the following terms: *“The inspiration came directly from CIPE. They knew the importance of having a best practice code to promote corporate governance. The challenge was creating a consensus within the private sector because the concept of governance was completely unknown. Resolution 275 created at that time a negative reaction in some of the Colombian business associations; for this reason it was agreed with Supervalores that the government should not be part of the committee to create the code”*.

The Code was based on the OECD Principles and includes practices taken from developed legal systems included in the first survey of corporate governance made by Davis Global Advisors<sup>8</sup>. The code was structured in seven chapters: (i) Rights and equitable treatment of shareholders; (ii) Board of directors; (iii) Transparency and financial disclosure; (iv) Stakeholders and corporate social responsibility; (v) CEO rules; (vi) Conflicts of interest; (vii) and Alternative dispute resolution mechanisms.

Since that time a strong commitment of the private sector has been shown in promoting corporate governance. A strong alliance with international institutions as IFC, CIPE, CAF and OECD facilitated the promotion and discussion of corporate governance practices in Colombia. A multiple force in which the government, business organizations, universities and the media produce diverse and creative forms to promote and publicize the benefits of corporate governance.

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<sup>7</sup> Del Valle and Carvajal. Gobierno Corporativo en Colombia: Desarrollos y Perspectivas. Claves del Gobierno Corporativo, 2005.

<sup>8</sup> Leading Corporate Governance Indicators 2001: Colombian Survey includes a comparison between Colombian regime and UK, United States, Belgium, Japan, France, Germany and Netherlands.

The Confecamaras' code was promoted through the Chambers of Commerce of Bogota, Medellin, Cali, Barranquilla, Bucaramanga and Cartagena. The promotional plan lead by Confecamaras and the Chambers of Commerce consisted in short courses on corporate governance, a monthly e-bulletin, new literature in Spanish and a website that includes academic material related to corporate governance. The strategy was possible due to the support of Superfinanciera and Supersociedades, as the leading governmental institutions for this issue; and a strong alliance with the specialized media, other business associations and universities.

## **2002 – 2004**

At the end of 2002 a new initiative to work on corporate governance was created in the country. The Colombian Stock Exchange and IADB introduced a program to strength Colombian capital markets. Juan Pablo Cordoba, Colombian Stock Exchange President explains the program in the following terms: *“the objectives were to improve information disclosure and establish more effective requirements for corporate governance of all firms that are traded on the Bolsa de Valores de Colombia.”* Since this time the Colombian Stock Exchange has been playing a leading role in the promotion of corporate governance within listed companies.

The Colombian Stock Exchange has made several activities in order to survey and implement better practices of corporate governance within Colombian issuers. The first activity was a survey that covered 40 issuers in order to calculate the level of corporate governance practices in 2003. The general score was 33% of implementation within listed companies and it was conducted along with the Madrid Stock Exchange. The results were promoted within Colombian issuers through public seminars and personal interviews with the executives of each company that had responded the survey. The main conclusions of the Survey in 2003 were: (i) Create special segments in the stock exchange for issuers with higher corporate governance practices; (ii) Improvements in the “one share, one vote” principle; and (iii) Strength the liability system against managers and directors. With these conclusions the Colombian Stock Exchange implemented a corporate governance improvement plan for 10 of its issuers in 2005.

The project was complemented with a new initiative in 2005 entitled “Colombia Capital” created to attract new issuers to the capital markets. This program also receives technical assistance from IADB and it works with the following institutions: SuperFinanciera, Andi, Asofondos, Proexport, Chambers of Commerce of Bogotá, Cali, Medellín, Bucaramanga and Deceval. Armanda Mago, Director of Colombia Capital in the Colombia Stock Exchange explains that *“this program is working in three areas: training new issuers, strengthening private equity funds and building local consulting capacity. The objective is training closely held companies and local consultants in how capital markets operate and what are the benefits of implementing good corporate governance.”*

## **Small and Medium Enterprise's Code**

In 2003 a new concern arose within the private sector: how to use the principles of corporate governance to increase competitiveness of closely held companies. For that reason Confecamaras and the Ministry of Commerce formed a new committee to build a best practice code for SMEs. This new committee included not only private institutions but also governmental agencies such as the Supersociedades and the National Department of Planning<sup>9</sup>.

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<sup>9</sup> Within the framework of the “Colombia Compite”– Specialized Management Section. In the committee the following institutions participated: ACOPI, the Colombian Stock Exchange, the Bogota Chamber of Commerce, the Cartagena Chamber of Commerce, the Medellin Chamber of Commerce, the National Planning Department, Emprecapital S.A., Fasesolda, Incubar Colombia, Innovar Colombia, KPMG, the Ministry of Commerce, Industry and Tourism, Naturasol, Companies Superintendence, Transparencia por Colombia, Universidad de la Sabana, Universidad de los Andes and Universidad Externado de Colombia.

The objective of the SMEs Code was to create a general guide for small and medium companies that could help them formalize their own governance systems. More than creating a benchmark for corporate governance, the committee focused on understanding the governance problems in SMEs and offering mechanisms to solve them<sup>10</sup>.

During 2005 Confecamaras – CIPE created many activities to promote the SMEs code within the Colombian business community; more than 1,850 people participated in academic conferences in eight different cities; an e-survey to diagnose CG in SMEs was launched; and an alliance with universities and the media facilitated the promotion of the concept. The diversity and large number of non-listed companies in the country makes it difficult to have statistics of the impact of the SMEs code<sup>11</sup>, but some analysis shows important progress in governance of family business.

Andres Gaitan, Director of Economic Groups in Supersociedades described the situation: *“Over the last few years, some companies have started implementing practices to improve their governance. Regarding family businesses, which are most of Colombian companies, several family protocols have been adopted. In Supersociedades,<sup>12</sup> we see a trend changing significantly the relations between business, family and equity”*.

In 2003 the country had advanced in several ways in terms of corporate governance. The World Bank assessed the country situation: *“Awareness of the importance of corporate governance issues is growing. Success stories of privatizations linked with good corporate governance highlight the importance of the issue. Colombia is an interesting example of the interplay between legal changes and voluntary initiatives based on the incentive to attract capital. It has put a minimum corporate governance disclosure regime in place for companies that wish to be eligible for pension fund investments”<sup>13</sup>*.

The SMEs code was a national exercise<sup>14</sup> to think about how corporate governance principles can contribute to the development of closely-held companies. The objectives of this code were to increase the knowledge of corporate governance within the SME’s entrepreneurial system and discuss with institutions non-associated with the financial world how corporate governance principles can contribute to sustainability of the private sector. Contrary to the Confecamaras code (2001) or the new Country Code (2007), the SME’s code was not a benchmark, but only a basic tool to attract SME’s entrepreneurs to the notion of corporate governance.

## **2005 – 2007**

In June, 2005 the Congress passed the new Securities Market Law (Ley del Mercado de Valores-964). This new regulation includes a chapter on “protecting investors” whose practices of corporate governance are compulsory for all issuers<sup>15</sup>. Some of the provisions are: a minimum required percentage (25%) of independent directors on the board; a compulsory audit committee

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<sup>10</sup> To see more about non-listed companies, please see the report: Colombian Report on Corporate Governance for Non Listed Companies, prepared for the Latin American Roundtable of 2006.

<sup>11</sup> In the Colombian Report on Corporate Governance prepared for the 2006 Latin American Roundtable, there are some statistics and analysis about the evolution of corporate governance in non listed companies.

<sup>12</sup> Supersociedades: Companies Superintendence. A government agency in charge of controlling and supervising non-listed companies and judging insolvency processes.

<sup>13</sup> Corporate Governance Report on Observance of Standards and Codes (ROSC). World Bank – IMF, 2003.

<sup>14</sup> See footnote 10 regard the institutions that participate in this project.

<sup>15</sup> Decree 4327/05: Issuers are companies with registered securities in the National Registry of Securities and Issuers.

made up of independent board members; certification of financial statements by “legal representatives” of the company; a requirement that boards respond in writing to any shareholder proposals put forth by a group representing 5% of the shares. The new law created a complete set of corporate governance rules that has small room for self-regulation.

With this new regulatory precedent, Supervalores (now Superfinanciera) proposed to some business associations to develop a new model of corporate governance rules. The objectives were reforming Resolution 275/01, identifying a model that could relax the strict approach of corporate governance created with the new securities law and enforce in a better way the issues related to governance in the capital markets.

Clemente del Valle, former Chairman of Supervalores, explained the situation: *“Once the Securities Market Law was approved, in June 2005, the required step was to create a governance standard for the elements that were not included in the law. Resolution 275’s lack of establishing a benchmark and the approach of corporate governance required more cultural development and market incentives. For this reason, Supervalores started studying different international experiences. We realized that the Novo Mercado (Brazil model) was impossible to implement due to the economic conditions of the Colombian market. Additionally, in Colombia, listing requirements are established by the financial supervisor and not by the stock exchange. This makes it impossible to create a system like Novo Mercado. Then we realized that a “comply or explain” system could help us to achieve two important objectives: create consensus within the private sector through the development of a best-practices code, and encourage the self-regulatory vision of corporate governance in the market”.*

### **Colombian Country Code<sup>16</sup>**

As mentioned before, Resolution 275 achieved the introduction of corporate governance; however, six years after its issuance, the economic conditions and the political environment for corporate governance have changed. It was necessary to adapt a new model to the economic realities of the Colombian capital markets. For these reasons, a new committee was composed: Analdex (exporting companies); Asofiduciarias (Trust Companies); Asofondos (Pension Funds); ANDI (Companies Association); Colombian Stock Exchange; Confecamaras (Chambers of Commerce); Fasecolda (Insurance companies) and Superfinanciera (Government - Financial Supervisor).

The committee was launched at the end of 2005. Since the first meeting several guidelines drove the process: (i) Create a system to improve the enforcement rather than generate new rules; (ii) The model should be based on self-regulation; (iii) The provisions should be strictly related to governance (not management or financial issues); and (iv) The code should not include practices already required by corporate law or financial regulations.

An opinion from Superfinanciera elaborated for the present report<sup>17</sup> identifies the new country code as a common effort in the following way: *“The objective of gathering all these public and private sector actors in the same group in order to get to a unified code with the consensus of everyone was to recover the process with the necessary legitimacy so that its final receptors, the securities’ issuers, fulfill with the practices included therein in a voluntary fashion and with credibility in them. The Country Code was conceived as a document that gathers all these voluntary recommendations accorder by consensus and therefore it’s intended not only to unify the different standards of the market in this subject, but to really elevate them, in order to eliminate asymmetries created by past regulation that only made obligatory these measures to*

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<sup>16</sup> Please see the complete text in: <http://www.superfinanciera.gov.co/Codigopais/textos/codigopias.pdf>

<sup>17</sup> Opinion prepared by Andrea Ramirez, Advisor and Jeannette Forigua, Chief of Issuers, Portfolios and Other Agents at Superfinanciera

*companies wanting to receive investments from institutional investors. The Colombian experience demonstrates that the elaboration of standards in a consensus-building fashion generates the necessary conviction and commitment of their recipients in order to fulfill them.”*

The model chosen was “comply or explain” with some particularities. The Country Code practices are voluntary adopted by the securities issuers, who shall report periodically their level of adhesion to these measures. In case of not complying with any practice, the issuer can report its reasons. Three elements require special attention of the new system:

- The code practices are completely voluntary. This means that every issuer can adopt its own model of corporate governance using or not the practices proposed.
- Superfinanciera will create a compulsory mechanism to report annually the level of adoption of these practices. The objective is having more information regarding the issuer’s governance and more important unified governance reports<sup>18</sup>.
- Finally, the “explaining” is also voluntary. There is no obligation to report issuers’ reasons to not comply with any of the practices. However the disclosing requirement<sup>19</sup> is supposed to create a strong incentive to improve corporate governance practices within Colombian issuers.

The code is organized in four chapters and includes forty-one practices. This document required a long process of negotiation and intense work from Superfinanciera, who has been leading the process. With the objective to support the work of the committee, Superfinanciera received cooperation from CAF to hire an international consultant and publicize the results of the document.

Jeannette Forigua, Chief of Issuers, Portafolios and Other Agents in Superfinanciera explained: “The code is mainly based on practices included in the Andean Corporate Governance Code made by CAF in 2004. However, during the meetings, every institution presented arguments and proposed new practices to adapt the Country Code to the Colombian market realities. Special consideration was given to other national codes, the OECD White Paper on Corporate Governance in Latin America as well as country experiences of Mexico, Peru, Spain and UK”.

Contrary to the 2001 situation, the current knowledge and interest in corporate governance has greatly expanded. Superfinanciera has two offices in charge of overseeing corporate governance issues; Fasesolda has a program to create guidelines on corporate governance for the insurance companies; Confecamaras and the Colombian Stock Exchange have programs exclusively working on corporate governance; and in general terms the private and public sector have understood the benefits of good governance.

The chapters of the new country code are: (i) shareholders meetings; (ii) board of directors; (iii) disclosure of financial and non-financial information; and (iv) mechanisms to resolve conflicts within corporate actors. Alvaro Clarke, international consultant<sup>20</sup>, assessed the new code as follows: *“Its contents are aligned to the best international practices. Once you understand the whole picture including the Commercial Code and the Securities Law, you realize that Colombia has a complete and high legal framework that is positioned in a privileged place in Latin America”.*

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<sup>18</sup> Recall that resolution 275 allows that every issuer could have its own code, this situation makes it difficult to compare and evaluate governance in Colombia.

<sup>19</sup> Superfinanciera is requiring from issuers an annual public disclosure of its corporate governance practices.

<sup>20</sup> Alvaro Clarke was the consultant hired by Superfinanciera to revise the country code.



## The Country Code and the Securities Market Law <sup>21</sup>

The Securities Market Law introduces corporate governance requirements to stock issuers in order to promote an administrative structure that allows a just and transparent participation of investors in the administration of the company. It's important to point out the good performance of the evolution in the adoption of said requirements, summarized as follows:

Evolution in the percentage of issuers<sup>22</sup> fulfilling with Lay 964/05 requirements.

|  | Jun 06 | Sep 06 | May 07 |
|--|--------|--------|--------|
| Independence requirement in the Board of Directors | 45%    | 61%    | 85%    |
| Substitute eliminations                            | 84%    | 86%    | 100%   |
| Creation of an Audit Committee                     | 70%    | 77%    | 88%    |
| Good Governance Codes                              | 36.30% | 36.30% | 38.87% |

Source: SIMEV – Registro Nacional de Valores y Emisores

In general terms, the corporate governance standards set by the Country Code are wider and complimentary to those of the recent Securities Market Law. To mention an example: while the Law mandates for the constitution of an Audit Committee<sup>23</sup>, the Code recommends the constitution of complimentary committees (Retributions and Appointments and Corporate Governance).

In the same way, the Code includes recommendations that compliment so mandated by the law regarding independent directors, the due timing in which shall be informed of the meeting's issues, the elaboration and adoption of internal functioning codes for the Shareholder's General Assembly and the Board of Directors as well as alternative dispute resolution channels.

## Resolution 275/01 and Corporate Governance<sup>24</sup>

The origins of resolution 275 of 2001, as well as its objectives, more than merely impose corporate governance standards, was to generate requirements for those issuers who wanted to receive capital from institutional investors, in order to give a wider protection to said resources taking in consideration their sources and their socio-economic relevance.

Through resolution 275 the requirements that entities seeking to receive the pension funds' resources were for the first time established, among which was the obligation to adopt new corporate governance standards, specially in relation to information disclosure to the market.

The governance codes promoted by resolution 275 have been an instrument of great importance in order to make conscience among issuers, investors and other market participants regarding the necessity of best practices adoption. Nevertheless, each governance code is different and therefore it is more difficult to the investors to consult and compare them. Finally, since it was a requirement for the receptor of certain types of investments, the adopted tradition was limited to having the code but not to fulfill it.

<sup>21</sup> Chapter prepared by Andrea Ramirez, Advisor and Jeannette Forigua, Chief of Issuers, Portafolios and Other Agents at Superfinanciera

<sup>22</sup> Numbers correspond exclusively to issuers of the Real Sector

<sup>23</sup> Whose main function is to supervise the fulfillment of the internal audit program and to oversee the elaboration, presentation and disclosure of financial information is in accordance with law.

<sup>24</sup> Chapter prepared by Andrea Ramirez, Advisor and Jeannette Forigua, Chief of Issuers, Portafolios and Other Agents at Superfinanciera

In base of the latter, the experience demonstrated that it was necessary to adopt a model in order to fill the existing gaps in terms of corporate governance<sup>25</sup>, the selected model was “comply or explain”. The ideal guiding this decision can be summarized in the necessity that issuers shall adopt such measures with conviction and that it was up to them to adopt as many corporate governance standards as desirable so that the market has an instrument to evaluate them.

While the Country Code doesn't intends to constitute itself as an instrument for the protection of the pension funds' resources –such as Resolution 275- it does aims to elevate corporate governance standards of all the issuers in order to generate trust with the investors, whether those issuers intend or not that pension funds invest in their stock.

Therefore, the External Circular that goes along with the Country Code doesn't contemplates to derogate Resolution 275, since they are not contrary and it becomes a compliment for the code's recommendations for the case of the issuers subject to said resolution.

## **Conclusion**

The building of the new Colombian Country Code teaches a key lesson: the importance of creating dialogue scenarios with the government and private sector to improve regulation, rather than imposing new rules or laws.

The new country code of corporate governance was released on May, 2007. The Code is a product of a public-private alliance and an excellent democratic exercise to use for new regulatory initiatives in capital markets. The methodology of improving corporate governance practices based on dialogue with the private sector is a great lesson for other countries that are discussing how to balance regulation and self-regulation to strengthen their capital markets.

The special emphasis on enforcement should facilitate a real implementation for companies and improve the level of information required to assess corporate governance issues for investors, agency ratings and media. This process will be facilitated because the Country Code is after now the only official benchmark of corporate governance in Colombia.

The challenge of the new code, as in most emerging economies, is deeply related to enforcement and how to accommodate new initiatives with preexisting regulations. The new model of corporate governance should strengthen Colombian capital markets, bringing new issuers to the market and facilitate local and international investment.

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<sup>25</sup> 1)To convert from the formal codes, written and copied from a model company's by-laws, to a real scheme of corporate governance practices; 2) Create convictions regarding the benefits of corporate governance for issuers an investors; 3) Increase the credibility, stability and viability of the issuers in order to increase the investments of the surpluses of those who have liquidity, mainly within the private sector; 4) Propose recommendations that go further than the legal standards; 5) Detail the operational scope of established norms in order to elevate the current standards; 6) Eliminate asymmetries in terms of corporate governance between the different sectors.

**Annexes**

**Survey 2006 of Corporate Governance - Colombian Stock Exchange**

| <b>Indicator Corporate Governance 2006</b>                  | <b>Weight</b> | <b>Result</b> | <b># Question</b> |
|---|---------------|---------------|-------------------|
| <b>I. Code and formal practices of corporate governance</b> | <b>5%</b>     | <b>3,64%</b>  | <b>4</b>          |
| <b>II. Ownership Structure</b>                              | <b>10%</b>    | <b>4,02%</b>  | <b>3</b>          |
| <b>III. Shareholders Rights and Meetings</b>                | <b>25%</b>    | <b>11,23%</b> | <b>8</b>          |
| 3.1 Shareholders Rights                                     | 12.5%         | 5,82%         | 5                 |
| 3.2 Issues related with the shareholder meetings            | 12.5%         | 5,41%         | 3                 |
| <b>IV. Board of Directors and Top Management</b>            | <b>30%</b>    | <b>18,78%</b> | <b>20</b>         |
| 4.1. Board composition                                      | 10%           | 5,14%         | 5                 |
| 4.2 Compensation of the board                               | 10%           | 7,28%         | 8                 |
| 4.3 Board Committees  | 5%            | 2,96%         | 4                 |
| 4.4 Main aspects of direction                               | 5%            | 3,41%         | 3                 |
| <b>V. Financial and Non Financial Information</b>           | <b>25%</b>    | <b>10,53%</b> | <b>14</b>         |
| 5.1 Financial Information                                   | 7.5%          | 3,45%         | 4                 |
| 5.2 Non Financial Information                               | 7.5%          | 3,00%         | 6                 |
| 5.3 Auditing  | 5%            | 1,81%         | 2                 |
| 5.4 Access to Information                                   | 5%            | 2,25%         | 2                 |
| <b>VI. Stakeholders</b>                                     | <b>5%</b>     | <b>4,08%</b>  | <b>7</b>          |
| <b>Total</b>  | <b>100%</b>   | <b>52,27%</b> | <b>56</b>         |

Source: Colombian Stock Exchange, Survey of Corporate Governance - 2006.

**Charter of New Colombian Corporate Governance Code (May, 2007)<sup>26</sup>**

|   |
|---|
| <u>COUNTRY CODE – CODIGO PAIS</u>   |
| <b><u>I. Shareholder Rights</u></b>   |
| 1. Notice of the Meeting  |
| 1.1. The stockholders shall be adequately informed in the notice of the general meeting [15 working days before the meeting for ordinary meetings (Colombian Commercial Code)].   |
| 1.2. The Code recommend information regarding nominated directors and material financial information about the company and its holding and/or subsidiaries.   |
| 1.3. The Code recommends using a corporate web page to disclose the information provided.   |
| 1.4. The agenda of the meeting should clearly address the different issues to be discussed.   |
| 2. Development of the Annual Meeting  |
| 2.1. A corporate spin-off should be approved by the shareholders meeting.   |
| 2.2. The following decisions should be discussed only where they had been expressly included in the notice of the meeting: changes of the purposes of the corporation, preemptive rights, corporate legal address, anticipated liquidation and spin-offs. |
| 2.3. The Code recommends establishing electronic mechanisms for “live” communication of the shareholders meetings with investors.   |
| 3. Authorization of Related Transactions  |
| 3.1. Required authorization of related party transactions of the corporation. Except where these operations are part of ordinary transactions or made at fair market price.   |
| 4. Shareholders Rights and Fair Treatment   |
| 4.1. The corporation should inform shareholders of rights and duties in a concise, clear and precise form.  |
| 4.2. The corporation should permanently disclose the types of authorized shares and its number of shares issued and in treasury reserved.   |
| 4.3. A shareholder meetings' set of rules is recommended.   |
| <b><u>II. Board of Directors</u></b>  |
| 1. Size and Formation of the Board  |
| 1.1. The Code recommends an odd number of directors in the board.   |

<sup>26</sup> This is a summary translation of the Country Code with exclusive and limited explicatory purposes.

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| 1.2. Recommendation to have at least monthly board meetings  |
| 1.3. To have a board set of rules with mandatory requirements and disclose it to the shareholders  |
| 1.4. The code recommends that corporations define a minimum personal and professional standards for its board of directors [the standards are not defined].  |
| 1.5. The Code recommends to have a majority of external directors [understanding external directors as not employees of the issuer; notice the difference with independent directors].   |
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| <b>2. Duties and Rights of Board Members</b>   |
| 2.1. The Code recommends an express disclosure of directors' conflicts of interest.  |
| 2.2. The Code recommends providing all corporate information to new directors, including economic data and directors legal duties, rights and functions.   |
| 2.3. The Code recommends expressly including in the board minutes all the information used to make a board decision including: studies, documents and data.  |
| 2.4. The Code recommends providing to directors all the information required to make informed decisions within at least two days before the meeting.   |
| 2.5. Substitute directors should keep informed of the decisions made by the board.   |
| 2.6. The Code recommends including in the Board set of rules a provision allowing directors to hire external advisors or consultants. The practice also establishes that all costs associated should be budgeted and assumed by the company.   |
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| <b>3. Responsibilities of the Board of Directors</b>   |
| 1.1 The Code recommends having corporate governance and human resources committees in the board. [The Audit committee is mandatory (Law 964/05)]   |
| 1.2 The Human Resources Committee should have at least the following responsibilities: evaluate performance of top managers; propose candidates for external auditors to shareholders [the election of revisor fiscal (external auditor) is reserved to shareholders (Commercial Code)]; establishing a compensation policy for all employees, including top management; hire, replace and fix CEO compensation; and establish recruiting policies for top management. |
| 1.3 The Corporate Governance Committee should have at least the following responsibilities: be responsible to disclose all corporate material information to the market; disclosing audit committee evaluations; evaluate the board performance periodically; review trading transactions of directors; and supervise the compensation policy of top management.   |
| 1.4 The Audit Committee should include in its functions: provide a written report of future transactions of the corporation with affiliates assuring fair market value and not harm to minority rights; establish the corporate accounting policies; create reporting mechanisms to the board of directors.  |
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| <b><u>III. Disclosure of Financial and Non Financial Information</u></b>  |
| 1. Request of Information   |
| 1.1. The Code recommends having a formal and permanent mechanism to provide corporate information to investors.   |
| 1.2. In cases in which the information provided to an institutional investor could give him any advantage, it is recommended to disclose this information to the rest of the market.  |
| 1.3. The Code recommends allowing “special audits” requested by investor groups.  |
| 1.4. Regarding the above practice, the Code recommends having a corporate formal commitment to protect minority shareholders rights. The corporation should disclose the policy regarding “special audits” including: the percentage required; the reasons for establishing this percentage; the requirements for having “special audits”; and who should pay for them. |
| 2. Market Disclosure  |
| 2.1 The corporation should have mechanisms to disclose material findings of internal controls to the market.  |
| 2.2. The corporation should disclose the compensation policy for CEOs, directors, auditors and consultants.   |
| 2.3 The corporation should disclose all contracts between its directors and managers including their family and business partners.  |
| 2.4 The corporation should disclose its internal rules for resolving conflicts.   |
| 2.5 The Code recommends disclosing corporate policies regard executives’ trading.   |
| 2.6 The corporation should disclose the resume of managers, directors and internal control officers.  |
| 3. External Auditor (Revisor Fiscal)  |
| 2.1. The Code recommends not hiring auditors or auditing firms that receive more than 25% of its total income from the corporation or its subsidiaries.   |
| 2.2. The Code recommends not hiring auditor firms for services other than auditing.   |
| 2.3. A rotation policy for partners of the auditing firm every five years.  |
| <b><u>IV. Shareholder's Claims</u></b>  |
| 1.1 The Corporation should disclose to its shareholders the judicial rights to protect their interests. [Law 446 gave judicial power to the Financial Superintendence to protect minority shareholders groups].   |
| 1.2 The Code recommends that every corporation should have a mechanism to resolve controversies between the company and its shareholders, shareholders against directors or between shareholders.   |