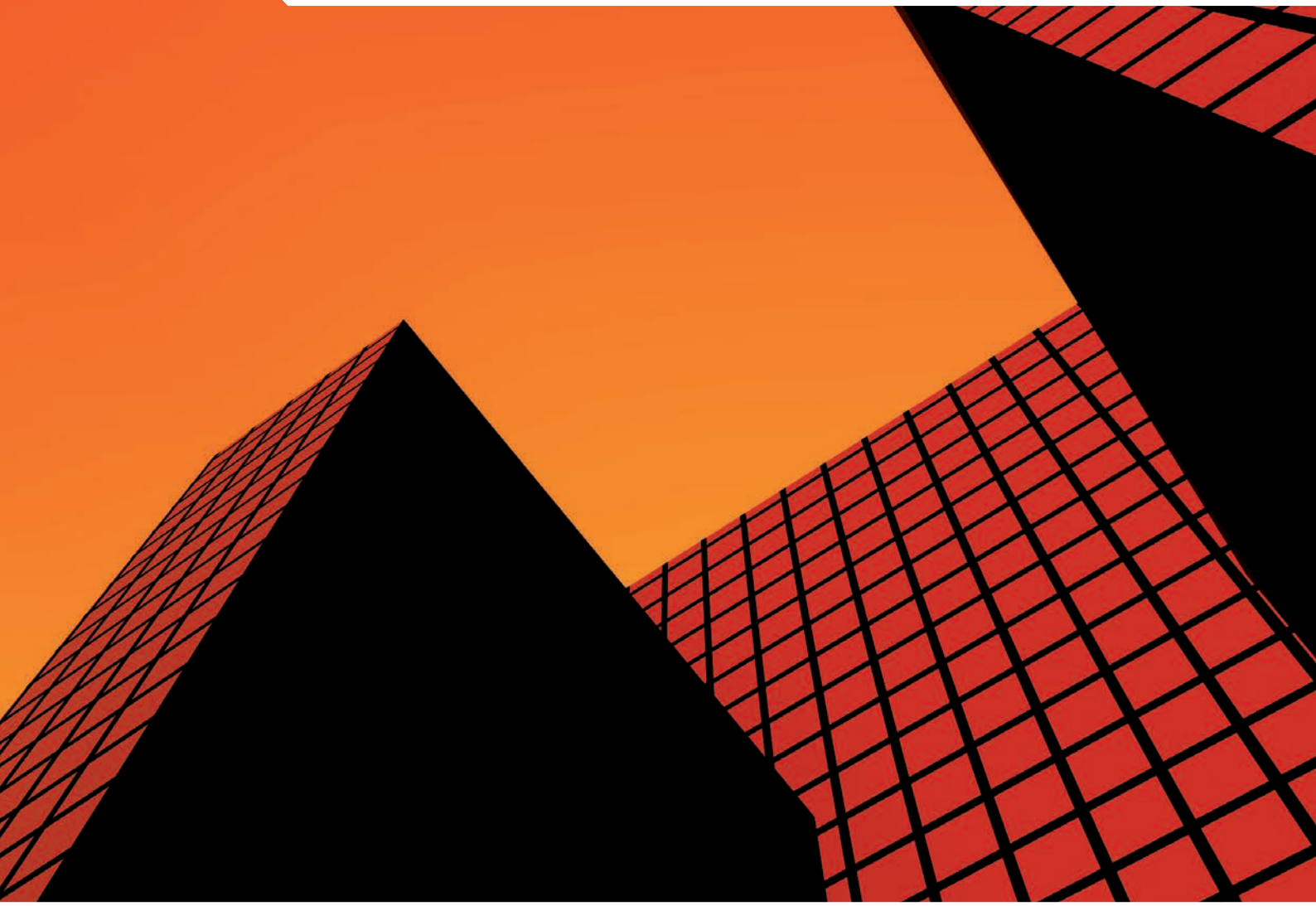
Corporate Governance

Corporate Governance in Colombia



OECD

Corporate Governance in Colombia



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Please cite this publication as:
OECD (2017), *Corporate Governance in Colombia*, OECD Publishing, Paris.
http://dx.doi.org/10.1787/9789264281134-en

ISBN 978-92-64-28112-7 (print)
ISBN 978-92-64-28113-4 (PDF)

Series: Corporate Governance
ISSN 2077-6527 (print)
ISSN 2077-6535 (online)

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Foreword

This review of *Corporate Governance in Colombia* was prepared as part of the process of Colombia's accession to the OECD, which was launched in 2013, when the OECD Council decided to open accession discussions with Colombia. This process included a requirement for Colombia to be assessed against the OECD's corporate governance benchmarks – the *Recommendation of the Council on Principles of Corporate Governance* ("Principles") and the *Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises* ("Guidelines") – by the two OECD bodies responsible for these standards, the OECD Corporate Governance Committee and the OECD Working Party on State Ownership and Privatisation Practices, respectively.

The report that follows sets out the results of this assessment, providing a window into the substantial reforms undertaken by the Colombian government during this process to strengthen its corporate governance framework, both for listed companies and state-owned enterprises (SOEs). These reforms, aimed at supporting the development of better governed and more transparent companies, represent important steps towards strengthening Colombia's economy through improved company performance, while also enhancing understanding of the key role that SOEs play in the Colombian economy and in providing services to the public.

Colombia began its corporate governance improvement efforts well before the OECD accession process was launched, supported by its active engagement in the OECD's Latin American Corporate Governance Roundtable and the Latin American Network on Corporate Governance of State-Owned Enterprises. The government had the foresight to recognise that gathering information for the review against the SOE Guidelines would be a particular challenge due to Colombia's decentralised ownership structure for SOEs. It therefore decided to initiate work with the OECD on a review against the Guidelines even before it had been invited to begin the accession process, and the subsequent report, published in 2013, proved instrumental in laying the groundwork for a major set of SOE reforms that are continuing to progress.

These reforms have included moves to strengthen ownership co-ordination and the professionalism and independence of SOE boards, including through more structured nomination processes and the announced phasing out of ministers from the boards of all SOEs along with a gradual reduction of deputy ministers serving on boards; and the issuance of aggregate annual reports on the performance of all of Colombia's enterprises where the government is the majority owner.

Colombia has also achieved significant improvements to its legal and regulatory framework for listed companies during this period, notably through the implementation of International Financial Reporting Standards, International Standards of Audit, and a comprehensive national corporate governance code, the *Codigo País;* and through the passage of a new law that gives the Financial Superintendency greater authority to oversee and obtain information from financial conglomerates – an important measure to ensure that conflicts of interest and related party transactions within such company groups are managed equitably and transparently.

Nevertheless, Colombia will continue to face challenges to fully implement the Principles and Guidelines in line with international best practices in the field of corporate governance, particularly with respect to building effective boards, and in the case of SOEs, clarifying and

increasing the transparency of objectives related to public policy or public services. In this context, the report also provides recommendations to further strengthen the governance of listed companies and SOEs in Colombia.

The review by the Corporate Governance Committee and Working Party was completed in April 2016, and its conclusions and recommendations generally reflect the assessment made at that time. However, the report has been updated to take account of more recent developments through June 2017, and its conclusions adjusted as necessary to reflect these latest developments. It was prepared by Daniel Blume of the OECD Directorate for Financial and Enterprise Affairs in co-operation with the Colombian authorities (particularly the Ministry of Finance and Public Credit and Financial Superintendency), with research support from Andrés Bernal of Governance Consultants of Colombia. Several sections of the report draw substantially upon the Working Party's 2013 review of Colombia against the SOE Guidelines, prepared by Héctor Lehuedé of the OECD Directorate for Financial and Enterprise Affairs, with additional and updated information added where available.

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Executive summary

This report assesses Colombia's legal, regulatory and institutional framework for corporate governance and the country's implementation of the *G20/OECD Principles of Corporate Governance* ("the Principles") and the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* ("the Guidelines"). It first examines the corporate governance landscape, then turns to the five "core corporate governance principles" set out in the *Roadmap for the Accession of Colombia to the OECD Convention.*

Colombia's corporate governance landscape

This report finds that Colombia's government has devoted considerable attention to aligning its corporate governance framework for listed companies with the Principles in order to promote transparent and efficient markets consistent with the rule of law and that clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities. It appears to have established effective co-ordination mechanisms, and its decisions are communicated clearly and transparently to the market. Nevertheless, Colombia faces important challenges with respect to low trading volumes and a gradually diminishing number of listed companies, as well as concentrated ownership in the context of large conglomerates that play a dominant role in the economy. In this context, the Colombian regulatory and supervisory authorities have rightly given a strong focus to tracking ownership structures and related party transactions among companies within these groups, and have worked actively to ensure adequate disclosure and to require appropriate treatment of conflicts of interest. The revised *Código País,* issued in 2014, has established a higher level of aspiration for practices at the company level that is broadly consistent with the Principles. The Colombian government has also developed legislation, approved by the Congress in June 2017, that would enhance the authority of the SFC to oversee and obtain information from holding companies of financial conglomerates.

Colombia's corporate governance framework for state-owned enterprises (SOEs) has undergone an important transformation aimed at establishing a framework broadly consistent with the Guidelines. Further implementation of its new national ownership policy will be important as the SOE sector continues to account for a significant share of Colombia's economy and includes particularly important holdings in the energy, oil and gas and financial sectors.

Colombia and the core corporate governance principles

Ensuring the enforcement of shareholder rights and equitable treatment.

Colombia has extensive requirements in place to ensure the enforcement of shareholder rights and their equitable treatment. While private actions through the regular court system to enforce these rights are rare, Colombia has developed an active public enforcement programme, alternative dispute resolution mechanisms and administrative courts to help ensure that shareholders have recourse to ensure their equitable treatment. Some weaknesses have been identified, particularly with respect to the availability of information and functioning of the annual general meeting. However, the revised national corporate governance code, the *Código País,* provides numerous recommendations aimed at improving the timeliness and quality of information available to

shareholders. It will be important for the SFC to monitor progress and consider further requirements if necessary to ensure implementation. SOEs with mixed ownership, particularly Colombia's listed SOEs, were also found to generally respect shareholder rights and equitable treatment of investors.

Timely and reliable disclosure in accordance with international standards

Colombia has extensive and well-elaborated disclosure requirements with respect to quarterly and annual financial reports, corporate ownership and share structures, related party transactions, and immediate reporting of material information. Colombian listed companies have completed the transition to International Financial Reporting Standards, while SOEs also have begun reporting according to IFRS. Full implementation of international audit standards also entered into force as of January 2016, and has been coupled with extensive efforts to raise awareness and understanding of the new requirements. While the 2014 review of Colombia identified some disclosure weaknesses, such as on board member qualifications, independence and nomination processes, executive and non-executive remuneration, and material risk factors, Colombia's revised *Código País* provides specific recommendations in each of these areas. The framework for disclosure by SOEs has been strengthened with the initiation of annual national aggregate reporting. While some SOEs have clearly specified public policy objectives established by law or through other public documents, the more systematic development of reporting and costing of public policy objectives is an important priority to be implemented more fully.

Effective separation of the government's roles as owner and regulator

Colombia's national ownership policy sets out a comprehensive plan to implement this core principle. Its first phase has assigned greater co-ordination responsibilities to the Ministry of Finance and Public Credit (MHCP), assisted by a new Directorate General for SOEs. This will also serve as the Secretariat to an Inter-Ministerial Co-ordinating Committee to help ensure effective implementation of good practice across other ministries. The MHCP has direct responsibility for exercising the ownership function in 21 of the government's 40 majority-owned SOEs, and 88.5% of the government's SOE assets. The ownership policy further recommends processes and criteria to ensure that boards are nominated and elected through well-structured, merit-based and transparent nomination processes. A key reform announced in the ownership policy was the intent to remove all ministers from the boards of 12 SOEs where they have been participating, along with a reduction in the number of deputy ministers. A new SOE corporate governance code, issued in January 2017, should seek to ensure that boards play a stronger role in CEO appointments, including in the 17 SOEs where the President currently has the legal responsibility to appoint and remove the CEO. For the longer term, the government plans to review the experience of the MHCP and other ministries in implementing the above measures before preparing legislation in 2018 that would further centralise the ownership functions of the Directorate General for SOEs as a separate ownership entity.

Ensuring a level playing field

Generally, SOEs face the same conditions as private sector companies with respect to the application of tax and other laws, and access to debt and equity finance, albeit with some exceptions. Owing inter alia to their corporate form SOEs further appear to have a higher level of legal protection with respect to insolvency and bankruptcy proceedings, and in exceptional cases, have received government guarantees in support of loans. Measures to streamline public procurement requirements for SOEs following the EICE legal form would help to ensure a more level playing field between SOEs and their private sector competitors. The national ownership policy seeks to enforce a level playing field by strengthening the development of and disclosure of public policy objectives and their associated costs and impact on commercial objectives, to help ensure that subsidies are avoided. The playing field may also in some cases be uneven in the

disfavour of SOEs, for example, due to extra reporting and approval burdens for SOE budgets, investments and staff changes.

Recognising stakeholder rights and the duties, rights and responsibilities of boards

Colombia has in place legal provisions to protect stakeholder rights with respect to corporate conduct, to ensure stakeholder participation in some corporate governance processes, to provide mechanisms for lodging complaints, and has established processes to address them. SOEs also generally respect stakeholder rights and have implemented mechanisms, including codes of ethics and reporting on corporate social responsibility, that help to support a framework for the respect of stakeholder rights.

On a general level, board members in Colombia have responsibilities and legal duties of loyalty and diligence that correspond to OECD recommendations, and these responsibilities are actively enforced by the SFC. The SFC, with support from BVC and market participants, has made a concerted effort to enhance the practices of boards of directors through a much more detailed set of recommendations in the *Código País,* which companies were required to report against for the first time in January 2016. Among some of the key improvements in practice that the code seeks to promote are a reduction in use of alternate directors; increased disclosure of board member backgrounds, service on other boards and other employment; increased use of board evaluations; and stronger alignment of key executive and board remuneration with the long-term interests of the company. For SOEs, as noted above, Colombia is in the process of removing ministers from all SOE boards and to establish well-structured, merit-based and transparent nomination processes aimed at enhancing the performance of these boards. The SOE corporate governance code is also intended to further reinforce good board practice.

Chapter 1

Introduction to the corporate governance review of Colombia

This Review of Corporate Governance in Colombia was prepared as part of the process of Colombia's accession to OECD Membership. The report describes the corporate governance setting for both listed companies and the state-owned sector (SOEs). The Review then examines the legal and regulatory framework and company practices to assess the degree to which the recommendations of the G20/OECD Principles of Corporate Governance and the OECD Guidelines on Corporate Governance of State-Owned Enterprises have been implemented.

This report reviews Colombia's implementation of the Recommendation of the Council on Principles of Corporate Governance (the Principles) and the Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises (the "SOE Guidelines") as part of Colombia's accession process to the OECD. It was developed to support the assessment of Colombia's willingness and ability to implement the substantive OECD legal instruments in the field of corporate governance, and an evaluation of its policies and practices as compared to OECD best policies and practices in this area. In this regard, it reviews Colombia's legal, regulatory and institutional framework and implementation with respect to five "core corporate governance principles" set out in the Roadmap for the Accession of Colombia to the OECD Convention. These five core principles are:

- Ensuring a consistent regulatory framework that provides for the existence and effective enforcement of shareholder rights and the equitable treatment of shareholders, including minority and foreign shareholders;
- Requiring timely and reliable disclosure of corporate information in accordance with internationally recognised standards of accounting, auditing and non-financial reporting;
- Establishing effective separation of the government's role as an owner of state owned companies and the government's role as regulator, particularly with regard to market regulation;
- Ensuring a level-playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions; and
- Recognising stakeholder rights as established by law or through mutual agreements and the duties, rights and responsibilities of corporate boards of directors.

This report is guided by the document titled *Concepts to Guide Corporate Governance Accession Reviews*[1] (the "Concept Paper"). The Concept Paper provides a methodology for conducting accession examinations, identifying which Principles and SOE Guidelines recommendations are most relevant for assessing accession candidate countries against the five Roadmap Principles. It integrates and updates the 2014 assessment by the Corporate Governance Committee (the "Committee") of Colombia's corporate governance framework vis-à-vis the Principles and the 2013 assessment by the Working Party on State Ownership and Privatisation Practices (the "Working Party") of Colombia's SOE sector relative to the SOE Guidelines.[2] Both assessments contain substantial recommendations to strengthen Colombia's corporate governance framework for listed and state-controlled entities.

The information included in this report draws upon a detailed self-assessment by the Colombian authorities against all of the Principles, prepared with reference to the *OECD Methodology for Implementation of the Corporate Governance Principles* and submitted to the OECD Secretariat in 2014, and updated in February 2016 to cover the revised Principles. The government also provided responses to a standard questionnaire on the SOE Guidelines submitted in 2013 as part of the Working Party assessment, along with Colombia's responses to the aforementioned recommendations made by the Committee and the Working Party following the 2013 and 2014 assessments and ongoing communications between the Secretariat and the Colombian authorities. This included fact-finding missions organized in 2013 for the SOE review, in 2014 for the Principles review and most recently in February 2016 for discussions with public officials, market participants, academics and other experts. The report has been further updated to take account of developments through 13 June 2017 based on information provided by the Colombian authorities as of that date. However, the report's recommendations were agreed by the Corporate Governance Committee in April, 2016, and have not been reconsidered to take account of these additional developments.

It must also be noted that the accession review process for Colombia was initiated in parallel with the Working Party and Committee reviews of the Guidelines and the Principles. Representatives of Colombia participated in the reviews of these instruments as an Associate in the Working Party and Committee, which were adopted by the OECD Council on 8 July 2015. While this report does not provide a comprehensive assessment of how Colombia is implementing each of the revisions to the Guidelines and Principles, the updated Concept Paper serving as a reference for this report takes account of the revisions to these instruments and provides updated references to those Guidelines and Principles recommendations that are most relevant to assessing candidate countries against the five core corporate governance principles cited above. References to revised Guidelines and Principles recommendations have been integrated as relevant in this report.

This report is structured to provide, first, an executive summary containing overall conclusions with respect to the five "core corporate governance principles" set out in the *Roadmap* . These conclusions are based upon the assessment provided in subsequent sections of this report. Following an introduction (Chapter 1), the report providesan overview of Colombia's corporate governance landscape (Chapter 2), followed by a detailed review of Colombia's performance against each of the five Roadmap core principles (Chapter 3). Finally, Chapter 4 provides (1) the conclusions of assessments made by the Corporate Governance Committee and Working Party on State Ownership and Privatisation Practices relative to the Principles and the Guidelines, respectively; and 2) a set of recommendations by which Colombia may further align its framework with these instruments.

Notes

1. First issued in 2008, this unpublished concept paper has been updated to take into account the 8 July 2015 adoption of the Principles and the Guidelines. The Concept Paper takes as a main reference the Council Roadmap for the Accession of Colombia to the OECD Convention, as well as similar roadmaps for Latvia, Lithuania and Costa Rica, which set out the terms, conditions and processes for their accession.
2. The Working Party assessment was prepared in response to a request from the Colombian government made prior to the launching of the accession process with Colombia. While separate from the process of Colombia's accession to the OECD, the Working Party assessment provides a useful reference for this report.

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Chapter 2

Colombia's corporate governance landscape

This chapter describes Colombia's corporate governance framework for listed and state-owned enterprises (SOEs). It starts with an overview of the Colombian economy and its capital markets, with references to important influences on the market such as its Integrated Latin American Market (MILA) initiative, and the role played by pension funds. The chapter then provides an overview of the legal and institutional framework, including the key institutions that play a role in the Colombian framework, and provides an assessment of their assessment in enforcing and supporting implementation of corporate governance practices.

The second half of the chapter covers the corporate governance landscape for SOEs, including the key governmental institutions responsible for exercising ownership functions and other oversight roles. The importance of mixed ownership SOEs listed on the Colombian stock market is also described. Additional sections cover the privatisation process and the different legal forms taken by SOEs.

The economy

Colombia, a country of 49 million people, is Latin America's fourth largest economy. Its growth has been strong, rising by an average of 4.3% annually between 2009 and 2014, more than double the OECD average[1]. Sustained growth has contributed to a drop in the poverty rate from 50% to 28% between 2002 to 2015. A sound macroeconomic framework has helped Colombia to adjust to the end of the commodity boom, while the peace agreement is expected to further boost economic growth and wellbeing over time. (OECD, 2017). The 2017 OECD Economic Survey also found that tax reforms undertaken during 2016 can help to address both high inequality and low productivity by increasing progressivity and reducing the tax burden on investment and dependence on oil revenues.

The capital market

Colombia's capital market has experienced important development in recent years. While still lagging behind OECD averages, Colombia has emerged as the third largest market in Latin America behind Brazil and Mexico. Its ranking in Latin America was 3rd in terms of market capitalisation as a percentage of GDP, with 29% as of 2015, well below the OECD average of 107%, and trailing Chile and Mexico in the region, according to World Bank figures[2]. Colombia's markets experienced compound annual growth of 39% between 2003 and 2012, fuelled by strong development of the country's financial sector,[3] with an important banking sector that exports services to many Central American countries, as well as three large, listed municipal and state-owned energy companies. Its fixed-income securities have also grown rapidly in a context of historically low interest rates.[4] However, a more recent decline in commodity prices and in the Colombian exchange rate have contributed to a sharp drop in overall market capitalisation, from USD 270 billion at the end of 2012 to just USD 103.8 billion by the end of 2016, according to SFC figures. Ecopetrol, Colombia's largest company, provides a clear example of this trend, with its share of market capitalisation dropping from 46.7% at the end of 2012 to just 18.2% as of the end of 2016, according to BVC figures.

Colombia fares less well than its leading Latin American neighbours with respect to market liquidity, with trading volume of 4% of GDP in 2015, lagging behind Brazil (23%), Mexico (9%), and Chile (8%) as well as the OECD average of 150% [5]. The market is dominated by a small number of very large companies, and the number of listed companies in the equities market (73) has been declining, also lagging well behind Latin America's other significant markets[6]. Daily share trading averaged USD 48 million in 2016, with a total of USD 11.7 billion traded. Overseas investors accounted for 24%, according to BVC figures.

The ten principal companies accounted for approximately 59.6% of total market capitalization, according to BVC February 2016 figures, and were concentrated in the oil and gas, energy and financial sectors. Among the 20 most liquid stocks that make up the COLCAP 20, Colombia's main trading index, the average free float of 38.1% was significantly higher than the 13.3% average for the other companies on the market.

Until their merger in July 2001, Colombia had three different stock markets (Bogotá, Medellín and Occidente), with differences in the price of the same asset that created opportunities for arbitrage, fragmented the market and weakened its incipient liquidity. Their merger created the present Stock Exchange of Colombia (Bolsa de Valores de Colombia – BVC) which, over the years, has grown in depth, transparency and dynamism, as reflected in the growth of the COLCAP index (Colombia's 20 most liquid shares), which has risen from a starting value of 1 000 in January 2008 to a high of 1,889 on February 5 2013. The index has subsequently dropped in line with the trends mentioned above to 1 309 as of 18 March, 2016.

The main trading systems are the Colombian Electronic Market (MEC), administered and regulated by the BVC, which trades fixed income securities; the Electronic Negotiation System (SEN), used principally for government debt; and the OTC market, which is used for securities trading but not equity.

Colombian companies have a highly concentrated ownership structure. Among the largest listed companies, the controlling shareholders retain more than two thirds of total shares. Beyond those cases, a study of non-financial listed companies without a single controlling shareholder (between 1996 and 2004), found that in almost all companies the four largest shareholders controlled over 51% of direct votes (and on average 62%) (Gutiérrez and Pombo, 2009).

Large financial and mixed-activity economic groups and state-owned companies play the dominant role among Colombia's listed companies. In addition to Ecopetrol, the state is the controlling owner of ISA, which was ranked 7th among Colombian listed companies according to market capitalization in 2014. The municipality of Bogota is the controlling owner of the 18th largest listed corporation, Empresa de Energia de Bogotá.[7]

Of 163 issuers under SFC supervision as of 2014, only 51 were considered to be unaffiliated with a group or "control situation." The country's largest business group is Grupo Empresarial Antioqueño, a dominant player in the food, cement, banking and insurance industries. Although not formally registered as a business group in the Colombian regulatory system, cross-shareholdings among different companies within the group are said to link some 100 listed and non-listed firms, according to one study (Gutierrez et al 2007). Its eight listed companies – including the 2nd, 4th and 5th largest companies on the market, Bancolombia, Grupo Suramericana and Grupo Argos – also control Colombia's second largest private pension fund, Proteccion.

Grupo Aval, another major Colombian conglomerate, owns four banks comprising 29% of market share, including Banco de Bogota and Banco de Occidente. Grupo Aval also owns Colombia's largest pension fund, Porvenir. Grupo Aval, Grupo Empresarial Antioqueño and a third conglomerate, Grupo Bolivar, held 53% of total assets in the financial system as of February 2009 (World Bank, 2011a). These and other Colombian economic groups have been gradually consolidating their position not only in the Colombian market, but also more widely through acquisitions across Latin and Central America as part of a new wave of "Multilatinas" [8] (See Box 1).

The strong presence of economic groups with high ownership concentration, combined with use of preference shares and cross-shareholdings or pyramidal structures that increase the differentiation between cash flow and control rights, may create incentives and some risk that the controlling shareholder(s) may use intra-group transactions to extract private benefits that are not shared with outside investors in the group. However, the Financial Superintendency devotes considerable resources to monitoring and reviewing such transactions among economic groups and financial conglomerates, and academic studies of Colombian groups have found that companies affiliated with economic groups actually enjoy *better* market valuation and better performance than non-affiliated firms. On the other hand, the relationship was not found to be monotonic, as it was found that cases with higher separation between cash-flow rights and voting rights had a negative effect on firms' valuation and performance (Gutierrez and Pombo, 2007).

Box 2.1. **Colombian Multilatinas**

In an environment of reduced liquidity among American and European companies following the global financial crisis in 2008, Colombian companies have found greater opportunities for corporate acquisitions in Latin America. This trend towards greater M&A activity in Central America and South America has led to increased consolidation within the financial sector (banks and pensions funds), as well as industry and energy sectors. According to América Economia, a regional financial magazine, Grupo ISA and Grupo Nutresa are the biggest Colombian Multilatinas with presence in more than 10 Latin American countries and revenue of more than USD 2.5 billion each. Key Colombian Multilatinas include:

- **Grupo Aval** (banking): In 2010, Grupo Aval acquired BAC Credomatic, a Central American Bank, in a transaction estimated at USD 1.9 billion. In 2013, Grupo Aval purchased 100% of the stock of Grupo Reformador in Guatemala; then through BAC Credomatic acquired 98.92% of BBVA Panama, for an estimated $490 million, and in Colombia acquired from BBVA the pension fund Horizonte for about U$530 million.
- **Grupo Bancolombia** (banking): In 2007, Bancolombia acquired Banco Agricola Group, a Salvadorean group, in a transaction estimated at USD 900 million. In 2013, Bancolombia purchased the operations of HSBC in Panamá for an estimated value of USD 2.234 million. The same year, Bancolombia acquired 40% of the stock of Grupo Agromercantil in Guatemala for an estimated USD 217 million.
- **Davivienda** (banking): In 2012 Davivienda purchased the operations of HSBC (UK) in Costa Rica, Honduras and El Salvador, for an estimated value of U$801 million.
- **Grupo Gilinski** (banking): In 2013, Grupo Gilinsky acquired the operation of HSBC (UK) in Colombia, Paraguay and Peru for an estimated value of USD340 million.
- **Grupo ISA** (energy): ISA Group is a Colombian electricity transport company with more than 30 subsidiaries in Argentina, Bolivia, Brazil, Ecuador, Peru and Central America. The most recent acquisition was Intervial Chile in 2013 for about U$580M.
- **Group Sura** (Financial sector): Grupo Sura bought the operation of pension and investment funds of ING (Holland) in Chile, Mexico, Peru, Uruguay and Colombia, for an estimated value of USD 3.614 million. In addition, Grupo Sura purchased Royal Sun Alliance's Latin American insurance operations (Argentina, Brazil, Colombia, Chile, Mexico and Peru) for an estimated value of USD 660 million in 2016.
- **Group Argos** (cement): Cementos Argos in 2009 acquired 50 percent of stock in Cementos Panama from Holcim for an estimated value of U$157 million. Also during 2011, Argos acquired several cement factories in the United States from Lafarge, as well as 53.3 percent of Lafarge cement in Honduras.
- **Grupo Nutresa** (food sector):[9] In 2007, Grupo Nutresa acquired assets of "Good Foods" in Peru. During 2008, it bought the assets of Ernesto Berard S.A., a food industry company in Panama. In 2010, Nutresa also bought assets of Fehr Holdings, LLC, in the United States, with factories in Texas and Oklahoma.
- **Grupo EPM** (public utilities):[10] During the last decade. Grupo EPM, which is owned by the city of Medellin, has been acquiring energy companies (mainly generation and distribution) in Central America. Currently it has a portfolio of over 40 subsidiaries in Colombia and Latin America. During 2013, Grupo EPM acquired the Chilean Cururos project to develop a wind energy plant, and subsequently it acquired Espiritu Santo Energy SDRL in Panama and a controlling stake of Intercontinental technology, S.A de C.V - TICSA, a Mexican corporation.
- **Group Éxito** (retail):[11] In 2011 Grupo Éxito acquired 100% of the shares of Spice Investments Mercosur, a Uruguayan retail chain, for an approximate value of €70 million.

Box 2.1. **Colombian Multilatinas** (cont.)

From a capital market perspective, the trend towards group acquisitions of smaller companies may run counter to the efforts of the stock exchange to promote new listings on the local market. On the other hand, in some cases the Multilatina acquisitions may require financing that can be obtained through the capital market. From a corporate governance perspective, the continued expansion of economic groups may add to the complexity of market oversight involving related party transactions and conflicts of interest extending across multiple jurisdictions. For the Multilatinas themselves, the expansion places increased demands on corporate governance systems, including on the composition of boards of directors in subsidiaries, risk management and compliance assurance, the interaction between internal and external audit mechanisms, and treatment of foreign minority shareholders, among others.

1. See "Revista América Economía. Ranking Multilatinas 2013". http://rankings.americaeconomia.com/2013/ranking_multilatinas_2013/ranking.php.

2. According to "Empresas multilatinas al ataque", Revista Semana. http://m.semana.com/economia/articulo/empresas-multilatinas-ataque/329352.

Source : Andres Bernal, Governance Consultants with additional sources as footnoted.

A more recent study (Mendoza 2014b) suggests that Latin American groups benefit from several competitive advantages vis-a-vis standalone companies, for example through access to finance through the group and through the efficiency of related party transactions that are less likely to face hold-ups in the execution of contracts. In addition, since company groups in Colombia and elsewhere in the region are generally characterized by long-term stability of the controlling owner, and because share prices will depend in part on the perceived fairness of the company towards its investors, these economic groups have an ongoing incentive to maintain a reputation for fair treatment. Nevertheless, Mendoza also points out that reputational incentives may not always apply, notably in cases where a controlling shareholder is deciding to delist or no longer depend on public markets for finance, creating a stronger incentive to extract maximum benefits at the expense of minority shareholders.

Market concentration is also seen at the level of intermediaries, with the three largest stock brokerages accounting for around 50% of the BVC's income (BVC, 2013). The Central Securities Depository (DCV) is responsible for mitigating risks related to the physical handling of transfers, registration and other operations, receiving securities and financial instruments whether or not they are registered on the National Securities and Issuers Register.

Institutional investors

Colombia's most important institutional investors are its four private pension fund companies, which hold shares comprising approximately 13% of market capitalization, according to data from Asofondos, the Colombian pension fund association. The BVC reported that pension funds comprised 15% of trading volume as of February 2014, brokers comprised 16%, and foreign investors comprised 28%. Other important groups include retail investors at 15%, the real sector at 12%, and mutual funds with 8%.

By another measure, based on 2014 SFC data on institutional investor shareholdings within the 20 most liquid companies that comprise the COLCAP index, pension funds held 49% of institutional investor-owned shares, trust companies held 42%, banks and financial institutions held 7%, and other institutional investors such as insurance companies, brokers and mutual funds held the remaining 2%.

The 24-year-old defined contribution private pension system has grown substantially in recent years, from USD 7 billion in 2003 to USD 54 billion in 2010, when reforms established multiple funds operating at multiple risk levels. By 2013, these funds had grown to US 85 billion,

according to BVC data. Nevertheless, the 2013 OECD Economic Survey pointed to a number of constraints that have limited their size relative to other countries, including the economy's high level of informality and the fact that the private defined-contribution pension system competes with a parallel pay-as-you-go system administered by Colpensiones.[12]

Because of their important role in the markets, pension funds face special regulatory requirements to take corporate governance into account in their investment decisions, and to vote when their shareholdings in a company represent 5% or more (or else they must explain if they do not vote, for example in the case of conflicts of interest or insufficient information). Other types of funds in Colombia tend to be relatively passive and are not required to vote, but must establish policies for voting and managing conflicts of interest. Decree 1242 of 2013 sets out such rules for mutual funds, known as collective investment funds. Broker-dealers are also required by regulation to manage conflicts of interest via practices which are further elaborated through guidelines established by the Securities Market Self-Regulation Corporation, AMV.

Regional market integration

The BVC joined together with the Lima and Santiago stock exchanges to begin operation of the Integrated Latin American Market (MILA) in 2011, seeking through the unification of their platforms to increase the range of options and liquidity they offer to issuers and investors. MILA works, for example, by allowing a Colombian investor to purchase shares in a Chilean listed company by using a broker in Bogota. The three stock exchanges' initial aim was to promote their combined markets as an attractive alternative to Brazil and Mexico, the region's two larger markets. However, the three founding members' market capitalization and trading volumes have remained well below those of Mexico and Brazil. In August, 2014, Mexico formally became the fourth member of MILA, further increasing its overall size, number of issuers and trading volumes, so that MILA markets' overall size now exceeds that of Brazil, while still falling well short of Brazil's trading volumes (see Table 2.1 below). At the same time, Latin American markets have not escaped a more general downward trend in size and trading volumes experienced by emerging markets during this recent period.

Table 2.1. **Integrated Latin American Market (MILA)**

	Market cap (USD Bn)	Issuers*	Traded volume (equity, USD Bn)
Peru BVL	57	310	2
Colombia BVC	86	73	15
Chile BCS	190	310	21
Mexico	402	143	127
MILA	**735**	**836**	**166**
Brazil BM&FBOVESPA*	491	359	498

(*) Domestic and foreign issuers.

Source: World Federation of Exchanges as reported by BVC as of December 2015

Stock exchange officials concede that the integration initiative has not led to the increased trading volumes that some had hoped for. Differences remain among the participating countries in terms of regulatory, tax and tariff policies. However, the initiative has led to increased co-ordination among the participating countries' regulatory authorities, and it could ultimately lead to convergence in regulatory and best practice standards as well as strengthened cross-border enforcement among the participating countries' regulatory authorities (Mendoza, 2014b). The Colombian government in its updated self-assessment states that MILA has also helped to consolidate and deepen the process of financial integration among these members of the Pacific Alliance.

Development of the corporate governance framework

The legal framework

Colombia has an extensive legal and regulatory framework for corporate governance, established through a wide range of laws, decrees implementing the laws, circulars providing more specific instructions to the market, self-regulation for certain segments of the market, and a voluntary corporate governance code. The government has frequently updated and amended the framework, creating some challenges for market participants to be fully informed of all relevant requirements.

Constitution (1991)

Under article 333 of Colombia's Constitution, companies are regarded as the basis of the country's development and have a social function. This entails obligations and implies that the state must prevent the obstruction or restriction of economic freedom and control any abuse by individuals or companies of a dominant domestic market position. The Constitution provides that the law shall define the scope of economic freedom when so required by the social interest, the environment and the country's cultural heritage.

Article 150 of the Constitution assigns to the National Congress the task of creating or authorising the creation of state-owned enterprises (SOEs). Congress may, however, also delegate extraordinary powers to the government to create or modify SOEs and change the institution to which they are linked through decrees with force of law.[13] Article 336 stipulates that the government must sell or liquidate state monopolies and transfer their activities to third parties when they do not achieve the efficiency required by law.

Article 60 adds that, when the state sells its stake in a company, it must take measures to diversify ownership and offer shares to workers and solidarity organisations on preferential terms. This norm establishes the framework for the privatisation regime discussed later in this chapter.

Article 305 establishes that, at the regional level, the governor is empowered to freely appoint and remove the managers or directors of public institutions and companies owned by the department. The department's representatives on their boards and their managers and directors are considered agents of the governor. Similarly, under article 315, mayors are empowered to appoint and remove the managers or directors of local public institutions and companies in accordance with the corresponding provisions.

Finally, article 106 establishes that the inhabitants of an area served by a utility company can elect representatives to its board (normally through the local governor or mayor), prior compliance with the requirements established by the law and in the cases which it defines.

Commercial Code (Law Decree 410 of 1971)

The general framework for Colombia's company and commercial contract law is provided by the Commercial Code (See Box 2.2), applying to both listed and non-listed joint stock companies. However, it should be noted that in some cases additional or differing requirements apply to listed companies and financial institutions.

Other relevant laws, circulars and decrees

Numerous reforms introduced beginning in 1990 have established a modern framework for securities issuers in Colombia and aligned companies' governance structures with international corporate governance practices. Law 43 of 1990 stipulates rules for the statutory auditor known as the *revisor fiscal*, which with some exceptions has a function similar to an external auditor. Law 1314 of 2009, calling for the implementation of international accounting, audit and information assurance standards, introduced further changes to this framework to ensure that the

role of the *revisor fiscal* is in line with international standards in relation to their independence, ethics and certification. The law has subsequently been implemented on two tracks with respect to International Financial Reporting Standards (IFRS) via implementing decrees issued in 2012 and 2013, and via Decree 302, issued on 20 February 2015, for information assurance and audit standards, with enforcement of its provisions taking effect on 1 January, 2016.

Box 2.2. **Main elements of stock company law under the Commercial Code**

Constitution: By public deed which must be registered with the Chamber of Commerce corresponding to the company's domicile; reforms of a company's bylaws must also be by public deed and registered with the corresponding Chamber of Commerce.

Shareholders: A minimum of five with no upper limit; no shareholder may hold more than 94.99% of the company's equity.

General shareholders assembly: The shareholders assembly shall decide on 1) what reserves should be made in addition to legal reserves; 2) determine the amount of dividends and the manner and terms of their payment; 3) direct any required actions against administrators, executives or auditor; 4) freely elect and remove any officers the assembly is empowered to appoint; 5) direct that common shares be disposed of not subject to pre-emptive rights with a minimum favourable vote of 70% of the shares represented; and 6) other measures as required by the corporation or as determined by legislation or the bylaws. Notice of the meeting must be issued at least 15 working days before the meeting, and shareholders have the right to inspect company information during 15 working days prior to the assembly.

Extraordinary meetings: Extraordinary meetings may be held when required by unforeseen or urgent needs of the company, by call issued by the board, legal representative, or auditor; or by the Superintendent in the event of serious mismanagement which should be made known or remedied by the assembly, or on the request of at multiple shareholders representing at least 20% of subscribed shares. Advance notice of at least five days is required, including publication of the agenda.

Minutes of shareholder assembly meetings: Shall be submitted to the Superintendency at within 15 working days and at least show the number of subscribed shares; list of attending persons with number of shares owned or represented; subjects discussed; number of favourable, blank or negative votes; written statements of the attending parties; and appointments made.

Company boards and organisation: i) The board of directors is appointed by the shareholders' meeting using the quotient method (see Box 2.6) with at least three members (directors and alternate directors) for non-listed companies, and five members for listed companies and financial institutions[14]; and ii) manager appointed by the board of directors with the powers established in the company's bylaws. The manager is also normally the company's legal representative. Administration corresponds to the board of directors and the manager.

Equity: A company's equity is divided into shares of equal value and comprises: (i) authorised capital; (ii) subscribed capital and (iii) paid-in capital. At the time of a company's constitution, its shareholders must subscribe at least 50% of its authorised capital and pay in at least a third of the subscribed capital. Within the limits of the authorised capital, increases in subscribed capital are through the issue of new shares, duly authorised by a shareholders' meeting. A reform of the company's bylaws is required only in the case of an increase in authorised capital which must be by public deed.

Responsibility: Shareholders are responsible only up to the amount of capital they have contributed. A company's administration is jointly and unlimitedly responsible for damages caused by intent or negligence to the company, its partners or third parties.

Transfer of shares: The transfer of shares must be recorded in the Share Register through a written order from the seller. This order may take the form of endorsement. In the case of preferential rights, these are guaranteed by the company's bylaws.

Source : Articles 373 to 460 of the Commercial Code.

Law 222 of 1995 contains norms in line with the Principles, particularly as regards shareholders' rights, disclosure and creditors' rights as well as the operation of a company's board and the responsibilities of its management. This law also introduced new types of legal action, such as the so-called social responsibility action which can be used against a company's managers if they fail to fulfil their functions. In 1998, Law 446 went on to introduce improved mechanisms for the protection of minority shareholders, enabling any group of shareholders that represents less than a 10% stake to request the intervention of the regulator if they consider the company is taking measures detrimental to their interests.

One of the most important reforms as regards corporate governance and protection of minority shareholders of listed companies is Law 964, the Securities Market Law, introduced in 2005 (Gutiérrez and Pombo, 2009). Its design is reportedly inspired by the Sarbanes-Oxley Act (2002) and the reforms of company law implemented by South Korea (1998-2003) on independent directors, audit committees and systems of information and financial control. Among the key reforms were requirements that 25% of directors be independent; that the CEO be separated from the chairman of the board; that audit committees must comprise at least three members including all of the independent board members; and that the chairman of the audit committee must be an independent director.

Resolution 275 of 2001 required companies to adopt codes of corporate governance to be eligible to receive investments from private pension fund administrators (subsequently rescinded and incorporated into External Circular 55) of 2007). This code was substantially revised in 2014 via Circular 28 and has become a major focus of the SFC's current efforts to promote improved corporate governance practices among Colombian issuers (see Box 2.3).

The Minister of Commerce also issued Decree 1925 in 2009, toughening requirements for the approval of related party transactions and increasing the liability of directors by regulating the disclosure and approval of related party transactions. Finally, an important consolidation of regulation was issued as Decree 2555 of 2010, which compiles and integrates into a single body provisions related to the financial, insurance and securities market.

Other recent reforms include article 17 of Law 1474 of 2011 that added disloyal management as a criminally sanctioned conduct in the Criminal Code, and Law 1258 of 2012, which created a new type of company, the simplified stock company, introducing greater flexibility as regards corporate governance requirements for investment companies that do not publicly offer securities.

Most recently, the Government of Colombia issued Decree 1817 of September 2015 to enhance the *de jure* independence of the SFC, by declaring that the Superintendent will be appointed through a public and transparent process based on academic and professional criteria to a fixed four-year term equal to the Presidential term, and that any administrative act by the President to dismiss the Superintendent before the end of the term must contain the reasons for the dismissal. The independence of Superintendents has also been reinforced by the adoption in October 2015 of the 2016 Budget Law which explicitly authorises Superintendencies to bear the costs of legal processes brought against the Superintendents for acts performed in the course of their duties.

Box 2.3. **Colombia's voluntary corporate governance code – the *Código País***

Colombia's listed companies and other fixed income securities issuers have been reporting on their corporate governance practices against 41 recommended measures in its national corporate governance code, the *Codigó País,* since 2007. On 30 September 2014, the code underwent a major transformation, when the SFC issued External Circular 028, establishing extensive revisions to the code, now containing 33 measures divided among 148 individual corporate governance recommendations.

Adoption of the code remains voluntary and based on the principle of self-regulation, but the Financial Superintendency requires that all issuers (except foreign-based cross-listed companies) report against the code. This includes 73 companies with equity listed on the Stock Exchange and an additional 60 "fixed income" issuers.

The first deadline for reporting on 2015 practices against the revised code was January 31, 2016, three months earlier than was required under the previous code. The earlier reporting date represents an important reform, because the reports are now issued approximately two months before annual general meetings, enabling shareholders to take the reports into account on a timely basis. This is relevant particularly for Colombia's pension funds, which are required via External Circular 55 of 2007 to factor compliance with the *Código País* into their investment decisions.[15]

From 2007 to 2011 the *Código País* took a "comply and explain" approach, requiring the issuer to explain how it complied, but making the explanation optional in case of non-compliance. This was amended by External Circular 7 of 2011 to apply usual "comply or explain" practices. Based on responses to an 80-question annual survey, SFC published a summary report on compliance annually in July or August, and has found that compliance with the code has generally increased over the years, from an average of 47.7% of all measures in 2007 to 64.2.0% as of 2014.

An OECD report on Colombia's experience with its corporate governance code (Kossov, 2013) noted that the compliance level was below the level of compliance with major corporate governance codes reported in Europe – for example, 81% in Germany in 2013, 81% in Spain and 97% in the UK. The report also found that the ten companies with highest compliance rates of between 87.8 and 92.7% had free float levels above the market average of 15%, and that the five companies with compliance rates below 30% all had no listed shares.

Colombian issuers faced a transitional year in 2015, adjusting to the new code recommendations, many of which require the companies to change their bylaws in order to implement some of the recommendations. The code covers five main areas:

1. Shareholder Rights and Equal Treatment
2. General Assembly of Shareholders
3. Board of Directors
4. Control Architecture (a new chapter)
5. Financial and Non-Financial Transparency and Information

Some of the notable recommendations seeking to raise standards in the Colombian market include:

- Providing longer advance notice periods for annual and extraordinary shareholder meetings (30 days instead of the legally required 15 days);
- Further precisions on the independence of directors, elimination of alternate directors and key functions of the board;
- Establishment and functioning of a risk management committee and internal control functions;
- Treatment of conflicts of interest, ethics and related party transactions;
- Detailed recommendations regarding economic groups.

Box 2.3. **Colombia's voluntary corporate governance code – the *Código País*** (cont.)

The SFC will continue to monitor, analyse and report on results, seeking to ensure that reporting against the code provides relevant and accurate information. However, rather than reporting comprehensively on compliance with the code, as it has in the past, the SFC has indicated that it intends to identify issues or measures where improvements may be needed, and to issue more thematic, focused reports. Overall monitoring of the results would be left to the market, while BVC and relevant Associations are also expected to play a role in promoting adoption of practices. The SFC has explained that the change in focus is aimed at avoiding "tick the box" exercises where companies' only focus is on increasing their compliance percentages in order to strengthen their reputations, without giving adequate attention to the substantive aspects of the recommendations themselves.

Nevertheless, at the request of the Secretariat, the SFC provided a summary of results reported by companies in the first quarters of 2016 and 2017 against the new code. Overall, Colombia's 73 listed companies reported that they had implemented 59.4% of the code's 148 recommendations in 2015, rising to 61.9% in 2016. Fixed income issuers reported a similar level of compliance of 58.9% in 2015, rising to 59.6% in 2016. However, compliance was much higher among 17 of Colombia's largest and most actively traded companies on the COLCAP index, at 83% in 2016. The SFC reported that it was satisfied with the overall level of implementation, which was only 3% lower than the compliance rate under the previous code.

Despite the slight increase in compliance rates between 2015 and 2016, the SFC suggests that efforts are still required to improve understanding of the code and to work with companies to improve the quality and consistency of responses The same areas identified as having low compliance in 2015 were flagged again with respect to the second year of reports issued in the first quarter of 2017:

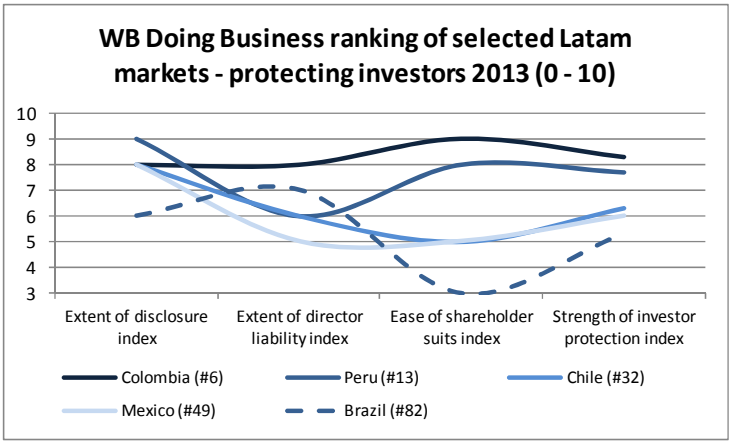
- recommendations supporting variable remuneration systems;
- good practices for conglomerates with respect to establishment of board committees and agreement frameworks for relations between holding companies and their subsidiaries;
- differentiation of treatment of the Chairman of the board in comparison to other board members in terms of responsibilities and remuneration;
- treatment and disclosure of conflicts of interest;
- independent assessment of board members; and
- adoption of independence requirements for board members that are stricter than the legal definition.

Code recommendations relevant to implementation of the G20/OECD Principles are discussed in greater detail as relevant under Chapter 3 of this report: Review Against the Core Corporate Governance Principles.

Legal framework's impact on investor protection

These efforts are reflected in Colombia's good results in the World Bank's Doing Business rankings (Figure 2.1). In general, its capital market is perceived as very favourable to investment and the World Bank considers its legal and regulatory regime as among the best as regards protecting investors, an aspect on which it took 6th place in the global ranking for 2014, with a significant improvement between 2006 and 2013 (Figure 2.2).[16] Colombia also performs well on resolving insolvency where it ranks 25th, while its worst performance is on enforcing contracts (155th).[17]

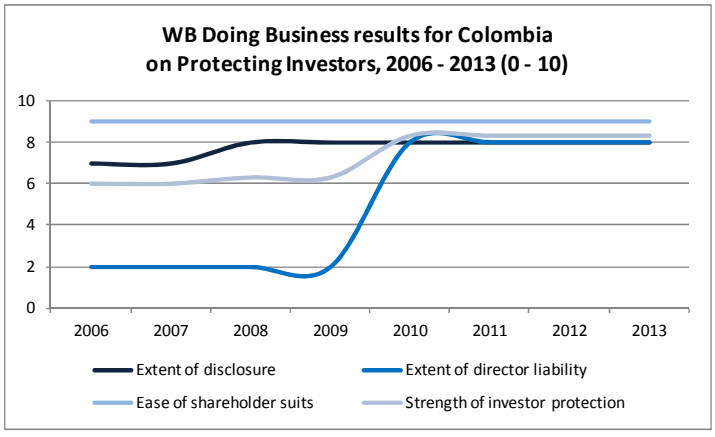
Figure 2.1. **Investor protection assessment by World Bank**



Source: Lehuedé (2013), citing World Bank Doing Business 2013 Database

The marked improvement in evaluation of directors' liability by the World Bank ranking is due partly to the important development of arbitration as seen particularly in the arbitration procedures conducted by the Bogotá Chamber of Commerce and Superintendency of Companies. In Colombia, arbitration rulings must be public and have influenced subsequent interpretation of the law.

Figure 2.2. **Colombia's results in WB's Doing Business**



Source: Lehuedé (2013), citing World Bank Doing Business 2013 Database

Colombia's framework for combating corruption

Corruption constitutes a significant challenge for the development of corporate governance in Colombia, despite the recent enactment of laws and regulations aimed at fighting corruption, and the ratification of several international anti-corruption conventions.

In November 2011, Colombia became the 40th member of the OECD Working Group on Bribery in International Business Transactions (WGB) and acceded to the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (Anti-Bribery Convention) on 19 January 2013. The WGB conducted a Phase 1 evaluation of Colombia's implementation of the Anti-Bribery Convention in December 2012, focusing on Colombia's legal framework for combating foreign bribery. The Phase 1 report concluded that, apart from Colombia's regime for corporate liability (introduced in Law 1474 of 2011 also called the Anti-

Corruption Statute), the country's legislation appears generally capable of conforming to the standards of the Convention, although some reservations were noted concerning elements of the foreign bribery offence. Concerning the corporate liability regime, the WGB highlighted four specific issues for Colombia to address: (1) the non-liability of non-profit entities; (2) the ability to hold a legal person liable for foreign bribery, even when the crime is committed by lower-level persons in the company; (3) the ability to prosecute a legal person for foreign bribery even when the natural person(s) involved in the crime has not been, or cannot be, identified; and (4) the level of sanctions applicable to legal persons, which were not considered sufficiently effective, proportionate and dissuasive.[18]

The WGB's Phase 2 evaluation of Colombia was completed in October 2015[19]. The report expressed a concern that Colombia had yet to satisfactorily address key Phase 1 recommendations relating to Colombia's foreign bribery offence, liability of legal persons, and sanctions against legal persons. The Working Group expressed particular concern about persisting shortcomings in Colombia's corporate liability regime, particularly concerning the lack of liability of publicly-traded companies, financial institutions, and non-profit entities, the necessity of establishing the responsibility of a natural person, in practice, to effectively enforce the foreign bribery offence against a legal person, and the level of sanctions applicable to legal persons for foreign bribery. The report further expressed concern regarding enforcement capabilities against legal persons for corruption offences, as well as the lack of adequate safeguards for the independence of the Superintendency of Corporations – the administrative authority in charge of foreign bribery enforcement against corporations. The report set out 13 more specific recommendations along with additional follow-up actions, including a requirement to report back to the Working Group within two years, pursuant to the regular Phase 2 procedures.

Subsequently, Colombia adopted Law 1778 of 2016 in December 2015, which was enacted by the President of the Republic on 2 February 2016. The Law amends Colombia's foreign bribery offence and significantly modifies Colombia's corporate liability regime, as called for by the Working Group since Phase 1. Enforcement capacities against legal persons have been strengthened through Law 1778 as well as through the signing of a formal cooperation agreement between the prosecutorial authorities and the Superintendency of Corporations. Safeguards to guarantee the independence of the Superintendent have also been introduced by Administrative Decree1817. In conclusion, the WGB's Full Assessment of Colombia for Purposes of OECD Accession found that Colombia's performance in relation to the Road Map's six core accession principles appear to be satisfactory, although some issues will be followed up in the context of the Working Group's regular monitoring under the Anti-Bribery Convention.

Colombia has also ratified the Inter-American Convention against Corruption (IACAC)[20] and the United Nations Convention against Corruption (UNCAC).[21] The Free-Trade Agreement (FTA) between Colombia and the United States also contains provisions on anti-corruption.[22] Following the ratification of these international agreements, the country worked towards complying with their provisions. Both the Inter-American and the UN instruments have review mechanisms in which Colombia participates.

Nevertheless, several other indicators point to corruption as a significant ongoing challenge in Colombia. In 2015, Colombia ranked 83rd out of 175 countries in Transparency International's Corruption Perceptions Index (Transparency 2015), an improvement from the ranking of 94th in 2012-2014. According to the Americas Barometer 2011 published by the Latin American Public Opinion Project (LAPOP 2011), the perception of corruption in Colombia reached 81%, its highest level since the study was first carried out in 2004. Similarly, the latest Survey of Colombian Companies' Anti-Bribery Practices, carried out in 2012, found that 94% of businesspeople believed that their peers offered bribes and 58% of companies lacked mechanisms for reporting cases of bribery. This is also reflected in the World Bank's Doing Business report which indicated that, in the view of businesspeople, corruption is the factor which most hampers companies' competitiveness.

Institutional framework

Three principal institutions have legal authority to regulate corporate governance matters by companies: Congress, the Government (President and Ministry) and Superintendencies, especially the Financial and Companies Superintendencies. In practice, the Ministry of Finance and Public Credit has the main legal authority to develop and issue regulations for issuers through Decrees, and has recently established a unit for this purpose which carries out analysis, including consideration of costs and benefits, before issuing such regulations. For entities supervised by the Companies Superintendency, the Ministry of Commerce is responsible for issuing regulations. The Superintendencies issue Circulars to instruct supervised entities on how to comply with laws, decrees and constitutional dispositions related to their activities. Circulars on accounting topics are an exception, in which the Financial Superintendency has the direct authority to regulate and not just instruct.

The Financial Superintendency (Superfinanciera – SFC)

The Financial Superintendency, known as *Superfinanciera,* or SFC, is a technical body with legal personality and administrative and financial autonomy. It plays a key role in Colombia's capital market since it supervises and controls persons and companies undertaking financial, stock market and insurance activities or any other activity related to management of resources obtained from the general public. In Colombia, these activities can only be undertaken by entities authorised by the Superintendency.

The SFC is the product of the merger in 2005 of the Banking and Securities Superintendencies, bringing together under a single regulator the supervision of all financial and insurance institutions and participants in the securities market. The aim of the merger was to guarantee a stable, efficient and competitive financial system that provides protection for the consumer; to improve regulation of conglomerates; and to avoid regulatory arbitrage.[23]

In February, 2017, a functional reorganisation of the SFC was implemented through Decree 1848 of 2016. As a simplification of a much more complex overall structural organization, the SFC may now be described as having three main areas with supervisory responsibilities: 1) a risk area; 2) an institutional area with responsibility for supervision of financial intermediaries and insurance companies; and 3) an institutional area responsible for supervision of issuers, securities intermediaries and other agents. As part of the SFC's restructuring, the division that was responsible for conglomerates and matters relating to corporate governance was eliminated, while a new division has been established called "sub-direction for supervision methodologies and best practices of corporate governance" (SMSCG). Its aim is to research and develop best corporate governance standards and to promote their implementation, as well as to develop methodologies and procedures related to risk-based supervision.

The SFC's functions include the review of the suitability of persons appointed as CEOs or directors under its supervision, ensuring formal compliance with the grounds for recusal. In the case of financial institutions, this is regulated by External Circular 29 of 2006, which establishes a procedure by which an SFC committee undertakes a more extensive assessment ("fit and proper") of candidates, taking into account propriety, honesty, integrity and reputation, knowledge and experience, time availability (including service on other boards), financial solvency and good financial conduct. The SFC cited two additional Circulars as important for the regulation of corporate governance matters:

- CBJ 007 of 1996 which sets out instructions related to the operation of the General Meeting of Shareholders, Board, managers and external auditor, and on the internal control system. The SFC also issued Circular 014 in 2009, providing a mandatory framework for internal control systems for supervised financial institutions, but which is voluntary for listed companies; and

- CCF 100 of 1995, which sets out requirements for transparency and disclosure to supervised entities, including on the year-end financial statement, consolidated statements, and the legal structure for addressing risks.

The Superintendency of Companies (Supersociedades)

The Superintendency of Companies, known as *Supersociedades*, is a technical body attached to the Ministry of Trade, Industry and Tourism (MCIT), with legal personality, administrative autonomy and its own assets. Since 1981, the Supersociedades has supervised those companies not subject to control by what is now the Financial Superintendency.[24] In 1995, the Supersociedades was empowered to act as conciliator in conflicts between companies and their shareholders as well as conflicts between owners or shareholders. Based on these new functions, *Supersociedades* established an Arbitration and Conciliation Centre. *Supersociedades* was also granted exclusive jurisdictional powers to act as the insolvency judge for companies both in the restructuring of companies and liquidation.

Supersociedades has also promoted the adoption of good corporate governance practices in non-listed companies and small and medium enterprises through an annual monitoring survey and educational seminars, as well as by sanctioning companies which have not complied with legally mandated governance practices.

Article 24 of Law 1564 of 2012, which established the text of the General Procedural Code, gave the *Supersociedades* exclusive jurisdictional powers to review the validity of votes at shareholders' meetings in case of a shareholder's abusive use of the right to vote (for both listed and non-listed companies). Specifically, this regulation refers to:

"the total annulment of a decision adopted in abuse of the right on the grounds of illicit purpose and compensation for damages in the case of majority, minority and parity abuse when shareholders do not exercise their right to vote in the interest of the company and for the purpose of causing damage to the company or the other shareholders or of obtaining unjustified advantage for themselves or a third party as well as when the vote may result in damage to the company or the other shareholders."

Its role in judicial enforcement is discussed in greater detail in Chapter 3 of this report under Principle III.A.2.

The Colombian Stock Exchange (Bolsa de Valores de Colombia – BVC)

The BVC, established in 2001 as a merger of exchanges in Bogota, Medellin and Occidente, gave up its self-regulatory responsibilities when the Securities Market Self-Regulation Corporation (AMV) was established in 2006. This helped pave the way for the Stock Exchange's listing on the exchange in 2007. As one of the few companies on the stock exchange with dispersed ownership, the Exchange has a board of directors with a majority of independent directors, and has established multiple board committees to deal with corporate governance, audit and other matters consistent with international standards. The respective roles of the BVC and AMV in overseeing or promoting good corporate governance in listed companies on the exchange is addressed in greater detail in the next section evaluating Colombia's implementation of Principle I.D calling for stock market regulation to support effective corporate governance.

Overall effectiveness of the corporate governance framework

The Concept Paper guiding corporate governance accession reviews calls for the corporate governance landscape section to make an assessment against key recommendations in Chapter 1 of the Principles. This section therefore builds on the previous introduction of Colombia's corporate governance framework and assesses its implementation in practice, according to

Principles 1.A to 1.F. Taken together, the discussion of Colombia's corporate governance framework for listed companies is distinct from but linked to Colombia's corporate governance framework for state-owned enterprises, described following this section.

Corporate governance framework (Principle 1.A)

The over-arching recommendation of the chapter is that "*The corporate governance framework should promote transparent and fair markets, and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement."* **Principle 1.A** further specifies that the corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and well-functioning markets.

Colombia implements this Principle through its overall legal and regulatory framework, its recently revised and improved comply-or-explain Corporate Governance Code – the Código País (Box 2.3) – and active public enforcement exercised through the Superintendencies of Finance and Companies that are aimed at promoting transparent and efficient markets. The government has been actively working to modernise its corporate governance framework through an extensive series of laws, decrees and regulations generally developed by the Ministry of Finance and Public Credit and implemented by the SFC. This has included recent reforms to implement International Financial Reporting Standards (IFRS) and International Audit Standards (IAS). The Código País complements this framework with voluntary recommendations that the SFC asserts it is promoting with an ultimate goal "to generate a solid culture of corporate governance in Colombia."

The establishment of a special unit in the Ministry of Finance responsible for the development of regulations has led to explicit analysis of the costs and benefits of regulation as part of the rule-making process. The SFC and Ministry of Finance have established formal procedures for issuance of new regulations that include public consultations.

Colombia has also made some progress in terms of initiatives to promote effective functioning of market incentives, such as through the BVC's Investor Relations Recognition index (Box 2.4), aimed at recognising transparent and accessible investor relations practices; and through requirements that pension funds take corporate governance into account in their investments, which has given greater weight to company responses to the Código País recommendations.

Principle I.B states that "The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable."

Colombia's corporate governance legal and regulatory framework is actively enforced by the SFC, the Superintendency of Companies and their internal court systems, which provide also for the right of appeal. Market participants and observers generally suggested that the SFC and Companies Superintendency have good reputations for technically competent staff and even-handed enforcement of the law.

The SFC's decisions are usually appealed but generally upheld and resolved within a reasonable time period. The SFC issued 222 administrative sanctions between 2013 and 2015, 173 of which were appealed to the Superintendent in the first instance. Of the 173 appeals, 52% were upheld, another 15% were modified, and 9% of the cases were overturned (the remainder were still pending as of January 2016). SFC also reported that for the 2011 to 2013 period, appeals were decided within an average period of 7.7 months, a relatively rapid resolution in comparison to other countries in the region. During the more recent period of 2013 to 2015, 67 SFC sanctions were appealed in court, and 50 were upheld.[25] In addition, the AMV issued 75 sanctions during the period of 2011 to 2013 related to market intermediaries which ranged from issuance of warnings and fines to most frequently, suspensions, and in some cases expulsions. The amount of

AMV fines has been gradually increasing, from an average of USD 26 000 between 2010 and 2012, to USD 46 850 in 2013.

The IMF's Financial Stability Assessment (IMF, 2013), assessing compliance with IOSCO Principles of Enforcement of Securities Regulation, found that "The powers of the SFC with respect to administrative enforcement activities and access to records, statements and testimony are extensive …" and that "AMV complements the SFC powers, which include disgorgement, and has undertaken an active disciplinary program that assesses credible, dissuasive and proportionate sanctions."

Nevertheless, the IMF pointed to a "perception that enforcement is sometimes an unduly lengthy process. While recognizing the length and depth required for proper investigation of certain types of complex misconduct; more efforts/resources should be expended to combat fraud and market abuse. The SFC, as augmented by the AMV program, has active monitoring and disciplinary programs, but action to deter misconduct should proceed more quickly, sanctions could be stronger, and more "message" cases could be selected for their deterrent processes."

The IMF review was based on study missions that took place in mid-2012, prior to more recent developments involving the Interbolsa case (See Box 2.5), which has led to 34 pending administrative enforcement cases involving directors, management and other individuals accused of market misconduct, and 37 pending criminal cases. AMV has also stated that it has recently cut the amount of time required to resolve cases by more than half by implementing a new structure and system in 2013 that included prioritization of certain cases, which reduced the time taken to resolve those cases to an average of 10 months, down from the 22.6-month average for cases handled between 2010 and 2012.

While legal provisions allow for private actions against board members or management when they have acted in violation of their legal duties, such cases are rare and some market participants suggest that the costs and time involved in pursuing such suits are prohibitive. Nevertheless, Colombia has taken steps to try to reduce congestion in the civil courts (Law 1564 of 2012), introducing the use of information and communication technologies and streamlined hearing processes to increase efficiency; and establishing judicial functions within the Companies Superintendency and SFC to handle cases within a more efficient time frame (further details are discussed under Principle III.A.2). An additional measure to reduce congestion in the civil courts, Law 1395 of 2010, established requirements to enter into alternative dispute resolution processes as a prior and mandatory requirement before filing through the ordinary court jurisdiction. On the public enforcement side, SFC reported issuing sanctions in 28 cases for "breach of administrator duties" between 2006 and 2014, with a majority of the cases related to conflicts of interest. Fines ranged from USD 17 500 to one case involving a 2010 fine to Interbolsa of USD 130 000.

Colombia's dispersed and complex legal framework makes it challenging to develop a clear understanding within the market of all relevant laws and regulations applying to listed companies. A positive step was the issuance of Decree 2 555 of 2010, providing for a consolidation of financial, insurance and securities market rules into a single measure.

Principle I.C states that "The division of the responsibilities among different authorities in a jurisdiction should be clearly articulated and designed to serve the public interest."

The establishment of the SFC in 2005 as an integrated supervisor of Colombia's financial system and securities market, consolidating the former securities supervisor with the supervisor of banking, trusts, insurance and pension funds into a single entity, was an important step towards ensuring an integrated and well-co-ordinated approach to supervision of the market. A range of additional mechanisms have been established to support effective co-ordination and clear division of responsibilities among the different entities responsible for market regulation and supervision.

A Financial System Monitoring Committee (CCSSF) meets quarterly and as necessary for extraordinary meetings to share information and co-ordinate actions relevant to financial system oversight. The Committee comprises representatives of:

- SFC, responsible for the supervision and control of financial institutions in order to ensure the soundness and stability of the financial system;
- the Ministry of Finance and Public Credit, responsible for issuing the regulation of financial activities, management of public resources and funding related to systemic crises;
- the Central Bank (Banco de la República), responsible for monetary policy and the regulation of foreign-exchange and credit policies and serving as a lender of last resort in exceptional cases; and
- Fogafin, responsible for the administration of deposit insurance for credit institutions.

In addition to sharing information and co-ordinating action with respect to financial institutions, including co-operative inspection of supervised companies when circumstances demand it, the Committee also promotes the uniformity of information and computer systems and use of uniform indicators systems, the co-ordinated implementation of warning signs, and diagnosis and submission of financial statements to controlled entities.

Other important supervisory bodies for the market include the Superintendence of Companies (*Supersociedades),* responsible for oversight of non-listed companies that do not perform financial activities, which also plays an important role with respect to conglomerates comprised of listed and non-listed companies; the Central Board of Accountants, a public supervisory entity for the accounting profession described under Principle V.C, responsible for oversight, certification and sanctioning of accountants and accounting firms; and the Securities Market Self-Regulatory Corporation (AMV), created in 2006 for the self-regulation of market intermediaries under the oversight of the SFC.

The SFC and AMV's respective responsibilities are established by law and further co-ordinated as agreed through a Memorandum of Understanding. The 2013 IMF FSAP recommended the creation of a separate enforcement function to coordinate efforts between the two institutions, and called for "further efforts to increase the promptness and sufficiency of sanctioning procedures." It found that "administrative procedures may be more timely and effective than criminal procedures." The AMV reported that it has responded to this concern by reducing the average length of sanctioning procedures by half for a selected number of high-priority cases.

Finally, an additional instrument of co-ordination is the SFC's Consultant Committee, established through Decree 422 of 2006. Its members are freely appointed and removed by the President, and currently include an economist who is the former director of the Central Bank; a legal adviser to the National Planning Department; a lawyer who is a former General Secretary of Fogafin; a Vice Minister of the Ministry of Finance and Public Credit; and an economist who serves as a consultant to the regulatory direction of the Ministry of Finance and Public Credit. The Committee provides legally non-binding advice to the Superintendent on economic, financial, securities market or general regulatory topics. He may convene the Committee when he considers it convenient but is "obliged" to hear it in cases involving granting of the operating license or constitution of a company overseen by the SFC or involving its conversion, merger, acquisition, transformation, division or transfer of assets, liabilities and contracts; the adoption of instruments of rescue and protection of public trust; to take immediate possession of the property, assets and business of a supervised company and to decide whether management or liquidation is adopted; and for the approval of the SFC's strategic plan.

Principle 1.D recommends that "*Stock market regulation should support effective corporate governance."*

As noted in the corporate governance landscape section of this report, with the Colombia Stock Exchange (BVC) listed as a company on its own Exchange since 2007, the Colombian government has assigned the supervision and enforcement of regulation of the stock market to be primarily the responsibility of the SFC, with certain responsibilities assigned to the Securities Market Self-Regulation Corporation (AMV) for self-regulation of market intermediaries such as stock brokers and investment managers. The AMV works on a complementary basis with SFC, which maintains overall responsibility for oversight of intermediaries.

Nevertheless, the Colombian Stock Exchange has established some basic requirements for equity listings, including that the issuer has a minimum of 10% free float, at least 100 shareholders, a minimum equity value of USD 3.5 million, that they maintain a web page for investors, and that they follow certain additional disclosure rules. While the BVC does not issue sanctions and has not forced any companies to de-list, it can make requests to the SFC, for example, to order a company to make a public tender offer for delisting. Additionally, the stock exchange has a duty to monitor the deals, positions and operations performed or recorded through their systems to verify compliance with the obligations of its members under Decree 2555.

The BVC is also subject to the same regulatory requirements and recommendations of the *Código País* as other listed companies with respect to its own corporate governance practices. The Exchange has a board of directors with a majority of independent directors, and has established multiple board committees to deal with corporate governance, audit and other matters consistent with international standards.

The BVC has played an active role in promoting corporate governance in Colombia, with support from the CAF Latin American Development Bank, Inter-American Development Bank and others. In 2002, it implemented a pilot plan under which it worked with consultants to improve the corporate governance of ten listed and non-listed companies. In addition, the BVC created the Colombia Capital programme which has launched numerous initiatives to improve corporate governance practices and communication between issuers and investors. Its most recent major initiative is the Investor Relations Recognition Initiative, setting out best practice standards for management of investor relations that 28 listed companies have committed to follow (See Box 2.4).

The Securities Market Self-Regulation Corporation (AMV), a non-profit private institution created in 2006 for the self-regulation of market intermediaries such as stock brokers and investment fund managers, maintains overall responsibility for oversight of intermediaries. An MOU between the SFC and AMV sets out a division of responsibilities which gives SFC responsibility for prudential oversight and measures related to liquidity, while AMV reviews misconduct in the market. In many cases the two institutions work together on enforcement cases, splitting up sanctioning processes based on their respective responsibilities.

The AMV has a 10-member board comprised of the heads of the five main associations of market intermediaries that make up its membership (pension funds, insurance, banks, brokers and trust companies), and five members classified as independent, with each member association given the right to appoint one independent member. Some questions have been raised as to whether this structure provides for sufficient independence of the board, but legal restrictions are established to keep the board from reviewing individual cases where they could have a potential conflict of interest. AMV commissioned a consultant's report (Carson, 2014), which contained a number of recommendations to strengthen AMV's governance. The report found that AMV's board structure and board governance system provide a sound level of independence in the context of a self-regulatory organization, meeting and even exceeding international SRO standards. On the other hand, it also recommended establishing a more elaborate process of board nomination and selection based on transparent criteria; participation of the full membership in votes for independent directors; and stronger board responsibilities to oversee AMV's programme of work and strategic directions.

Box 2.4. **The Colombia Stock Exchange's investor relations initiative**

The Colombia Stock Exchange (BVC) established the Colombian Investor Relations Recognition initiative (hereinafter IRR) to incentivize issuers to implement higher standards of transparency, disclosure and investor relations in Colombia. The main purpose is to have a stronger capital market that facilitates interaction with local and international investors.

The BVC provides annual certification of issuers (equity and debt) that have met the best practice standards to participate in the IRR. As part of this initiative, BVC has also created a stock index, COLIR, comprised of the most liquid issuers with IR best practices, complementing the traditional COL20. As of June 2014, 28 issuers have been recognized, including the main financial and non-financial issuers.

Among the best practice standards that its adherents must adopt include:

- Having an investor relations officer (IRO) available to interact in English and Spanish (an IRO is not required by regulation, nor to list).
- Disclosure of quarterly consolidated balance and income statement (consolidation is only required annually by law).
- An updated website with high standards of information, both in English and Spanish, including among others:
  - Corporate structure (including subsidiaries local and off-shore);
  - Corporate governance documents (governance code, ethics code, AGM and board regulation);
  - Copy of the comply-or-explain report of the *Código País*;
  - CVs of directors and officers;
  - Social responsibility commitments;
  - Copy of material information sent to SFC;
  - List of equity analysts that follow their stock.
- Quarterly events (conference calls) required to investors.

Source : BVC and Andres Bernal, Governance Consultants

However, AMV has adopted the Principles of Corporate Governance as its guidelines, and its management cites a number of steps taken to strengthen corporate governance of the intermediaries it oversees. These include new guidelines to support implementation of regulatory requirements for dealing with conflicts of interest; implementation of an ethics standard in its certification process for intermediaries; and adoption of a risk-based supervision model in 2013 to evaluate and promote improvements to the governance system of the intermediaries it oversees. In addition, under Decree 4759 of 2005, members of stock markets and independent stock brokerages as well as investment fund managers must have a Client Defender who responds to complaints within a maximum period of five working days. Finally, in 2014, the SFC approved amendments to the AMV regulation to establish a new organizational scheme with the aim of i) integrating activities and related processes; ii) reducing hierarchical levels; and iii) simplifying reporting lines.

Principle I.E calls for supervisory, regulatory and enforcement authorities to *"have the authority, integrity and resources to fulfil their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent, and fully explained."*

The Ministry of Finance and Public Credit as principle issuer of financial market regulations and the SFC as the main supervisory and enforcement body for listed companies, appear to have the

authority and resources necessary to fulfil their duties in a professional and objective manner. Market participants generally suggest that SFC has a positive reputation for technical competence and professional conduct, and it appears to be fully transparent in communicating its activities and rulings.

SFC has substantial independence from political intervention in its budget through its reliance on fees from supervised institutions to cover approximately 95% of its budget costs. The amount received from contributions was 175 billion Colombian pesos (COP) in 2015 (USD 55.7 million), down slightly from the level of 191 billion COP in 2014 but roughly equal to 2013 levels. These revenues are supplemented by smaller amounts received mainly from sanctions revenues related to consumer protection. The SFC made use of a budget surplus to maintain an overall budget of 198.8 billion pesos (USD 63.1 million) in 2015, a slight increase over previous levels.[26] SFC had 868 employees as of 2014, up from 732 staff in 2010. Only a small proportion of these staff are assigned to oversight of issuers in the real (non-financial sector), including an issuers division with just 10 people. Due to recent reorganization within SFC and increased responsibilities, it is planned to increase the number of employees by 288 persons, while the number of staff assigned to oversight of issuers in the real (non-financial) sector will increase by 10 persons, according to the SFC.

The SFC budget must be presented by the Ministry of Finance to Congress for approval on an annual basis. The Superintendent has full discretion to allocate funds to the priorities identified by the SFC, but must also receive Congressional approval for budget additions when necessary, an approval procedure applicable to all central public entities. The only case reported in which Congress allocated additional funds for a specific priority occurred in 2011, when USD 2.3 million was earmarked for SFC to deal with claims against it in the aftermath of the collapse in late 2008 of a series of pyramid financial investment schemes.

The 2014 CGC accession review raised a concern that in Colombia, the Superintendents of Financial Institutions and Companies were appointed for indefinite periods, and could also be removed by the President without any requirement to specify causes. While market observers generally have stated that the SFC conducts its operations with professional objectivity, it faced a period of substantial turnover in the mid-2000s with three consecutive superintendents serving for periods of less than two years each between 2006 and 2010. A period of relative stability followed with Gerardo Hernandez Correa's appointment in 2010 and the reconfirmation of his appointment with the new Presidential term beginning in 2014. However, the Office of the Procurador (Grand Inspector General) issued a report in November 2013 calling for the dismissal of Mr. Hernandez and two other top SFC officials, banning them from serving in public office for a period of 12 years for SFC's alleged failure to take sufficient and timely enough action in relation to the Interbolsa case (see Box 2.5). Mr. Hernandez appealed the case to the head of the Procurador, who subsequently amended the ruling in March 2015, suspending Mr. Hernandez for a period of 10 months, while two other officials were suspended for eight months. In Mr. Hernandez's absence, Jorge Castaño Gutierrez served as SFC's Superintendent until Hernandez's return to his position on 8 February, 2016. Mr. Hernandez was subsequently appointed in early 2017 to a position on the board of Colombia's Central Bank, and Mr. Castaño Gutierrez has been appointed as his successor at the SFC until 7 August, 2018, the date on which the term of the President is due to end.

In order to strengthen the framework for supervisory independence, the Government of Colombia issued Decree 1817 on 15 September 2015, which covers not only the Superintendent of Finance but also the Superintendent of Companies and Superintendent of Industry and Commerce. The power of appointment and dismissal remains with the President of the Republic, but is now subject to certain minimum qualifying requirements, including a professional and advanced degree in areas related to the function of the positions, and 10 years of relevant professional experience in the public or private sector or as a university professor in related disciplines. The Superintendents' terms will be the same as the Presidential term. Any decision to dismiss a

Superintendent prior to the completion of the term must be accompanied by an administrative Act explaining the motivations for the dismissal. The 2017 appointment of Mr. Castaño Gutierrez to head the SFC was made in accordance with the new Decree, according to the Colombian authorities.

While the Committee also sought to have Colombia adopt specific criteria that would be necessary to meet in order to justify early dismissal, Colombia's updated self-assessment states that Colombia's Law 734 of 2002, applicable to Superintendents as public servants, provides relevant criteria for the fulfilment of their duties and potential sanctions, including dismissal, for misconduct. Such misconduct may be found in relation to "a breach of duties, exceeded limits of rights and duties, violations of inabilities, incompatibilities, impediments and conflict of interest regime." Article 34 of the law requires such public servants to "fulfil with diligence, efficiency and impartiality the service that has been assigned, and refrain from any act or omission that causes suspension or unjustified disruption of an essential service, or that implies abuse or misuse of his position or function."

The 2014 CGC report pointed to the issue of the personal liability of the Superintendent and other SFC officials for their actions carried out in the course of their duties as a potential deterrent to timely enforcement actions. It called on the SFC and Superintendency of Companies to protect the Superintendent and other public officials from personal liability for actions taken in the course of their official duties; and to clarify that liability for failure to perform the regulatory mandate in good faith should be defined as equivalent to acting in bad faith, and that the judicial authorities can limit circumstances in which private parties can sue. The annual Colombia Budget laws for 2016 and 2017 allow state entities, including the SFC, to purchase "civil liability insurance" to cover the costs of public officials' legal expenses incurred with respect to disciplinary, criminal and fiscal processes related to acts that occur in the exercise of their functions. The State may also pay legal expenses for public officials under specific conditions when a) the public servant is exonerated from liability, and b) the natural or legal person who sued the public official has not been required to pay all the costs of prosecution.

The practice of providing insurance for public officials to cover the costs of legal, criminal and fiscal processes related to carrying out their duties is not new. The SFC reported that between April 2009 and February 2015, 20 administrative or judicial proceedings have been initiated against SFC officials, including Superintendents, Superintendent Delegates, Directors and other officials. The amounts claimed in these procedures totalled USD 263 014, while the decisions ultimately reached through legal proceedings required payments of USD 84 050, all of which have been paid by the insurance, requiring no out-of-pocket payments by the officials involved. The 2014 CGC report notes that the insurance company may sue the officer to recover costs paid by the insurance company in case of seriously criminal behaviour (*culpa grave)*. In addition, Article 90 of the Colombian Constitution requires the state to answer materially for any type of damages that can be attributed to illegal action, or caused by deeds of commission or omission by the public authorities. However, "in the event that the state is ordered to compensate damage which may have been the consequence of the fraudulent or seriously criminal behaviour of one of its agents, the former [the state] will have to claim restitution from the latter [the public official]."

The SFC has taken the position that further actions to give SFC staff additional protections or legal clarifications would imply a kind of "special jurisdiction" requiring a constitutional reform and would not be viable in the current political context. Moreover, they assert that because the only circumstances in which SFC staff are not protected are in cases involving fraudulent or seriously criminal behaviour, they consider that this is not a major aspect of maintaining effective enforcement authority.

Box 2.5. **The Interbolsa Case and its implications for Colombia's corporate governance and enforcement framework**

Interbolsa, Colombia's largest stock exchange broker until its bankruptcy in November 2012, was at the centre of what may be Colombia's greatest market scandal and also what has become the occasion for Colombia's most extensive and elaborate actions to prosecute corporate officials and some of their clients for conduct related to conflicts of interest, insider trading, market manipulation and neglect of director duties.

Interbolsa, which was established in the 1990s, was a key player in the Colombian capital markets due to its innovative products and its tendency to take riskier positions in the market. In 2012, just before its bankruptcy, Interbolsa handled approximately 25% of the transactions within the Colombia capital markets, according to SFC data, and had assets of over USD 750 million and more than an estimated USD 4.5 billion under management.[27] Most of Interbolsa's successful growth was associated with the development of the market for public debt during the decade of 2000, a market which mobilized over USD 120 billion in resources, according to statistics of the Colombian Central Bank (Banco de la Republica). Interbolsa was one of the largest brokers of public debt during that period.[28]

Since 2008, the company group called "Grupo Interbolsa", participated in several financial vehicles, some supervised by the SFC (the stock broker company Interbolsa SCB and the administrator of private equity funds and investment funds Interbolsa SAI)), and some not supervised, with direct investment in corporations or through its main shareholders. These non-financial investments included the commodities stock exchange (Bolsa Mercantil of Colombia – BMC), an airline (EasyFly) a textile company (Fabricato), and a private fund in Curaçao, among others.

Fabricato, a listed company since 1981, played a key role in the Interbolsa case. During the last decade, the textiles-producing company faced ongoing financial problems stemming from the lack of a competitive position for exports to the United States. However, some analysts considered that Fabricato may have had an opportunity for growth, due to the approval of the free trade agreement between Colombia and the US in 2011, a potential merger with a Brazilian company and its valued real estate in Antioquia.[29] Based on these findings, "Grupo Interbolsa" started an aggressive position to acquire stock of Fabricato directly, advised its clients to buy, and lent capital to some related investors (including the Premium Fund and Grupo Corridori) to acquire shares and derivatives convertible in stock.[30] Consequently, Fabricato shares jumped from 29 Colombian pesos (COP) to a high of COP 84 during 2011. By the beginning of November, 2012, "Grupo Interbolsa" was experiencing liquidity problems. The stock broker company Interbolsa SCB defaulted on payments, bringing about the liquidation of Interbolsa SCB by the SFC on 7 November, 2012. Some of the related parties of "Grupo Interbolsa" who had REPO operations (short-term re-purchasing agreements) with stocks of Fabricato announced their impossibility to pay, a situation that led to the decision by the SFC to freeze the sale of the stocks of Fabricato pending the availability of more information for the market. By the time trading of Fabricato shares were re-authorized in March 2013, its share values had plunged to COP 23.

From a corporate governance perspective, the case has generated enormous attention and debate around the lessons to be learned and actions needed to prevent its recurrence. Some, including the Inspector General, have argued that the oversight system did not function correctly, and that the SFC (and by implication the AMV as well) should have intervened more assertively and earlier to alert the Attorney General and to protect investors who had REPO operations backed with Fabricato stocks, who were allegedly being misled by Interbolsa SCB. Nevertheless, there was also a public recognition that the decisions made by the economic authorities prevented a systemic crisis, given the size and the interconnectedness of the liquidated stock broker company with the financial system.

Others have been critical of the wider set of market actors such as market analysts and financial journalists who should have alerted the public that there was no obvious explanation for why Fabricato's share prices kept rising despite the absence of underlying fundamentals to support the rapid rise.

Still others point to positive outcomes from the process that show that violations related to market manipulation, insider trading, and conflicts of interest will be punished in the Colombian market. At the time this report was written (July, 2014), 37 people involved in the Interbolsa case including directors and officers, had criminal charges pending for infractions related to market manipulation, insider trading, unfair administration and conspiracy. The Attorney General's office has created a specialized judicial police unit for economic and financial crimes, and the SFC has committed four people from its staff to help in their investigations and processes.

Box 2.5. **The Interbolsa Case and its implications for Colombia's corporate governance and enforcement framework** (cont.)

As of January, 2015, SFC reported that in total it had carried out 40 investigations and had imposed sanctions in all cases (27 in force, with 13 under appeal) for offenses relating mainly to breach of director and professional duties, supplying privileged information, price manipulation, and provision of false or misleading information. . As of March 2014, fines imposed had exceeded USD 1.1 million, and three sanctions had disqualified violators from participating in the market for five years. AMV had issued 10 sanctions to traders involving an average fine of USD 22 000 and including five suspensions and five expulsions from the market, and had another 23 investigations pending as of July 2014. The Attorney General's office estimated that Interbolsa suffered losses of USD 197 million, affecting 482 victims, according to an April 2014 Attorney General's office press release. The Attorney General's office reported that the Premium Fund had lost USD161 million, affecting 1 026 alleged victims.[31] The Attorney General's office also reported 40 ongoing investigations as of January 2016, all related to the Interbolsa case and Premium Fund, generally related to "fraudulent handling of species listed in the National Securities and Issuers Register – market manipulation and unfair administration."

The Colombian equity market suffered from a 13.64% drop in trading volumes during 2013 following the scandal, according to SFC data. Equity transactions and especially REPO operations collateralized with stocks were the most affected with a decrease of 33.26%. Following the Interbolsa bankruptcy there has been a consolidation of local broker-dealers, with an important participation of foreign investors (including transactions for Corredores Asociados, Bolsa y Renta and Correval during 2013).

The case has reportedly strengthened Colombian market consciousness of the importance of corporate governance, especially for boards of directors, their audit committees and their independent directors in holding and subsidiary companies, who have become more aware of their roles and responsibilities.

It has also increased attention given to the role and responsibility of market regulators, including the importance of co-ordination between the SFC and AMV; the scope and effectiveness of SFC's supervision of conglomerates (financial and non-financial) and of related party transactions of financial entities; the importance of having effective internal and external auditors; and the lack of transparency of off-shore transactions.

It is widely recognized in Colombia that this crisis tested the institutional framework in which local economic authorities including the Central Bank, Finance Ministry, SFC, AMV, Stock Exchange and financial system as a whole co-ordinated their actions to prevent systemic risks to market liquidity and confidence. It is against this background that new regulations were issued tightening oversight of trust companies, collective investment funds, and credit rating agencies. The SFC has also issued an updated comply-or-explain national corporate governance code, the *Código País*, with much more detailed recommendations for good market practices.

Sources : SFC, press reports, Andres Bernal of Governance Consultants

A second weakness identified by the IMF was the SFC's lack of supervisory and regulatory powers over the holding company of a financial conglomerate. The SFC has authority to supervise and review transactions and risks to the market with respect to the different companies within the conglomerate, but has lacked this authority with respect to the holding company itself.

New legislation enacted in June 2017, to be implemented through secondary regulation, will provide the SFC with new supervisory and regulatory powers over the holding company of a financial conglomerate. The new law authorises the government to establish prudential requirements for the holding company with respect to solvency, corporate governance and related party transactions; and gives SFC supervisory powers over the holding company empowering it to 1) order changes in the structure of the conglomerate when the non-supervised entity does not provide the necessary information to perform a consolidated supervision or it generates a risk affecting the group; and 2) to request information from the non-supervised entities' natural or legal persons, either national or foreign, that are part of the conglomerate. The new legislation is a response to an issue that arose in the context of the 2012 Interbolsa scandal. The SFC already had authority to supervise and review transactions and risks to the market with respect to the different companies within the conglomerate, but lacked this authority with respect to the holding company itself.

The new law will:

- Establish a definition of financial conglomerates and financial holdings in order to ensure that financial conglomerates comply with prudential and risk management standards and that they are supervised on a consolidated basis;
- Ensure that the supervisor has timely access to information on the structure of financial conglomerates and their activities; and
- Promote a coherent corporate governance framework for financial conglomerates.

The SFC reported the law will provide them with new authority to oversee and request information from an estimated 37 non-listed holding companies, as well as authority and responsibility to obtain information from affiliated companies located in foreign jurisdictions. A significant impact of the law relates to how the definition for financial conglomerates will be applied to Grupo Empresarial Antioqueño, Colombia's largest economic group, which under the previous legal framework was not defined as a company group but rather as several separate entities, including some of Colombia's largest listed companies. With these entities defined as a single group, different requirements for related party transactions and management of conflicts of interest with respect to investment funds owned by the group could be applied.

Principle I.F calls for cross-border co-operation to be enhanced, including through bilateral and multilateral arrangements for exchange of information. Colombia has extensive arrangements to address this Principle. It is an adherent to IOSCO's Multilateral Memorandum of Understanding on co-operation and exchange of information to facilitate cross-border enforcement cases. Other multilateral agreements on information exchange and mutual co-operation have been signed with members of the Central American Council of Superintendents of Banks, Insurance and Other Financial Institutions (CCSBSO); and the Association of Insurance Supervisors of Latin America (ASSAL). It is also active in all major regional and international organisations involved in supporting regulatory co-operation.

The SFC has also signed Memoranda of Understanding for exchange of information and cooperation with most supervisors of countries where Colombia's supervised entities have subordinates, as well as those jurisdictions whose entities have a presence in Colombia.

Finally, the SFC and BVC work particularly closely with Chile, Mexico and Peru as members of the Integrated Latin American Market (MILA) initiative to support a common platform for integration of trading across the four participating countries across all four countries.

Overview of the Colombian SOE sector

The Working Party's 2013 review of Colombia against the SOE Guidelines identified 70 fully and partly-owned SOEs with at least 10% direct or indirect national ownership. By the time the government issued its national ownership policy in November 2015, it reported ownership of 111 fully or partly owned enterprises, which also included enterprises with less than 10% national ownership.

A list submitted to the OECD on 16 March 2016 provides information on 102 fully or partly-owned SOEs, with an asset value of USD 115.9 billion, or 32% of national GDP. According to MHCP 2014 figures, these SOEs generated income of USD 5.3 billion. The refined list has excluded some enterprises that have been privatised or liquidated, entities considered to be public agencies, and enterprises that have only social purposes, where the Guidelines are considered to be less directly applicable. Most enterprises under the ownership of the Ministry of Defence have also been excluded for national security reasons[32] or because they have been categorised as public agencies or non-commercial in nature.

The list of 102 SOEs can more usefully be broken down into 56 where the state has direct or indirect majority ownership of at least 51% (including 16 subsidiaries of SOEs), attached as Annex A; another 27 (including 2 subsidiaries) for which the government owns either directly or indirectly between 10% and 50% of the enterprises (Annex B). The national government owns less than 10% of the remaining 19 enterprises (Annex C), and has indicated that it intends to assign responsibility for management and/or disposal of these assets to CISA (*Central de Inversiones)*, an SOE within the MHCP portfolio responsible for asset management. This list includes all SOEs providing information to the MHCP's public financial information system, known as CHIP.[33]

Subsequent to the preparation of these three annexes and following a request for updated information prior to publication of this report, the MHCP provided the OECD with a new count of SOEs in June 2017. The MHCP reported that as of the end of 2016, the MHCP's Directorate of SOEs has gone beyond the information reported to the General Accounting Office through the MHCP's CHIP system and undertook a search of every stake held by the national government through the ministries. They found that some SOEs with minority government stakes don't report any information to the CHIP and the report of subsidiary companies was not completed. The Annual Report of SOEs in Colombia released in May 2017 by the MHCP contained updated figures of SOEs based on reporting by each Ministry according to their accounting information. Nevertheless, the new data do not significantly change the government's analysis of the composition of the portfolio in so far as the value invested in the minority stakes is very low. By 2016, the MHCP identified 119 directly-owned enterprises fully or partly owned. This includes 40 SOEs where the state has direct majority ownership of at least 50%; another 34 for which the government owns directly between 10% and 50% of the enterprises. The National Government owns less than 10% of the remaining 45 enterprises. However, there could be even more minority stakes in decentralized national entities which are part of the Central Government but do not report any financial information to the Ministries they are linked to. After requesting information from several decentralized national entities, 20 additional minority stakes were identified in addition to the 119 reported on in the Annual Report.

This review focuses primarily on the SOEs where the state has majority control. Under the new count, the MHCP reports that the government has majority control over 40 SOEs and 47 subsidiaries, rather than the number 56 (which included 40 directly owned SOEs and 16 indirectly-owned subsidiaries) that were reported during the Committee and Working Party's reviews undertaken at the beginning of 2016 (and shown in Annex A). The OECD's focus on majority-owned SOEs is consistent with the SOE Guidelines: insofar as the Colombian government generally does not exercise disproportional rights in the companies where it is a minority investor, these companies are not considered as SOEs in the sense of the Guidelines. The government's ownership policy also gives priority to these SOEs, but applies to all enterprises with state ownership. Majority-owned SOEs account for the vast majority of the government's state-owned assets (95%), while the partly-owned SOEs account for just 4% of the government's portfolio, and the remaining enterprises with less than 10% ownership account for less than 1%.

Within the 40 majority-owned SOEs, the ownership rights in all but a few of the largest companies are either exercised solely by the MHCP or in a dual structure within which the MHCP has the lead. These companies comprised 88.5% of the government's majority-owned SOE portfolio. In terms of overall numbers, 21 of the 40 SOEs are under the MHCP's lead co-ordination.

In terms of sectoral distribution, the SOE sector is dominated by 6 companies in the oil and gas sector (mainly Ecopetrol and its subsidiaries), constituting 67% of the value of all assets; 17 companies in the finance and insurance sector, accounting for 23.6% of assets; and 13 companies in the energy sector, comprising 7.6% of the government's portfolio. While these 3 sectors accounted for 98% of the government's assets, the remaining group of 20 smaller SOEs are spread

out among transportation and telecommunications, food and agriculture, health and remaining diverse SOEs that Colombia has categorised as "other".

Following the government's sale of its 57.6% stake in Isagen, completed in January 2016, the central government currently owns just two listed SOEs - *Ecopetrol* and *Interconexión Eléctrica S.A. E.S.P* (ISA). While Ecopetrol in 2012 comprised 47% of the value of Colombian equity market capitalisation, its value has dropped substantially since then, from COP 5 850 (USD 3.31) in 2012 to COP 1 385 (USD 0.46) at the end of 2016, in parallel with a substantial fall in oil prices during the same period. As of the end of 2016, it was still the stock market's largest company, representing 18.2% of total market capitalisation. ISA comprised an additional 3.4% of market capitalisation as of the end of 2016. The state has 88.5% ownership of Ecopetrol, and a 56.7% share of ISA. Ecopetrol, ISA and an additional 12 enterprises in the government's portfolio (as noted in Annexes A, B and C) have registered securities and are subject to SFC's supervision and disclosure requirements, including reporting on their corporate governance practices against the recommendations of the national corporate governance code, the *Código País*.

Colombia also has numerous SOEs at the regional and municipal level, which, since their control falls outside the scope of the central government, are not covered by this report. However, it is important to note that some are important players in their markets and have good corporate governance standards as, for example, in the case of *Empresas Públicas de Medellín* (EPM), while others, such as a number of utilities that serve the capital city, are important players at a regional level, and some are even listed. However, according to experts interviewed for this report, there are also many sub-national SOEs in which corruption and mismanagement represent a serious problem.

The Colombian government is divided by administrative sectors in accordance with the different areas of state activity, with enterprises owned by the central government distributed depending on regulatory affinity. As a result, they are assigned to different ministries that include principally the MHCP, the Defence Ministry (MD), the Mines and Energy Ministry (MME), the Ministry of Commerce, Industry and Tourism (MCIT), as well as others that include the Ministry of Agriculture, the Ministry of Transport and the Ministry of Health and Social Protection. In parallel, the government has issued norms of a general nature which apply to all companies, whether privately or state-owned, independently of the ministry responsible for them, such as the Utilities Law and the Organic Statute of the Financial System.

Colombia's SOEs are organised mostly as either statutory corporations or joint stock companies, discussed in greater detail later in this chapter, and specified for each SOE in Annexes A, B and C. Law 489 of 1998, which established the general structure of the state, stipulates that SOEs have administrative and financial autonomy and their own assets. They can, therefore, be subject to private law and undertake for-profit industrial or commercial activities but, due to the contribution of state capital and the relation that the law establishes between these enterprises and the different bodies of the state, remain state activities.[34]

In general, the relations of Colombian SOEs with the different ministries (or administrative departments) take the form of what under Colombian administrative law is defined as *vinculación* (linkage), which offers more autonomy from the central government to SOEs than that offered to other bodies subject to *adscripción* (ascription). The linkage is usually determined when an SOE is created, along with its legal form and starting capital, and, unless its charter states otherwise, the relationship may, depending on the decision of the legislature, be with any ministry or administrative department related to its activities. This decision may subsequently be revised, subject to compliance with same original formalities.

This relationship of SOEs to ministries and administrative departments implies that, notwithstanding their autonomy as decentralised bodies, they are subject to control by the central government. This control is not of a hierarchical nature but takes the form of “tutelage” by the ministries or administrative departments for which the SOEs are an instrument of coordination for

the implementation of their policies.[35] Under this tutelage, the ministry or administrative department must ensure the legality of an SOE's administrative actions and monitor its compliance with public policies. It also usually implies that officials from the ministry or administrative department sit on its board of directors.

It is fairly common for Colombian SOEs to be linked to one ministry but to have its ownership rights exercised by another. This is the case of a number of SOEs administered by the MHCP, despite being linked formally to other ministries. The Working Party's 2013 review of Colombia against the Guidelines found that, barring some specific exceptions,[36] there are no formal mechanisms for resolving the discrepancies that can, in these cases, arise as a result of the different points of view of ministries as regards decisions that correspond to the state as owner.

However, the government's new ownership policy (see Box 2.6), adopted in November 2015, seeks to address this by establishing enhanced co-ordination in the short-term to be led by a new Directorate General of SOEs in the MHCP, established in December 2015, along with related co-ordination mechanisms. To allow time to assess initial experience with the DG's co-ordinating role, the ownership policy calls for the development of legislation during 2018 that would establish the Directorate General of SOEs as an independent and autonomous entity responsible for carrying out the government's ownership policy.

Box 2.6. **The Colombian national ownership policy**

Colombia's National Council for Economic and Social Policy (CONPES) issued a comprehensive "General Ownership Policy for State-Owned Enterprises of the National Level" on 23 November, 2015 (CONPES Document 3851). The Council is headed by the President and includes all relevant ministers and additional officials responsible for the government's economic and social policy. The 54-page document (plus annexes) sets out an ambitious programme for first enhancing co-ordination and corporate governance practices of all Colombian SOEs, and ultimately instituting a fully centralised ownership function. The annexes provide information on the 102 Colombian SOEs that are subject to this policy and set out a time-frame for implementation with specific deliverables for every six-month period through 2019.

In an updated submission describing how it is complying with the revised 2015 Guidelines provided to the Secretariat in December 2015, The Colombian authorities summarised the ownership policy's key measures as follows:

- Establishes the steps to gradually centralize ownership of all SOEs under a single State entity, to be completed by 2019. As a transitory measure, it creates coordination mechanisms among all entities currently exercising ownership functions.
- Highlights the importance that SOE boards exercise their responsibilities with autonomy and sets forth specific actions to strengthen their role.
- Establishes guidelines to implement well-structured, merit-based and transparent board nomination processes.
- Creates instruments for the government to transparently set and monitor broad mandates and objectives for SOEs, including financial targets.
- Sets up reporting systems to regularly asses SOE performance and compliance with corporate governance standards.
- Dictates that the Colombian government will start producing annual reports of the SOE sector, with consolidated and standardized information.
- Mentions the importance to revise SOE board remuneration to determine if they are setting the right level to attract and retain professionals of the adequate level and experience, without paying more than necessary.

An additional key reform will be the removal of Ministers from the boards of directors of all 12 SOEs where they were serving as board members in 2015. Further details on these measures, and on the different institutions assigned or established to promote and monitor their implementation are discussed in greater detail in subsequent sections of this report.

Colombian presidential system

Like many other Latin American countries, Colombia has a presidential political system under which the President of the Republic plays an important role in state affairs. In the case of SOEs, this is reflected in the role played by ministries as representatives of the executive as well as in the role played directly by the President.

Under the statutes and charters of some SOEs, it is the President who nominates their CEOs and some members of the board, in accordance with the terms of their statutes which may stipulate minimum requirements or characteristics for the corresponding posts. In addition, the President's powers include the appointment of the presidents, directors or managers of national public institutions and of all other officials who do not have to be selected competitively.

Under Colombian law, all state entities, including enterprises in which the state holds a stake of 90% or more, must have offices responsible for their internal control. Under Law 87 of 1993 and the Anti-Corruption Statute, it is the President of the Republic who appoints the head of the internal control office of the executive branch's national state bodies.[37] The Directorate of the National Internal Control System, which reports to the President of the Republic, establishes a system of organisation and set of plans that include verification and evaluation methods, principles, norms, procedures and mechanisms which all bodies subject to internal control must adopt.

In utilities, a sector that is important in the activities of Colombian SOEs, the President of the Republic has the authority to complement the law and establish general policies on administration and efficiency as well as for the control, inspection and supervision of these companies. Under Law 819 of 2003, the Colombian Congress determined that the state's interests must be represented on the boards of utility companies by MHCP officials. Under related norms, issued subsequently by the President of the Republic, the boards of all these companies must include at least one MHCP official.

The President of the Republic also plays a significant role in setting the remuneration of the state's representatives on the boards of some SOEs. Law 4 of 1992 states that public employees may not receive more than one remuneration that has its origin in the National Treasury but makes an exception in the case of the fees received by public employees as directors of SOEs. In this case, the President of the Republic has delegated the task of setting the remuneration of directors of SOEs in which the state holds a majority stake to the Minister of Finance. The President has, in addition, delegated the power to establish the salary regime of the public employees of bodies that include non-financial SOEs linked to the MHCP and the presidents of state financial entities.

Ministry of Finance and Public Credit (MHCP)

Under Colombia's Constitution, the state must foster business development, guard against the obstruction or restriction of economic freedom and prevent or regulate dominant domestic market positions by individuals or companies. The Ministry of Finance and Public Credit (MHCP) is the principal body responsible for the economy's general management and is, therefore, the single most important player as regards state ownership of companies. Its portfolio represents 88.5% of government assets and includes eight of the government's 10 largest SOEs, including its two listed SOEs. According to MHCP figures, the principal companies in the portfolio had a value of USD 22 billion and generated annual revenues of approximately USD 1.5 billion in 2016.

The MHCP's responsibilities as regards SOEs include administration of the state's shares in companies linked to the Ministry or subject to its administration through intra-administration contracts or other legal provisions. They also include participation in the preparation, modification and monitoring of the budgets of some SOEs where the state holds 90% or more of the shares. It is, therefore, responsible for monitoring the financial management and investments

of decentralised national entities, guiding management of the companies linked to it and of the bodies ascribed or linked to it. It must also co-ordinate sales of SOE's assets and shares.

Prior to the establishment in December 2015 of a Directorate General for SOEs within the MHCP, the MHCP had a five-member team which managed the state's ownership stake in all SOEs related to the Ministry in conjunction with professionals of the MHCP's Asset Committee and the office of the General Secretary (in-house legal counsel).[38] Among a wider set of responsibilities, the unit was essentially responsible for managing the Ministry's portfolio of state shares and co-ordinating sales of SOE assets and shares. More specifically, this included advising on mergers, acquisitions and other financial issues with respect to the MHCP's portfolio; advising the MHCP on decisions in board and shareholders' meetings of the wider range of companies in which the state holds a stake; co-ordinating processes related to the management of state shares in SOEs linked to the MHCP and in other SOEs subject to intra-administration agreements; and participating in board and shareholders' meetings and monitoring its decisions.

Decree Number 2384 issued on 11 December 2015 created the Directorate General for SOEs, to replace this unit with expanded responsibilities not only for the MHCP's portfolio of 36 active SOEs[39], but also to take the lead role in developing an SOE corporate governance code, guidelines for board nominations and other measures aimed at strengthening SOE governance practices, to be shared with other Ministries (Box 2.7).

The Working Party's 2013 review of Colombia against the Guidelines found that no formal criteria or publicly disclosed process had been established for the MHCP's appointment of SOE directors. Even in the case of independent directors, their nomination and election depended on contacts and the professional or personal relations of its officials with possible candidates. Similarly, there was not a defined practice for taking into account (internal or external) evaluations of the board as a whole or its members individually when making appointments, except for particular cases like ISA and Gecelca (MHCP). However, the new national ownership policy calls for the MHCP and its new Directorate General for SOEs to establish more formal structures, procedures and guidelines for the appointment of board members based on competitive, well-structured and transparent selection and assessment procedures (to be applied to other ministries as well). It also calls for the gradual establishment of training activities for board members followed by exercises to assess their performance.

Other ministries

The MHCP exercises the ownership rights (alone or jointly with other government bodies) in 21 of Colombia's 40 majority-owned SOEs. The remaining companies in the national portfolio (SOEs or state-invested firms) are spread out across 11 government ministries (see Annexes A, B and C). The most important SOEs not owned by MHCP are SOEs that the government describes as "second-tier development banks" including Finagro, owned primarily by the Ministry of Agriculture, and Bancoldex, for which the Ministry of Commerce has lead ownership. The Ministry of Transport has part-ownership of a substantial number of SOEs (34), but most of these are small, regional transport SOEs for which the national government has minority ownership and local governments maintain overall control.

Box 2.7. **Functions of the MHCP's new Directorate General for SOEs**

The December 2015 Decree 2384 assigns the following responsibilities to the MHCP's new Directorate General for SOEs:

On the control strategies, guidelines and objectives of state ownership:

1. To advise the ministry on the design, coordination and performance of the general state ownership strategies and processes, and on the management of the government's participations, and to lead the initiatives for the periodical reassessment and update of those strategies.
2. To propose guidelines for the development and implementation of a global state ownership strategy and for the management of the government's participations, seeking to increase generation of value and the efficiency of its portfolio, as well as the adoption of tools and best practices for the governance, control, monitoring and assessment of the state-owned enterprises, and of the government's representatives to their boards of directors.
3. To advise the ministry on the definition and conveyance of guidelines for the state-owned enterprises about their objectives, strategic activities, periodical goals, and performance indicators.
4. To promote the strategic operations of the state-owned enterprises by coordinating and exploiting synergies and efficiencies between them.
5. To contribute to the promotion and implementation of good corporate governance practices and standards in the state-owned enterprises, and to the monitoring of their enforcement.
6. To provide analyses and technical guidelines for the implementation of the dividend distribution policy of the state-owned enterprises.

On the information gathering, monitoring, surveillance and assessment of the enterprises and corporations where the government has participations:

7. To take part in the request, consolidation, management, update and custody of the relevant information from the enterprises, sectors, reports and registers of the state-owned, direct or indirect, financial participations, pursuant to any valid procedures, the operational manual, and the applicable regulations.
8. To provide support to the monitoring and assessment of the situation, activities, operations, performance and results of the state-owned enterprises, of the decisions of their boards of directors, and of the performance of the board members appointed by the government by virtue of its share participation, or the enterprises' regulations.
9. To prepare periodical reports on the situation, performance and context of the state-owned enterprises.

On the boards of directors of the enterprises and corporations where the government has participations:

10. To design, propose and help coordinate the processes by which the government elects, re-elects or dismisses its representatives to the boards of directors of the state-owned enterprises, by virtue of its share participation or the enterprises' regulations; and to advise the ministry on the election of those board members.
11. Within the scope of the ownership strategy set forth for each enterprise, to advise the ministry on the decision-making guidelines for the members of the boards of directors appointed by the government, by virtue of its share participation or the enterprise's regulations, as well as for the government's representatives to the enterprise's shareholder meetings.
12. To provide support to the supervision of a consistent execution of responsibilities by the board members appointed by the Ministry as well as by the enterprises' management and surveillance bodies.
13. To advise the ministry on remuneration guidelines for the boards of directors of the enterprises and corporations where the government has participations.

On the minority shareholders and stakeholders of the enterprises and corporations where the government has participations:

14. To advise the ministry on the definition and enforcement of guidelines to acknowledge and respect the interests of the minority shareholders of the corporations where the government is a majority shareholder, as well as those of their stakeholders.

Box 2.7. **Functions of the MHCP's new Directorate General for SOEs** (cont.)

Additional responsibilities, not excerpted in full detail here, relate to providing advice on disposal of government assets, public-private partnerships, and integration of public transportation systems in which the national government participates.

A final set of responsibilities call for the Directorate General to develop guidelines strategies, programmes, procedures, action and improvement plans within its functions, to ensure their enforcement, and to recommend and implement any changes deemed necessary; and to examine, propose and plan improvements to the regulatory and policy frameworks of the state-owned enterprises, pursuant to efficiency, effectiveness and transparency criteria, and considering the best international practices.

Source: MHCP

The Working Party's 2013 review against the Guidelines highlighted the Defence Ministry's portfolio of SOEs as the second largest in Colombia in terms of size, including 18 companies. However, following the government's further review, the national ownership policy excludes most of these enterprises from the requirements to be implemented, describing most as either non-commercial, as public agencies, or in five cases as necessary to exclude for reasons of national security. Following the government's review, just two SOEs with Ministry of Defence ownership – the airline company Satena (which serves the most isolated parts of the country and therefore includes a national security component) and the Tequendama Hotel – are covered by the national ownership policy. Nevertheless, the Ministry of Defence reported that it is devoting substantial attention to improving corporate governance in the companies within its portfolio. This has included particular attention to diversifying the boards of directors, which historically have been primarily comprised by members of the Armed Forces or retired officers, and instituting board evaluations. For the overall management of the Ministry's portfolio, the Ministry created the Defence Business Social Group (GSED) in 2008, which reports to a vice-ministry and comprises 34 people, divided into a business management team and a financial planning team. Its principal functions are to direct and guide the corporate policies of the Ministry's SOEs, with a management approach geared to achieving their objectives and a high level of competitiveness.

National Planning Department (DNP)

The National Planning Department (DNP) is an administrative department[40] that reports directly to the Presidency of the Republic and whose purpose is the implementation of national social, economic and environmental strategies through the design, guidance and evaluation of public policies, the management and allocation of public investment and the development of government plans, programmes and projects. Its link to the SOE sector is related to budget control and strategic planning mostly.

The DNP's functions include: i) proposing macroeconomic and financial objectives and strategies in co-ordination with the MHCP that are consistent with the government's policies and plans, in accordance with the projection of short, medium and long-term scenarios; ii) ensuring proper budget programming of the different sources of investment resources, based on the government's priorities and the country's development objectives; iii) serving as the Technical Secretariat of the National Council for Economic and Social Policy (CONPES); iv) preparing and submitting to CONPES documents setting out the government's policy priorities as well as other documents that correspond to its functions, divulging their content and monitoring and evaluating the lines of work defined; and v) guiding and co-ordinating the design and implementation of the plans, programmes and projects of the entities ascribed and linked to the DNP.

General Accounting Office (Contaduría General de la Nación)

The General Accounting Office (CGN) regulates the public sector's accounts and is headed by the General Accountant. It was created under article 1 of Law 298 as a special administrative unit attached to the MHCP, with its own legal personality and budget, technical and administrative autonomy.

Its functions include: i) to define accounting policies, principles and norms for all the country's public sector; ii) to establish general and specific technical norms and procedures to standardize, centralise and consolidate public sector accounting; iii) to manage the country's public accounts and, to this end, issue norms for the recognition, registry and disclosure of the information of central government bodies; iv) to prepare the country's general financial statements, submit them for auditing by the Comptroller General's Office and present them for review and analysis by the National Congress through the Legal Accounts Commission of the Chamber of Representatives within the timeframe established by the Constitution; and v) to carry out the studies and research considered necessary for the development of accounting expertise.

Comptroller General's Office (Contraloría General de la República)

The Comptroller General's Office (CGR) is the highest body for fiscal control of the state. It is autonomous and independent and, under the Constitution[41] and Law 42 of 1993, is responsible for supervising public finances, consolidating the general public sector budget (including individuals who manage or administer public funds), standardizing and centralising accounting and establishing the nomenclature of budget accounts and the form in which budget implementation is reported. The CGR is, in turn, subject to supervision by the General Audit Office, which is responsible for fiscal control of both the CGR and the Offices of Regional Comptrollers.

The CGR's principal functions include: i) supervising fiscal management and those individuals or bodies that manage state funds or goods; ii) evaluating the results of different state organisations and bodies, determining whether they acquire, manage and/or use public resources within the framework of the law and in accordance with the principles of economy, efficiency, effectiveness, equity and environmental sustainability; iii) examining the reasonableness of the financial statements of those entities subject to fiscal control and determining the extent to which they achieve their objectives and comply with their plans, programmes and projects; iv) establishing the fiscal responsibility of public servants and individuals who, by commission or omission and by intent or negligence, cause damage to public assets; and v) seeking redress of public assets.

It is important to note that, in contrast to many other countries, Colombia's CGR is charged under the Constitution with protecting public resources and assets and recovering goods. For this it audits the management of all state entities, including those enterprises in which the state has only a small ownership stake, and it is empowered to act in cases of violation of fiscal responsibility and has judicial police powers. Its investigations in this field seek to verify: i) intentional or negligent conduct attributable to individuals or legal entities responsible for the management of public assets; ii) damage to public assets; and iii) a causal connection between these two elements. As a way to ensure recovery of losses, the CGR is authorized to order precautionary measures, including seizure and confiscation against property and assets, whether they are inside or outside the national territory.

As further developed in the Chapter 3 section dealing with issues impacting on board composition, the way in which the CGR exercises its audit function has, on a number of occasions, been perceived by the market as at odds with the powers of SOE boards of directors and management, particularly as regards their capacity to define the enterprise's strategy and assume risks such as the possibility of losses. The zeal with which the CGR carries out its ex-post review of the business decisions of boards of directors and, in some cases, pursues pecuniary

responsibility for losses was identified by a number of experts as deterring professional and independent directors from accepting seats on the boards of SOEs.

The decision for the CGR to exercise its role ex-post and selectively was taken in 1991 to remedy the administrative delays that occurred under the previous system of ex-ante control. Under the present system, the CGR acts ex-post when it considers there is sufficient evidence to indicate possible shortcomings in an entity's or official's management of public resources. It is also important to note that the costs of review by the CGR are borne by the company in question. However, the MHCP is leading a new project aimed at ensuring that SOE board members and officers are able to obtain liability insurance, which could provide some protection against such concerns. While some officials including independent directors appointed to SOE boards already have director liability insurance, others do not yet have such insurance. The Ministry reported that its review of the situation will be undertaken during 2018.

Colombian budget control

SOEs in Colombia are under budgetary control of the National Public Budget Office when the state´s participation in the company is 90% or higher. In some cases, the CONPES also has jurisdiction on budget issues of certain SOEs.

The functions of the General Directorate of the National Public Budget include that of proposing, in conjunction with the DNP, the allocation of the part of the profits of SOEs and other similar bodies that go to the National Treasury. This is done in collaboration with the MHCP's Investment Bank Divisions, which prepares a technical study of the enterprises' borrowing level as a basis for establishing a dividend distribution policy compatible with their financial viability.

The role of the CONPES is to decide the amounts of profits to be distributed or retained by certain SOEs in relation to the financial needs of the state for any given year.

Colombian listed SOEs

Following Isagen's privatisation, only two SOEs controlled by the central government are currently listed (Ecopetrol and ISA). Ecopetrol alone accounted for 39% of total SOE equity as of the end of 2016 (including its subsidiaries), while ISA comprised an additional 8%. Ecopetrol represented 18% of market capitalisation as of the end of 2016.

Ecopetrol is one of the world's 50 leading hydrocarbons companies and the fourth largest in Latin America. Ecopetrol was listed in 2007 on the Colombian Stock Exchange (ECOPETROL) and has close to half a million shareholders. It trades also in the form of ADRs on the New York Stock Exchange (EC) and on the Toronto market (ECP). The state of Colombia owns 88.5% of the company.

ISA, established in 1967, is Colombia's largest power transmission company. Originally 100% state-owned, it was formed for the purpose of interconnecting Colombia's different regional grids. However, in order to finance its growth strategy, the company looked to the capital market and opted to diversify its ownership as a means of enhancing its competitiveness. Its listing took place between 2000 and 2002 and attracted thousands of new investors.

ISA's commercial interests extend beyond electricity transmission in a narrow sense of the word. It is the parent company of Grupo Empresarial ISA, a conglomerate of 30 subsidiaries that develop transmission line and telecommunications infrastructure, road concessions and projects for the intelligent management of systems in real time. As well as Colombia, it has line infrastructure in Argentina, Brazil, Bolivia, Chile, Ecuador, Panama, Peru and Central America.

According to the company, its participation in the capital market led it to "understand that investors seek companies that are profitable, act transparently, disclose information, respect

minority shareholders' rights and have good corporate governance practices". In response, ISA formally established a Code of Good Governance in 2001.[42] Its compliance with this Code is verified by its own and government auditors and is monitored and evaluated in reports that are posted on its website. ISA has been a member of the Companies Circle of the Latin American Corporate Governance Roundtable[43] since 2006.

The state has retained a 51% stake in ISA, Empresas Publicas de Medellin (EPM) owns another 11%, Ecopetrol owns 5.3% and Empresa de Energia de Bogota (EEB) owns 2%. The remaining 31% is divided amongst some 48 790 shareholders and floats freely on the Colombian Stock Exchange (INTERELECTRI), where its shares have been among the most liquid and heavily traded, with one of the highest market capitalisations. In 2004, ISA registered its Level I ADR (IESFY) with the U.S. Securities and Exchange Commission (SEC).

Colombian corporate governance practitioners interviewed for this review consider that these companies are good examples of professional management following high standards of corporate governance. In the most recent 2017 comply or explain reporting process against the market's *Codigo País* corporate governance code, ISA and Ecopetrol ranked 5th and 6th respectively among issuers comprising the COLCAP index, reporting compliance with 94% and 93% respectively of the code's 148 recommendations, well above the overall average for all issuers of 61%.

The privatisation process

Current political trends in Latin America and the region's level of economic development mean that SOEs have acquired an important role in driving countries' development (OECD, 2015c). This has been coupled with a clear tendency for SOEs to adopt company structures, more professional - albeit not independent - boards of directors, the appointment of managers on merit and increased transparency. Large privatizations of the previous decades, sometimes at inadequately low prices, contributed to leaner SOE sectors where these new trends are visible.

Box 2.8. **Privatisation in Colombia**

When faced with the problems of a large foreign debt and hyperinflation, most Latin American countries reacted by privatising state-owned enterprises. Although these processes differed between countries, reflecting their particular social, economic and political problems, they were generally implemented quickly and in an ill-co-ordinated way. It is difficult to argue that there was a long-term privatisation policy with clear objectives and specific medium-term sales targets and, in fact, the sale of assets in the region became a competition between countries to attract capital from the rest of the world. Financial needs and the speed with which enterprises were sold meant that countries had no control over regulation and, ultimately, over the bottom line for consumers. Similarly, they failed to take account of the possible negative impact on fiscal finances.

When Colombia embarked on its privatisations, Latin America had already acquired experience and this, together with the country's own practices, enabled it to implement them in an orderly fashion, with some specific objectives and some sector targets. In this sense, the process was relatively successful as regards its effectiveness. Specific studies are, however, still required to determine whether it was also efficient. The country's approach to managing public policy was a decisive factor in the results in that it provided a degree of order and permitted ex-ante evaluations and ex-post monitoring not only for the central government and political players but also the entities that financed the process.

Source: Hernandez 2004

The current size of Colombia's state-owned sector was influenced to an important extent by a privatisation process that took place as from the 1970s and, particularly, in the 1990s (Box 2.8). Since then some further privatisation has occurred. The Colombian government has implemented a policy of privatisation, capitalisation and divestment of public assets. The numerous transactions that have taken place since then have used different mechanisms, including some listings on the stock market. This was, for example, the case of Ecopetrol whose IPO in 2007 represented the last stage of a restructuring process that began in the 1990s and involved both the separation of its market regulation functions and the divestment of non-oil activities such as the transport of natural gas.[44]

Article 60 of the Constitution establishes that, when the state sells its stake in an enterprise, it must take measures to diversify the ownership and shares must be offered to workers and "solidarity organisations" on preferential terms. Those eligible for these special conditions are: i) active and retired workers of the enterprise being privatised and of the entities in which it holds a majority stake; ii) former workers of the enterprise being privatised and of the entities in which it holds a majority stake, providing they were not dismissed with just cause; iii) associations of employees and former employees of the enterprise being privatised; iv) workers' unions; v) federations and confederations of workers' unions; vi) employee funds; vii) mutual investment funds; viii) unemployment and pension funds; and ix) cooperatives.

These constitutional principles were further developed by Law 226 of 1995[45] which deals with the transfer of SOEs to private ownership, whose main aspects include:

- The corresponding minister and the Minister of Finance and Public Credit must present the project for the sale of the enterprise to the Council of Ministers. If the Council of Ministers approves it, it must then be submitted for approval by the government.

- The shares or mandatory convertible bonds to be sold must first be offered on special amortisation and financing conditions to all those defined in the enterprise's charter as having priority status. They have a period of two months in which to respond to the offer. Only then can the shares not acquired by these persons be sold at a price and on conditions that cannot be inferior to those of the preferential offer.[46]

It should be noted that the process for the divestment of shares in SOEs, including their listing, does not have to comply in a strict sense with the diversification of ownership referred to above. However, this has applied in some specific cases such as the capitalisation of Ecopetrol where Law 1 118 of 2006, drawn up for this particular process, expressly called for application of the principles of diversification of ownership. Different experts have concurred in indicating that, as compared to the procedure established in Law 226, privatisation through the stock market has the great advantage of allowing the transaction to be completed within a reasonable period of time. The two months allowed for the response of those eligible for special conditions implies a degree of uncertainty whose avoidance is recommended by financial advisers.[47]

A further advantage of placement on the stock market of any stake in an SOE larger than 10% is that, as explained in the next section, this immediately lifts several administrative burdens, characteristic of central governments, that affect some SOES in which the state has a stake of more than 90%. At least partial privatisation means that these companies become subject to private law, making it easier for them to compete with private companies on equal footing.[48]

In 2011, under the national development plan, it was agreed that the Colombian state would be able to sell minority participations (under 10%) under a simplified mechanism when not deemed strategic in nature (article 258 of Law 1 450 of 2011).

The government also completed a major privatisation process with respect to ISAGEN in January 2016, selling all of its 57.6 percent remaining shares of the company to a single shareholder, BRE Colombia Investments, for USD 1.93 billion. A small proportion of the shares (less than 0.1%)

were sold in a first stage of the process in 2014 to employees, unions and pension funds to meet legal requirements that these groups receive the first opportunity to buy company shares as required by Law 226 of 1995.

In September 2015, the government initiated a process for Ecopetrol to sell its 5.3% share of ISA, as well as a 6.9% stake in *Empresa de Energía de Bogota* (EEB). In a first stage from 29 September to 30 November 2015, the shares were offered to employees, unions, pension funds and other institutions as required by law 226 of 1995. However, the offer price of COP 7.979 per share was above that of the market trading price, and no offers were received. In a second stage, Ecopetrol sold its remaining 5.3% of ISA shares in December 2016 at a price of COP $10.001. During the first part of 2017, Ecopetrol also completed the sale of 6.6% of its stake in EEB, leaving a 0.3% stake that was expected to be sold later in the year.

Legal form of Colombian SOEs

Colombian SOEs fall into two broad categories: i) Industrial and Commercial State Companies (*Empresas Industriales y Comerciales del Estado* or EICEs), which are statutory corporations wholly owned by the state and whose origin and norms are established by law; and ii) Mixed-Ownership Companies (*Sociedades de Economía Mixta* or SEMs) in which the state has a stake and which can take any legal form and are generally governed by the norms applicable to the private sector. The legal categorization of each SOE is listed in Annexes A, B and C. The vast majority – 93 of Colombia's 102 SOEs subject to Colombia's ownership policy – are classified as SEMs. An important degree of complexity is, however, introduced into this classification because the law establishes that SEMs in which the state holds a stake of 90% or more are to be treated as EICEs and, regardless of their legal form, are, therefore, governed by the norms applying to EICEs. Of the 93 SOEs classified as SEMs, 34 meet this threshold or under company statutes are subject to requirements established under the EICE legal regime.

There is, in addition, a special category of SOEs, known as Social State Companies (*Empresas Sociales del Estado* or ESEs), which are wholly owned by the state but not structured as EICEs. Created by the central government or by sub-national bodies, their purpose is the direct provision of healthcare services. Just four among Colombia's 102 SOEs identified in annexes A, B and C fall under this category.

Finally, as established by the Constitutional Court[49], some types of mixed or privately owned utility companies (*Empresas de Servicios Públicos* or ESPs) are considered SOEs. Law 142 of 1994 states that: i) mixed public service companies[50] are those in which the state, sub-national bodies or their decentralised bodies have stakes of 50% or more; and ii) privately owned public service companies in which a majority stake is held by the private sector (or by entities created by international conventions that opt to be subject to private sector rules). Only one of Colombia's 102 SOEs reviewed for this report follow this legal form.

Industrial and Commercial State Companies (EICEs)

In accordance with article 85 of Law 489 of 1998, EICEs are statutory corporations, created or authorised by law, which undertake activities of an industrial or commercial nature and of economic management under private law, except in the cases established by the law. Just four of Colombia's SOEs are established under this legal form, including savings funds with social or development objectives, the national pension fund administrator *Colpensiones,* and the national printing company. Nevertheless, this legal category remains important due to the requirement cited above for companies incorporated as SEMs to follow the EICE legal regime if they have more than 90% state ownership or otherwise are required by their bylaws.

Their principal characteristics are: (i) they have their own legal personality; (ii) they are administratively autonomous; (iii) they are financially autonomous; and (iv) they have their own

capital composed entirely of common public goods or funds, their product or the earnings they receive as a result of their activities as well as contributions from the state in those cases authorised by the Constitution. The capital of EICEs can be represented as quotas or shares of equal nominal value.

The direction and administration of EICEs is the responsibility of their boards of directors and a manager or president. The decisions that EICEs take for the development of their own industrial, commercial or economic management activity are subject to the provisions of private law. The contracts which they sign in the pursuit of their purpose are, on the other hand, governed by the provisions of the General Statute of Procurement by state entities. The general regime applicable to these companies is established in articles 85 and 94 of Law 489 of 1998. As discussed later in Chapter 3, the insolvency regime applying to them is not the general regime established in the country's bankruptcy law.

Mixed-Ownership Companies (SEMs)

SEMs are entities, authorised by law and established in the form of commercial companies with state contributions and private capital, which undertake activities of an industrial or commercial nature subject to private law. They are public entities, but created under a company contract. Typically, they take the form of stock companies but when the state and sub-national or decentralised bodies have a stake of 90% or more, they must adopt the norms governing EICEs.

The difference in the administrative burden on EICEs and SEMs is an important incentive for reducing the state's stake to below 90% in order to allow them to compete on equal terms with other market players.

Notes

1. This report draws upon the report prepared for the Working Party review of Colombia against the OECD Guidelines on Corporate Governance of State-Owned Enterprises (Lehuedé, OECD Working Paper Series, 2013 www.oecd-ilibrary.org/governance/colombian-soes-a-review-against-the-oecd-guidelines-on-corporate-governance-of-state-owned-enterprises_5k3v1ts5s4f6-en), re-using figures and substantial parts of the text with additional and updated information where available.
2. See http://data.worldbank.org/indicator/CM.MKT.LCAP.GD.ZS.
3. Assets of the supervised financial system rose from about 60% of GDP in 2000 to about 90% of GDP in 2011, according to a 2013 IMF report. Credit institutions (mostly banks) accounted for about half of financial system assets, with the balance held by nonbanks (largely private pension funds, trust companies and insurance companies). (IMF 2013, p. 8). The SFC reported that financial assets in Colombia have continued to grow at an annual rate of 4.72% with a value of USD 390.2 billion at the end of 2015.
4. "Colombia's capital markets reflect mainly activity in government debt and equity markets (…). Non-government fixed income remains undeveloped (4 per cent of GDP) and dominated by financial sector issues" (IMF 2013, p. 8).
5. See http://data.worldbank.org/indicator/CM.MKT.TRAD.GD.ZS/countries/
6. While 73 companies were listed on the equities market as of December 2016, the SFC counts 133 issuers overall under its supervision, including issuers of non-equity securities as well as financial institutions (both listed and unlisted).
7. According to figures provided by SFC as of 28 July, 2014.

8. The "Multilatinas" or "Translatinas" were the names given to transnational corporations in the region of Latin America by the United Nations Economic Commission for Latin America (CEPAL).

9. « Historia Grupo Nutresa » www.gruponutresa.com/es/content/historia.

10. "Hechos Históricos EPM". www.epm.com.co/site/Home/GrupoEPM/Hechoshist%C3%B3ricos.aspx.

11. Grupo Éxito webpage. www.grupoexito.com.co/index.php/es/component/content/article/276-cronica-utopia.

12. The OECD Economic Survey also cited the impact of a high minimum wage (80% of the median wage) and high social security contributions on the labour market as constraints on private pension fund growth. Out of a workforce of 21 million, only 6.5 million pay pension contributions. The survey also draws attention to a lack of public policies providing adequate incentives for formalisation (OECD, 2013).

13. These special faculties are often granted when a new President takes office, as it was in the case of President Santos.

14. For non-listed companies the requirement is for at least three members. For issuers (listed companies and financial institutions), Law 964 (art. 44) establishes that the requirement for alternate directors may be waived if specified in the bylaws.

15. AFPs are also subject to corporate governance rules contained in Decree 857 of 2011 and External Circulars 051 of 2011 and 01 of 2012 of the Financial Superintendency.

16. The strength of investor protection index is the average of the extent of disclosure index, the extent of director liability index and the ease of shareholder suits index. It ranges from 0 to 10, with higher values indicating greater investor protection.

17. The 2017 OECD Economic Survey urged the Colombian authorities to continue improving the country's business environment, in particular by ensuring better contract enforcement through improvements to the efficiency of the judicial system (OECD, 2017).

18. See the Phase 1 Report on Implementing the OECD Anti-Bribery Convention in Colombia at www.oecd.org/daf/anti-bribery/ColombiaPhase1ReportEn.pdf, in particular the Evaluation by the WGB at paragraphs 139-150 of the Report.

19. See the Phase 2 Report on Implementing the OECD Anti-Bribery Convention in Colombia at www.oecd.org/daf/anti-bribery/Colombia-Phase-2-Report-ENG.pdf, in particular the Recommendations by the WGB at paragraph 306 of the Report.

20. The Inter-American Convention against Corruption was ratified by Law 412 of 1997.

21. The United Nations Convention against Corruption was ratified by Law No. 970 of 2005.

22. Chapter 19 Section B of the Colombia FTA (entry into force 15 May 2012).

23. The study which was carried out prior to this reform found that the existence of difference supervisors had encouraged regulatory arbitrage on accounting and business development matters as well as in the provision of information to consumers. One example of this was the case of collective portfolios which, when structured and managed by fiduciary companies, were supervised by the Banking Superintendency but by the Securities Superintendency when structured and administered by stock brokerages or investment management companies.

24. As from 1992, overlap of powers between the Companies Superintendency and the Financial Superintendency was resolved in the latter's favour, giving the Companies Superintendency residual responsibility for companies not subject to the supervision of other regulators.

25. The 88 appeals in in court between 2011 and 2013 cannot be compared directly to the 198 total sanctions issued by SFC during that same period, because some of the appeal actions were related to cases initiated before 2011.

26. Due to a sharp decline in the value of the Colombian peso from COP 1 926 for 1 USD in 2013 to COP 3 149 as of December 31 2015, budget figures appear to decline substantially when reported in USD. However, SFC reports that it has been able to maintain a similar staff size and level of operations.

27. See "Las cifras del líder de las comisionistas" in *Revista Dinero* (July 2012) http://m.dinero.com/inversionistas/caso-interbolsa/articulo/las-cifras-del-lider-comisionistas/163217.

28. See "Ministerio le premió la trampa a Interbolsa" in *El Espectador*, (February 2013) www.elespectador.com/noticias/economia/ministerio-le-premio-trampa-interbolsa-articulo-405197.

29. See "Interbolsa: la debacle anunciada". in *El Espectador* (November 2013) www.elespectador.com/noticias/investigacion/interbolsa-debacle-anunciada-articulo-386382.

30. See "Las cifras de Interbolsa" *El Espectador* (November 2013) www.elespectador.com/noticias/economia/cifras-de-interbolsa-articulo-386681.

31. See "25 nuevas imputaciones para vinculados con Interbolsa, el Fondo Premium y el Grupo Corridori" in Fiscalía General de la Nación (Prosecutors Office) (April 2014). www.fiscalia.gov.co/colombia/noticias/25-nuevas-imputaciones-para-vinculados-con-interbolsa-el-fondo-premium-y-el-grupo-corridori/.

32. SOEs excluded for national security reasons include Indumil (a weapons, ammunitions and explosives producer and importer); CIAC (responsible for aerospace repair of both public and private entities including Colombia's Air Force); Cajahonor (managing savings for armed forces personnel to promote housing acquisition); Cotecmar (science and technology development for maritime and fluvial defence); and Codaltec (science and technology research and development for defense activities).

33. The Consolidator of Fiscal and Public Financial Information (CHIP) system contains the following information: registers of transactions and financial results reflected and registered in the budget, accounting registers, treasury accounts and, in a broad context, sub-national budgets, covering movements in assets, income, expenditure and borrowing and variations in assets and liabilities in general. The information reflects flow variables (including budget implementation and cash operations) and stocks (for example, borrowing levels and net worth) which, as a whole, provide information for fiscal analysis and monitoring, generally accepted accounts and their links to the national accounts. See www.chip.gov.co/schip_rt/.

34. According to the jurisprudence established by Colombia's Constitutional Court, the relationship of SOEs to executive government, combined with their nature as decentralised bodies, implies that i) they must be created or authorised by law; ii) they are subject to control of their finances, management and results by the Comptroller General's Office; iii) they are subject to political control exercised directly by Congress to which they must report on the state of their business; iv) their directors and management are subject to the recusals applicable to public officials; and v) they are subject to the norms of the organic budget law (Sentence C–910 of 2007).

35. The concept of tutelage is defined in Law 489 of 1998 which, among its provisions, states that: (i) at the national level, "ministers and directors of administrative departments guide and co-ordinate compliance with the functions assigned to (…) companies of mixed ownership that are ascribed or linked to them or form part of the corresponding Administrative Sector (article 41); (ii) "the charter of all companies of mixed ownership will indicate the conditions of the state's participation which include authorisation of its creation, the company's character as of a national, departmental, district or municipal nature and its relations with different bodies for the

purposes of the control the state must exercise over it" (article 98); and (iii) "representation of the shares that public bodies or the Nation hold in a Mixed-Ownership Company corresponds to the Minister or Director of the Administrative Department to whose institution the Company is linked" and "when the shareholder is a public institution or industrial or commercial state company, its representation will correspond to the respective legal representative but may be delegated to the officials indicated in its internal statutes" (article 99). See also articles 104 to 106 of Law 489 for the scope of administrative tutelage.

36. Article 99 of Law 489 of 1998 establishes that, if two or more public bodies must participate in the shareholders' meeting of an SOE in the financial sector, the right to vote on behalf of the state's shares will correspond to the body to which the SOE is linked: "Representation of the shares that public institutions or the Nation hold in a Mixed-Ownership Company corresponds to the Minister or Director of the Administrative Department to whose institution the Company is linked". Under this norm, it is, for example, the MCIT that votes in representation of the state at shareholders' meetings of the *Fondo Nacional de Garantías S.A.* (FNG), a body linked to the MCIT but whose shares are mostly held by the MHCP.

37. Every four months, this head of internal control must publish a detailed report on the entity's website; see Chapter II of www.secretariasenado.gov.co/senado/basedoc/ley/2011/ley_1474_2011.html.

38. "The Asset Committee of the MHCP was created by Resolution 2 214 of 2006 and comprises the Minister of Finance and Public Credit, who serves as its president, the Technical Vice-Minister, the General Vice-Minister, the Secretary General and the Director of Public Credit and the National Treasury. The Investment Bank Subdirector serves as secretary of the Committee whose functions are: to analyse and evaluate the performance of the State's shares in the companies referred to in article 1 of this Resolution, based on the reports presented by the Private Participation Group or whoever fulfils its function, and to define the position of the MHCP on matters such as the sale of shares, mergers, capital increases and decreases, liquidations, the issue of shares and the distribution of dividends by the said companies" (MHCP, p. 14).

39. This includes both majority and minority stakes. An additional three SOEs are undergoing a liquidation process, while one additional SOE is technically under the ownership of another ministry but is still subject to MHCP management because the MHCP maintains control over some stock as a guarantee of debt.

40. Administrative departments are entities of a technical nature that are charged with directing or co-ordinating a service and supplying the government with adequate information for decision making. They have the same rank as ministries but do not have the power to propose legislation.

41. The Constitution states that the Comptroller General's Office "supervises the fiscal management of the government and individuals or entities that manage public funds or goods. This control will be exercised ex-post and selectively in accordance with the procedures, systems and principles established by law. In special cases, the Comptroller General's Office may, however, authorise private Colombian companies, selected competitively and on merit and hired with the prior knowledge of the Council of State, to exercise this supervision".

42. The Code was presented by the CEO and adopted by the board of directors and, subsequently, incorporated into the company's statutes. It is enshrined in the company's mission and vision and commitments to stakeholders as well as in important internal documents that include the Code of Ethics, Business Management System, Procurement Statute, Business Policies, Anti-Fraud Code and Internal Regulation of Operation of the Board of Directors.

43. The Companies Circle of the Latin American Corporate Governance Roundtable was created by the OECD, the IFC and its founding members at a meeting in May 2005. Currently managed by the IFC, it brings together leading companies with experience in implementing good corporate governance practices in Latin America. See

www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+cg/regional_advisory_programs/the+latin+american+companies+circle.

44. *Empresa Colombiana de Gas* (Ecogas), a subsidiary of Ecopetrol in charge of natural gas transportation, was put up for public auction in 2006 and was acquired for USD 1.3 billion by *Empresa de Energía de Bogotá* (EEB), which had been privatised in 1997. It was subsequently transformed into a stock company and renamed *Transportadora de Gas del Interior* (TGI). The acquisition was financed on the international market through the placement under Securities Act Rule 144 of 10-year bonds for USD 750 million and 7-year bonds for USD 610 million. At the time, this was Colombia's largest ever international bond issue (Gutiérrez & Pombo, 2009, and Bernal, 2009).

45. See www.secretariasenado.gov.co/senado/basedoc/ley/1995/ley_0226_1995.html#1.

46. Share sales between state bodies are excluded from this procedure.

47. It should be noted that some jurisprudential theses maintain that capitalisation is viable under the terms of Law 226 without a preferential offer, providing the transaction does not result in the state ceding control of the enterprise.

48. It is worth mentioning that a similar result can be obtained by means of legal reform, with the need to dispose of any shares, as it is the case of Bancoldex, which was relived from the administrative burdens applicable to other SOEs where the state owns more than 90% of the shares in order to facilitate its competitive commercial operation.

49. Sentence C-736 of 2007.

50. Mixed public service enterprises typically taken the form of stock companies and, on the corresponding matters, are subject to the Commercial Code.

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Chapter 3

Review against Core Corporate Governance Principles

This chapter assesses Colombia against individual recommendations of the Principles of Corporate Governance and Guidelines on Corporate Governance of State-Owned Enterprises. It follows the structure of the five "core corporate governance principles" as set out in the Roadmap for the Accession of Colombia to the OECD Convention: 1) shareholder rights and equitable treatment; 2) requiring timely and reliable disclosure in accordance with internationally recognised standards of accounting, auditing and non-financial reporting; 3) establishing effective separation of the government's role as owner of state-owned companies and its role as regulator; 4) ensuring a level playing field in markets where SOEs and private sector companies compete in order to avoid market distortions; and 5) recognising stakeholder rights and the duties, right and responsibilities of corporate boards.

Ensuring a consistent regulatory framework that provides for the existence and effective enforcement of shareholder rights and the equitable treatment of shareholders, including minority and foreign shareholders.

As noted in the introduction to this report, Colombia was reviewed against all of the recommendations of the Principles of Corporate Governance and Guidelines on Corporate Governance of State-Owned Enterprises in 2013 and 2014. This report integrates the elements most relevant to assessing each of the core corporate governance accession principles, drawing upon the Committee's "Concept Paper" – *Concepts to Guide Corporate Governance Accession Reviews*. Following the Concept Paper structure, this section therefore is divided into five sub-sections: (1) shareholder rights and equitable treatment, including treatment of the market for corporate control (Principles II.C, D, E, H and Principle III.B); (2) related party transactions and conflicts of interest (Principle II.F 1 and 2); (3) institutional investor disclosure, corporate governance policies, conflicts of interest and voting (Principles III.A and C); and (4) insider trading and abusive self-dealing (Principle III.E). The fifth and final section of the chapter deals with equitable treatment of shareholders among state-owned enterprises (Guidelines IV.A and IV.C).

Shareholder rights and equitable treatment

Principle II.C states that shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures that govern general shareholder meetings. This includes consideration of six sub-topics dealing with 1) provision of sufficient and timely information regarding general meetings; 2) processes allowing for equitable treatment of shareholders including so that procedures do not make it unduly difficult or expensive to cast votes; 3) shareholders should have the opportunity to ask questions to the board and to place items on the general meeting agenda; 4) facilitation of effective participation in key corporate governance decisions such as nomination and election of board members and remuneration; 5) shareholders should be able to vote in person or in absentia; and 6) impediments to cross-border voting should be eliminated.

Provision of sufficient and timely information regarding general meetings (II.C.1)

Colombian listed companies are required to issue invitations to the general shareholder meetings at least 15 working days in advance of the meeting, and 5 business days in the case of extraordinary meetings. This is done through direct invitations to the shareholders' listed address, through publication of the invitation in a daily newspaper, and as "relevant information" disseminated through SFC's SIMEV public information system. Institutional investors interviewed for this report suggested that information provided for these meetings was often lacking in detail. Shareholders may ask questions or go to the company's headquarters to inspect its records during the 15 days prior to the AGM, but this would appear to put foreign shareholders at a disadvantage in the case of companies that have not made such information available on-line.

More generally, the Colombian Commercial Code supplemented by Law 222 of 1995 and the BVC Circular Única requires listed companies to post extensive information available to shareholders on their web sites, such as quarterly and annual financial reports, the prospectus and any modifications, the company's corporate governance code, a description of the company group to which the company belongs, company bylaws and a list of its board of directors. These documents can also be obtained from the Chamber of Commerce, and the most relevant information is also available through the SFC's public information system known as SIMEV. In addition, Decree 2 555 of 2010 Art. 5.2.4.1.5 provides a non-exhaustive list describing 55 categories of material information that must be reported immediately to the market through the SFC's SIMEV system. The World Bank (2011b) reported that minutes of the AGM are not made available on a timely basis unless they are reported to SFC as material information. Shareholders

may only inspect the previous year's AGM minutes during the 15-day inspection period prior to the AGM. Other information disclosure requirements are described in greater detail in the chapter on disclosure.

The revised *Codigo País* contains several additional recommendations to encourage companies to provide information beyond the right of inspection at the main office, including through use of e-media and the institutional web site available only to shareholders, to convey to them the documents and information related to each of the points of the agenda for the meeting (Recommendation 10.11); to have corporate bylaws recognizing the shareholders' right to request information or clarification on the agenda (10.12); conditions under which requested information may be denied, such as if non-reasonable, irrelevant, confidential or would imminently or seriously compromise the competitiveness of the company (10.13); and that information provided to one shareholder that could provide him with an advantage must be made accessible to all shareholders (10.14). Recommendation 10.1 further recommends that companies provide the notice of meetings for the general meeting at least 30 days in advance for general meetings, and 15 days in advance for extraordinary meetings. Other provisions provide for notice of content for the meeting within 15 days of the meeting.

Processes allowing for equitable treatment of shareholders including so that procedures do not make it unduly difficult or expensive to cast votes (II.C.2)

All investors, foreign and domestic, face the same 15-working day notice period for receiving information and participating in AGMs. The right to inspect company financial records at the company's headquarters is accessible to local shareholders but more difficult to exercise for foreign shareholders. It was reported that AGM votes are sometimes taken by a show of hands which may also favour domestic shareholders who can be physically present at the meeting.

On the other hand, there are no legal barriers to shareholder participation and voting in general shareholder meetings, and there is substantial minority shareholder participation at AGMs. According to a 2014 SFC survey of 74 Colombian listed companies, these companies have an average free float of 35.6%, and an average of 55.3% of the shares of minority shareholders that comprise the free float participate in AGMs. Of those minority shareholders who attend or who are represented by proxy at the AGM, an average of 96.5% of the shares are voted. Proxy voting procedures are available to foreign shareholders but not to Colombian shareholders. However, domestic shareholders may cast votes through a third party by providing power of attorney. Electronic (and other non face-to-face) voting is only considered valid when there is a 100% quorum of shareholder participation under Articles 19 and 20 of Law 222 of 1995, making it impractical. The SFC reported that it has prepared a draft legal amendment to facilitate shareholder participation in AGMs via an electronic platform, provided that company bylaws allow for it. The provision would allow companies to establish a procedure that would allow shareholders to appoint (and remove) electronically a proxy to represent them at the AGM. Electronic participation and voting in these meetings would have the same legal consequences established for physical meetings. The SFC states that this reform will likely be part of a wider reform of the Colombian Commercial Code. However, the reforms had not been presented to Congress at the time of writing, with no timeline yet established for when such reforms may be pursued.

Asking questions to the board and placing items on the agenda of the general meeting (II.C.3)

Shareholders with at least 5% of capital can ask questions to the board of directors, and the *Código País* recommends that the board answer such questions in writing (with an exception limiting discussion of industrial secrets or "strategic information"). Any shareholder may raise a question during a general meeting of shareholders or submit a proposal for consideration on the

agenda, including nominations for board candidates. However, a majority is required to actually add the item to the agenda or hold a vote on it, unless the company's bylaws specify a lower threshold. Companies interviewed for the report suggested that their AGMs are quite open to receiving comments from minority shareholders. However, to avoid consideration of items that shareholders have not had the opportunity to review in advance, company management may suggest that the company will subsequently follow up with a response in writing or put the item on the agenda for a future meeting.

Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members and remuneration (II.C.4)

The Colombian updated self-evaluation reported this measure as broadly implemented. Legally, all shareholders are able to elect and remove members of the board, but in practice, most companies have a controlling shareholder or shareholders who practically have sufficient votes to determine the outcome. Pension funds and proxy voting advisory services interviewed for this report complained that they sometimes lack sufficient and timely information in advance of the shareholder meeting. While this creates an impediment for all minority shareholders, it leaves foreign shareholders seeking to participate by proxy vote at a particular disadvantage, since the absence of timely information leads proxy voting services either to not take a position or to recommend a no vote. A weakness in the Colombian system from this perspective is the possibility for any shareholder to propose candidates even as late as the AGM itself, which can be considered for a vote if a majority of the shares present agree. While such procedures offer the potential for abuse by allowing controlling shareholders to elect candidates who are nominated without advance notice, there were no reports of the system being abused in this way. In practice, minority shareholders may propose candidates at the last minute but recognise that they will not be able to elect them without the support of the controlling shareholder.

Colombia board elections make use of an "electoral quotient" system, which establishes rules of proportional voting to elect one list of candidates as regular members of the board and a second list for its independent members, which must comprise at least 25% of the board membership. For example, for a board of seven members, the controlling shareholder will prepare a general list of five candidates and a separate list of two candidates for the independent slots. Other shareholders may propose competing lists for these same positions. Although the system was devised to introduce proportional representation, in practice board candidates of minority shareholders are seldom elected. Colombian pension funds reported that pooling of votes enabled them to elect 14 directors (out of 79 listed companies) in 2013.

Colombia's 2005 corporate governance reforms called upon the national government to develop alternative voting systems that companies may use to give minority shareholders at least as much ability to influence the election of board members as under the electoral quotient system. While implementation of such mechanisms would require regulatory action from the Ministry of Finance, the SFC suggested that other regulatory priorities have been more pressing, with no demand expressed by either companies or investors to make use of such alternatives.

Numerous recommendations (16.7, 18.5, 18.19, 23.5, 33.2) in the revised *Código País* seek to strengthen transparency and procedures for assessment of board candidates prior to their election. In addition, the first recommendation in the chapter on general assembly of shareholders calls for company bylaws to explicitly confer the assembly with the function to approve the general compensation policy for the Board of Directors. However, a more specific recommendation calling on companies to specify the amount of the variable component of remuneration was on the SFC's list of least implemented measures of the code.

Shareholders should be able to vote in person or in absentia and impediments to cross-border voting should be eliminated II.C.5 and II.C.6):

There are no legal impediments to cross-border voting, and proxy voting procedures are in place to allow such voting to facilitate the participation of foreign investors, who make up approximately 20% of trading volume in Colombian markets. However, proxy voting currently is permitted only for foreign shareholders, while domestic shareholders may provide power of attorney to third parties to vote in their absence. Furthermore, electronic voting is generally not feasible due to a requirement for 100% participation for the votes to be considered valid.

Shareholder consultation and co-ordination in the exercise of their rights

Principle II.D states that shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.

Each type of fund in Colombia has established an association that facilitates consultation among its members. Associations such as *Asofondos* for pensions, *Fasecolda* for insurers, *Asofiduciarias* for trust companies, *Asobancaria* for banks and *Asobolsa* for stock-brokers all actively participate in public consultations on legal, regulatory and self-regulatory initiatives. There are no restrictions on their consulting with each other, co-ordinating their efforts or on acting jointly in shareholder meetings. Pension funds have the right to enter into shareholder agreements and the duty to submit them to the SFC. Such agreements cannot have the objective of taking control of the issuer. The SFC supervises the contents of such agreements to ensure that they comply with the law. In any case, pension funds are restricted from holding more than 10% of any listed company's shares.

Equal treatment with respect to different share classes

Principle II.E states that all shareholders of the same series of a class should be treated equally. Capital structures and arrangements that enable certain shareholders to obtain a degree of influence or control disproportionate to their equity ownership should be disclosed.

The revised *Código País* establishes as its first recommendation that all shareholders in the same class of shares are treated equally, and all listed companies reported for 2015 and 2016 that they follow it. Colombia has three classes of shares: 1) ordinary shares, which have the same rights in all companies; 2) preferred (non-voting) shares, which have the right to a higher dividend level paid before ordinary share dividends are paid; and 3) privileged (voting) shares, which have the right to receive dividend payments before any other type of share. Companies can create different classes of shares within each category, such as class A and class B preferred shares, and the GMS must set forth the special privileges or preferred dividends for each of these specific classes of shares.

In practice, 98.6% of shares on the market are ordinary shares, 1.4% are preferred (non-voting) shares, and just one issuer has privileged shares, according to the SFC. Twelve out of 79 listed companies reported having preferred non-voting shares, but they are restricted from issuing more than 50% of shares as preferred shares. In practice, the highest percentage of preferred, non-voting shares is held by Bancolombia, with 40%. Companies must report all information on share structures and rights in their prospectus and must update and report any changes in the bylaws, including changes in voting rights, as material information. Each listed companies is required to publish and update its prospectus on its web site.

While non-voting shares and cross-shareholding structures enable shareholders to obtain a degree of control disproportionate to their equity ownership in some cases, these structures are generally well understood and disclosed. Voting caps and multiple voting rights are not allowed by law, and golden shares are not present. When an issuer is a subsidiary of another company as defined in

the Commercial Code, it is required by the BVC to disclose on its web site "a brief description of the relation between the issuer and the economic group and its links with other companies in the group." Issuers also must disclose immediately ownership information as "relevant information" in the SIMEV, including the disclosure of the capital structure of a company. The parent company must declare the control situation in a document that must be registered in the chamber of commerce. In addition, all shareholder agreements must be publicly disclosed. Finally, SFC has established extensive disclosure requirements for related party transactions and monitors these particularly closely within group structures (see Principle V.A.6).

Transparency and functioning of the market for corporate control

Principle II.H, recommending that markets for corporate control be allowed to function in an efficient and transparent manner.

Colombian issuers (but not individual shareholders) must disclose through the SFC's SIMEV public information system any relevant information to the market regarding changes in control and changes in either direct or indirect ownership equal to or greater than 5% of the outstanding shares of the company. If an acquirer seeks to acquire 25% or more of the stocks of a publicly traded company, or an additional 5% when above the 25% threshold, the shareholder is required to make a public tender offer. Due to the concentrated ownership of most Colombian listed companies, hostile takeovers are not known to occur in the Colombian markets, and these provisions are rarely triggered. The law does not provide for "squeeze-outs" in Colombia.

Mergers must be approved by shareholders in the general shareholders meeting of both the offering company and the targeted company by a simple majority, or higher level if set in the company's bylaws. In practice, changes of control are rare among Colombian listed companies, with the best known case involving South Africa-based SABMiller's takeover of the Bavaria brewery, a Colombian listed company (See Box 3.1). More recently, the trend among Colombia's large economic groups and state-owned companies has been to acquire smaller companies in Central America, Latin America and even in some cases in the United States (See Box 2.1).

Box 3.1. **Merger of SABMiller and Bavaria breweries**

One of the most high-profile recent cases involving enforcement of corporate governance rules and protection of minority shareholder rights involved the merger agreement reached on 18 July 2005 between South Africa-based SABMiller and Colombia's Bavaria brewery. The Bavaria brewery was founded in 1899 and listed in 1933. Under the control of the Santodomingo family, the Bavaria group became the country's second biggest conglomerate that included *Caracol Televisión*, the TV channel, and *Avianca*, the airline, among other important companies.

In 2005, the brewery was spun off and acquired by SABMiller (listed in London and Johannesburg). The Santodomingo family became the second largest shareholder in the resulting holding company. SABMiller obtained a 71.8% stake in Bavaria while also agreeing that the Santodomingo Group would acquire a 15.1% holding in SABMiller, and would participate in the management through two places on the board of directors of the SABMiller regional group. The merger led to three public tender offers: A first voluntary offer by SABMiller, a second compulsory offer at a price established by the regulator, and a third delisting offer to Bavaria shareholders. Together, these three mechanisms ensured that the prices paid to both majority and minority shareholders were fair and on relatively similar terms. The International Finance Corporation, one of the most significant minority shareholders in Bavaria, reported a substantial profit on its USD 30 million investment, and attributed improvements in Bavaria's and Santodomingo's governance practices during the period of its investment as an important factor contributing to the successful merger

Source : Bernal, 2009 and IFC, 2007

A last area for consideration of the treatment of shareholders in this section is **Principle III.B** which states that votes should be cast by custodians or nominees in line with the directions of the beneficial owner of the shares. Beneficial owners in Colombia may direct their custodian on how to vote, and custodians are required by regulation to "exercise the voting rights attached to the securities, according to the instructions of the beneficial owner, where this function is delegated to the custodian."

Related party transactions and conflicts of interest

Principle II.F states that related party transactions should be approved and conducted in a manner that ensures proper management of conflicts of interest and protects the interest of the company and its shareholders. (1) Conflicts of interest inherent in related-party transactions should be addressed; and (2) Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

Framework for supervision of related party transactions

The Colombian authorities have devoted extensive attention to the issue of treatment of conflicts of interest and preventing misuse of corporate assets and abusive related party transactions. Commercial law states that board members must refrain from participating directly or indirectly, in their own interest or in the interest of third parties, in a) activities competing with the company, or b) acts resulting in a conflict of interest, unless otherwise authorized by shareholders. This requirement has been actively enforced by SFC, which has issued 17 sanctions between 2007 and 2013 to individuals for "breach of administrator duties related to conflicts of interest." Decree 1925 of 2009 requires decisions in which board members have conflicts of interest to be submitted to shareholders for approval, and the board member must disclose all relevant information that is necessary for the decision. The Decree also toughened requirements for board approval of related party transactions and increased the liability of directors by regulating the approval of related party transactions and specifying requirements to obtain AGM authorisation in certain cases (World Bank, 2011).[1]

Several measures (6, 22 and 33) in the revised *Código País* address related party transactions. Measure 22.2 calls for the corporation to establish a policy on related party transactions that provides for the Audit Committee to assess the transactions with respect to specific qualitative and quantitative criteria, and that the Board of Directors approve the RPT without the participation of the interested parties. The approval of these transactions should require a qualified majority of three-quarters of the Board plus the positive vote of the independent members.

The SFC has issued a number of sanctions over the last few years to financial institutions for failing to follow proper procedures with respect to RPTs. In a 2011 case, Banco GNB Sudameris was fined approximately USD 25 000[2] for failing to submit an RPT for approval by the Board of Directors. In a second case, Bancolombia was fined approximately USD 50 000 for failing to submit an RPT for shareholder approval after approving an operation without the required board majority in a case in which some members abstained due to a conflict of interest. Two enforcement actions initiated in 2013 were still pending a final outcome, involving RPTs made under conditions different from those used with the general public; and a second company that failed to comply with its own internal regulations for RPT approval.

Framework for disclosing conflicts of interest

With respect to **Principle II.F.2**'s recommendation that board members be required to disclose their interests in material transactions, board members and managers are required to inform the board if they have a direct interest in a potential transaction of the company, and to act in good

faith, with loyalty to the company and diligence of a good businessman. They are also required to refrain from participating, directly or indirectly, in their own interest or in the interest of third parties, in (a) activities competing with the company, or (b) acts resulting in a conflict of interest, unless the board or AGM expressly authorizes it. When a possible conflict of interest is brought to the board's attention, the board is responsible for deciding on how to manage the conflict of interest. While the legal framework does not explicitly require board members to recuse themselves from voting on matters in which they have a conflict, the above requirements generally result in board members abstaining from such votes. In addition, if the board member is also a shareholder of the company, Article 23.7 of Law 222 requires that he or she refrain from voting on decisions involving conflicts of interest.

Decree 1925 of 2009 clarified the penalties that a board member may face if he or she does not properly report conflicts of interest. Board members have "unlimited joint and several liability for the damage that fraud or fault cause partners, the company or any injured party," if they do not follow the rules to report conflicts of interest and obtain shareholder approval if necessary (World Bank, 2011).

Compliance with recommendations of the *Código País* on board member disclosure of conflicts of interest was already high (95% compliance) with respect to the previous version of the code. The revised code includes several new measures (6, 21, 22 and 33).

Institutional investor disclosure, corporate governance policies, conflicts of interest and voting

Principles III.A (formerly Principles II.F.1) states that "Institutional investors acting in a fiduciary capacity should disclose their corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights;" and **Principle III.B** (formerly Principle II.F.2) states that institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.

Colombia's most important institutional investors are its pension funds, with 13% of share market capitalization in 2013, according to the national pension fund association, Asofondos. They were required by a 2007 resolution to take corporate governance into account in their investment decisions, and for those companies in which they have at least 5% of the shares, to vote or in cases where they abstain, to explain why they have abstained. They also must disclose their voting policies and how they vote to the SFC. Furthermore, they are required to develop a policy for dealing with conflicts of interest, which must be approved by the AFP's board and disclosed on its web site.

Pension fund representatives interviewed for this review reported that they have developed mechanisms for rating the corporate governance of the companies they invest in, taking into account their responses to the annual survey of compliance with the *Código País*. One pension fund said it has developed a separate methodology for rating the corporate governance of companies that are invested in bonds. They also reported that they were active in asking companies questions and inspecting their books during the 15-day period prior to the general shareholders meeting, and felt that their active role has resulted in companies becoming more responsive to investor concerns in recent years. Asofondos reported in 2013 that its members had elected independent board members in 14 listed companies. They also as a general rule review the backgrounds of independent director candidates to determine whether they are independent of the pension funds before deciding whether they should vote or abstain due to a conflict of interest. They may also abstain if they do not receive sufficient information to make a determination within five days of the general shareholder meeting. This concern to avoid voting in case of a conflict of interest is particularly important in the Colombian environment because the country's two largest private pension funds (by assets managed), Proteccion and Porvenir, belong to two of

the countries' largest economic groups, whose holding companies control multiple listed companies in the market.

Other institutional investors tend to be more passive on corporate governance issues with respect to the companies they invest in. However, Decree 1242 of 2013 requires mutual funds to state as part of their corporate governance standards, the policies and mechanisms that allow them to prevent and manage potential conflicts of interest. They must also establish policies, guidelines and procedures for the exercise of voting rights. While there is no requirement to disclose these voting policies to the public, they are required to explicitly define where the investment fund company may not participate in the deliberations and voting because of, inter alia, the low materiality of social participation or issues to be decided.

Other types of institutional investors do not have specific requirements regarding voting or disclosure of voting policies. Trustees, another category of institutional investor, must abide by the provisions set out by the settler regarding the exercise of voting rights attached to the shares, which may require trustees to vote subject to instructions given by the settler or the beneficiary. Trustees are required to act in good faith, with loyalty, diligence and professionalism, performing all acts necessary to achieve the purpose of the trust.

Insider trading and abusive self-dealing

Principle III.E states that insider trading and market manipulation should be prohibited and the applicable rules enforced.

Colombian regulations prohibit company insiders from trading, directly or through another individual, based on privileged information. Insiders may include managers, board members as well as brokers and individuals who have received that information and use it to advise a third party on transactions in the market. SFC and AMV both have responsibilities with respect to market surveillance and prosecution of insider trading, but AMV's responsibilities are limited to securities intermediaries and the natural persons assigned to them.

Between 2006 and the first quarter of 2014, the SFC issued 18 sanctions related to misuse of privileged information, with fines issued every year except 2013, ranging in amount from USD15 000 to USD 105 000. The SFC also has worked jointly with the AMV on insider trading and market manipulation cases that have led to fines of up to USD 155 000 and suspensions of the individuals involved for up to 5 years.

As reported under Principle I.B, the IMF's Financial Stability Assessment (IMF, 2013) reached positive conclusions about the SFC's and AMV's enforcement powers and actions, but suggested that there is a perception of "unduly lengthy" enforcement processes, and that more resources and efforts should be devoted to combating fraud and market abuse and prosecuting "message" cases. Since the report was issued, quite high profile enforcement cases have emerged with respect to the Interbolsa case (see Box 2.5), and AMV has reported that it has cut the length of time required to conclude its higher priority enforcement cases in half.

Equitable treatment of shareholders among state-owned enterprises

Shareholder protections (Guideline IV.A)

Guideline IV.A provides that the state should strive toward full implementation of the *Principles of Corporate Governance* when it is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs. Concerning shareholder protection this includes: (1) The state and SOEs should ensure that all shareholders are treated equitably; (2) SOEs should observe a high degree of transparency, including as a general rule equal and simultaneously disclosure of information, towards all shareholders; (3) SOEs should develop an active policy of communication and consultation with all shareholders; (4) The participation of minority

shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions, such as board election; and (5) Transactions between the state and SOEs, and between SOEs, should take place on market consistent terms.

Ensuring equal treatment

The 2013 Working Party review of Colombia against the Guidelines pointed to a range of measures that support equitable treatment of shareholders within SOEs that have minority shareholders as called for under **Guideline IV.A.1**. This is particularly the case for Colombia's two listed SOEs (Ecopetrol and ISA). The state has sought through different actors to attract investors and build closer links between SOEs and their stakeholders. In the "Declarations of the Nation as Majority Shareholder", for example, it undertook a series of obligations in favour of the minority shareholders and stakeholders of a number of companies, listed and otherwise, in which it holds a controlling stake (Box 3.2).

Box 3.2. **State's statement in favour of minority shareholders of Ecopetrol**

In the case of Ecopetrol, the State's declaration issued on 26 July 2007 states that best practices recommend that companies have a board with the appropriate professional expertise and that its nomination be "transparent and independent in order to avoid future conflicts of interest". It explains that, to this end, "the Nation has unilaterally decided to enter into an undertaking" with the company's minority shareholders for a period of ten years under which it will vote at shareholders' meetings in accordance with a list of commitments that "seek to guarantee the application of good corporate governance practices" in the company. These commitments include:

i) **Dividend policy**. "In order to effectively guarantee the right of all shareholders to receive dividends in accordance with the Law", the state declares that dividends will be paid out of liquid profits and establishes a procedure for their calculation that considers balance sheet profits less the losses of previous years, legal reserves and tax provisions.

ii) **Board composition.** The state undertakes to put forward two (out of a total of nine) candidates for the board who have been proposed by the departments (regions) where the hydrocarbons exploited by the company are located and by minority shareholders, and to vote for these candidates. It will require that the candidates are suitable and comply with the legal definition of independent directors.

iii) **Agenda of shareholders' meetings**. The state undertakes to vote for motions that seek to permit the inclusion of matters additional to those envisaged in the agenda of the company's extraordinary shareholders' meetings if proposed by a shareholder who represents at least a 2% stake in the company. In addition, it undertakes to transform this commitment into a permanent statutory norm.

iv) **Decisions by shareholders' meetings.** The state undertakes that the disposal of assets with a value equivalent to 15% or more of the company's market capitalisation will be discussed and decided affirmatively only if supported by minority shareholders who represent at least 2% of the shares subscribed by minority shareholders. In the absence of this support, the state must call a new meeting at which the decision will be adopted without this special quorum. In addition, it undertakes to transform this commitment into a permanent statutory norm.

v) **Exit right.** If it is not possible to reach agreement on the share price for exercise of the right of exit, the state will accept the arbitration of an investment bank selected by the Chamber of Commerce of Bogotá.

Source: www.ecopetrol.com.co/documentos/40316_Declaracion_del_Accionista_Mayoritario_26-07-07.pdf

Similarly, in other SOEs, it has signed shareholder agreements[3] that seek to protect minority shareholders in areas that include dividend distribution policies and the calculation of profits, the summoning of shareholders' meetings, operations with related parties, disclosure policies, liquidity mechanisms, the adoption of international accounting standards, board decisions, board composition and the sale of shares to third parties. One example of a shareholders' agreement was that adopted by former SOE Isagen in December 2006.

In addition, Colombian legislation establishes special mechanisms for the protection of minority shareholders such as those contained in article 141 of Law 446 of 1998, under which any group of shareholders that represent less than a 10% stake in a company and are not represented on its board can request the intervention of the Financial Superintendency whenever they consider that a decision by the shareholders' meeting, the board or an enterprise's legal representatives is directly or indirectly detrimental to their rights. Other important norms establish exit rights in the event of a merger, spin-off or transformation and high voting quorums for sensitive matters such as profit distribution (78% quorum); the issue of ordinary shares placed without being subject to preferential rights (70% quorum); and payment of dividends in the form of treasury shares (80% quorum).

Transparency towards all shareholders

As issuers of publicly traded securities, Colombia's two listed SOEs (Ecopetrol and ISA) are required to follow disclosure practices in line with **Guideline IV.A.2,** including disclosure to all shareholders at the same time. In the case of Ecopetrol, listed both in Colombia and in the US and Canada, information must also be reported simultaneously through the SEC's EDGAR system and, in Canada, through the Canadian Securities Administration's SEDAR system and the information system of the Toronto Stock Exchange. There are no rules that allow the state to receive any early notice. In order to comply with their reporting obligations in the Colombian market, SOEs use the Financial Superintendency's Integrated Securities Market Information System (SIMEV). Their reporting obligation comprises all material information defined as "all situations related to the issuer that would have been taken into account by a prudent and diligent expert in decisions related to the issuer or in the exercise of his political rights". This is regulated by Decree 2555 of 2010.

In addition, all SOEs, whether listed or not, are obliged to report to the General Accounting Office through the MHCP's CHIP system, to the Comptroller General's Office through its SIRECI system and the Fiscal Statistics Information System (SIDEF). In some cases, they must also report to the MME's Integrated Management System (SIGME), the Financial Superintendency or the Company Superintendency. Some also have to report to the Utilities Superintendency, through another system known as SUI, and to other regulators. Furthermore, the MHCP's Directorate General for SOEs has worked along with the General Accounting Office to enhance the reporting tools for SOEs through the CHIP system in order to build a more comprehensive and integrated package of information. Any SOE of which MHCP has majority ownership and/or MHCP-appointed directors is obliged not only to report its financial information but also its operational and budgetary performance on a quarterly basis.

This multiplicity of reporting often involves the same basic information which must be processed and published differently by public bodies, at diverse times of the year. According to SOE administrators, this implies an important work load that could easily be simplified through unification and standardization of some of these reports or the methodologies used for their publication, as well as the sharing of information.

Active policy of communication and consultation with all shareholders

According to the MHCP, Colombian companies have in place different mechanisms, either legally required or voluntary, to ensure that SOEs have an active policy of communication and

consultation with all shareholders as called for under **Guideline IV.A.3**, through which they make information available to shareholders or answer their questions. These mechanisms vary depending on the volume of information and the company's geographic location.

The law provides shareholders with the opportunity to inspect a company's books and papers, except for those documents subject to corporate confidentiality. Under this right of inspection, established by article 379 of the Commercial Code, companies must put their books and papers at the disposal of shareholders to enable them to obtain information about their administrative and financial situation. This right can be exercised within the 15 working days prior to a shareholders' meeting in which the company's end-of-year financial statements will be examined.

The Código País recommends companies to make available to investors a point of contact to serve as a channel of communication. In 2012, 93% of financial companies and 98% of real sector companies reporting under the Código País said they adopted the recommendation (Financial Superintendency). The voluntary mechanisms that companies have adopted for the attention of investors include traditional and non-traditional channels. The latter include call centres, e-mails, chat and offices for personal attention and, in the case of the former, mobile units, stands and educational talks and seminars offered particularly by listed companies. Many Colombian companies also post information on their websites, including their approved financial statements.

Facilitation of minority shareholders' participation in shareholders' meetings

Guideline IV.A.4 recommends that the participation of minority shareholders in shareholders' meetings be facilitated in order to allow them to take part in fundamental corporate decisions such as board election. As indicated above, all SOE shareholders have, in general, the same rights, without discrimination between private and state shareholders, except in a few cases where, for legal or statutory reasons, certain nominations or posts depend expressly on the decision of the state. Colombia's three listed SOEs, which are naturally those with more minority shareholders, have developed a culture that seeks to maintain close and fluid relations with their investors who attend shareholders' meetings in very large numbers. Their shareholders' meetings are, in addition, broadcast live on Internet and television and often involve small presents and souvenirs from the company that shareholders take with them after the meeting. The OECD's 2013 review of Colombia against the SOE Guidelines reported the following participation in Ecopetrol's shareholders' meetings (Table 3.1).

Table 3.1. **Attendance at Ecopetrol's shareholder meetings**

Year	Shareholders (individuals and companies)
2008	10 879
2009	8 722
2010	10 617
2011	8 604
2012	14 696

Source: Ecopetrol, 2013

The 2013 review found that many SOEs consider minority shareholder participation as an important factor that may shield them from the risk of undue political influence that could affect their sustainability. This is another reason why these SOEs foster mechanisms of communication with shareholders and stakeholders.

Furthermore, Colombia has regulated the use of proxy voting (via External Circular 22 of 2012 by the Financial Superintendency) and custody of securities (via Decree 1 243 of 2013) to facilitate shareholder participation.

As also discussed above, the state has, in the case of a number of SOEs, also issued declarations and signed shareholders' agreements for the purpose of guaranteeing the due representation of the interests of minority shareholders and stakeholders. Agreements have also been signed between minority shareholders, in some cases with the enterprise's support, to regulate situations such as the election of the director to whom they have a right under the state's undertaking to ensure them a seat on the board.

For example, prior to its privatisation, Isagen had a shareholders' agreement under which the state undertook to include an independent candidate (for both director and alternate director), elected by minority shareholders, in its list of candidates for board seats. Ecopetrol also has a shareholders' agreement with provisions for election of candidates to the board.[4]

Treatment of SOEs' transactions with the state and other SOEs on market consistent terms

Guideline IV.A.5 calls for transactions between the state and SOEs, and between SOEs, to take place on market consistent terms. This issue is addressed further under the section on ensuring a level playing field between SOEs and private sector competitors, where it is noted, for example, that Colombian SOEs do not generally receive loans from state-owned banks, and do not receive preferential treatment in public procurement processes.

Disclosure of public policy objectives (Guideline IV.C)

Guideline IV.C states that, where SOEs are required to pursue public policy objectives, adequate information about these should be available to non-state shareholders at all times.

Colombia's listed SOEs do face general requirements to report non-financial information within their annual reports, and their reports are readily available. However, there are no specific requirements to report on public policy objectives. In the absence of an overall co-ordinating function across all Colombian SOEs, different SOEs face different requirements in this respect: based on demands by line ministries, many SOEs prepare annual reports on their performance which discuss their results not only from a financial perspective. It is possible to access the reports of companies that post them on Internet.

The government's ownership policy (CONPES, 2015) pledges that "The national government will issue ownership guidelines for every state-owned enterprise" … and that "those guidelines will clearly stipulate and convey to the board of directors the general objectives that the enterprise must pursue. Moreover, they will be written down on a declaration of objectives agreed between the government and the board of every company (or group of companies). And such declaration may be included in the companies' bylaws or other type of document. Furthermore, it will be supplemented with annual performance agreements between the government and the board, which will determine for every company objective, given parameters, criteria and specific targets easy to monitor and measure…to assess the performance of the board and of the senior management."

The ownership policy does not specify a process for agreeing or disclosing such objectives in the case of listed or mixed ownership companies, but does call for each SOE to implement and report on "practices and methodologies to determine the weight of its public-policy activities on the company's business operation and financial outcomes. When reporting such a weight, every company will indicate the method used to assess it, along with enough information to back up its measurement." A final element of this recommendation calls on all SOEs to "Inform the public, as much as possible, on the public policy objectives of every enterprise and their weight for the companies."

Disclosure and transparency: Requiring timely and reliable disclosure of corporate information in accordance with internationally recognised standards of accounting, auditing and non-financial reporting

The Concept Paper, in its guidance for assessing Colombia's corporate governance framework relative to this Roadmap principle, suggests three main areas of focus. A first key issue is the application of accounting and auditing standards and practices (Principles V.B and C and Guidelines VI.A, B, and C). A second key emphasis is the importance of disclosing information on two aspects of corporate information: enterprise governance, ownership and voting structures (Principles II.E.2, V.A.3 and V.A.9 and Guideline VI.A.3); and disclosure of related party transactions (Principle V.A.6 and Guideline VI.A.8). This section, therefore, is broken down into three substantive sections: accounting and auditing standards; disclosure of governance, ownership, and voting structures; and disclosure of related party transactions.

Accounting and auditing standards (Principles V.B, V.C and Guideline VI.A)

Principle V.B recommends that information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial reporting, while **Principle V.C** calls for an annual audit to be conducted by an independent, competent and qualified auditor in accordance with high-quality auditing standards.

Law 1314 of 2009 called for Colombia to implement International Financial Reporting Standards (IFRS) and International Standards of Audit (IAS). However, implementation of the law has been sensitive and has taken substantial time due to concerns from the business and accounting sectors about the capacity and training of the accounting sector to handle the transition, as well as the costs of compliance.

Implementing decrees were issued during 2012 and 2013 establishing a phased implementation of IFRS that has been completed for listed companies in Colombia. The decrees established three groups subject to IFRS. The first group, comprised of listed and other large Colombian companies, was required to issue its annual financial statement for 2013 by June 2014 in two forms: one following IFRS, and the second using the traditional Colombian GAAP accounting requirements. For this first round, companies were not required to disclose their financial statements under IFRS, but the reports were audited by the statutory auditor and submitted to Superfinanciera. Statements issued in 2015 covering the 2014 financial year were again issued as two separate reports following Colombian GAAP and IFRS requirements, but this time were fully disclosed to the market to allow for comparison. Finally, financial statements for the 2015 fiscal year and thereafter are required to exclusively follow IFRS.

SFC authorities suggested that the biggest difference between IFRS and Colombian GAAP is in how banks and insurance companies calculate estimates of expected losses, which under Colombian GAAP must be based on historical data, but which allow for more discretion under IFRS. Another difference is that IFRS requires more detailed reporting of related party transactions than Colombian GAAP, and extractive industries face different requirements for reporting of reserves.

A second group, which includes some of the smaller financial institutions, mid-sized companies and **state-owned enterprises**, was required to implement IFRS for a transitionary phase beginning on 1 January, 2015, one year after the first group, with full implementation of IFRS implemented from 2016. In December, 2016, Decrees 2 131 and 2 132 were issued to update the Technical Framework of Financial Reporting Standards for Groups 1 and 2 to the 2015 version; and to update the Technical Framework of Information Assurance Standards to 2014. Thus, for January 1, 2018, Colombian enterprises will follow IFRS version 2015.

A third group, involving micro-businesses, have been provided additional time and flexibility to implement IFRS. Under transitional rules allowed for under IFRS, tax filings will not have to be based upon IFRS until 2019.

IFRS standards are fully applied for consolidated financial accounts. Colombia's framework does allow for a small number of exceptions to IFRS with respect to separate financial reporting. According to SFC, this includes provisions related to: 1) the estimate of provisions for loan portfolios; 2) classification and valuation of investments; 3) in the case of insurance companies, methods for estimating catastrophic technical reserves for earthquake insurance, deviation reserves for accident rates and asset shortfall reserves; and 4) pension liabilities, which remain in line with a methodology established under Decree 2783 of 2001.

Principle V.C recommends that an annual audit should be conducted by an independent, competent, and qualified auditor, in accordance with high-quality auditing standards in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

The shareholders' meeting appoints the statutory auditor, known in Colombia as the *revisor fiscal,* to carry out duties that include: (i) certification of the quality of internal controls defined broadly (including processes and operations); (ii) certification that the firm complies with laws and bylaws; (iii) signing of financial statements together with the legal representative (World Bank 2003a). Article 215 adds that the *revisor fiscal* must be a public accountant and may not serve as the auditor of more than five stock companies. In the case of firms performing these services, the Code establishes that, for each audit, they must designate a single public accountant who personally carries out this task.

In its 2003 Accounting and Audit ROSC review, the World Bank described that in its opinion the term *revisor fiscal* should not be translated as "statutory auditor" because "according to internationally accepted practice, the term "statutory auditor" is used to mean independent auditors who audit financial statements. Since a *revisor fiscal* is legally required to perform various activities that do not resemble auditing of financial statements, the term revisor fiscal is used throughout this report to mean those practitioners who perform legally required annual audits in Colombia (…) There is an inherent conflict of interest in that the revisor fiscal gives the company instructions[5] and then audits their execution. Market observers express concern about the independent judgment of the *revisor fiscal*, especially in cases where his or her salary is paid by the company" (World Bank 2003b).

The Colombian authorities have taken a number of steps since then to address the concerns raised by the World Bank and that ensures that Colombia's *revisores fiscales* comply with international audit standards. This has included the issuance of regulations (such as Circular 54 of 2008 and Circular 38 of 2009) that better define the scope of the external audit and internal control functions assigned to the *revisor fiscal*. A particular preoccupation has been the issue of independence, which has been addressed by asking for rotation of firms or partners as well as preventing the simultaneous rendering of additional services, even via sister companies.

In February 2015, the Government issued Decree 302 requiring statutory auditors to implement international audit standards,[6] to be enforced from 1 January, 2016. This was followed by Decrees 2 420 and 2 496 issued in December 2015 to regulate the implementation of accounting standards, financial reporting and information assurance. These Decrees include the entire framework of pronouncements issued by the International Auditing Assurance Standards Board (IAASB) and the International Ethics Standards Board for Accountants (IESBA).

The SFC reported that it has been working in cooperation with the Superintendency of Companies, the National Institute of Accountants, Technical Council for Accounting (*Consejo Técnico de la Contaduria)* and the universities to encourage all accounting professionals to be

trained and to acquire the knowledge necessary for optimal implementation of IFRS and IAS during this transition period. For example, the Superintendency of Companies in co-ordination with the National Institute of Accountants organised events in both 2014 and 2015 on convergence to the new standards to educate and sensitise companies, owners, teachers, statutory auditors and others about the process and to share problems and experiences. During 2016, the Technical Council for Accounting held 53 training and diffusion events on IFRS and IAS, which were attended by approximately 4 000 people. The National Institute of Accountants has also conducted training events and workshops, with the first two focusing on IFRS and the second two on implementation of international audit standards. Universities have also played an important role by offering free courses for auditors on implementation of assurance and audit standards, including a "Forum of Firms" that featured the participation of approximately 450 accountants.

Regarding enforcement of these provisions, the SFC reported that when a new statutory auditor is appointed, the SFC reviews and assures that they have sufficient qualifications and training to execute their duties as auditor of a supervised entity. The SFC may issue fines, suspend or remove auditors from office if it finds a breach of duties or disregard of applicable regulation. The Technical Council for Accounting has also conducted awareness-raising and training activities, and annually defines a training plan in which approximately 6 000 auditors have participated from all regions of the country. However, no qualifying exams have been established.

Private sector institutions, including the PwC and National Institute of Accountants, have established their own programmes of continuing education and issuance of diplomas to provide certification for both IFRS and IAS. A new group, co-ordinated by the Technical Council for Accounting, has also been established with the participation of companies, official entities, universities and audit firms. The group has begun carrying out surveys on the current state of IFRS and IAS implementation with an objective to eventually develop an "Accounting Development Tool."

Colombian companies are legally required to have their annual financial statements audited by an external auditor. The external or statutory auditor, who is assigned to perform the duties of the *revisor fiscal*, may perform this function for no more than five companies at a time. If a public accounting firm is appointed as *revisor fiscal*, a firm partner or employee who is legally qualified to practice accounting is designated to perform those duties.

A number of additional legal requirements have been established in support of auditor independence. The external auditor cannot provide non-audit services for the company he or she audits, and in case of violation, may be sanctioned by the Central Board of Accountants. In addition, according to the Commercial Code, the statutory auditor may not be 1) a partner of the company or any of its subsidiaries or those associated with or employees of the parent; 2) linked by marriage or relationship or are co-members of board members or managers, the auditor cashier or company itself; or 3) employed by the company or its subordinate.

The *Código País* has also established recommendations to promote the independence of the *revisor fiscal*, which apply not only to the company but also to the company's economic related parties. This includes recommendations that corporations establish a maximum contract term with the auditing firm ranging between five to 10 years after which the turnover of the firm must take place. Half-way through the term, the corporation should promote the turnover of the auditing firm associates and their work teams assigned to it. While SFC has not provided comprehensive data on compliance levels against each of the 148 recommendations in the code, they did indicate that some issuers pointed specifically to difficulties in implementing the recommendation to rotate audit work teams. COLCAP issuers' overall compliance with this recommendation was reported at 75% in 2015, while the average compliance level for all listed companies was just 46%. In 2016, overall compliance among COLCAP issuers rose slightly to 76.4%, while all listed companies' compliance increased to 52%.

Colombia's 195 000 registered accountants and 1 780 accounting firms are certified based on requirements for an accounting degree and at least one year of experience. The Central Board of Accountants is anticipating that the biggest challenge and most controversial measure needed to comply with IAS standards will be to strengthen certification requirements to require accountants to pass written exams certifying their knowledge of IFRS, and sectoral regulation when applicable. As an initial step, such exams may first be required for certification to serve as a company's "revisor fiscal," or statutory auditor. The Central Board and SFC also acknowledge an interest to strengthen training and continuing education for statutory auditors.

Traditionally, the Central Board's main activity has been to review complaints and to sanction those accountants and firms that do not comply with the law or its code of ethics. Annually the Central Board handled an average of 1 200 processes and issued 283 sanctions between 2010 and 2013, which most frequently involved suspension of the accountant's certification for one year, and in rare cases, cancellation or removal from the profession. Out of 900 sanctions issued since 2004, they have only sanctioned 14 firms, and had only one case involving one of the Big 4 firms, which was suspended in 2004 for one year.

Audit and disclosure standards for SOEs and aggregate reporting (Guidelines VI.A, VI.B and C)

Disclosure of material financial and non-financial information

In addition to calling on large and listed SOEs to implement financial and non-financial reporting according to international standards, as discussed above, **Guideline VI.A** also addresses more specific standards for SOEs, taking into account size and capacity, to disclose material financial and non-financial information, including areas of significant concern for the state as an owner and the general public.

The Working Party's 2013 review against the Guidelines found that companies report under several sectoral or ministerial requirements. They are often required to deliver the same information, mostly financial, at different points in time, without a single or overarching guide that would focus on the issues listed by Guideline VI.A. Some of the topics listed there, such as any financial assistance received from the state, are not subject to any reporting requirement on a regular basis.

SOEs are however obliged to report and publish the general information required by law for all companies, depending on whether they are issuers of equity or securities. In addition, they submit financial, economic and social information quarterly to the MHCP's CHIP system and annually to the General Accounting Office. They also report to other entities as in the case of financial companies which must file monthly reports with the Financial Superintendency, and securities issuers, which are subject to a range of disclosure requirements including on their corporate governance practices with respect to recommendations of the *Código País*.

Based on demands by line ministries, many SOEs also prepare annual reports on their performance which discuss their results not only from a financial perspective. This is compulsory for listed companies and their reports are readily available. However, it is also possible to access the reports of other companies that post them on Internet. In addition, some information, such as the names of board members and the CEO, is available for all majority-owned SOEs via the annual MHCP aggregate report on SOEs.

The government's ownership policy calls for further development and public disclosure of SOEs' financial and public policy objectives. More comprehensive disclosure of SOE financial and non-financial results started to become available via the MHCP's first annual aggregate report issued in April 2016, with further elaboration of information reported in the second report issued in May 2017 (see discussion of Guideline VI.C below).

Independent external audit

Guideline VI.B recommends that SOEs' financial statements be subject to an independent external audit based on high-quality standards. The Guideline also specifies that specific state control procedures do not substitute for an independent external audit.

Under article 203 of the Commercial Code, a *revisor fiscal* must be employed by all stock companies, branches of overseas companies and "companies in which, by law or under their statutes, their administration does not correspond to all the partners, when so determined by partners excluded from the administration who represent no less than 20% of the capital".[7] As discussed under Principle V.C above, these statutory auditors are subject to international standards of audit.

According to the MHCP, all SOEs are externally audited. Some SOEs have also adopted voluntary policies of rotating their auditors but this is not the usual practice. SOEs are, in addition, subject to the individual and sector specific supervision of bodies such as the Financial Superintendency, the Utilities Superintendency, the Comptroller General's Office and the General Accounting Office which also, in one way or another, audit their results.

Aggregate annual reporting on SOEs

Guideline VI.C recommends that government ownership entities develop consistent reporting on SOEs and publish annually an aggregate report on SOEs.

Colombia's decentralised system of ownership made the development of comprehensive information on Colombian SOEs a significant challenge for the government during the accession review process. However, the government has made major strides during this period to collect consolidated information on all of its majority and partially state-owned enterprises across 11 ministries, with much of this information now available and reported in annexes A, B, C and D of this report. This includes information for each enterprise in its portfolio with respect to assets, liabilities, equity, net income, direct and indirect ownership, legal form, and responsible ownership entities.

The development of this information paved the way for the publication by the MHCP of its first annual consolidated report on SOEs in April 2016, covering the 2015 financial year. This included an overview of the national government SOE portfolio and some analysis at the sector level, with individual data for each SOE, mainly focused on financial indicators of performance, including information on financial structures and profitability. In May 2017, the MHCP issued a second annual aggregate SOE report covering SOE performance through the end of 2016, including increased non-financial data and information on corporate governance developments.

The 2016 Report, in addition to providing a financial summary of performance for each SOE, provides an overview of actions taken by the government to strengthen corporate governance of SOEs more generally (e.g. establishment of the Directorate General for SOEs (DGPE), drafting of a new SOE Code, strengthening board nomination processes, and removing Ministers from boards of directors, among others), building upon the CONPES 3851 government ownership policy, and responding to recommendations of the OECD Corporate Governance Committee. The 2016 report also provides non-financial information for each majority-owned SOE including: identification of its CEO and Chairman, names of directors (though without background information on their qualifications or status of independence), information on board remuneration, and external auditors, among others. The 2016 Report includes five new chapters:

1. Towards best practices: underlining the national government´s commitment to best practices of corporate governance for SOEs.
2. Implementation of the State Ownership Policy: describing the current situation and evolution in the implementation of CONPES 3 851 and the expected role of the DGPE.

3. Technological tools: explaining IT developments by DGPE to interact with the SOEs, including an initiative, called SIREC (Boards´ System for Information and Reporting).
4. Strengthening Corporate Governance: containing a reference to other initiatives and actitivites performed by the DGPE to strengthen boards including evaluation, training and induction for directors nominated by the government.
5. Sustainability in Colombian SOEs: explaining the expectations and challenges for SOEs in implementing a higher standard of sustainability. The report mentions as a reference the Global Reporting Initiative (GRI) as a good corporate social responsibility standard to follow.

The aggregate reports draw upon the MHCP's system for consolidating public financial information, known as the Consolidator of Fiscal and Public Financial Information (CHIP).[8] It is responsible for channelling the financial, economic and social information of public bodies, including SOEs, to central institutions, under the administration and supervision of the General Accounting Office, and to the general public. Its primary purpose is to monitor the fiscal and financial performance of public bodies, based principally on macroeconomic and financial data. It seeks to control and evaluate fiscal management and its reports are, therefore, designed to provide the information required to define transfers to sub-national bodies, adopt macroeconomic policies, control specific and aggregate borrowing and, in general, conserve the state's fiscal and financial equilibrium.

Disclosure of ownership and voting structures

Principle II.E.2 recommends requiring the disclosure of capital structures and control arrangements, and **Principle V.A.3** similarly recommends requiring the disclosure of material information on major share ownership, including beneficial owners, and voting rights.

Colombian issuers are required to publicly disclose their ownership structure including information about their shareholders. Information on the 20 largest shareholders is available within the SFC SIMEV public information system, and companies must disclose to SIMEV as material information when a shareholder's stakes exceed 5% of outstanding shares. Economic groups are required to submit a special report describing the economic intragroup relationships, and companies must register in the Chamber of Commerce any controlling situation or economic group. While SFC has comprehensive data on different classes of share ownership for ordinary, preferred (non-voting) and privileged shares among listed companies, not all companies disclose this information.

Colombian issuers (but not individual shareholders) must also disclose through the SFC's SIMEV public information system any relevant information to the market regarding changes in control and changes in either direct or indirect ownership equal to or greater than 5% of the outstanding shares of the company. If an acquirer seeks to acquire 25% or more of the stocks of a publicly traded company, or an additional 5% when above the 25% threshold, the shareholder is required to make a public tender offer. Due to the concentrated ownership of most Colombian listed companies, hostile takeovers are not known to occur in the Colombian markets, and these provisions are rarely triggered.

SOE disclosure of governance, ownership and voting structures

Guideline VI.A.3 emphasizes the transparency of SOEs' *ownership and voting structures*, including legal ownership of the state's shares and any special shareholder rights or agreements.

Provisions for the reporting of ownership and voting structures apply to the 14 Colombian SOEs that issue securities (see Annexes A, B and C for specification of the SOEs with this status). These SOEs must also report on their corporate governance practices against the

recommendations of the *Código País.* The government's annual aggregate reports on SOEs include information on the percentage ownership share of each SOE held by the government. The government does not have any voting structures that are disproportionate to its share ownership.

Disclosure of related party transactions for publicly traded companies

Principle V.A.6 recommends requiring the disclosure of material information on related party transactions and the terms of such transactions to the market individually.

The legal and regulatory framework for disclosure of related party transactions is extensive, requiring reporting on all such transactions in the Notes of annual financial statements. The framework is quite complex, establishing different requirements for disclosure, monitoring and verification of the information provided, depending on the company's status as a financial or non-financial issuer, or whether it is part of an economic group or a financial conglomerate. The rationale behind the differing requirements is that economic groups, financial conglomerates and financial entities present differing levels of prudential risk to the country's financial stability and therefore must be reviewed and monitored more closely than non-affiliated real sector companies.

Annual Financial Statement Notes for financial entities must record asset and liability balances as well as income and expenses resulting in each period for RPTs including those involving shareholders with 10% or more of the capital, management and members of the board. They must indicate the conditions of operations involving loan balances, loan portfolios, leases, deposits, financial obligations and other liabilities. They must also disclose transactions with shareholders below the 10% threshold if the capital amount is 5% or more of regulatory capital.

For non-financial issuers, the Notes must report on RPTs' aggregate value during the year, the conditions in which operations were concluded and whether they were conducted under current market conditions. If the conditions of the transaction differed from regular market conditions, the company must explain the reason why they were different. They must also generally disclose any information that would enable the market to evaluate the effect of these operations on the economic and administrative situation of the company as well as its particular interests.

In addition, all issuers of securities must inform the market through the SIMEV of any material related party transactions on a timely basis, including "share acquisitions and transfers by the managers, either directly or indirectly, through family companies, spouses, relatives up to fourth degree of consanguinity, second of kinship, civil relationship, or, in general through natural or legal persons with whom they form a single real beneficiary…" when relevant to a) the financial and accounting situation; b) the legal situation; c) commercial and labour situation; d) corporate crisis situations; e) issuance of securities; and f) processes of securitization.

Companies within an economic group must issue a "special report" to the AGM describing the economic relations between the controlling corporation or its affiliates or subsidiaries with the respective controlled corporation. The report must provide information on 1) the most important transactions performed between the above-mentioned entities; 2) the most important transactions between the controlled corporation and other entities under the influence of or in the interest of the controlling company (or vice versa); and 3) the most important decisions that the controlled corporation took, or refrained from taking, under the influence of the controlling corporation (or vice versa).

The SFC reviews the Notes of Annual Financial Statements and Special Reports to verify that all RPTs are reported, and as of 2014 had imposed two sanctions to issuers and had five pending investigations for non-compliance.

In addition, SFC requires financial groups to issue a quarterly report called "Reciprocal Intragroup Consolidated Transactions", which describes the economic intra-group relationships, including amounts of debit and credit movements and balances at the end of the quarter. The

SFC reviews among other aspects, 1) the type of operation; 2) the terms and prices; 3) the level of concentration of cash and credit that is generated; 4) compliance with limits for investment and credit; 5) disclosure in the financial statements; and 6) the frequency and amounts of these operations. The SFC reviews in greater depth any RPTs that may stand out because of their amount, type, jurisdiction, or because they are not usual. SFC also undertakes on-site supervision in which it verifies that the companies have defined procedures to perform related party transactions and that they follow them, along with more detailed provisions related to such issues as agreements regarding supply of technology, property rental, office supplies, appropriate fees for services, and the absence of profits or liquidity transference or subsidies between the companies in the group. All financial and non-financial holding companies are subject to such inspections at least every two years, during which all RPTs performed by the companies within the group are checked and verified. Non-financial issuers are also subject to less frequent on-site and off-site inspections to verify the accuracy of RPT reporting.

SOE disclosure of material transactions with the state and other related entities (Guideline VI.A.8)

The Working Party's 2013 review of Colombia against the Guidelines reported that state-owned banks are expected to treat SOEs without any preference and in general SOEs are not engaged in substantial related party transactions and do not provide each other commercial credit. It is also worth recalling that SOEs are required to follow IFRS, which has extensive provisions for reporting on related party transactions. However, IFRS also allows some exemptions of these requirements for state-owned enterprises.

Establishing effective separation of the government's role as an owner of state-owned companies and the government's role as regulator, particularly with regard to market regulation

The Concept Paper and 2015 SOE Guidelines include a stronger focus on the overall responsibilities of the state ownership entity and, in assigning and implementing these responsibilities, ensuring that there is a clear separation between the government's role as an owner of state-owned companies and its role as regulator. Relevant recommendations under the Guidelines in this regard include Guidelines III.A (separation of functions); I.B (ownership policy); I.D (SOE ownership rationale and objective-setting); II.A (simplifying and standardizing SOE legal forms); II.B (SOE operational autonomy); II.D (exercise of state ownership rights); and II.F.2 (board nomination processes).

Separation of functions (Guideline III.A)

Guideline III.A calls for a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.

In the case of the MHCP, which is responsible for financial affairs (together with other entities such as Banco de la República), the separation of functions as regards its role as representative of the state in financial enterprises is achieved, according to the authorities, by not involving officials of the General Directorate of Financial Regulation in SOE management issues. These officials do not sit on any SOE board or take part in any of the discussions that may take place at the Ministry as a result of its role as representative of the owner (MHCP). Furthermore, the MHCP in 2014 established a unit for financial analysis and regulation (*Unidad de Proyección Normativa y Estudios de Regulación Financiera*) to separate functions even more. It includes an oversight council with 2 (out of five) independent members, although the head is appointed by the President.

A good example of the separation of regulatory and commercial functions is provided by the restructuring of Ecopetrol in 2003 under which the National Hydrocarbons Agency (ANH) was created. Ecopetrol had previously been responsible for designing oil policy and supervising its implementation whilst, at the same time, competing as a state oil company with the private sector (see Annex 4). This confusion of roles discouraged the participation of private players in the market, leading to a critical drop in the country's oil reserves. The reform established that Ecopetrol would confine itself to the oil business, competing on equal terms with other companies, while the ANH would take responsibility for the sector's administration and regulation. Nevertheless, both the Finance Minister and the Minister of Mines and Energy continue to be ex officio members of Ecopetrol's board, along with the Head of the National Planning Department, another ministerial-level appointment.

More generally, this review identified 12 SOEs in which Ministers, in many cases by law or under the enterprises' statutes, participate *ex officio*, or as a result of delegation, in the boards of different EICEs and SEMs. The Working Party's 2013 review pointed to the issue of Ministers serving on boards as inevitably generating a conflict of interest that is only partially mitigated by the authorities' efforts to establish Chinese walls or other similar forms of containment as to prevent the exchange of information that could cause conflicts of interest, contributing to at least a perception in the market of a lack of due separation between regulatory affairs and the enterprise's management. A number of CEOs interviewed for the 2013 report spoke about the problems this entails. Some SOEs are, for example, unable to participate fully in technical discussions within their business associations when sector reforms are being debated or, at least, their participation is viewed with mistrust.

The Working Party's March 2015 review of Colombia's progress again focused on this concern, when the Colombian authorities reported the presence of Ministers on the boards of 12 SOEs and deputy ministers serving on the boards of many of these same SOEs plus 18 additional SOEs. By March 2015, the Colombian government had agreed to phase out ministers from the board of the National Development Fund (FDN). The Colombian authorities also argued that deputy ministers are more technical than political, and that at least in the medium-term it would be necessary to keep their presence on many of these boards to ensure that the board has the necessary technical knowledge to be effective. The Working Party responded by calling for a stronger commitment and faster implementation of SOE boards without the presence of Ministers in an April 2015 letter from the Chair to Colombia's Minister of Finance.

The Colombian government subsequently committed to a much more rapid removal of ministers from all SOE boards, as announced in its national ownership policy (CONPES 2015). The ownership policy noted that in the case of Ecopetrol, removal of ministers would be phased out over a longer period due to its major importance to the Colombian economy and its financial stability. The government subsequently clarified that for Ecopetrol, the Minister of Mines and Director of National Planning would leave the board as of March, 2017, and the Minister of Finance one year later in 2018. In the case of FDN, a shareholder's agreement called for the phased removal of ministers on the board to be completed in March 2017. However, minority shareholders subsequently requested a temporary waiver allowing the Minister of Finance to remain on the board of the FDN until March 2018. The government accepted this request, reporting that the company is in a very important stage in the development of its strategic direction and business plan which is focused on the development of the infrastructure of the Nation.

For five SOEs that require legal changes to remove the minister from the board[9], the government announced that it would remove the ministers from these boards on a discretionary basis by having the minister designate an alternate to serve in his or her place, as legally permitted under Colombia's system of alternate directors. While as of March 2016 all five ministers were replaced by their alternates to implement this agreed approach, an important exception emerged when a new Minister of Commerce was appointed to the government in May 2016. She subsequently

informed the President that she would take a position on the board of directors of Bancoldex, where as of June 2017 she was serving as Chair. The government further stated a commitment to change the bylaws of these companies in order to forbid ministers from serving on these boards. However, plans to do so by March 2017 have been delayed due to conflicts between bylaws and the existing law (Estuto Orgánico del Sistema Financiero).

Apart from the exception at Bancoldex, the government has continued to progress in removing ministers from SOE boards and reducing the number of deputy ministers since the time of the Committee's 2016 review, as shown in Tables 3 and 4 below. The government's general policy has been to replace departing ministers at director general level or below, while beginning to reduce the number of deputy ministers on boards on a gradual basis. They reported that the speed of this transition will depend in part on their success in identifying suitable replacements with sufficient technical knowledge to maintain the board's overall effectiveness. Table 3.2 provides an overall summary of the current situation with respect to ministers and deputy ministers on boards classified by the government as commercial SOEs.

Table 3.2. **Commercial SOEs with Ministers and Deputy Ministers**

	March 2015		March 2016		March 2017	
	Ministers	Deputy Ministers	Ministers	Deputy Ministers	Ministers	Deputy Ministers
ICETEX	1	1	0	1	0	1
ARTESANIAS DE COLOMBIA S. A.	1	2	0	2	0	2
COLPENSIONES	1	1	0	1	0	1
COLOMBIA TELECOMUNICACIONES	2	0	0	0	0	0
ISA	1	2	0	1	0	1
BANCO AGRARIO	1	1	0	1	0	1
FIDUCIARIA LA PREVISORA S. A.	0	1	0	1	0	1
LA PREVISORA S. A. (COMPAÑIA DE SEGUROS GENERALES)	0	1	0	1	0	1
POSITIVA COMPAÑIA DE SEGUROS S.A.	0	1	0	1	0	1
SERVICIO AEREO A TERRITORIOS NACIONALES (SATENA)	0	1	0	1	0	1
SOCIEDAD HOTELERA TEQUENDAMA S.A - SHT	0	1	0	1	0	1
SOCIEDAD DE ACTIVOS ESPECIALES S.A.S.	0	1	0	0	0	0
ECOPETROL	3	0	2	0	1	0
Total Commercial SOEs	10	13	2	11	1	11

In addition, Colombia has categorized another six SOEs with political-level appointees under the category of financial institutions and second-tier development banks in Table 3.3.

Table 3.3. **Second-tier public development banks and other financial institutions**

	March 2015		March 2016		March 2017	
	Ministers	Deputy Ministers	Ministers	Deputy Ministers	Ministers	Deputy Ministers
BANCOLDEX	1	1	0	1	1	0
FDN	2	0	1	0	1	0
FINAGRO	1	0	0	0	0	0
FINDETER	1	0	0	0	0	0
FNA	1	0	0	0	0	0
FNG	0	1	0	1	0	1
Public Financial Institutions	6	2	1	2	2	1

In total, Colombia's submission reported that as of June 2017, 13 of the 16 ministers that had been serving on boards of 12 Colombian SOEs were no longer doing so, with two others scheduled to depart in 2018. The number of deputy ministers has dropped during this period from 15 to 12.

Another concern relevant to the separation of ownership and policy functions raised in the Chair's letter of 21 April 2015 following its review of Colombia's progress concerned the President's authority to directly appoint and remove CEOs from several SOE boards, a practice which can be seen as undermining the role of the board to oversee the day-to-day management of the company. The Chair's letter further stipulated that if this is not politically feasible in some SOEs, transitional measures should give these boards at least the authority to significantly influence the selection of candidates considered by the President for appointment, with the provision of stronger direct authority to be reconsidered once these SOE boards have been strengthened. The Colombian authorities have subsequently reviewed the government's portfolio more thoroughly to identify the precise list of the 17 SOEs where this is the case, set out in Table 3.4 below.

In addition, as noted in the corporate governance landscape section describing the role of the Presidency, the President also has the authority in some cases to set remuneration for board members as well as top executives (generally delegated to the MHCP), while under the Guidelines, remuneration policy is a recommended responsibility of the board of directors.

Table 3.4. **SOEs where the CEO is nominated by the President**

1.	ARTESANÍAS DE COLOMBIA
2.	BANCO AGRARIO S.A.
3.	CENTRO DERMATOLOGICO FEDERICO LLERAS ACOSTA E.S.E.
4.	FINANCIERA DE DESARROLLO TERRITORIAL S.A. - FINDETER
5.	FIDUPREVISORA
6.	FONDO FINANCIERO DE PROYECTOS DE DESARROLLO - FONADE
7.	FONDO NACIONAL DEL AHORRO - FNA
8.	FONDO NACIONAL DE GARANTÍAS
9.	IMPRENTA NACIONAL DE COLOMBIA
10.	INSTITUTO COLOMBIANO DE CREDITO EDUCATIVO Y ESTUDIOS TECNICOS EN EL EXTERIOR - ICETEX
11.	INSTITUTO NACIONAL DE CANCEROLOGIA E.S.E.
12.	LA PREVISORA S.A. CIA DE SEGUROS
13.	POSITIVA COMPAÑIA DE SEGUROS
14.	RADIO TELEVISIÓN NATIONAL DE COLOMBIA (RTVC)
15.	SANATORIO DE AGUA DE DIOS E.S.E.
16.	SANATORIO DE CONTRATACION E.S.E.
17.	SOCIEDAD DE ACTIVOS SPECIALES SAE

The MHCP has taken the position that the provisions for Presidential appointment of the CEO apply to a small number of SOEs, many of which are socially oriented in nature such as the four SOEs from the health sector. The MHCP's March 15, 2016 written submission reported that the provisions stipulating that the President appoint the CEO (or to delegate this authority to the responsible minister) are generally based on legal requirements that would be difficult to change, rooted in the President's constitutional authority with respect to these SOEs. In addition, the national ownership policy sets out plans to issue a new SOE corporate governance code, subsequently issued at the beginning of 2017, that MHCP indicated "will require the boards of directors to create competitive, robust and transparent processes for the identification, selection and appointment of their respective general managers."

To strengthen the role of the board in relation to the CEO, the ownership policy states that when the law or a company's bylaws stipulate that the President of the Republic, a minister or a director of an administrative department may freely appoint and remove the company's general manager, the corporate governance code will request the board of directors to:

- Carry out a process to identify, assess and select candidates competitively, based on guidelines for the selection of board members.
- Based on the abovementioned process, present a shortlist of two or more candidates to the President, or to his relevant minister, for its election and appointment.
- Draft and forward to the President, or to his relevant minister, an annual report on the performance of the general manager.
- Forward, when it considers it pertinent to the company's best interest, a formal communication to the President, or to his relevant minister, recommending the removal of the general manager from his position, along with any suitable supporting documents.

- However, the new SOE code issued in January 2017 does not include such provisions, according to the MHCP, because they would be in conflict with the law which provides the President with the authority to nominate the CEO in the above cases. Therefore, the national ownership policy on this issue remains to be implemented and the issues raised during the OECD review about lack of direct authority of the board over management remain as a continuing concern.

A final concern with respect to ambiguity of roles raised in the Working Party's 2013 review was the case of Coljuegos, an SOE that has a monopoly on gambling. Coljuegos' objectives include "the issue of regulation of the games of chance for which it is responsible", "the definition of the characteristics with which individuals or legal entities must comply in order to operate the games of chance for which it is responsible" and "the design of annual plans for the combat of illegal operation of games of chance". The annotations to Guideline III.A emphasise the importance of avoiding a confusion of roles such as that seen in Coljuegos and which are common in public service monopolies as well as in industries that have recently been deregulated or partially privatised. The Colombian government has subsequently taken the position that Coljuegos is not a commercial SOE and has no economic activities, making the Guidelines less applicable in this particular case.

Ownership policy (Guideline I.B)

Guideline I.B recommends development of an ownership policy defining the overall rationale for state ownership[10].

Colombia's National Council for Economic and Social Policy (commonly known by its Spanish acronym CONPES) issued a comprehensive "General Ownership Policy for State-Owned Enterprises of the National Level" on 23 November, 2015. The Council is headed by the President and includes all relevant ministers and additional officials responsible for the government's economic and social policy. The 54-page document (plus annexes) sets out an ambitious programme for first enhancing co-ordination and corporate governance practices of all Colombian SOEs, and ultimately instituting a fully centralised ownership function. Its annexes provide information on the Colombian enterprises that are subject to this policy and sets out a time-frame for implementation with specific deliverables for every six-month period through 2019. The main recommendations of the ownership policy are described further in the corporate governance landscape section of this report.

The main focus of the document is on the institutional structures, policies and practices to be implemented to strengthen the functioning and effectiveness of Colombia's ownership function, and the corporate governance policies and practices applicable to the SOE sector. However, the document also sets out six main reasons for the why the government becomes and remains the owner of SOEs:

- To participate in sectors strategic for the country's economy and development.
- To implement productive-development policies.
- To solve market shortcomings and distortions.
- To create non-existing yet necessary markets.
- To provide utility and social services when the market does not provide them adequately, or for reasons of national security.
- To keep highly-profitable share participations as a source of fiscal revenues.

The ownership policy goes on to describe the government's challenges with respect to its SOEs in terms of generating economic and social value. "Those challenges fall into two categories: on the one hand, there are the issues on the government's performance of its role as owner; on the other hand, there are the internal and external barriers of SOEs to become competitive, profitable and sustainable. In general, it is evident that the national government must make greater efforts so that the performance of its ownership functions, its corporate-governance practices, and the regulatory framework of the state-owned companies become closer to the international best practices…" Other elements of the ownership policy are described in relationship to the Guidelines recommendations that they address.

SOE ownership rationale and objective-setting (Guideline I.D)

Guideline I.D recommends that the state define the rationales for owning individual SOEs and subject these to recurrent review. Guideline I.D also recommends that any public policy objectives assigned to an individual SOE or group of SOEs should be clearly mandated and disclosed.

The overall rationales for the government's ownership of state-owned enterprises are described in the previous section. The national ownership policy also sets out a more specific objective "to deliver clear and explicit mandates to SOEs," which describes the process that will be followed to strengthen the clarity and transparency of objectives for each SOE. It states that the national government will issue ownership guidelines for every SOE that will clearly stipulate and convey to the board of directors the general objectives that the enterprise must pursue. These objectives will be contained in a declaration of objectives agreed between the government and the board of every company (or group of companies), which may also be included in the companies' bylaws. These will be supplemented with annual performance agreements between the government and the board determining every company objective, given parameters, criteria and specific targets. Those parameters will serve to assess the performance of the board and of the senior management.

In cases when the national government may have both business and public policy objectives for an SOE, the policy calls for establishing a balance between these objectives so that the company may attain long-term economic stability. It further calls on the government to provide clear guidelines to the enterprise on the priorities of public policy and business objectives, and to inform the public, as much as possible, on the public policy objectives of every enterprise and their weight for the companies.

The 2013 review of Colombia against the Guidelines found that Colombian SOEs are viewed as a supplementary public policy tool in the sense that they exist to provide certain goods or services, which the state expects them to produce under market conditions without political intervention beyond that which could be exercised by any controlling shareholder. According to the MHCP, SOEs do not have obligations and responsibilities in terms of public services beyond those envisaged by the country's legislation for any public or private entity that performs the same function. At the same time, it is recognized that some SOEs have explicit public policy objectives; the report cited a number of examples (the airline company *Satena, Bancoldex*, and *Artesanías de Colombia)* where such objectives have been established and transparently communicated.

The government's ownership policy seeks to further refine this framework and the elaboration of such objectives by establishing an action plan with a specific timetable for each action. of the ownership policy projected that the reviews of their portfolios with respect to their rationales for state ownership and recommendations on which SOEs not to retain would be completed by 2017. The establishment of specific ownership guidelines for each SOE would take longer, beginning in 2017 through a gradual process that would be completed by 2019. A new CONPES document was expected to be issued by September 2017 that will declare which SOEs are strategic for the

Government, along with their objectives; and those which are non-strategic, for which plans to disinvest will be developed.

Simplifying and standardizing SOE legal forms (Guideline II.A)

Guideline II.A recommends that governments simplify and standardise the legal forms under which SOEs operate and that SOEs' operational practices follow commonly accepted corporate norms.

As discussed in the corporate governance landscape section, SOEs are subject to different legal regimes depending on their legal form as determined by their charter. With the exception of EICEs, which may be considered statutory corporations, most Colombian SOEs are, in general, subject to private law and structured as commercial companies. The particular situation of EICEs is not fully aligned with the Guidelines' recommendation that, as far as possible, governments should base the legal form of SOEs on private law and avoid creating a specific legal form when this is not absolutely necessary for the enterprise's objectives. This recommendation reflects a belief that the adoption of commercial structures increases transparency and, by making state commercial activities comparable with those of the private sector, facilitates their control as well as levelling the playing field for private competitors in increasingly deregulated and competitive markets.

With the exception of EICEs and the SEMs which are assimilated to the former because the state holds a stake of 90% or more, it is, in general, the country's Commercial Code and its related regulation that serve as the legal and regulatory framework for SOEs. It establishes norms on the composition of boards and the election of a company's administration in line with those applied to listed companies.

However, depending on the sector, SOEs may also be subject to specific sector norms. This is the case of listed and utility companies. In their acts and legal contracts, SOEs must adhere to the general procurement regime and to specific norms for certain sectors or activities such as insurance and financial activities. In addition, as indicated above, special rules apply to EICEs and SEMs which determine the regime applicable to their acts and contracts.

In the case of labour relations, SOEs' employees may be subject to different rules than those applicable to the employees of private companies. In certain cases, when an SOE's employees are considered to provide services to the state, they are classified under Colombian law as *public employees*[11] or *official workers*[12]. Public employees have a legal and regulatory relation with the public administration which means that they require an act of appointment, their situation is governed by law excluding the possibility of negotiating a change in conditions, and they are subject to contentious-administrative jurisdiction under public law. Official workers, on the other hand, have a work contract with the administration or, in other words, have a contractual relationship similar to that of private sector employees. However, in contrast to the latter, official workers have a minimum of guarantees established by contract, permitting negotiation of the other terms of their employment and even collective agreements.[13] Controversies between official workers and their employers are usually subject to common labour jurisdiction.

The employees of SOEs whose acts are governed by private law are also subject to the provisions of common labour law. Some SOEs have adopted collective agreements that protect their employees as regards pension and labour rights and, in some cases, include incentive-based remuneration plans.

In addition to the areas identified above, the Colombian ownership policy identifies a number of procedures and requirements, particularly those related to budget approval and staff changes that impair SOEs from competing on a level playing field with the private sector. SOEs with the EICE legal form and SEMs with at least 90% state ownership subject to the EICE legal regime must submit their budgets to the Senior Council for Fiscal Policy (CONFIS), while changes in staff

structure must be approved by the Directorate General for Public Credit and National Treasury (DGCPTN) within the MHCP along with a budget viability certification from the General Directorate of the National Public Budget within the MHCP. Separate approvals are also required for majority-owned SOEs' credit operations from the DGCPTN, while the National Planning Department must approve operations aimed at carrying out investment expenditures. The ownership policy recognises that the controls are in place to meet specific government objectives to ensure a responsible management of public resources by SOEs and to minimize the government's fiscal risks, but also argues that similar objectives can be achieved through corporate governance tools that would grant a greater autonomy to boards of directors.

The national ownership policy does not take a position on the specific question of developing a uniform legal form for SOEs, but rather calls for a long-term objective of ensuring that SOEs are subject to the laws and regulations of a general nature; and transferring to the board of directors the performance of functions as the organisation's highest governing body. In the short-term, the MHCP and Administrative Department of the Public Service (DAFP) "must adjust the regulatory framework of SOEs so that the boards of directors may have flexibility to decide on their budgets, staff scheme, capital structure, long-term investments, and other management-related aspects, with speed and timeliness to remain competitive, particularly when they are in markets where private sector companies also operate." The MHCP and DAFP launched this process during 2016 by beginning work on a legal and financial analysis of the convenience and efficiency of the norms that govern the approval of the annual budget, authorized allocation of future funds, staffing structures, and the performance of indebtedness operations in certain sub-groups of SOEs that are different than those applying to private companies. The results and proposed regulatory changes are scheduled to be presented and reviewed by the government during the second half of 2017.

SOE operational autonomy (Guideline II.B)

Guideline II.B recommends governments to allow SOEs full operational autonomy to achieve their defined objectives and to refrain from intervening in SOE management. The annotations clarify that governments may still act as active owners, but that direction given by the state to the SOE or its board should be limited to strategic issues and public policy objectives.

Issues raised in the sections above with respect to ministers on boards, presidential appointment of CEOs, and control processes on budget, investment, credit and staffing structures all raise concerns with respect to SOEs' operational autonomy. How the national ownership policy is proposing to address these concerns has also been described.

Despite characteristics that include being subject to private law and undertaking for-profit industrial or commercial activities, Colombian SOEs are perceived as expressions of state activity and a further tool for the implementation of public policy. However, according to the country's authorities, this does not mean that the enterprises are at the service of different ministries and authorities, or that they owe obedience to them under a structure of administrative subordination. Instead, it is the activity of the state that requires or makes advisable the existence of a state company to provide the corresponding goods or services. The enterprise is, therefore, expected to undertake its activity in market conditions without political intervention beyond that which any controlling shareholder could exercise though votes and nominations to the board.

In this sense, the objectives of a number of the SOEs consulted for the preparation of this report clearly explain what they understand as their commercial and social objectives and how they balance them. Banco Agrario's corporate objectives offer a good example (Box 3.3).[14]

Box 3.3. **Banco Agrario's corporate objectives**

Social purpose. The objective of Banco Agrario de Colombia S.A. is to develop the activities of a commercial bank, financing principally, but not exclusively, activities related to the rural, agricultural, fishing, forestry and agribusiness sectors. At least 70% of new active lending operations must be to finance rural, agricultural, fishing, forestry and agribusiness activities and no more than 30% of new credit operations will be to finance sub-national bodies and activities other than those mentioned above, prior authorisation by the Board of Directors.

Mission. We are a commercial bank that focuses on the agricultural sector, with the country's widest coverage, and offers specialised financial solutions, supported by a competent human team and with technologies that integrate and ensure effective, high-quality processes, creating value for our clients, collaborators and shareholders in accordance with their risk tolerance, in order to foster Colombia's economic and social development.

Vision. To be in 2015 the principal financial ally of the agricultural, official and micro-finance sectors, recognised for its specialised financial solutions, its coverage of all the country's municipal districts and as the promoter of the development and financial inclusion of Colombia's rural population.

Source: www.bancoagrario.gov.co/acerca/Paginas/Entidad.aspx

The MHCP has indicated that SOEs can receive instructions from the government as regards laws, decrees or development plans that affect all companies in a particular sector of the economy, regardless of whether they are state or privately owned. This is consistent with the Guidelines which advocate limiting intervention of the ownership or coordination entity to issues and policies of a strategic nature. The Colombian authorities have also indicated that the government does not intervene in the commercial policies of SOEs:

"Its intervention occurs when, given the size of its stake, it has a right to a seat on the board and this director, therefore, represents the position of the Ministry. Similarly, at shareholders' meetings of enterprises in which the Ministry has a stake, decisions are approved or not by its representatives in accordance with the interests of the state. It is, therefore, clear that the government guides its representatives on boards and at shareholders' meetings informally and allows each SOE to act with independence. However, strategic decisions about the SOE may be put before the Asset Committee" (MHCP, p. 53).

When the Colombian state decided to partially privatise some of its enterprises, such as ISA, Isagen and Ecopetrol, it entered into unilateral undertakings in favour of their new investors, establishing limits on its powers to intervene in the companies' affairs and promoting more independence in their boards of directors. In these undertakings, known as "Declaration of the Nation as Majority Shareholder", it took on a series of obligations and offered guarantees on corporate governance matters such as dividend distribution, decisions by shareholders' meetings, the right of exit and the setting aside of certain board seats for candidates proposed by the regions where the respective company operates and by minority shareholders. Without this voluntary decision on the part of the state, minority shareholders would not obtain seats on the boards of some of these companies.

These undertakings were for a period of ten years and served as a guarantee for investors, particularly as regards clarity, a greater participation in decisions about the company and the application of best corporate governance practices. In almost all cases, the guarantees and rights enshrined in these undertakings were incorporated into the companies' statutes within the ten-year period and, therefore, became permanent.

Centralisation of the ownership function (Guideline II.D)

Guideline II.D recommends the exercise of state ownership rights should be clearly identified within the state administration and that the exercise of such rights should be centralised in a single ownership entity or carried out by a co-ordinating body. This "ownership entity", the Guideline further recommends, should have the capacity and the competencies to effectively carry out its duties.

An important long-term objective established in Colombia's national ownership policy is to establish centralised ownership of all SOEs under a single State holding company or agency, which would require legislation which the government states would be prepared before the end of the current Presidential term in August 2018. To prepare for this, the government has focused its current attention on establishing various measures to more effectively co-ordinate the state's ownership function, to be led by the MHCP which has ownership responsibility for 88.5% of the government's assets, and 21 of 40 majority-owned SOEs.

As a next step to begin implementing these measures, the President issued Decree 2384 on December 11, 2015 establishing a General Directorate for State-Owned Enterprises within the MHCP for what is described in the ownership policy as a "pilot project" to strengthen the ownership function and corporate governance of SOEs within the SOEs for which the MHCP has overall ownership responsibility. The SOE Directorate has taken lead responsibility for developing an SOE corporate governance code during 2016, issued in January 2017, that would eventually be applied to all SOEs, as well as for issuing guidelines to identify and select members of the boards of directors, and to assess those boards, which would be shared with other Ministries. The SOE Directorate has also issued the government's first annual aggregate SOE reports in March 2016 and May 2017. The Directorate is composed of 10 staff, including five focused on SOEs and corporate governance, two handling administration, two working on a major transportation project, and one legal advisor, The more detailed responsibilities of the Directorate are described in Box 2.7 in the corporate governance landscape section of this report.

In addition, to further strengthen co-ordination, the Ministry of Finance has indicated the intent of the government to establish an Inter-ministry Committee for State-Owned Enterprises composed of the seven ministries with the largest SOE portfolios (finance, defence, agriculture, mines and energy, trade, housing, technology and telecommunications and transport) as well as the National Planning Department, the Administrative Department of the Public Function and the Administrative Function of the Presidency. The MHCP reported in June that a new decree has been drafted and would be issued to establish the Committee "within weeks." The General Directorate for SOEs will act as the committee's secretariat. Among other functions, the Committee will:

- Coordinate the definition of general policies, strategies and objectives directed at harmonizing and standardizing the exercise of ownership functions.
- Design and recommend coordinated strategies that allow the National Government to advance in a coordinated manner towards a centralized State ownership model.
- Research, draft and propose regulatory changes that allow Colombia to guarantee that SOEs and private companies compete on an equal footing.
- Promote, on a whole-of-government basis, the implementation of corporate governance best practices within Colombian SOEs.
- Diagnose the state of implementation of the General State Ownership policy among all responsible entities of the National Government.

Board nomination processes (Guideline II.F.2)

Guideline II.F.2 recommends that the state, in exercising its rights as an informed and active owner, should establish well-structured, merit-based and transparent board nomination processes in full- or majority-owned SOEs and should actively participate in the nomination of all SOEs' boards and contribute to board diversity.

The 2013 review of Colombia against the Guidelines found that the Colombian government had not yet established fully structured and transparent board nomination processes. The national ownership policy seeks to change that by setting an overall objective "to formalize well-structured and transparent processes to identify, assess and recommend the candidates for appointment to the boards of directors of SOEs." To put this into practice, it calls on the MHCP's new Directorate General for SOEs to formalize the processes to identify and select candidates to become members of the board of directors. The MHCP reported in June 2017 that it plans to issue an internal directive to establish a board nomination assessment committee within the MHCP in the near future.

The Decree establishing the Directorate General for SOEs sets out this responsibility specifically as "to design, propose and help coordinate the processes by which the government elects, re-elects or dismisses its representatives to the boards of directors of the state-owned enterprises, by virtue of its share participation or the enterprises' regulations; and to advise the ministry on the election of those board members." The process established for this responsibility within the MHCP calls for the director of the Directorate General to present candidates for the board positions to the Ministry's Assets Committee, which is attended and led by the Minister, to decide on the nominations. Any guidance developed by the MHCP would also be shared with other Ministries and the Inter-ministry Committee for SOEs to promote their wider use.

The ownership policy specifies that in case of a vacancy, the national government must employ transparent tools to have access to the largest possible number of potential candidates. It may, for example, publish the available vacancies and receive applications through diverse media, or keep a database of prospects that will be periodically updated. As a first step in the process, the policy calls for the national government must work with the board of directors to define a tentative composition of minimal functional profiles needed by the board as a whole, related to aspects such as knowledge, skills, professional experience, and gender. For instance, it may be determined that a particular board must have at least someone with certain financial experience, someone with given legal experience, a minimum quota of women, and no less than one independent member.

The policy further stipulates that "to assess the candidates, there will be some eligibility criteria in light of the board's predefined composition and the current challenges of the enterprise, without prejudice to the use of any additional information available, or the consideration of other factors. For instance, if a given candidate is or has been a member of the board of directors of another state-owned company, the outcomes of his performance assessment in that position will be fundamental to the analysis of his candidacy. It may be important to appoint an independent board member, in which case his profile must adhere to the independence requirements stipulated by the Law 964 of 2005."

The policy further stipulates that the board of directors should be given an opportunity to express itself about any individual profiles identified as necessary for the company's strategic plan. When the government deems it necessary, for example in view of the importance of an SOE among other factors, the government may make use of specialized headhunting firms to provide advice and support to the selection processes. The government's representatives to the boards of directors of its SOEs do not need to be governmental officers necessarily; they may be professionals of the private sector.

Ensuring a level playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions.

To ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities, the Concept Paper calls for consideration of Chapter III.B-G of the Guidelines. (Guideline III.A is addressed in the previous section above.)

Stakeholders' access to redress (Guideline III.B)

Guideline III.B recommends that SOEs' stakeholders and other interested parties, including creditors and competitors, should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated.

Stakeholders in Colombia can seek to enforce their rights through different mechanisms that allow them to challenge the acts of both SOEs and the state itself. These mechanisms include an appeal for annulment with or without the re-establishment of certain rights, appeals for direct compensation and contractual controversy appeals[15] (Box 12). These appeals are seen by the contentious-administrative jurisdiction. When stakeholders appeal to the ordinary courts against administrative acts, they must, given the presumption of legality, demonstrate having first used all the available administrative mechanisms.

In addition to alternative dispute resolution mechanisms such as conciliation, negotiation and mediation, Colombian SOEs can voluntarily submit to the jurisdiction of arbitration tribunals. Homologation, review and annulment mechanisms are available to challenge some of these decisions.

Box 3.4 **Stakeholders' means of redress**

Appeal for annulment. This is a public action which can be filed by any person, without a time limit and without demonstrating personal legal interest, requesting that the administrative act in question be declared null. It seeks to determine the legality of an act in the light of higher norms or, in other words, the Constitution or laws.

Appeal for annulment and re-establishment of a right. This is an action that seeks i) annulment of the act in question and ii) recognition of a specific legal situation, re-establishing the right that may have been ignored or violated by the administrative act that is declared null. The time limit for this action is four months.

Appeal for direct compensation. This action seeks compensation for the damages generated or caused by an act, omission, event or operation of the state or, in other words, the cause of anti-legal damages which the person is not obliged to bear. The time limit for this action is two years.

Contractual controversy appeal. Any of the parties to a contract can request that it be declared void, with the corresponding declarations, sentences and restitutions, that its review be ordered, that non-compliance be declared and that the party responsible be ordered to pay compensation for damages and that other declarations and sentences be issued. This is a private action that can only be filed by interested parties. However, the Public Prosecution Service can also request that a contract be declared void if it has a direct interest in it. The statute of limitations for this action is two years as from the end of the contract and the time limit for filing the action is two years.

Source: MHCP

Stakeholders can use executive action to obtain enforcement of the definitive ruling of the judge in the last stage of a legal case, which constitutes a writ of execution. In the absence of voluntary compliance with a sentence issued by the contentious-administrative jurisdiction, a year must elapse from the date of the sentence before the judge can order its enforcement while sentences against a public entity that involve liquidation or payment of money can only be enforced after ten months. This does not, however, exclude the application of injunctions in the intervening period.

Transparency and disclosure of public policy objectives and related costs (Guidelines III.C & D)

Guidelines III.C and **III.D** recommend that state ownership entities and SOEs maintain transparency and disclose costs and revenue structures in cases where SOEs combine economic activities and public policy objectives. In the case of the latter, costs should be clearly identified, disclosed and adequately compensated by the state on the basis of specific legal provisions and/or through contractual mechanisms.

The section above dealing with Guideline I.D describes the national ownership policy's recommendation and action plan setting out the government's intent to develop specific, agreed and measurable objectives for each SOE, which may encompass both commercial and public policy objectives. As noted above, the policy calls on the government when setting public policy objectives to ensure that they are defined in a way that is easy to measure and verify; and requires the implementation of practices and methodologies to determine the weight of its public policy activities on the company's business operations and financial outcomes. When reporting such a weight, every company must indicate the method used to assess it, along with enough information to back up its measurement. Finally, the policy calls for the government to clearly stipulate the remuneration scheme for the public policy activities, which may come from direct transfers from the national general budget or from the company's business revenues.

The Colombian government has not yet implemented this practice and plans to move on a gradual basis in this direction, first asking ownership ministries to review their portfolios during the period through 2017 before launching a more specific objective-setting and costing exercise.

Application of general laws, tax codes and regulations (Guideline III.E)

Guideline III.E recommends SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations, that laws and regulations should not unduly discriminate between SOEs and their market competitors, and that SOEs' legal form should allow creditors to press their claims to initiate insolvency procedures.

As described in previous sections with respect to Guideline III.A, SOEs do not follow a uniform legal form in Colombia, and different requirements apply to SOEs with the EICE legal form or SEMs with more than 90% government ownership or other bylaws requiring them to operate according to the EICE legal form. However, the majority of the government's portfolio (59 of 102) operate according to the SEM legal regime under which commercial law applies to them in the same way that it applies to private companies.

An important exception where SOEs appear to enjoy differing treatment occurs with respect to insolvency and bankruptcy procedures. Law 1 116 of 2006, through its regulation of the insolvency and bankruptcy regime, seeks to protect creditors and foster the recovery and survival of viable companies. However, in article 3, it expressly excludes from this regime all "state-owned companies and state industrial and commercial companies at the national and any other level", without clarifying the regime to which they are subject by default.

In the case of SOEs in the financial and utilities sectors, special norms, which apply supplementarily, establish specific liquidation procedures (with laws designed to ensure

continuity of the service or the system of payments). In other cases, such as EICEs or SEMs following the EICE legal form, liquidation must be authorised by the President of the Republic.

However, even in those SOEs with a supplementary norm establishing their liquidation regime[16] and, certainly, for all other SOEs (including listed companies like Ecopetrol that are not EICEs or, for example, utilities, but are "state-owned companies" as prescribed by article 3 of law 1 116), it is not clear which regime applies by default. As a result, their creditors do not seem to have a clear procedure for exercising their rights in the face of insolvency. The Commercial Code contains basic norms which they can use but these, in general, provide a level of protection for creditors and investors that is inferior to that afforded by Law 1 116.

Access to debt and equity finance (Guideline III.F)

Guideline III.F recommends SOEs' economic activities should face market consistent conditions regarding access to debt and equity finance. In particular, the Guideline recommends: (1) SOEs' relations with all financial institutions, as well as non-financial SOEs, should be based on purely commercial grounds; (2) SOEs' economic activities should not benefit from any indirect financial support[17] that confers an advantage over private competitors; and (3) SOEs' economic activities should be required to earn rates of return that are, taking into account their operational conditions, consistent with those obtained by competing private enterprises.

Colombian SOEs normally use the financial or capital markets for financing and do not receive any additional support from the state. State-owned banks are expected to treat SOEs without any preference and in general SOEs do not engage in substantial related party transactions or provide each other commercial credit.

Only in exceptional cases does the government guarantee SOE borrowing directly. This occurs when an SOE could not alone finance a project through the financial system or in the case of multilateral lending organisations which, in general, request a state guarantee, regardless of the borrower's solvency. The provision of a state guarantee is transparently regulated by Decree 2 681 of 1993, which was partially modified by Decree 95 of 1994. It establishes that a company seeking a state guarantee must comply with the conditions it defines and, in addition, set up collateral judged adequate by the MHCP.[18] For example, Isagen received a state guarantee for the loan it obtained in 2005 from the U.S. Overseas Private Investment Corporation, which required this as a condition for the loan with an initial value of USD 212 million (MHCP).

It should be mentioned that different market actors consider that, in Colombia, there is a widespread perception that public enterprises are implicitly guaranteed by the state, even when the law dictates otherwise. Although this has no basis in the law or regulation, there are, in fact, precedents in which the state has covered the outstanding debts of enterprises in which it only had a stake, without being obliged to do so. In one of these cases, the state was sued to cover the pensions of the employees of an agricultural company declared bankrupt in which it had only a minority stake. Another interesting case is that of the Urrá hydroelectric project in which the state had to cover the social responsibilities that arose from a change in the legal framework and which the company was unable to cover out of its own resources (Box 3.5).

Box 3.5. **Urrá dam case**

The design stage of the Urrá hydroelectric project began in 1979 and envisaged the construction of two dams (Urrá I and II) in the Alto Sinú area, a north-western region of Colombia. At that time, the project was considered financially viable and justified by the need to expand the country's hydroelectric system. In 1988, when the government gave the go-ahead for the project, it authorised construction of only Urrá I. In October 1992, the company, Multipropósito Urrá S.A., was formed and, in 1993, began construction of the dam and plant.

This called for the resettlement of 589 rural families and 22 families from the *Embera Katía* indigenous community. The latter appealed to the Constitutional Court on the grounds that they had not been consulted about the dam's construction and obtained a favourable ruling under which the company was ordered to pay monthly compensation to each indigenous inhabitant of the area for a period of 20 years. This triggered a significant increase in the population of the affected area, with the arrival of indigenous people from other parts of the country seeking to also benefit from the compensation. In addition to these monthly payments, the company was also ordered to pay compensation for the area of land that would be flooded by the dam. These additional costs, explained largely by the more conservationist nature of the new Constitution adopted in 1991, had naturally not been taken into account when the project was designed a decade earlier.

Through to 2009, the company ran an operating loss, due partly to the effect of the exchange rate on the value of the overseas borrowing used to finance the plant's construction. In this context, the state was obliged to take on responsibility for the payments owing to the displaced population and for the flooding of land, becoming a creditor of the project. In 2008, it capitalised an important part of the debt and, as of December 2012, the remaining portion amounted to approximately USD 500 million.

Source: MHCP

SOEs engagement in public procurement (Guideline III.G)

Guideline III.G recommends that, when SOEs engage in public procurement, procedures applied should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency.

The Working Party's 2013 review against the Guidelines noted that procurement by SOEs is governed by private law when they compete with the domestic or international private and/or public sector and when they operate in regulated markets. The state also requires that they have a procurement manual aligned with the principles of the administrative and procurement function established in the general state procurement statute. The public procurement statute establishes that the state may not procure directly from SOEs when they compete with private companies, requiring a bidding process. This provision is based on the constitutional principle of material equality under which the state must guarantee equality of conditions and a level playing field. According to the MHCP, the government does not interfere in SOEs' procurement and its influence is limited to that which it could exercise through the board of directors if it has a role in the authorisation of procurement (MHCP).

However, the government's ownership policy points out that SOEs operating under the EICE legal regime (including SEMs with 90% government ownership) must follow the General Procurement Statute for public entities. As noted earlier in this chapter on standardizing and simplifying legal structures, the government's ownership policy action plan calls for an analysis of the legal framework with an objective to adjust laws and regulations applicable to SOEs that undermine their ability to compete on equal conditions with private companies.

Recognising stakeholder rights as established by law or through mutual agreements and the duties, rights and responsibilities of corporate supervisory boards.

This Roadmap core principle relates mainly to Chapters IV and VI of the Principles and Chapters V and VII of the Guidelines on stakeholders and boards. The Concept Paper notes that a full assessment of these chapters could potentially call for quite detailed information about actual board practices (including in relation to stakeholders). It therefore recommended focusing on some of the key framework conditions, such as the legal framework defining the duties of board members, and the enforcement mechanisms and the legal rights of stakeholders. It suggested focusing particularly on: (1) stakeholder rights (Principles IV.A, B and E); (2) the rights, duties and responsibilities of boards (Principle VI.A); and (3) SOE recognition of stakeholder rights and SOE boards (Guidelines V.A, B, C, and VII.C).

Stakeholder rights

Respect for stakeholder rights (Principle IV.A)

Principle IV.A recommends that the rights of stakeholders that are established by law or through mutual agreements should be respected. Colombia's self-evaluation reported that in general, the rights of stakeholders in Colombia are protected by law, and the World Bank review also concluded that this Principle is broadly implemented.

The Corporate Governance Committee's review focuses on the recommendations in the Principles of Corporate Governance specifically aimed at worker and other stakeholder rights, particularly with respect to listed companies. This is also the case with respect to SOEs against Guideline V.A addressed later in this section.

In this context, the Colombian self-assessment cites workplace regulation that allows employers and employees to enter into and enforce contracts and agreements with each other. It also states that labour agreements, internal work regulations, collective bargaining agreements (with unionised employees) and collective accords (with non-unionised employees) govern work relations between employers and employees, and that sanctions and penalties are imposed if either of the parties fails to comply.

The Colombian authorities also reported on a number of legal provisions and other initiatives specific to the corporate governance framework that underpin the respect of stakeholder rights in Colombia. Colombian commercial law requires managers to act (i) in good faith, with loyalty and with the diligence of a "good businessman," and (ii) in the interest of the company, bearing in mind the interest of the shareholders.

Financial consumers also receive special consideration under Law 1480 issued by the government in 2011, which gave judicial power to the SFC with respect to financial consumer protection under Article 116 of the Colombian Constitution. As a result, SFC established in 2012 an impartial and autonomous judicial office with responsibilities for enforcing financial consumer rights, with direct accountability to the Superintendent. Another consumer protection mechanism created by Law 1328 of 2009 requires financial institutions to have a "system for attention to consumers" or SAC, a system that ensures attention to customer inquiries, including through establishment of a "consumer ombudsman" and clearly defined consumer duties, rights and enhanced enforcement mechanisms to protect them.

An initiative called "Balance social" calls on companies to report on the impact that their activities have on less favored segments of the Colombian population. Decree 3341 sets out minimum content that the report must include on social programmes implemented and activities developed, indicating the sectors that benefited.

Beyond the legal framework, corporate social responsibility initiatives are common in Colombia, and companies visibly strive to improve their channels of communication with stakeholders. Decree 2555 of 2010 instructs companies on their disclosure of such programmes.

Stakeholders' access to redress (Principle IV.B)

Principle IV.B recommends that, where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Stakeholder groups may seek legal redress through the courts, which have recently become more timely in processing cases due to measures taken to address congestion in the civil courts. Mechanisms are in place for stakeholders to obtain redress for violation of their rights, including alternative dispute resolution mechanisms such as arbitration, conciliation and mediation. Consumer complaints may also be filed in the specialized courts of the SFC and Superintendence of Companies. As referenced under Principle IV.A, Law 1328 requires financial institution board members, legal representatives and key managers to establish and enforce rules that ensure financial consumer protection, and the breach of its regulation can result in sanctions for the financial institution and/or its managers.

Communicating concerns about illegal or unethical practices (Principle IV.E)

Principle IV.E recommends that stakeholders, including individual employees and their representative bodies, be able to freely communicate their concerns about illegal or unethical practices to the board and to the competent public authorities and their rights should not be compromised for doing this.

The Colombian self-evaluation states that "Although not expressly stated in the laws and regulations of the corporate governance framework, the protection of those who are willing to denounce and expose unethical behaviour is part of our legal principles and widely accepted in practice." All issuers have reported to SFC that they have documented processes or mechanisms for employees to make complaints related to Code of Ethics and Conduct violations or other violations of internal regulations or corporate governance codes.[19] In a 2015 SFC survey of 73 issuers, 67 indicated they have e-mail, phone or form submission processes to handle such complaints. Thirty-two issuers reported data on how many complaints they received over the last three years (5,776, including 1485 at Ecopetrol alone). The companies reported that they investigated 2,955 of the complaints and sanctioned 256. In general, the Audit Committee or other committee reviews such complaints before reporting to the Board on how the complaints were addressed.

The SFC also considers complaints from employees. From 2011 to 2013, they reported initiating 141 investigations in response to complaints, 22 of which resulted in sanctions for the issuers and the other 119 resulting in recommendations for adjustments.

According to Colombian labour law[20], every company must have an internal procedure for reporting, preventing and addressing events related to labour harassment. The internal procedure must be kept confidential and the employee who lodges a complaint is legally protected by the authorities. An employee considered a victim of "mobbing behaviour" (a form of work-place harassment by groups) may also request the intervention of a conciliation centre. In general, the law provides that every employee should be loyal and faithful to its employer and has the legal obligation to report anything that may cause harm or damage to the company or its personnel.

Finally, the revised *Código País* includes several relevant recommendations, including 13.1 that bylaws should specify explicitly the functions that will not be delegated to the senior management, including the approval of policies related to anonymous tip systems or "whistle-blowers"; and recommendation 28.4 calling for the establishment of internal anonymous tip

systems for whistle-blowers (reportedly followed by 72.3% of all issuers in 2015). The recommendation further calls for the Board of Directors to receive a report on these claims.

Other Principles' recommendations related to stakeholder rights, including with respect to mechanisms for employee participation, disclosure, and the insolvency framework, were covered in greater detail in the Committee's 2014 accession review report and were generally assessed favourably.

The rights, responsibilities and duties of boards

This chapter of the Principles has as an overarching principle that the corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. However, the Concept Paper, noting the complexity associated with evaluating the effectiveness of board practices at company level, calls for the accession review to focus particularly on the legal framework in place, including an assessment against **Principle VI.A**, which states that *"Board members should act on a fully informed basis, in good faith, with due diligence and care and in the best interest of the company and the shareholders."*

Colombian administrators, which are defined to include board members, are legally required to act (i) in good faith, with loyalty and with the diligence of a "good businessman", and (ii) in the interest of the company bearing in mind the interest of the shareholders. Further obligations for managers defined in the Commercial Code include to: (i) protect the confidentiality of proprietary information of the company; (ii) refrain from the undue use of insider information; and (iii) except otherwise authorized by shareholders, refrain from participating directly or indirectly, in their own interest or in the interest of third parties, in activities (a) competing with the company or (b) acts resulting in a conflict of interest.

While no court cases against board members for violation of their duties were identified in the regular court system, Superfinanciera has issued sanctions against board members (and in some cases managers) for violation of their duties, most visibly in the recent Interbolsa case. Between 2006 and 2014, SFC reported issuing sanctions in 28 cases for "breach of administrator duties," with a majority of the cases related to conflicts of interest. Fines ranged from USD 17 500 to one case involving a 2010 fine to Interbolsa of USD 130 000. Furthermore, board members interviewed for this report suggested that it is common practice for board members to have liability insurance, suggesting that there is a credible potential for prosecution of directors for violation of their duties.

An overall assessment of the effectiveness of Colombia's framework may also draw upon the more detailed assessment of Colombia made against each of the Principles' recommendations in 2014. That review found that legal requirements are often lacking with respect to more specific board responsibilities called for in other Principles' recommendations, but there are also limits as to how effectively legal and regulatory requirements can impose specific board behaviour and responsibilities. The Colombian authorities have attempted to encourage this behaviour through the voluntary recommendations of the Código País, but in some cases this has led to only a minority of issuers adopting such practices.

In particular, in the period leading up to the adoption of the revised Código País in 2014, little appetite was apparent among Colombian listed companies to follow the Código País recommendations to establish committees for board nomination and remuneration and for corporate governance, and most issuers had not fully complied with the recommended functions of the Audit Committee. The Principles do not specifically recommend the existence of such committees, and company explanations of their lack of compliance may well state that the recommended functions are carried out by the Board as a whole. However, the underlying concern is a possible resistance at the level of companies and their controlling owners to the

Principles' concept of assigning directors capable of objective, independent judgement to review sensitive issues such as those involving related party transactions, remuneration and the nomination of board members and executives.

Apart from comply-or-explain self-reported survey results, there is little systematic survey information available to provide an objective account of how effectively boards function in Colombia. Some market participants, including board members, interviewed for this report suggested that board performance is quite variable, with some of the larger listed companies and state-owned enterprises making serious efforts to appoint independent-minded directors and to carry out best practices for boards, while in other companies, boards may serve primarily to ratify decisions of the controlling shareholder.

The Colombian authorities have recognized that changing the corporate culture of lagging companies will be a challenge, and have therefore given renewed attention to board practices through the development of the revised Código País. The new code includes, for example, a much more detailed list of 32 recommended board functions and responsibilities that should be included in company bylaws (Measure 13.1) that are broadly consistent with the recommendations of the Principles. Their updated self-assessment also provides references to specific recommendations in the code that address each of the Principles Chapter VI recommendations on boards, with the exception of the recommendation on employee representation on the board (Principle VI.G), which is not applicable in the Colombian context.

As the aggregated results against most of the Code's 148 individual recommendations were not available, this report does not generally provide details on implementation rates as reported by companies for 2015 and 2016. The SFC's preliminary report on initial efforts to implement the code reported an overall compliance rate of 59.1%, slightly lower than the 64% compliance rate with the previous code.[21] This improved to 62% for the second round of reporting based on 2016 practices. However, the SFC has noted that many of the recommendations will take time to implement due to the need for bylaw changes. The SFC devoted 2016 to pedagogical efforts, including a series of meetings with those responsible for completing the reports and in some cases with their board members, to help them to understand the scope of certain recommendations and to ensure their adequate understanding.

The 2014 review of Colombia against the Principles pointed to more specific gaps in Colombia's framework and practices for boards of directors, recommending that Colombia:

- eliminate the system of alternate directors;
- increase disclosure of board member backgrounds, service on other boards and other employment; and
- refine recommendations of the *Código País* on best practices for boards and board committees to correspond more closely to the recommendations of the Principles, for example, to encourage boards to:
  - review the company's corporate governance practices and carry out board evaluations (VI.D.2 and VI.E.4);
  - select, monitor and when necessary replace key executives and oversee succession planning (VI.D.3); and
  - align key executive and board remunerations with the long-term interests of the company (VI.D.4).

The revised *Código País* contains more specific recommendations with respect to each of these issues, in some cases going beyond what was in the previous code. For example, the revised *Código País* recommends eliminating the system of alternate directors through changes to company bylaws (recommendation 15.1), whereas the previous version of the code was limited to

trying to achieve more effective participation of alternate directors through their mandatory attendance at all board meetings. The SFC stated in June 2017 that it is continuing to monitor implementation with an objective to improve understanding of the code and the quality of reporting, and are not actively considering modifications to the code or regulation to strengthen implementation of particular practices at this time.

SOE recognition of stakeholder rights and SOE boards

This section assesses Colombia's position against Guideline V.A (recognising and respecting stakeholders' rights); Guideline V.B (reporting on stakeholder relations); Guideline V.C (internal controls, ethics and compliance programmes or measures); and Guideline VII.C (board composition and exercise of objective and independent judgment).

Recognition of and respect for stakeholder rights (Guideline V.A)

Guideline V.A calls on governments, the state ownership entities, and SOEs themselves to recognise and respect stakeholders' rights established by law or through mutual agreements.

Colombia's overall framework for recognising and respecting stakeholder rights is addressed in this section above where Colombia is assessed against Principle V.A. The 2013 Working Party review against the Guidelines found that, while Colombia lacks a comprehensive institutional and legal framework to address this issue, it is nevertheless possible to identity different expressions of a culture of respect for stakeholders' rights. It is not clear whether this is principally a result of the implementation of public policies or reflects local culture, but companies certainly strive to improve their channels of communication with stakeholders. They also actively participate in local and international related initiatives, in a bid to draw attention to their corporate responsibility or policies of transparency on the protection of the environment or human rights. In the case of SOEs, this is seen at all levels and not only among large companies, although the activities of the latter naturally have greater visibility. A very interesting example is EPM, an EICE that is wholly owned by the Medellín municipal government. It has implemented a business strategy that has received international recognition for its efforts to generate value for stakeholders.

Reporting on stakeholder relations (Guideline V.B)

Guideline V.B recommends that listed or large SOEs report on stakeholder relations, including where relevant and feasible with regard to labour, creditors and affected communities. According to the information gathered for this report, there is no general requirement for SOEs to report on stakeholder relations. There are, however, numerous examples beyond Colombia's listed SOEs of enterprises which report on a regular basis, adhering to different reporting methodologies (including the UN Global Compact, the Global Reporting Initiative, Integrated Reporting and ISO 26 000).[22] Many of them also submit their reports for external assurance of the quality of the information they contain. The national ownership policy makes reference to publishing information on SOE board nominees to ensure that it is available to stakeholders, but does not make any other explicit reference to recommendations to provide stakeholder information.

Internal controls, ethics and compliance programmes or measures (Guideline V.C)

Guideline V.C calls on SOE boards to develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures, including those which contribute to preventing fraud and corruption.

All entities subject to the supervision of the Financial Superintendency, SOE or privately-owned, are required to adopt a code of ethics and conduct. The board of directors is responsible for adopting the code while its implementation is a joint responsibility of the board and the management.[23]

As discussed in Chapter 2 of the corporate governance landscape section, corruption represents a significant challenge in Colombia and it is, therefore, encouraging to find that practically all enterprises linked to or owned by the MHCP report having adopted codes of ethics and, in one way or another, monitor compliance with their terms. Several companies also reported having manuals for the prevention of fraud, corruption, asset laundering and financing of terrorism.

Ecopetrol, for example, has in place a process for receiving reports of misconduct that operates under strict confidentiality and privacy parameters. This online service is operated by an external company and can be accessed at any time by telephone or Internet, allowing the person making the report to do so anonymously but also to receive a code number through which to verify the status of the report. The company's compliance official informs the audit committee on a monthly basis about the reports received through this mechanism and the cases that remain open and have been closed, including the measures adopted.

However, according to the Measurement of Business Transparency in Public Service Companies (MTE-ESP) 2012,[24] carried out by the local chapter of Transparency International, *Corporación Transparencia por Colombia*, the weakest aspects of the 22 public and private companies who voluntarily agreed to be assessed were their ethics, including the corporate governance mechanisms underpinning it.

Board composition (Guideline VII.C)

Guideline VII.C recommends that SOEs' board composition allow the exercise of objective and independent judgment and that all board members – including any public officials – be nominated based on qualifications and have equivalent legal responsibilities.

The Working Party's 2013 review of Colombia against the Guidelines identified a number of concerns regarding Colombia's implementation of this Guideline. The issue of ministers and deputy ministers serving on a large number of Colombian SOE boards was highlighted as a particular concern, considering its importance in ensuring a clear separation between the government's functions as an owner of companies and other functions, particularly those related to market regulation. The commitment and progress of the Colombian government to remove ministers from all SOE boards and to begin reducing the number of deputy ministers is discussed extensively earlier in this chapter under Guideline III. A.

More generally, the Colombian legal framework already has a number of measures in place guiding SOE board composition. For SOEs that are securities' issuers, article 44 of Law 964 of 2005 establishes the general regime as regards board composition and includes norms to protect their independence. In particular, it requires that boards have a minimum of five and a maximum of ten members of whom at least 25% must be independent, providing a definition (Box 3.6). The new *Código País* also includes recommendations encouraging companies to provide stricter definitions of independent directors and percentages above the current 25% level. If a company's statutes also envisage alternate directors, the norm requires that the deputies of independent directors also be independent.

The law also establishes that persons subject to certain recusals may not serve as directors of listed companies. The Financial Superintendency performs a suitability control for persons appointed as CEOs or directors of entities under its supervision, ensuring formal compliance with the grounds for recusal described in External Circular 29 of 2006.[25]

Article 44 of Law 964 of 2005 regulates the election of directors of listed companies, stipulating the electoral quotient system (proportional voting) as the default mechanism. In addition, it establishes the mandatory separation of the posts of CEO and chair of the board. According to the MHCP, the statutes or charters of Colombian SOEs in general also establish that the CEO may not be a member of the board.

Box 3.6. **Definition of independence for board members**

The second point of article 44 of Law 964 of 2005 establishes that, for the purposes of the appointment of the directors of companies governed by law, the following persons will not be considered independent:

1) Employees or executives of the issuer or any of its branches, subsidiaries or controllers, including those persons who have held such posts in the year immediately prior to the appointment, except in the case of the re-election of an independent person;

2) Shareholders who, directly or through an agreement, direct, guide or control the majority of the entity's voting rights or determine the majority composition of the bodies for its management, administration or control;

3) Partners or employees of associations or companies that provide advisory or consultancy services to the issuer or companies that belong to the same economic group as the issuer, when income on this account represents 20% or more of their operating revenues;

4) Employees or executives of foundations, associations or companies that receive important donations from the issuer, with important donations are understood as those that represent over 20% of the total donations received by the respective institution;

5) Administrators of an entity of which a legal representative of the issuer is a director;

6) Persons who receive from the issuer remuneration other than fees as a member of the board, the audit committee or any other committee created by the board.

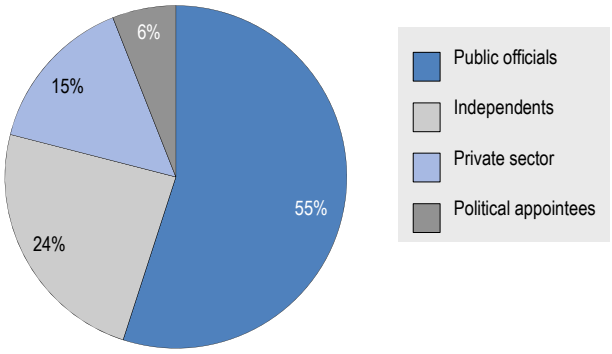
Source: Law 964 of 2005.

For SOEs that are not securities' issuers, regulation is less specific and, in the absence of explicit norms, they are governed by their statutes. The Organic Statute of the Financial System establishes that boards of entities subject to the supervision of the Financial Superintendency should not have a number of members related to the entity itself that allow them, by themselves, to achieve the necessary quorum to adopt any decisions. The utilities law, on the other hand, establishes that on the boards of these companies the state's interests must be represented by MHCP employees, thereby limiting the election of independent directors.[26]

A sample of information about the composition of the boards of 45 large SOEs[27] selected by the MHCP for the Working Party's 2013 review of Colombia against the Guidelines showed that political appointees and public officials comprised about three quarters of the members of the board (not including alternate directors), while independents occupied only 10% of the seats. Political appointees made up 22% of the board and included ministers, deputy ministers and other high-level authorities. Private sector representatives comprised just 18% of the 45 SOE boards.

Figure 3.1. **Composition of the board**

Sample of 40 large SOEs, as of 2016



Source: MHCP

An updated review of the board composition of Colombia's 40 majority-owned SOEs as of 2016 (Figure 3.1 above) found an increase of independents from 10% to 24%, and a drop in political appointees from 22% to just 6%. The majority of board appointees (55%) remain public officials, while private sector participation has not changed substantially at just 15%.

With the establishment of a new Directorate General for SOEs within the MHCP at the end of 2015, the MHCP has established a revised process and guidelines for the nomination and appointment of board members, described earlier in this chapter under the section on board nomination processes.

MHCP reported that there were 34 independent SOE board members in majority-owned SOEs as of June 2017. In general, the SOEs for which the MHCP is responsible tend to have more independent directors than other SOEs, but this is also partly due to the fact that they belong to sectors where the *Código País* applies (including not only the two companies listed for equity shares but also financial institutions and issuers of fixed income securities), and where the law requires a minimum 25% of independent members.[28]

Within the context of limited involvement of independent directors among SOE boards, it would be important to address any potential impediments or disincentives for the development of a sufficient pool of qualified candidates willing to join SOE boards. Two possible factors were identified during this review. The first is related to the Anti-Corruption Statute that established a series of recusals to prevent persons who leave the public sector from immediately representing private interests. Under article 4 of the Statute, these recusals, in particular that of not signing contracts with the state for a period of two years, also extend to persons who have served on SOE boards, even their independent members. This has reportedly discouraged potential candidates from joining SOE boards.[29] Amendment or a possible reinterpretation of the rule has been suggested as a means to overcome this problem.

A second factor that can discourage independent directors from joining SOE boards, is a perception that some instances of control exercised by the Comptroller General's Office (CGR) are related to legitimate business decisions taken by SOE boards. Because a challenge by the CGR can include recovery of lost state assets ("*detrimento patrimonial*") from individual board members, possible candidates can also conclude that they risk personal liability, including for SOE losses related to a commercial strategy or other business decision. This perception can also affect the functioning of boards, leading them to set too low levels of risk for entrepreneurship or value-creation.[30] This could be mitigated by greater legal development of the standards of

diligence expected of companies and by providing a clearer framework for SOE boards to take decisions with diligence and loyalty, perhaps also within safe harbours. The development of a set of clear criteria as a type of "business judgment rule", such as that used in the jurisprudence of the State of Delaware in the United States, could be considered.[31] MHCP noted in this context that it has initiated a review to encourage SOE board member acquisition of director liability insurance as an additional measure to address this concern.

An additional relevant aspect of the functioning of the boards of Colombian SOEs is the practice of appointing alternate directors. Although common in Latin American SOEs, this is not recommended by the Guidelines and was identified by the Latin American White Paper on Corporate Governance (OECD, 2004) as one of the weak points of corporate governance in the region. One of the principal drawbacks of alternate directors is they typically do not attend meetings when the director does so (and it is also common that they are not remunerated for doing so when they voluntarily attend).[32] As a result, their knowledge of the company's activities is patchy and their work on the board lacks continuity. In order to comply with the Guidelines, a board should work as a collegial body. This requires a cohesion and continuity that alternate directors are not usually able to provide.

While the ownership policy does not fully address all of the above concerns, it does call for measures to ensure that alternate directors attend all board meetings to ensure that they can adequately fulfil their functions, and for the MHCP and National Planning Department to conduct a study focused on non-listed SOEs, to ensure that the government implements competitive board remuneration policies within the markets of its SOEs to attract well-qualified professionals to the selection processes and to retain them, without paying in excess.

Notes

1. Decree 1925 of 2009 states that "administrators" (defined as board members and management) will be jointly and severally liable for damages incurred through fraud or negligence when performing operations involving conflict of interest or competing with the company in violation of the law and without proper authorisation of the AGM. Operations involving conflict of interest may only be carried out with AGM authorisation, which can only be given if the operation does not harm the company's interests. If directors obtain such authorisation based on incomplete or false information or knowing that the operation would harm the company, AGM authorisation does not exempt them from responsibility for their actions. Shareholders will also be responsible for the explicit authorization of an operation that harms the company's interests, except if they were misled into giving that approval. In addition to criminal liability that such conduct could generate, directors may be penalised with fines or the inability to engage in market activity.
2. Based on approximate exchange rate of 2 000 Colombian pesos = 1 USD.
3. Under article 70 of Law 222 of 1995, two or more shareholders may undertake "to vote in the same or a specific way at shareholders' meetings. This agreement can stipulate that one or more of them or a third party is allowed to represent them all at the shareholders' meeting or meetings. This stipulation will have effect as regards the company providing the agreement is in writing and is submitted to the company's legal representative for safekeeping in the offices of its administration. On all other matters, neither the company nor its other shareholders will be answerable for non-compliance with the terms of the agreement".
4. See: www.ecopetrol.com.co/documentos/57875_Ecopetrol_revela_acuerdo_de_accionistas_minoritarios_06-02-12.pdf.

5. The ROSC report explains that the *revisor fiscal* is legally required to carry out many activities, including certifying that the enterprise's internal control system is effective. This makes the auditor virtually responsible for the client's internal control. The *revisor fiscal* is also required to safeguard the enterprise's assets and ensure that all the enterprise's obligations to various government agencies (including tax administration) have been met in a timely way, among others. "Thus, in effect, it requires an enterprise's auditor to conduct controllership functions that should be the responsibility of management. These activities impede an external auditor's independence as outlined in the auditor independence rules promulgated by the International Federation of Accountants (IFAC)."

6. According to the Decree, the technical framework for Information Assurance Standards includes International Audit Standards (ISA), International Quality Control Standards (ISQC1), the International Work Review Standards (ISRE), the International Standards on Assurance Engagements (ISE), the International Related Service Standards (ISRS) and the Ethics Code for Accounting Professionals.

7. Article 13 of Law 43 of 1990 also establishes that all commercial companies, regardless of their nature, must employ an external auditor when their gross assets as of 31 December of the previous year were equivalent to or more than five thousand times the minimum monthly wage (approximately USD 1.48 million) or their gross revenues in that period were equivalent to or more than three thousand times the minimum monthly wage (USD 888 000).

8. The CHIP system contains the following information: registers of transactions and financial results reflected and registered in the budget, accounting registers, treasury accounts and, in a broad context, sub-national budgets, covering movements in assets, income, expenditure and borrowing and variations in assets and liabilities in general. The information reflects flow variables (including budget implementation and cash operations) and stocks (for example, borrowing levels and net worth) which, as a whole, provide information for fiscal analysis and monitoring, generally accepted accounts and their links to the national accounts. See www.chip.gov.co/schip_rt/.

9. This includes a group of five SOEs described as financial institutions or second-tier public development banks: Bancoldex, Finagro, Findeter, Fondo Nacional del Ahorro (FNA), and the Fondo Nacional de Garantias (FNG).

10 . While most of this core principle focuses on Guideline II, which recommends the clarification of the state's role as owner, Guidelines I.B and I.D recommend further clarification of how the State expects to carry out its role as owner by defining and disclosing its rationale for enterprise ownership. In doing so, these Guidelines help to establish whether the ownership function of the government is sufficiently developed and active to credibly handle the ownership function separately from regulation.

11. Public employees are considered to include those employees undertaking management activities or activities of trust defined in the statutes of EICEs and in SEMs in which the state has at least a 90% stake (article 5 of Decree 3 135 of 1968, article 2 of Decree 1 848 of 1969, article 3 of Decree 1 950 of 197 article 1 of Law 909 of 2004, article 3 of Decree 3 130 of 1986 and jurisprudence).

12. Official workers are considered to include those who provide services to EICEs and SEMs in which the state holds a stake of more than 50%, providing they do not qualify as public employees (article 5 of Decree 3 135 of 1968, article 3 of Decree 1 848 of 1969 and article 3 of Decree 1 950 of 1973).

13. It should, however, be borne in mind that the employees of public services do not have the right to strike.

14. Also see Annex A for financial information about the bank.

15. Under Law 1 437 of 2011, the Code of Administrative and Contentious-Administrative Procedure, these actions are known as *means of control*.

16. Decree-law 254 of 2000 amended by Law 1 105 of 2006.

17 This includes, for example, preferential financing, tax arrears or other preferential trade credits from other SOEs. It can also include SOEs' receiving inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors.

18. Article 24 of Decree 2 681 of 1993 states that these conditions include: a) approval of CONPES for the provision of the guarantee and the loan or the liability, according to the case; b) approval of the Public Credit Commission for the provision of the guarantee if this is for a period of more than one year; and c) compliance with the other requirements established in the Decree for the guarantee of a loan or the issue and placement of public debt on the domestic or international market, depending on the state entity undertaking these operations.

19. Complaints were related to issues such as workplace harassment, work environment, conflicts of interest, cybercrime, impersonation, reputational impact, inappropriate employee behaviour, unethical behaviour, and non-compliance with internal policies.

20. Law 1010 of 23 January 2006, corrected by Decree 231 of 2006, Article 9.

21. For the 20 COLCAP most actively traded companies, the overall compliance rate was 83.8%. Compliance with recommendations in the code's chapter on boards was reported to be 53.9% for all issuers, and 81.2% for COLCAP companies.

22. See www.unglobalcompact.org/AboutTheGC/index.html; www.globalreporting.org/; www.theiirc.org/; and www.iso.org/iso/fr/home/standards/iso26000.htm.

23. See sections 7.5.1 and 7.7.1.3 of External Circular 7 (*Circular Básica Jurídica)* of 1996 by the Financial Superintendency. The rules also establish the obligation to adopt whistle-blowers' mechanisms and anti-fraud procedures.

24. In 2012, 22 companies (including SOEs and private sector entities) in the energy and gas, water, aqueducts and sewage and information and communications technologies sectors, which provide services to over 28 million Colombians, submitted voluntarily for the fifth consecutive year to assessment of their transparency mechanisms and policies. The assessment, which considered openness, dialogue, clear rules and company control, was based on international principles and standards that permitted identification of opportunities for improvement and possible risks of institutional corruption.

25. This monitoring is regulated by article 14 of Law 795 of 2003 that states: "Those with legal representation of supervised institutions, except branch managers, once appointed or elected and before performing this function, must take possession and take an oath by which they oblige to perform their duties diligently while managing the company, to meet legal obligations and enforce the rules, orders and instructions issued by the Superintendency in the exercise of its powers."

26. According to some of the experts interviewed for this report, this norm was introduced to protect these enterprises from the influence of local political leaders who exerted pressure to obtain a seat on their boards which could be used as an electoral platform. The downside of this measure is that there is little or no room for appointing independent directors. A related issue is that of directors' remuneration since, a seat on a well remunerated SOE boards is said to be sometimes used as a way of complementing the salaries of senior public officials regardless of whether those persons' capabilities match the needs of the board.

27. The 2013 sample included the following SOEs: Acueducto Metropolitano Bucaramanga; Agencia Logística de las FF.MM.; Artesanías de Colombia; Banco Agrario; Bancoldex; Bolsa Mercantil de Colombia; Caprovimpo; Casur; Cedelca; Cedenar; Cenabastos de Cúcuta; Club Militar; Ciac; Cisa; Colombia Telecomunicaciones; Corabastos; Cotecmar; Cremil; Circulo de

sub-oficiales de las FF.MM.; Dispac; Ecopetrol; Eedas; Electrocaquetá; Electrohuila; Emsa; Fen; Finagro; Findeter; Fng; Fondo Rotatorio de la Policia; Granabastos; Gecelca; Gensa; Hospital Militar; Icfe; Indumil; ISA; Isagen; La Previsora Compañía de Seguros; Positiva; Satena; Sociedad Hotelera Tequendama; Terminal de Transportes de Pereira; Urrá, and Vecol. The definition of political appointee, for the purpose of this survey, includes all ministers; vice-ministers; mayors; governors and other similar high-level authorities. Independents are those that meet the definition described in Box 14.

28. For SOEs in the financial sector, for example, independents make 12% of the board and private sector representatives occupy another 36% (MHCP).

29. The Statute establishes that contracts with the state may not be signed by "persons who have held senior posts in state entities and the companies of which these entities form part or to which are linked in any way during a period of two years subsequent to ceasing in the exercise of their public post when the purpose of the contracts is related to the sector in which provided services. This incompatibility also applies to persons with a first degree relationship by birth, a first degree relationship by marriage or a first degree civil relationship with the former public employee".

30. In interviews with several managers and board members, many examples of the kinds of sub-optimal decisions that might result from board members' fear of being held liable by the CGR were offered. These included insufficient hedging in case they be held liable for the cost of the protection that was not actually invoked; preference for more liquid investments offering a steady lower return (like a low interest paying bank deposit), rather than a more volatile but significantly higher return asset to avoid the risk of having to liquidate it in a potentially bad pricing scenario; lower investments in research and development in case the board were to be held liable for projects that fail even if other projects were successful.

31. There, it is the person challenging the board decision that bears the burden of proof and must show that the directors, in order to take the contested decision, violated their fiduciary duties of good faith, loyalty and due care. Otherwise, the decision cannot be reviewed unless it was ruinous or, in other words, of a nature that no business person in their right mind would have accepted (see OECD 2013b).

32. For the enterprises for which it is responsible and which have alternate directors, the MHCP adopted a policy that both the director and the alternate director attend meetings so that the latter has the same level of information and can fulfil his function adequately.

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Chapter 4

Conclusions and recommendations for Colombia's corporate governance framework

This chapter sets out the main conclusions and recommendations reached by the OECD Corporate Governance Committee and Working Party on State Ownership and Privatisation Practices in its assessment of Colombia against the five "core corporate governance principles" set out in the Roadmap for the Accession of Colombia to the OECD Convention. This assessment in turn draws upon the G20/OECD Principles of Corporate Governance and the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

This final chapter is divided into two parts: overall conclusions which summarize the report's main findings; and recommendations by which Colombia may further align its framework with the recommendations of the Principles and Guidelines.

This report provides an assessment of Colombia's corporate governance framework for listed and state-owned enterprises with respect to five "core corporate governance principles" set out in the Roadmap for the Accession of Colombia to the OECD Convention, which draws upon the Principles of Corporate Governance (Principles) and the Guidelines on Corporate Governance of State-Owned Enterprises (Guidelines). This section, first, provides the conclusions of assessments made by the OECD Corporate Governance Committee and the OECD Working Party on State Ownership and Privatisation Practices of Colombia's position relative to the Principles and the Guidelines, respectively. Second, it provides a set of recommendations by which Colombia may further align its framework with these instruments.

Conclusions

This report reaches a positive overall view of Colombia's corporate governance framework in relation to the recommendations in the Principles and the Guidelines. Some of the key issues, strengths and weaknesses of Colombia's corporate governance framework and implementation include:

- ***Colombia's corporate governance landscape:*** Colombia's government has devoted considerable attention to aligning its corporate governance framework for listed companies with the *Recommendation of the Council on Principles of Corporate Governance* in order to promote transparent and efficient markets consistent with the rule of law and that clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities. It appears to have established effective co-ordination mechanisms, and its decisions are communicated clearly and transparently to the market. Nevertheless, Colombia faces important challenges with respect to low trading volumes and a gradually diminishing number of listed companies, as well as concentrated ownership in the context of large conglomerates that play a dominant role in the economy. In this context, the Colombian regulatory and supervisory authorities have rightly given a strong focus to tracking ownership structures and related party transactions among companies within these groups, and have worked actively to ensure adequate disclosure and to require appropriate treatment of conflicts of interest. The revised *Código País,* issued in 2014, has established a higher level of aspiration for practices at the company level that is broadly consistent with the Principles. The Colombian government has also developed legislation, approved by the Congress in June 2017, that will enhance the authority of the SFC to oversee and obtain information from holding companies of financial conglomerates.

- **Colombia's corporate governance framework for SOEs** has undergone an important transformation aimed at establishing a framework broadly consistent with the *Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises*, described in further detail below. Further implementation of its new national ownership policy will be important as the SOE sector continues to account for a significant share of Colombia's economy and includes particularly important holdings in the energy, oil and gas and financial sectors.

- ***Ensuring the enforcement of shareholder rights and equitable treatment.*** Colombia has extensive requirements in place to ensure the enforcement of shareholder rights and their equitable treatment. While private actions through the regular court system to enforce these rights are rare, Colombia has developed an active public enforcement programme, alternative dispute resolution mechanisms and administrative courts to help ensure that shareholders have recourse to ensure their equitable treatment. Some weaknesses have been identified, particularly with respect to the availability of information and functioning of the AGM. However, the revised *Código País* provides numerous recommendations aimed at improving the timeliness and quality of information available to shareholders. It is too early to assess

how widely the code's new recommendations will be followed, so it will be important for the SFC to monitor progress and consider further requirements if necessary to ensure implementation. **State-owned enterprises** with mixed ownership, particularly Colombia's listed SOEs, were also found to generally respect shareholder rights and equitable treatment of investors.

- ***Timely and reliable disclosure in accordance with international standards.*** Colombia has extensive and well-elaborated disclosure requirements with respect to quarterly and annual financial reports, corporate ownership and share structures, related party transactions, and immediate reporting of material information. Colombian listed companies have completed the transition to International Financial Reporting Standards, while SOEs also have begun reporting according to IFRS. Full implementation of international audit standards also entered into force as of January 2016, and has been coupled with extensive efforts to raise awareness and understanding of the new requirements. While the 2014 review of Colombia identified some weaknesses with respect to disclosure of certain elements recommended in the Principles, such as on board member qualifications, independence and nomination processes, executive and non-executive remuneration, and material risk factors, Colombia's revised *Código País* provides specific recommendations in each of these areas. The framework for disclosure by SOEs has been strengthened with the issuance of Colombia's first and second national aggregate report on SOEs. While some SOEs have clearly specified public policy objectives established by law or through other public documents, the more systematic development of reporting and costing of public policy objectives is an important priority to be implemented more fully.

- ***Effective separation of the government's roles as owner and regulator.*** Colombia's new national ownership policy sets out a comprehensive plan to implement this core principle. Its first phase has assigned greater co-ordination responsibilities to the MHCP, assisted by a new Directorate General for SOEs. This will also serve as the Secretariat to an Inter-Ministerial Co-ordinating Committee to help ensure effective implementation of good practice across other ministries. The MHCP has direct responsibility for exercising the ownership function in 21 of the government's 40 majority-owned SOEs, and 88.5% of the government's SOE assets. The ownership policy further recommends processes and criteria to ensure that boards are nominated and elected through well-structured, merit-based and transparent nomination processes. A key reform announced in the ownership policy was the intent to remove all ministers from the boards of 12 SOEs where they have been participating, along with a reduction in the number of deputy ministers. A new SOE corporate governance code, issued in January 2017 should seek to ensure that boards play a stronger role in CEO appointments, including in the 17 SOEs where the President currently has the legal responsibility to appoint and remove the CEO. For the longer term, the government plans to review the experience of the MHCP and other ministries in implementing the above measures before preparing legislation in 2018 that would further centralise the ownership functions of the MHCP Directorate General for SOEs as a separate ownership entity.

- ***Ensuring a level playing field.*** Generally, SOEs face the same conditions as private sector companies with respect to the application of tax and other laws, and access to debt and equity finance, albeit with some exceptions. Owing inter alia to their corporate form SOEs further appear to have a higher level of legal protection with respect to insolvency and bankruptcy proceedings, and in exceptional cases, have received government guarantees in support of loans. Measures to streamline public procurement requirements for SOEs following the EICE legal form would also help to ensure a more level playing field between SOEs and their private sector competitors. The national ownership policy seeks to enforce a level playing field by strengthening the development of and disclosure of public policy objectives and their associated costs and impact on commercial objectives, to help ensure that subsidies are

avoided. The playing field may also in some cases be uneven in the disfavour of SOEs. For instance, extra information reporting and approval burdens that SOEs face with respect to their budgets, investments and desired structures in staff changes may put them at a disadvantage versus their private sector counterparts.

- ***Recognising stakeholder rights and the duties, rights and responsibilities of boards.*** Colombia has in place legal provisions to protect stakeholder rights with respect to corporate conduct, to ensure stakeholder participation in some corporate governance processes, to provide mechanisms for employees, creditors and financial consumers to lodge complaints, and has established processes to address them. SOEs also generally respect stakeholder rights and have implemented mechanisms, including codes of ethics and reporting on corporate social responsibility, that help to support a framework under which stakeholder rights and interests are respected. On a general level, board members in Colombia have responsibilities and legal duties of loyalty and diligence that correspond to OECD recommendations, and these responsibilities are actively enforced by the SFC. The SFC, with support from BVC and market participants, has made a concerted effort to enhance the practices of boards of directors through a much more detailed set of recommendations in the *Código País,* which companies were required to report against for the first time in January 2016. Among some of the key improvements in practice that the code seeks to promote are a reduction in companies making use of alternate directors; increased disclosure of board member backgrounds, service on other boards and other employment; increased use of board evaluations; and stronger alignment of key executive and board remuneration with the long-term interests of the company. The SFC in collaboration with BVC and other market actors is devoting substantial efforts to raising awareness and understanding of the code's recommendations along with their benefits. For SOEs, as noted above, Colombia is in the process of removing ministers from all SOE boards and to establish well-structured, merit-based and transparent nomination processes aimed at enhancing the performance of these boards. The SOE corporate governance code is also intended to further reinforce good board practice.

Recommendations

The Committee and the Working Party note that Colombia has made substantial progress in its implementation of the Principles and the Guidelines. Nevertheless, they have identified the following areas where further improvements are recommended with respect to the Principles:

- To ensure the effective protection of shareholder rights, Colombia should build upon legislation enacted in June 2017 to provide the SFC with the necessary supervisory and enforcement authority to oversee holding companies of financial conglomerates, including to ensure the availability of information regarding related entities both domestically and abroad;

- The SFC should also follow through on its commitment to continue to review implementation of the revised *Código País* with a view towards identifying those areas where implementation is weak and amendments to the commercial code or other regulation may be necessary to spur improved implementation of the Principles. Areas identified in this review that may require particular attention include lengthening the notice period for provision of information relevant to the annual general meeting (AGM); further encouraging shareholder participation by promoting mechanisms for electronic broadcasting of AGMs and voting, including by eliminating the requirement of a 100% quorum for such voting to be valid; and disclosure of remuneration of board members and key executives.

To support further implementation of the Guidelines, the Colombian government should ensure timely implementation of the commitments it has established through the national ownership policy and the recommendations from this review, notably to:

- Implement well-structured, merit-based and transparent board nomination processes that complete the phased removal of all ministers and deputy ministers from SOE boards of directors before the end of the Presidential term in 2018 (including necessary legal changes to institutionalise these changes), while increasing the appointment of independent directors.

- Continue to develop and enact legal reforms to ensure more consistent treatment of state-owned enterprises with the objective of ensuring a more level playing field between SOEs and other market participants. While the ownership policy points specifically to issues related to approvals for budget, investment and staff changes where SOEs face greater burdens than their private sector counterparts, legislation should also address inconsistent treatment with respect to public procurement requirements and treatment of insolvency.

- Enhance corporate governance practices and disclosure on SOE performance through annual aggregate SOE reports that contain information on both commercial and public policy objectives, the extent of their achievement and their related costs; and through the issuance of a new SOE corporate governance code which should establish requirements for regular reporting on implementation of its recommendations. A key recommendation for the establishment of more effective SOE boards will be the development of a stronger role for the board with respect to appointment, evaluation and dismissal of the CEO, including both through recommendations in the code and other means such as use of headhunting firms for CEO recruitment.

- Further strengthen the ownership function through the establishment of a centralised ownership entity and by applying the good practices set out in the national ownership policy to all commercially-oriented SOEs. While the national ownership policy exempts certain SOEs under the Ministry of Defence for national security reasons, it is recommended that the ownership policy also apply to these SOEs.

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Annex A.
Colombian SOEs with at least 50% national direct or indirect ownership (USD in thousands)

SOE	Total State ownership (Direct + Indirect)	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Financial Statements 2016			
						Assets	Liabilities	Equity	Net Income
Ecopetrol S.A. (a)	88.5%	88.5%	SEM	MinHacienda	Oil and Gas	40 988 949	25 915 260	15 073 688	15 907 018
Cenit transporte y logística de hidrocarburos S.A.S*	88.5%	0.0%	SEM	MinHacienda Ecopetrol	Oil and Gas	4 354 876	666 082	3 688 794	2 198 843
Banco Agrario S.A. - Banagrario (a)	100.0%	100.0%	SEM as EICE	MinHacienda	Finance and Insurance	7 951 737	7 204 441	747 295	1 170 458
Refinería de Cartagena S.A.*	88.5%	0.0%	SEM	MinHacienda Ecopetrol	Oil and Gas	8 420 768	5 716 521	2 704 247	2 883 990
Interconexión Eléctrica S.A. ESP - ISA (a)	51.4%	51.4%	SEM	MinHacienda	Energy	12 835 696	7 199 870	3 287 174	4 044 893
Oleoducto central S.A. *	64.3%	0.0%	SEM	MinHacienda Cenit	Oil and Gas	1 901 206	949 095	952 111	1 258 014
Fondo para el financiamiento del sector Agropecuario - Finagro	78.2%	65.3%	SEM	MinAgricultura and MinHacienda	Finance and Insurance	2 954 049	2 647 890	306 159	162 717
Financiera de desarrollo territorial S.A. - Findeter	92.5%	92.5%	SEM as EICE	MinHacienda	Finance and Insurance	2 983 865	2 640 301	343 564	602 474
Fondo Nacional Del Ahorro - FNA (a)	100.0%	100.0%	EICE	MinVivienda	Finance and Insurance	2 467 487	1 685 987	781 500	326 282
Bancoldex S.A. (a)	99.7%	99.7%	SEM as EICE	MinComercio and MinHacienda	Finance and Insurance	2 337 411	1 848 179	489 232	822 481
Positiva compañía de seguros	99.9%	90.5%	SEM as EICE	MinHacienda	Finance and Insurance	1 185 292	954 928	230 364	1 321 099
Instituto Colombiano de Crédito Educativo y Estudios Técnicos en el Exterior - ICETEX (a)	100.0%	100.0%	ESP	MinEducación	Other	1 272 341	448 398	823 943	198 120
URRÁ S.A. E.S.P.	100.0%	100.0%	SEM as EICE	MinHacienda and MinMinas	Energy	638 024	259 803	378 220	98 370
Gecelca S.A. E.P.S.	100.0%	100.0%	SEM as EICE	MinHacienda	Energy	883 463	513 227	370 236	332 599
Fondo financiero de proyectos de desarrollo	100.0%	100.0%	EICE	DNP	Finance and Insurance	435 808	393 981	41 826	86 757

SOE	Total State ownership (Direct + Indirect)	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Financial Statements 2016			
						Assets	Liabilities	Equity	Net Income
Transelca S.A. ESP* (a)	51.4%	0.0%	SEM as EICE	MinHacienda ISA	Energy	465 639	228 828	236 812	121 741
Oleoducto de Colombia S.A.*	64.6%	0.0%	SEM	MinHacienda Cenit	Oil and Gas	187 340	91 118	96 222	197 964
La Previsora S.A. - Compañía de seguros (a)	99.8%	99.8%	SEM as EICE	MinHacienda and MinComercio	Finance and Insurance	661 155	533 708	127 447	559 764
Fondo Nacional de Garantías F.N.G.	93.2%	67.5%	SEM as EICE	MinHacienda and MinComercio	Finance and Insurance	356 777	203 540	153 237	193 869
Electrificadora del Huila S.A. E.S.P	83.1%	83.1%	SEM	MinMinas	Energy	249 852	123 266	126 673	155 323
Financiera de desarrollo nacional (a)	67.5%	67.5%	SEM as EICE	MinHacienda	Finance and Insurance	1 114 797	868 078	246 719	82 612
Gestión energética S.A. ESP GENSA	93.3%	93.3%	SEM as EICE	MinHacienda	Energy	349 616	202 964	146 652	224 459
Electrificadora del Meta	55.7%	55.7%	SEM	MinMinas	Energy	215 912	133 512	82 399	161 568
Leasing Bancóldex S.A. - Compañía de financiamiento comercial* (a)	95.3%	0.0%	SEM as EICE	MinComercio MinHacienda Bancoldex	Finance and Insurance	217 501	196 879	20 621	30 630
Centrales Eléctricas del Cauca S.A. ESP - CEDELCA	55.4%	55.4%	SEM	MinMinas and MinHacienda	Energy	251 562	132 294	119 268	16 073
Internexa S.A.*	50.6%	0.0%	SEM as EICE	Min Hacienda ISA	Energy	152 040	95 004	57 035	67 217
Bioenergy S.A.*	80.9%	0.0%	SEM as EICE	MinHacienda Ecopetrol	Energy	145 211	40 628	104 583	4 493
Central de Inversiones - CISA	100.0%	100.0%	SEM as EICE	MinHacienda	Finance and Insurance	85 415	15 812	69 603	8 428
Imprenta nacional de Colombia	100.0%	100.0%	EICE	MinInterior	Other	132 762	6 716	126 046	30 897
XM*	51.3%	0.0%	SEM as EICE	MinHacienda ISA	Oil and Gas	132 516	124 440	8 076	44 458
Fiduciaria La Previsora S.A.* (a)	99.8%	0.0%	SEM as EICE	Min Hacienda La Previsora	Finance and Insurance	95 550	13 684	81 866	75 359
E.S.P. Empresa pública de alcantarillado de Santander S.A	100.0%	100.0%	SEM as EICE	MinVivienda	Other	108 295	17 251	91 045	27 458
Empresa colombiana de productos veterinarios S.A.	82.9%	62.3%	SEM	MinAgricultura	Other	100 857	7 733	93 125	28 759

SOE	Total State ownership (Direct + Indirect)	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Financial Statements 2016			
						Assets	Liabilities	Equity	Net Income
Radio Televisión Nacional de Colombia - RTVC*	50.2%	0.0%	SEM as EICE	MinTICTeveandina	Transport and Telecomunications	123 834	62 132	61 702	51 154
E.S.E. Instituto Nacional de Cancerología	100.0%	100.0%	E.S.E	MinSalud	Health	109 323	7 621	101 702	76 742
Colpensiones (a)	100.0%	100.0%	EICE	MinTrabajo	Finance and Insurance	126 660	135 292	-8 632	239 626
Empresa distribuidora del Pacífico - DISPAC	100.0%	100.0%	SEM as EICE	MinMinas and MinHacienda	Energy	78 827	22 780	56 040	34 924
Teveandina	71.7%	71.7%	SEM as EICE	MinTIC	Transport and Telecomunications	39 602	16 088	23 514	13 387
Sociedad hotelera Tequendama S.A.*	100.0%	0.0%	SEM as EICE	MinDefensa CREMIL	Other	59 697	19 452	40 245	32 594
Servicio Aéreo a Territorios Nacionales S.A. - Satena (a)	100.0%	100.0%	SEM as EICE	MinHacienda and MinDefensa	Transport and Telecomunications	61 056	94 913	-33 857	72 111
Electrificadora del Caquetá	72.3%	72.3%	SEM	MinMinas	Energy	39 018	10 018	29 000	36 636
Fiduciaria colombiana de comercio exterior S.A.* (a)	89.2%	0.0%	SEM	MinComercio y MinHacienda Bancoldex	Finance and Insurance	22 537	4 015	18 522	15 332
Empresa de energía del Archipiélago de San Andrés, Providencia y Santa Catalina - EEDASSA	67.1%	67.1%	SEM	MinHacienda	Energy	17 638	493	17 145	1 767
Sociedad de Activos Especiales - SAE*	100.0%	0.0%	SEM as EICE	MinHacienda CISA	Finance and Insurance	6 795	679	6 117	10 184
Fiduagraria*	94.8%	0.0%	SEM as EICE	MinHacienda Banco Agrario	Finance and Insurance	16 232	4 338	11 894	13 292
Sociedad almidones de Sucre S.A.	100.0%	100.0%	SEM as EICE	MinAgricultura	Food and Agriculture	8 183	1 237	6 945	2 873
E.S.E. Centro dermatológico Federico Lleras Acosta	100.0%	100.0%	E.S.E	MinSalud	Health	9 452	262	9 190	5 669
E.S.E. Sanatorio de agua de Dios	100.0%	100.0%	E.S.E	MinSalud	Health	6 369	675	5 694	12 789
Central de abastos de Cúcuta	75.1%	75.1%	SEM as EICE	MinAgricultura	Transport and Telecomunications	4 500	2 089	2 411	203

SOE	Total State ownership (Direct + Indirect)	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Financial Statements 2016			
						Assets	Liabilities	Equity	Net Income
Sistemas inteligentes en red S.A.S.*	51.3%	0.0%	SEM as EICE	MinHacienda ISA	Transport and Telecomunications	8 080	3 830	4 250	5 976
Empresa forestal del Huila S.A.*	72.0%	0.0%	SEM	MinVivienda Cormagdalena (c)	Other	2 583	125	2 458	54
Sociedad de televisión de Las Islas	54.9%	54.9%	SEM	MinTIC	Transport and Telecomunications	1 272	449	824	186
Centro de diagnóstico automotor de Cúcuta Ltda.	82.0%	82.0%	SEM as EICE	MinTransporte	Transport and Telecomunications	1 672	213	1 458	958
E.S.E. Sanatorio de contratación	100.0%	100.0%	E.S.E	MinSalud	Health	1 348	72	1 276	4 373
Piscicola San Silvestre - PSS S.A.	50.0%	50.0%	SEM	MinAgricultura	Food and Agriculture	2 817	174	2 644	285
Centro de diagnóstico automotor de Caldas Ltda.	60.0%	60.0%	SEM as EICE	MinTransporte	Transport and Telecomunications	1 241	76	1 164	422
Totals						**96 819 794**	**61 874 422**	**32 048 023**	**34 513 869**

Notes: SOEs that are subsidiaries are shown with an * and in terms of ownership entity the Ministry of the parent company is shown, along with the parent company.

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(b) SEM as EICE are SOEs which have mixed ownership, but that, according to law, are subject to EICE regulations.

(c) Cormagdalena, the parent company of Empresa forestal de Hula S.A., is a national corporation of special legal status. It is not an SOE but it is governed by the legal framework of EICEs.

Figures provided in thousands of US dollars based on December 2016 exchange rate of 3 000.71 Colombian pesos per USD.

Source: MHCP.

Annex B.
Colombian SOEs with between 10% and 50% direct or indirect ownership (USD in thousands)

SOE	Total State ownership (Direct + Indirect)	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Financial Statements 2016			
						Assets	Liabilities	Equity	Net Income
Colombia Telecomunicaciones	32.5%	32.5%	SEM	MinHacienda	Transport and Telecomunications	3 303 173	3 423 482	- 120 309	1 623 498
Polipropileno del Caribe S.A.*	44.2%	0.0%	SEM	MinHacienda Ecopetrol	Oil and Gas	602 268	147 033	455 235	836 978
Acueducto metropolitano de Bucaramanga	15.6%	15.6%	SEM	MinHacienda	Other	307 763	134 966	172 797	46 419
Centrales Eléctricas de Nariño - CEDENAR	35.3%	35.3%	SEM as EICE	MinHacienda and MinMinas	Energy	211 341	99 734	111 607	134 506
Sociedad de acueducto y alcantarillado del Valle del Cauca - Acuavalle	39.2%	39.2%	SEM	MinVivienda	Other	144 261	41 624	102 637	28 718
Acueducto y alcantarillado de Popayan S.A	21.4%	21.4%	SEM	MinVivienda	Other	74 670	9 915	64 755	12 686
Gran central abastos Caribe S.A. - Granabastos	48.3%	48.3%	SEM	MinHacienda and MinAgricultura	Food and Agriculture	62 997	16 940	46 057	2 789
Terminal de transportes de Pereira S.A.	26.9%	26.9%	SEM	MinTransporte and MinHacienda	Transport and Telecomunications	14 214	821	13 392	2 406
Artesanias de Colombia	27.0%	27.0%	SEM as EICE	MinHacienda and MinComercio	Other	13 731	4 889	8 842	10 869
Terminal de transportes de Manizales Ltda.	30.2%	30.2%	SEM	MinTransporte	Transport and Telecomunications	13 571	2 519	11 052	2 487
Central de abastecimientos del Valle	37.1%	37.1%	SEM	MinAgricultura	Food and	11 958	264	11 694	1 652

SOE	Total State ownership (Direct + Indirect)	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Financial Statements 2016			
						Assets	Liabilities	Equity	Net Income
del Cauca S.A. **					Agriculture				
Terminal de transportes de Armenia S.A.	21.8%	21.8%	SEM	MinTransporte	Transport and Telecomunications	9 978	1 622	8 356	4 858
Terminal de transportes de Ibagué S.A. **	29.7%	29.7%	SEM	MinTransporte	Transport and Telecomunications	9 718	444	9 274	4 591
Canal regional de television del Caribe Ltda.	40.6%	40.6%	SEM as EICE	MinTIC	Transport and Telecomunications	9 145	2 555	6 590	5 733
Centro de diagnóstico automotor del Valle Ltda. **	45.2%	45.2%	SEM	MinTransporte	Transport and Telecomunications	10 251	1 624	8 627	6 644
Terminal de transportes Popayán S.A.	10.2%	10.2%	SEM	MinTransporte	Transport and Telecomunications	6 998	222	6 775	1 583
Terminal de transportes de Neiva S.A.	10.5%	10.5%	SEM	MinTransporte	Transport and Telecomunications	8 090	351	7 740	1 869
E.S.P Servicio público y alumbrado de Pasto - SEPAL S.A.	40.1%	40.1%	SEM	MinMinas	Energy	5 597	1 680	3 917	4 624
Televisión regional de Oriente Ltda.	11.5%	11.5%	SEM	MinTIC	Transport and Telecomunications	5 523	3 249	2 274	4 009
Central de transportes de Tulúa S.A.	22.3%	22.3%	SEM	MinTransporte	Transport and Telecomunications	4 669	1 039	3 629	774
Terminal de transportes de Pasto S.A.	22.0%	22.0%	SEM	MinTransporte	Transport and Telecomunications	4 852	280	4 572	1 055
E.S.P. Empresa de energía eléctrica del departamento de Vichada S.A.	24.8%	24.8%	SEM	MinMinas	Energy	5 520	2 794	2 726	4 264
Centro de diagnóstico automotor de Risaralda S.A.	23.7%	23.7%	SEM	MinTransporte	Transport and Telecomunications	2 175	541	1 634	3 426
Fondo Regional de Garantías del Café S.A.- FRGC* (a)	18.4%	0.0%	SEM	MinHacienda MinComercio FNG	Finance and Insurance	1 527	384	1 143	935
Centro de diagnóstico automotor de	17.9%	17.9%	SEM	MinTransporte	Transport and	2 548	68	2 481	372

SOE	Total State ownership (Direct + Indirect)	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Financial Statements 2016			
						Assets	Liabilities	Equity	Net Income
Nariño Ltda.					Telecomunications				
Centro de diagnóstico automotor de Palmira	13.4%	13.4%	SEM	MinTransporte	Transport and Telecomunications	1 267	83	1 184	447
Centro de diagnóstico automotor de Popayán Ltda. **	11.2%	11.2%	SEM	MinTransporte	Transport and Telecomunications	520	41	479	275
Totals						**4 848 326**	**3 899 164**	**949 161**	**2 748 468**

Notes: Figures provided in thousands of US dollars based on December 31, 2016 exchange rate of 3000.71 Colombian pesos per USD. Except those that are shown with an ** Based on December 31 2015.

SOEs that are subsidiaries are shown with an * and in terms of ownership entity the Ministry of the parent company is shown, along with the parent company.

(a) signifies SOEs that issue securities and thereby are subject to disclosure requirements and supervision of the Financial Superintendency.

(b) SEM as EICE are SOEs which have mixed ownership, but that, according to law, are subject to EICE regulations.

Source: MHCP.

Annex C.
Colombian enterprises with less than 10% direct or indirect government ownership (USD in thousands)

SOE	Total State ownership (Direct + Indirect)	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Financial Statements 2016			
						Assets	Liabilities	Equity	Net Income
Central Hidroeléctrica de Caldas S.A. - CHEC S.A. ESP	0.05%	0.05%	SEM	MinMinas	Energy	341 250	173 490	167 760	227 752
Servicios postales nacionales (a)	1.03%	1.03%	SEM as EICE	MinHacienda and MinDefensa	Other	104 639	36 730	67 909	94 436
Terminal de transporte S.A.	9.05%	9.05%	SEM	MinTransporte	Transport and Telecomunications	113 668	15 748	97 920	10 673
Fertilizantes colombianos S.A.	1.30%	1.30%	SEM	MinAgricultura	Food and Agriculture	41 515	19 082	22 432	5 069
Terminales de transportes de Medellín S.A.	1.67%	1.67%	SEM	MinTransporte	Transport and Telecomunications	49 827	12 023	37 804	8 671
Hidroeléctrica pescadero Ituango S.A. E.S.P.	0.02%	0.02%	SEM	MinMinas	Finance and Insurance	25 547	9 057	16 489	265
Sociedad televisión de Antioquia Ltda. - Teleantioquia	1.31%	1.31%	SEM	MinTIC	Transport and Telecomunications	25 366	9 800	15 566	9 536
Terminal de transportes de Villavicencio S.A.	4.79%	4.79%	SEM	MinTransporte	Transport and Telecomunications	19 700	463	19 237	1 970
Centrales de transportes S.A.	8.44%	8.44%	SEM	MinTransporte	Transport and Telecomunications	18 815	2 001	16 814	4 638
Canal regional de televisión para el Pacífico Ltda.	0.07%	0.07%	SEM	MinTIC	Transport and Telecomunications	10 247	2 159	8 089	7 158
Terminal de transportes de Barranquilla S.A.	3.13%	3.13%	SEM	MinTransporte	Transport and Telecomunications	6 834	185	6 649	1 906
Organización regional de televisión del Eje Cafetero	0.04%	0.04%	SEM	MinTIC	Transport and Telecomunications	6 435	1 118	5 317	5 069
Empresa de desarrollo urbano de Barranquilla S.A.	0.04%	0.04%	SEM	Otro	Other	16 422	15 332	1 090	6 029

SOE	Total State ownership (Direct + Indirect)	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Financial Statements 2016			
						Assets	Liabilities	Equity	Net Income
Sociedad terminal de transporte terrestre de Ipiales S.A.	5.37%	5.37%	SEM	MinTransporte	Transport and Telecomunications	5 147	182	4 965	703
Terminal de transportes de Sogamoso Ltda.	4.00%	4.00%	SEM	MinTransporte	Transport and Telecomunications	2 790	195	2 594	912
Central de transportes de Santa Marta Ltda.	3.34%	3.34%	SEM	MinTransporte	Transport and Telecomunications	2 218	319	1 899	974
Terminal de transportes de San Gil	2.16%	2.16%	SEM	MinTransporte	Transport and Telecomunications	1 551	93	1 458	271
Terminal de transportes de Valledupar S.A.	4.00%	4.00%	SEM	MinTransporte	Transport and Telecomunications	3 151	299	2 852	1 197
E.S.P. Aguas de San Andrés S.A.	9.28%	9.28%	SEM	MinVivienda	Transport and Telecomunications	30	16	13	160
Totals						**795 150**	**298 293**	**496 857**	**387 388**

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Source: MHCP

Annex D.
Colombian enterprises that do not report to the CHIP system but of which the state has direct ownership (USD in thousands)

SOE	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Equity
ACERÍAS PAZ DEL RÍO S.A. (Instit. Geologico)	1.54%	SEM	MinMinas	Other	207 725
AGUAS DE SAN ANDRES S.A. E.S.P	0.09%	SEM	MinVivienda	Other	13
AVIANCA	0.00%	SEM	NACIÓN	Transport and Telecomunications	540 613
BOLSA MERCANTIL DE COLOMBIA	11.83%	SEM	MinAgricultura	Finance and Insurance	21 811
CARBONES DE BOYACA (IPSE)	14.38%	SEM	MinMinas	Energy	275
CENTRO AGROINDUSTRIAL Y DE EXPOSICIONES DEL HUILA S.A. CEAGRODEX	2.67%	SEM	MinAgricultura	Agriculture	3 825
CENTRO DE DIAGNOSTICO AUTOMOTOR DE TULUA LTDA.	20.77%	SEM	MinTransporte	Transport and Telecomunications	437
CENTROABASTOS	38.40%	SEM	MinHacienda	Agriculture	60 663
CIA HOTELERA CARTAGENA DE INDIAS	0.26%	SEM	MinCIT	Other	27 148
COMERCIALIZADORA DE ANTRACITA DE SANTANDER S.A COMANTRAC (Instit. Geologico)	0.00%	SEM	MinMinas	Other	-281
COMERCIALIZADORA DE CARNES BUCARAMNGA S.A “SOLOMOS”	42.13%	SEM	MinAgricultura	Agriculture	-
COMPAÑÍA DE FERIAS Y MATADEROS DEL CAQUETA S.A. COFEMA	11.34%	SEM	MinAgricultura	Agriculture	3 172
CONFE	0.61%	SEM	MinHacienda	Finance and Insurance	3 147
CORABASTOS CORPORACIÓN DE ABASTOS DE BOGOTA S.A.	20.47%	SEM	MinAgricultura	Agriculture	133 614
CORFIGAN – CORPORACIÓN FINANCIERA GANADERA S.A. “BBVA CORFIGAN”	0.04%	SEM	MinAgricultura	Finance and Insurance	1 432 700
CORPORACIÓN DE LA INDUSTRIA AERONÁUTICA DE COLOMBIA S.A.	0.00%	SEM	MinMinas	Transport and Telecomunications	18 681
DIAGNOSTICENTRO S.A.S (ANTERIOR CDA DE RISARALDA S.A)	23.73%	SEM	MinTransporte	Transport and Telecomunicatios	1 634
DISTASA	18.02%	SEM	MinHacienda	Energy	20 697
ELECTRICARIBE	6.57%	SEM	MinHacienda	Energy	597 506
EMBARCADERO TURISTICO GIRARDOT	27.49%	SEM	MinCIT	Other	-15
EMGESA	0.00%	SEM	MinMinas	Energy	1 165 054
EMPRESA DE ENERGIA DEL AMAZONAS S.A. E.S.P. (IPSE)	90.69%	SEM	MinMinas	Energy	5 200
ENERGUAPI (IPSE)	15.26%	SEM	MinMinas	Energy	1 158
EPSA	0.35%	SEM	MinHacienda	Energy	981 967
FONADE	100.00%	SEM	DNP	Finance and Insurance	41 826
FONDO GANADERO DEL CESAR S.A. EN	20.88%	SEM	MinAgricultura	Agriculture	-486

SOE	Direct State ownership	Legal nature [b]	Ownership Entity	Sector	Equity
REORGANIZACIÓN					
FONDO GANADERO DEL HUILA S.A.	14.44%	SEM	MinAgricultura	Agriculture	6 406
FONDO GANADERO DEL TOLIMA S.A.	18.94%	SEM	MinAgricultura	Agriculture	5 551
FOSFATOS DE BOYACÁ	1.54%	SEM	MinMinas	Energy	4 458
FOSFATOS DEL HUILA	0.28%	SEM	MinAgricultura	Energy	2 598
HOTEL SEVILLA (VA A ENTRAR EN LIQUIDACIÓN)	12.71%	SEM	MinCIT	Other	293
HOTELES EL PORTON	2.62%	SEM	MinTIC	Other	4 179
LLOREDA	6.21%	SEM	MinHacienda	Other	27 855
MATADERO FRÍGORIFICO DE VILLAVICENCIO	15.91%	SEM	MinAgricultura	Agriculture	-
NORTESANTANDEREANA DE LACTEOS S.A. NORLACTEOS HOY DELEIT S.A	8.12%	SEM	MinAgricultura	Agriculture	1 371
SERCOFUN	4.00%	SEM	MinHacienda	Other	10 591
SOCIEDAD DE CARTAGENA S.A II	1.82%	SEM	MinTransporte	Transport and Telecomunications	283 392
SOCIEDAD PORTUARIA DE SANTA MARTA S.A	0.53%	SEM	MinTransporte	Transport and Telecomunications	38 900
SOCIEDAD PORTUARIA REGIONAL DE BARRANQUILLA S.A.	1.84%	SEM	MinTransporte	Transport and Telecomunications	8 863
SOCIEDAD PORTUARIA REGIONAL DE BUENAVENTURA S.A	2.00%	SEM	MinTransporte	Transport and Telecomunications	73 676
SOCIEDAD PORTUARIA REGIONAL DE CARTAGENA S.A	1.82%	SEM	MinTransporte	Transport and Telecomunications	25 489
SOCIEDAD PORTUARIA REGIONAL RÍO GRANDE (BARRANQUILLA) S.A.	1.84%	SEM	MinTransporte	Transport and Telecomunications	30 490
TERMINAL DE TRANSPORTES DE AGUACHICA S.A	3.87%	SEM	MinTransporte	Transport and Telecomunications	766
TERMINAL DE TRANSPORTES DE BUCARAMANGA	11.13%	SEM	MinTransporte	Transport and Telecomunications	4 233
TERMINAL DE TRANSPORTES DE GIRARDOT S.A.	2.29%	SEM	MinTransporte	Transport and Telecomunications	9 400
TERMINAL DE TRANSPORTES S.A.CALI-MI TERMINAL (Centrales de transportes)	1.06%	SEM	MinTransporte	Transport and Telecomunications	16 814
TERMINAL TRANSPORTES DE CARTAGENA S.A	10.55%	SEM	MinTransporte	Transport and Telecomunications	1 311
YARA	1.75%	SEM	MinHacienda	Other	90 100
ZEBRACOM	16.13%	SEM	MinTIC	Other	56

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(b) SEM as EICE are SOEs which have mixed ownership, but which, according to law, are subject to EICE regulations.

Source: MHCP

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OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(26 2017 05 1 P) ISBN 978-92-64-28112-7 – 2017

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ISBN 978-92-64-28112-7
26 2017 05 1 P

