

# CORPORATE GOVERNANCE CODE



*"White Paper"*

## CORPORATE GOVERNANCE PROGRAM FOR COLOMBIA CONFECAMARAS - CIPE

### MEMBERS OF THE COMMITTEE

**Colombian Confederation of Chambers of Commerce  
(CONFECAMARAS)**  
**National Association of Pension Funds (ASOFONDOS)**  
**Colombian Stock Exchange (BVC)**  
**Chamber of Commerce of Bogota (CCB)**  
**Chamber of Commerce of Cartagena (CCC)**  
**Dinero Magazine**  
**SpecerStuart**  
**Juan Carlos Varón<sup>1</sup>**

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<sup>1</sup> Representative of the Academy sector

## **MESSAGE FROM CONFECÁMARAS**

Eugenio Marulanda Gómez

Transparency, efficiency and honesty in the companies, are part of the competitive budget in today's market. These premises constitute a stimulus to the investments in typically integrate markets wherein Colombia cannot remain on the fringes.

The Corporate Governance Code constitutes a commitment of the private sector to propel the economic development through the reestablishment of trust in the companies that finance their activities, through the public market/trading place.

Confecámaras and the CIPE consolidated an alliance to promote the Principles of Corporate Governance proclaimed by the OECD in Colombia in 1998. The results obtained by the training of directors, better regulations and diffusion of the concept would not have been possible without the support of other representatives in the public and private sectors.

Confecámaras appreciates the positive response from the representatives in the Private Sector regarding this initiative: National Association of Pension Funds (Asofondos), the Stock Exchange of Colombia (BVC), Chamber of Commerce of Bogotá and Cartagena, KPMG, Dinero Magazine and Juan Carlos Varón, who with a futurist vision are betting on the development of Colombian market investments.

After a year of in-depth studies regarding the practices, strengths and weaknesses of the domestic market, according to the results of the diagnostics performed on corporate practices in Colombian society by Confecámaras, we would like to present this first draft of the Corporate Governance Code so as to receive comments from businessmen, investors, auditors, academics, intermediaries and other market agents, so as to enrich our initiative.

The Corporate Governance Code has no other endeavor but to offer a guide so that the managerial sector may adopt better corporate practices in an autonomous, gradual and individual manner.. The Committee suggests that the asymmetries encountered in any organization may not allow for the Corporate Governance Code to be adopted in its entirety by all societies and clarifications that in certain cases they have to take into account certain matters that are not examined within this document. This Corporate Governance Code could be utilized as a "*Benchmark*" so that the investors may develop their own investment guidelines.

I take this opportunity to thank OECD in Washington for believing in Colombia, and thank all the other members of the Committee for being the leaders in this change.

## MESSAGE FROM OECD IN WASHINGTON

John Zemko

For the last two years, the International Center for the Private Company (Subsidiary of the Chamber of Commerce of the United States) has supported and encouraged the activities of Confecámaras in their endeavors to strengthen the transparency, financial responsibility, competitiveness and principles of the "Corporate Governance" in Colombia.

### ***Why did the OECD dedicate resources to support the Corporate Governance Program?***

The strengthening of principles for good governance is a priority for those countries that undertake the route towards a global and integrated economy. The options for those developing countries are clear: they can develop instruments for good corporate governance so as to participate and benefit from the process of globalization or they can build protective instruments around their economies. Unfortunately, if the protective route is chosen, limitations regarding the possibility of attracting investments for new technologies are generated and, in general, would mean low economic growth. *Contrariu sensu*, if the representatives of the private sector decide to participate in the consolidation principles of the "Corporate Governance" to attract new capital and technology, they could assure a competitive position within the market integration process.

A strong corporate governance system, is seen as a positive for all types of corporations, including countries with incipient financial markets, where few companies finance their activities through public stock markets. They will benefit because the principles of the

"Corporate Governance" increase their transparency and trust regarding the transactions that take place between their clients and the creditors or investors, which represents an important contribution toward maintaining the stability of their financial systems. Some recent investigations demonstrate that in the countries where the protective mechanisms are in place for minority shareholders, they enjoy deeper and more liquid capital markets.

*Will the Colombian and foreign investors benefit in the same manner with the strengthening of the principles of the "Corporate Governance"?* Absolutely. A recent investigation by the Deutsche Bank revealed that the Latin-American companies that have the highest standards of Corporate Governance are better valued by the market agents, and that the domestic investors are requiring the documentation from those companies that are governed by these principles.

Hence, the diffusion and strengthening of the principles of "Corporate Governance" should be a priority not only in the private sector but in the public sector as well. This is already a fact in some Latin American Governments, as seen with the important legislative changes in Argentina, Mexico and Brazil. On the other hand, these same countries also count on the commitment of the private sector to develop instruments such as the document presented today, to promote the trust in the emerging economies through Institutes, Stock Exchanges and Business Associations.

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## **GLOSSARY**

### **Administrators**

Key Executives and members of the Board of Directors.

### **GSA**

General Shareholders Assembly; main association membership

### **Auditing**

Systematic process to obtain, objectively evaluate and analyze evidence regarding the statements relating to acts or economic developments, so as to evaluate such statements with the criteria previously established and communicate the results to those interested.

### **External Auditing**

An examination of the financial statements of a corporation by an independent public accountant, under the generally accepted auditing norms, so as to establish if said financial statements represent the appropriate financial status at a specified date and time, and that the cash flows and the results of the operations of said company during the period of time under review, and if such financial statements were prepared in accordance with generally accepted accounting principles.

### **Conflict of Interest**

The term conflict of interest pertains to the situation wherein a person, due to the activity he/she performs, confronts different behavior alternatives regarding incompatible interests, none of which should interfere with his/her due diligence of legal or contractual obligations

### **Compensation**

Is the economic remuneration received by the key executives during the execution of the functions their position requires.

### **Key Executives**

The group of persons that comprise Upper Management, Presidents, executives, managers, directors, vice-presidents and any other individual that may hold the legal representation of the corporation or have the ability making important decision of the company..

### **Top Executive**

The person who holds the maximum legal and managerial representation of the company:  
Executive Presidents or General Managers.

### **Corporate Governance**

The form in which the company is administered and controlled.



### **Interest Groups**

They are known as "*Stakeholders*". They involve all areas and persons upon whom the company has some influence. Examples of Interest Groups are: employees, consumers, competitors, title holders, control and security regulatory organizations, the community and the corporate providers of goods and services.

### **Confidential information for internal use**

Information that could put the company at risk which may, in fact, involve competitive strategies (Invitations, Convocations, Project Placement, Bids or Negotiations).

### **Eventual Information**

Any judicial, economic or financial fact that is of relevance to the the company, their business or to determine the price or circulation of titles issued in the stock market.

### **Materials Information**

Any type of information which a good businessman might foresee that if omitted or presented erroneously, in a partial or extemporaneous manner, might ostensibly affect the approved financial decisions, made by the consignees of said information.

### **Office of the Auditor**

This function was established by the Commerce Codes, wherein a Certified Public Accountant (called the Auditor) and in accordance with the general accepted auditing

practices, presents his/her professional opinion regarding the status of the financial statements which he/she has examined and confirms that they have been prepared in accordance with the generally accepted accounting principles; he/she reports, as well, whether the functions of the administrators as well as the operations detailed in their records have been fulfilled, according to the standards and laws in place at the time as well as in accordance with the decisions made by the General Shareholders and the Board of Directors of the company; he/she also reports on the appropriateness of the internal controls of the company, the fulfillment of certain legal standards and if the accounting and the correspondence have followed the rules established and whether they have maintained the required forms and measures used by the company with regards to the control of the assets, as well as the assets of any third party that might be in their possession.

### **Company**

Companies who offer titles (Fixed and Variable rent) as a financing source.

### **Title Holders (Owners)**

They are the title holders (owners) of financial instruments such as bonds, commercial papers, securities derived from title holding processes, among others.

### **Third Party Investors**

These individuals are members of the interest group called "Stakeholders", not counting the employees of the company and the security and control groups.

## **OBJECTIVE OF CORPORATE GOVERNANCE CODE**

The objective of this Corporate Governance Code is to offer the Colombian companies a competitive tool to guarantee investment, avoid massive flight of capital out of the country, promote market capitalization and to prepare them, with specific mechanisms for the economic globalization processes that demand the adherence to recognized international standards regarding the manner in which the companies are administrated and controlled.

The present Code will be used as a frame of reference so that all companies might develop their own Internal Corporate Governance Codes. The standards contained in this document, constitute general guidelines regarding the Corporate Governance Code model that the companies should adopt in their organizations, financial activities and sources of financing.

## **Consignees of the Corporate Governance Code**

The standards for the Corporate Governance Code detailed in this document will be directed to those companies that obtain their financing through the stock market.

At the same time, the recommendations detailed in each one of the section of this document could be used as points of reference for the closed or limited companies that in the median term, could find an alternative source of financing in the capitals market.

## **Principles of the Corporate Governance Code**

The principles detailed in this Code are: transparency, honesty and submission of accounts to the market, capital investors and interest groups.

## **Composition of the Corporate Governance Code**

The actual Corporate Governance Code will be divided into seven (7) sections, in accordance to the norms established by the Organization for Economic Cooperation and Development (OECD) in 1998, recognizing the reality of the emerging economies such as the Colombian economy. The sections will be as follows:

- I. Rights and Equal Treatment of Shareholders
- II. Functions and Responsibilities of the Board of Directors
- III. Transparency, Fluidity and Integrity of the information (Disclosure)
- IV. Company Interest Groups and Social Responsibility (Stakeholders)
- V. Principal Executive
- VI. Conflict of Interest.
- VII Administration and Resolution of Conflicts

## **I. Rights and Equal Treatment of Shareholders**

The shareholders of the Colombian companies will be protected by the standards of the Corporate Governance Code of the company, which should protect their rights and their capital. The minority and foreign shareholders will receive equal treatment that promotes greater dynamics in the capital markets by attracting new and different sources from the collective savings.

### **1. The shareholders of the Colombian companies will have the following rights:**

- a. Participate in the dividends and benefits of the company.
- b. Participate in the election and removal of the members of the Board of Directors and evaluate their administration.
- c. Be effectively represented at the General Shareholders Assemblies/Meetings.
- d. Have access to company information in a timely and appropriate manner.
- e. Participate and vote during the General Shareholders Assemblies/Meetings.
- f. Unite (join together) to exercise their rights.

- g. Propose items to be debated by the General Shareholders Assemblies before the Board of Directors.

**2. The shareholders of the Colombian companies will decide on the following items:**

- a. Evaluate and approve changes to the company statutes
- b. Examine, approve or disapprove the financial statements.
- c. Processes of company reorganization (mergers, excisions, changes, acquisitions among others)
- d. Decide on the dividends and receive profits.
- e. Elect members to the Board of Directors.
- f. Elect the Auditor and approve their honorarium
- g. Ratify or rectify the actions of the Board of Directors
- h. Approve the commercial operations between the companies of the same corporate group
- i. Authorize the re-acquisition of shares.
- j. Approve the remuneration systems for the members of the Board of Directors.
- k. Approve the amount of authorized capital.
- l. Approve the compensation policies for the key executives.
- m. Approve changes regarding the right to vote derived from share acquisition.(1)

- n. Approve extraordinary company transactions that are above the total sum authorized the key executives and the Board of Directors.

### **3. Agreements between members**

Any agreement made between shareholders, whether relating to patrimonial content or appointment or removal of management, will made known to the other shareholders.

### **4. Voting Rights**

- a. The shareholders will share with the public, with a great deal of clarity and integrity, the rights to vote derived from the acquisition of shares that have been issued on the public market.
- b. The companies will prefer to issue non-restriction shares for free negotiation. When there is a right of preference, the companies will indicate this restriction to the market.

### **5. Equal treatment of shareholders**

Colombian companies will guarantee equal treatment to all shareholders, including minority and foreign shareholders.

- a. Colombian companies will prefer the democratization of the ownership.
- b. Administrators and investors will promote the subscription of agreements for approval regarding matters that bind the rights of the minority shareholders.(2)
- c. Colombian companies will inform the market and especially the minority shareholders when an individual or a company acquires more than 10% of the shares of the company or if there is any type of change in the control of the company.

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**(1) Although the international community prefers qualified decisions to be adopted for certain decisions such as those established in No. 2 of the present section, the Colombian legislation does not permit it. (Oficio 220-60.732, December 27, 1996, of the Legal Entities Superintendence Article 68 C. majority decision of the limited companies that negotiate in the public value market, does not permit that it be an object of change by individuals; Concepto 16982-1504 dated February 10, 1998 National Securities and Exchange Commission “Supervalores”).**

(2) Mechanisms provided under Article 70 of Law 22, 1995.

- d. Minority shareholders may request an extraordinary meeting of the General Shareholders Assembly, as long as that request is backed by more than 5% (3) of the owners of total the total number



of shares of the company and the Board of Directors considers that there are sufficient motives to approve the meeting.

- e. The minority shareholders may join together to select a representative, debate matters relating to their interests and request that the Board of Directors include their recommendations during the General Shareholders Assembly.
- f. The information obtained by the shareholders as they develop the right of inspection, may not be used to benefit themselves or others.

#### **6. The General Shareholders Assembly - Ordinary Session**

Colombian companies should adopt internal regulations for the development of the General Shareholders Assemblies so that they guarantee the rights and equal treatment of all shareholders. These regulations should take into account, at least, the aspects relating to the meeting, the agenda, the voting process and the representation to the same.

- a. **Meeting.** Considering the requirements established in the company standards and those that regulate public offerings, companies should establish the General Shareholders Assembly meetings in the following manner:

- i. The company will notify the shareholders of the date and time of the meeting at least twenty (20) days prior to the meeting. Should the shareholders be living out of the country, this notification should be made at least thirty (30) days prior to the meeting.
- ii. When financial statements, reorganization processes, and commercial operations regarding the same type business groups are presented during the General Shareholders Assembly, the required backup documenttion must be presented as well.
- iii. The company will summon the shareholders to the meeting by electronic mail and through their web page. Also, with regards to those living outside of the country, the meeting information will be sent via fax, certified mail or some other type of information system.

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(3) Article 423 of the Business Code. Allows for this percentage to be established through statutes.

- b. **Agenda:** The agenda should be sent to the shareholders prior to the General Shareholders Assembly. Colombian companies should try not to include the term "other" in the meeting agenda.

- c. **Representation:** Colombian companies will promote specific mechanisms so that the shareholders can vote through their representatives or vote by proxy. (4) It is proscribed that the managers of a company will represent the shareholders at the General Shareholders Assembly.
  
- d. **Information Disclosures:** The shareholders may ask questions to the Certified Public Accountant, the Board of Directors Committees and the Auditors during the General Shareholders Assembly.
  
- e. **Voting Procedures:** Colombian companies will establish voting procedures depending on the number of shareholders and the infrastructure that would guarantee the exercising of the right to vote by the shareholders that are present as well as those who are absent. The title representatives will vote according to the instructions received from the owners of the shares. (5)

## II. Board of Directors

Colombian companies should create a Board of Directors that is efficient, independent and responsible, that will represent the shareholders as well as the growth and management of the company. The Board of Directors will act in good faith and with sufficient information so as to execute their rights and obligations. The members will avoid situations where they might encounter conflicts of interest and promise to manage the internal confidential information with the utmost discretion during their time in their position on the board.

1. **Structure of the Board of Directors:** Colombian companies should structure a Board of Directors that guarantees the suitability, experience and independence of their decisions. The Board of Directors will be structured in the following manner:

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(4) The Colombian companies will use the at a distance voting mechanisms found in the Articles 18, 19 (Non-presence Meetings), and 20 of Law 222, 1965, incorporated in Article 184 of the Commerce Code. At the same time using the standards found in Law 527, 1999 regarding electronic mail. When the company decides on the mechanisms found in Article 20 of Law 222, they will prepare a formal so that the shareholders who are present at the General Shareholders meeting might express their vote in writing on each one of the matters presented. (Reference No. 220-003443 dated February 29\8, 2002 in the Legal Entities Superintendence “Supersociedades”).

(5) For these shareholders, the Colombian companies will permit share division/fractioning.

- a. **Number of members:** According to the needs of the company, it is recommended that the Board of Directors be comprised of no less than five (5) and no more than nine (9) members.
  
- b. **Members of the Board of Directors:** The Board of Directors should be comprised by representatives of the majority shareholders, at least one representative for the minority shareholders, the title owners and independent members.
  
- c. **Duration of Position on the Board of Directors:** Membership to the Board of Directors should be limited to one (1) year. The members may be reelected according to the evaluation made at the General Shareholders Assembly.
  
- d. **Regarding the Members of the Board of Directors:**
  - i. **Independent Members:** Independent members of the Board of Directors are those who (i) are not representatives of the majority shareholders; (ii) those who have not worked for the company within the last three (3) years; (iii)

those who are not providers of goods and services to the company; (iv) and those who do not work for the company.

- ii.*     **Profile of the members of the Board of Directors:** The members of the Board of Directors should, at least, have the following qualifications: (i) experience in the financial activities provided by the company and/or have experience in the financial field, the Law or similar field; (ii) have a good name and is recognized for excellent professionalism and integrity; (iii) be within the age range established by the General Shareholders Assembly; (iv) not belong to more than five (5) boards simultaneously.
  
- iii.*     **Prohibition:** Key executives of the company or any other member of the company, may not be members of the Board of Directors. Key executives will be present during the Board of Directors meetings only to present reports and answer any questions directed to them by the Board of Directors. This prohibition guarantees that the main executives of the company and the president of the Board of Directors, are not the same person.

e. **Committees:** The Board of Directors should structure within their member representatives special committees, comprised mainly of independent members. The following committees will be created:

- (i) the Financial and Audit Committee;
- (ii) Nomination, Evaluation and Compensation Committee;
- (iii) Corporate Governing Committee.

2. **Functions of the Board of Directors:** The Board of Directors is mainly responsible for the supervision of the production and yield of key executives and guarantor of acceptable benefits for shareholders and other capital investors. At the same time, they are in charge of preventing any conflicts of interest and are required to balance the requirements that the different groups fulfill in the company. The Boards should maintain their independence regarding the directorship so as to administer their responsibilities in an appropriate manner. The main functions of the Board of Directors are:

a. **Approve and examine the company corporate strategy:** (i) Mission and vision of the company; (ii) objectives and administration indicators; (iii) financial plan; (iv) plan for risk management; (v) plan for management of corporate image; (iv) marketing plan; (vii) plan for activities development; (viii) labor

policies; (ix) administration policies regarding conflicts of interest; (x) policies for both internal and external resolution of conflicts.

- b. **Nominate, name, evaluate and remove key executives of the company:** (i) create profiles on how to become a key executive in the company; (ii) propose and designate the executives according with the approved profiles; (iii) evaluate key executives in accordance with the objectives outlined in the corporate strategy; (iv) prepare systems of succession for key executives.
  
- c. **Determine the compensation systems for key executives of the company:** the Board of Directors should establish the fixed and variable systems of compensation according to the company needs. In the same manner, the Board should establish, taxwise, the occasions where the key executives may receive extraordinary remuneration.
  
- d. **Request periodic reports from the key executives, regarding the company status:** The Board of Directors as a board or through one of their Audit committees, compensation and/or corporate governance committees, should request from key executives of the company sufficient information to allow them to adequately fulfill their obligations.



- e. Verify the effectiveness and transparency of the accounting systems of the company.
- f. Develop periodic reports to present to the shareholders regarding the financial situation and the governance of the company.
- g. Place before the General Shareholders Assembly, for their review and consideration, any changes (reforms) regarding the Corporate Governance of the company which they consider necessary.
- h. Determine compensation for the auditing.
- i. Authorize transactions between controlling shareholders.

**3. Responsibilities of the Board of Directors:**

- a. Act in good faith, use independent judgment and guarantee the rights and equal treatment to all shareholders.
- b. Guarantee the effectiveness of the information disclosure systems.
- c. Devote sufficient time to their responsibilities as members of the Board of Directors.

- d. May not manipulate, divulge or use the internal confidential information to which they have access for their personal use or for the benefit of others.
- e. Guarantee the use of good corporate governance policies utilized by the company.
- f. Verify fulfillment of the law.
- g. Meet at least four (4) times a year.
- h. Train new members to the Board of Directors, regarding the decisions made up to the moment of their appointment, regarding the financial situation and the standards for corporate governance.
- i. Create documents wherein the decisions made by the Board of Directors are recorded.

4. **Systems of compensation for the members of the Board of Directors:**

The companies should use the appropriate systems of compensation for the members of the Board of Directors according to their situation. The compensation plan should be approved by the General Shareholders Assembly and will be proportional to the time dedicated to the position, the financial situation of the company and their participation in the various committees.

### **III. Transparency, Fluidity and Integrity of the Information (Disclosure)**

Colombian companies should use the mechanisms that will assure that the information is presented in a precise and organized manner regarding all the questions that are considered relevant regarding the company, including the results obtained, the financial situation, the eventual risks, the conflicts of interest and the corporate governance. These mechanisms of information disclosure should not become an excessive administrative or financial liability on the companies. The companies will make the commitment to reveal materials information and not any information which could put their competitive position in jeopardy.

1. **Consignees of Information:** The consignees of the information for this document are: the shareholders, the members of the Board of Directors, the financial auditors and the open market (to include the analysts, communication centers, stock market, superintendencies, qualifying companies and the public in general.

## 2. **Disclosure of Financial Information**

- a. **Accounting Standards:** Colombian companies will follow the principles and accounting standards outlined in IASC.
  
- b. **Balances and Status of Results:** (i) The financial statements should include at least the general balance, status of results, status of cash flow, status of changes in the financial situation and the notes regarding financial statements; (ii) balances and results status must be backed by a narrative report from the principal executive of the company; (iii) Colombian companies will make an annual presentation of the consolidated financial statements for the groups of companies.
  
- c. **Eventual Information:** Should there be an extraordinary financial change in the company such as: the need for new investment, sudden losses, onerous excessive compensation, need for issuance of specific funds, disposition of the legal or voluntary reserves and the alienation of active representatives, the key executives should reveal said information to the Board of Directors and the shareholders at the appropriate time and in the

appropriate manner. The companies shall establish the mechanisms to place the information in the hands of the public in a timely fashion.

d. **Control and Participation:** The companies will reveal within their financial statements: (i) the control situations that they might have over other companies; (ii) any changes in said control of the company; (iii) the acquisition of more than 1% of the total shares of the company; (iv) the share composition of the company.

e. **Compensation system for administrators:** The companies should reveal the systems of compensation for the key executives established by the Board of Directors to the shareholders and market as well as those established at the General Shareholders Assembly regarding the members of the Board of Directors.

3. **Disclosure of Financial Information:** Colombian companies should disclose information to their shareholders and the public regarding materials information that do not contain financial information such as the following:

- \* Information regarding the evaluation of key executives
- \* Objectives, mission and vision of the company
- \* Structure of the Corporate Governance
- \* Rights and voting procedures
- \* Eventual non-financial Information: (i) the naming and removal of key executives; (ii) company reorganization procedures; (iii) changes in the corporate image; (iv) non-financial risks; (v) changes in the corporate strategy; (vi) high impact work conflicts.
- \* Internal and Auditing Controls
- \* Qualification of values

4 **Disclosure mechanisms of information for the market:** Colombian companies will utilize the appropriate mechanisms to disclose information. It is recommended, among other things, to establish offices for investor customer service, use of internet portals and communications by email and internet.

5. **Disclosure mechanisms for simultaneous information:** Colombian companies will utilize the appropriate mechanisms so

that the disclosed information will be received by the agents in the field in an opportune and simultaneous manner.

6. **Risk Management:** Colombian companies will utilize the appropriate mechanisms to disclose and manage risks. It is recommended that they utilize self regulation mechanisms, in accordance with at least the following principles established by the Council of Basel (8)

- \* Report on Solvency
- \* Use of GAAP (9)
- \* Risk Evaluation of counterpart
- \* Investment evaluation at market price

7. **Auditing Systems:** Colombian companies will use internal auditing systems that allow for timely evaluation to review preparation and presentation of the financial statements and additional information they must contain.

a. **Auditing Functions:** (i) to grant certain guarantees regarding the procedures the company has with title holders and for all the shareholders, especially those shareholders with a restricted vote who do not have great influence in the management

of the company; (ii) verify that the financial statements reasonably reflect the financial situation of the company and the results of their operations; (iii) perform special audits to review the security and dependability of specific processes within the company, including auditing evaluations on line at those systematized organizations; (iv) collaborate and report to the Auditing Committee of the Board of Directors; (v) evaluate the fulfillment of the financial type precepts contained within the Corporate Governance of the company; (vi) Create a quarterly report regarding the financial situation of the company and disclose to the appropriate authorities any irregularities that have been committed by the company, after having notified the administrators and after having allowed them sufficient time to take the appropriate correcting measures.

- b. **Auditing Characteristics:** (i) We recommend that the services be contracted with an outside source, so that the auditing services be done by an individual(s) that does not work for the company; (ii) the Statutory Auditor, as an individual, may not be in charge of the external auditing of the company; (iii) the relationships between the key executives of the company and the auditor should be strictly professional; (iv) we recommend that the Directors of the

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(8) Prudential regulation is also recommended for companies in the financial and value sections



(9) GAP Assets and Liabilities. Measures the liquidity variations and exchange taxes.

auditing work group be rotated every five (5) years; (v) we recommend that the outside auditing firm or statutory auditors make recommendations regarding designs and implementation services while they are performing auditing services at the same company; (v) the board of Directors should establish a compensation system for the auditing services.

8. **Statutory Audit:** The Statutory Audit should look after the protection of the rights of the shareholders and other investors, will act in good faith and with an independent criteria from the key executives, members of the Board of Directors and the shareholders.

a. **Fiscal revision and external audit services:** Colombian companies that must present consolidated financial statements should contract the same statutory auditors and/or external auditors for the company and its affiliates; the determination of the company that will be assigned the job of external auditor could be the same as that of the statutory auditor if this determination is approved at the shareholders assembly.

b. **Fiscal review and consulting:** The performance of the fiscal review and/or external audit should not be done at the same

time as the design and implementation of financial and accounting information systems.

We also consider it incompatible that the services for statutory audit and/or external audit be done by the internal auditing department.

#### **IV. Interest Groups and Social Responsibility (Stakeholders)**

Colombian companies recognize the rights of the social interest groups stipulated by law and the ones that invest either directly or indirectly to the development of the company. The companies will promote the consolidation of the active synergies within the companies and different interest groups so as to assure additional income, employment and achieve financial stability.

1. **Groups of Interest:** The community of influence of the company. Each company, according to the economic activity they perform and the location of their company installations, will identify and reveal, to the market, which ones make up the groups of interest. Among the groups of interest are the following:
  - a. **The consumers of goods and services:** Colombian companies will opt for the establishment of mechanisms that will allow the consumers to make claims, obtain an equitable price for the acquisition of goods and services as well as generate high quality products for the market.

- b. **The suppliers of goods and services:** Colombian companies will utilize the appropriate procedures to acquire goods and services, whose general principles are: quality, price and execution or fulfillment.
  
- c. **The regulation organizations, for the control and security of the State, that have any claim on the economic activity of the company:** Colombian companies will utilize the appropriate mechanisms to verify the fulfillment of the standards that regulate their economic activity and to share sufficient information regarding control and surveillance in an appropriate and timely manner. These mechanisms will observe at least the following standards: (i) taxes; (ii) employment; (iii) restrictive practices regarding free competition; (iv) rights of the consumer; (v) commercial and corporate standards; (v) traditional standard financial activities and the market.
  
- d. **The competitors:** Colombian companies will utilize mechanisms to avoid incurring in restrictive practices regarding free competition.

- e. **The company employees:** Colombian companies will utilize mechanisms to guarantee equal treatment to all employees, prevent the loss of human talent, promote healthy behaviors in the work force and establish incentive programs.
  
  - f. **Company location:** Colombian companies will utilize mechanisms to reward the community where they are located with benefits, growth and employment according to the financial abilities of the company and the needs of the community.
  
  - g. **Private debt title holders:** Colombian companies will utilize mechanisms to guarantee the rights of the private debt creditors. For this they will create frameworks so as to assure the independence of the Representatives of the title holders; the disclosure of the financial information in an appropriate and timely manner, the right to associate and the possibility of establishing special audits to verify the practices of the corporate governance of the company.
2. **Social Responsibility:** Colombian companies should utilize mechanisms that will allow them to respond to the demands of the

globalization processes, the tariff policies and the international agreements to achieve greater competitiveness and promote foreign investment. The companies will follow the following policies:

- a. **Environmental policy:** Colombian companies will encourage a healthy environmental policy and will help control the impact of their activities, products and services on the environment.
  - i. **Planning:** The companies will incorporate within their planning tasks, environmental subjects encouraging evaluation and improvement programs that allow for the fulfillment of all legal regulations and when the costs balance with benefits obtained, develop projects that go further than the norm requirements.
  - ii. **Prevention:** The companies will assume policies that emphasize prevention of contaminants, through the use of clean

technologies and the appropriate management of industrial waste.

- iii. **Clean technologies:** The companies will develop environmental administration systems regarding the daily processes and encourage the use of clean technologies in the different production stages with active participation by the employees, the suppliers and others.
- iv. **Industrial Waste:** The companies should develop efficient generating, elimination, confinement or appropriate recycling systems for the industrial waste material.
- v. **Efficient Use:** The companies should develop, design, operate their facilities, fulfill activities and supply their products and services considering the efficient use of energy and other inputs, the sustainable use of the renewable resources and the

minimizing of the adverse environmental impact.

vi. **Education and Promotion:** The companies will use appropriate mechanisms to educate and promote environmental management, the adequate use of industrial waste, sustainable development and clean technologies among employees, suppliers, contractors and the community where the company operates.

b. **Protection of Intellectual Property:** Colombian companies should assure the fulfillment of national standards and international agreements, regarding the rights of the author, industrial and intellectual property.

Towards this end, Colombian companies will ensure the following:

i. Internally regulate the use of: the copy, distribution and other actions regarding their



own products and the products of others protected by the rights of intellectual property (such as: software, environmental music, photocopies, brands, patents, etc) to prevent the intentional infractions or due to any mistake on the part of the employees regarding this right.

- ii. **International Agreements:** Consider the protection, that is recognized in other countries, of the different elements of intellectual property, to guarantee their international protection independent from the territorial standards, when this is the adequate procedure.
- iii. **Contractual clauses:** Include protection clauses on the intellectual property (rights of the author and industrial property) in the contracts with the employees, suppliers and third parties related to the company, wherein the ownership and adequate use is clearly

defined so as to avoid future interpretation problems.

- iv. **Promotion:** Educate, train and motivate the employees so that they understand the importance and the legal consequences regarding the protection of intellectual property.
  - v. **Smuggling:** The companies will promote the protection of the intellectual property between the suppliers and the contractors, prohibiting the acquisition of smuggled products or products without licenses.
  - vi. **Value of Intellectual Property:** Colombian companies will consider their creations as a valuable asset of the company, according to the accounting standards.
- c. **Anti-bribing Policies:** The companies that sign contracts with the State will utilize mechanisms to minimize the corruption sources and will guarantee

the public, the best destination of the public resources.

We recommend that the companies utilize the following mechanisms: (i) Study ethical principles that are, preferably, the result of an internal study of the company; (ii) advertise the ethical standards and confirm the unshakable determination to fulfill them during their daily activities; (iii) promote the adherence to integrity and transparency agreements by the proponents in the bids and merit competitions, as a tool that improves the structural conditions of the state contracts, while discussing the terms of reference, evaluating the offers giving priority to the spirit of the standard and not the formal aspects of same, promote social control and guarantee that the procedures are clear, fair, viable and transparent; (iv) denounce any irregular conduct of public servants and/or contractors during the contractual processes with the State; (v) train the company personnel regarding citizen ethics and social responsibility, as part of a great educational effort in all the levels of the community; (vi) create an Ethics Committee

inside the company to understand and direct any conflicts which should come up between them.

- d. **Social Investment Policies:** Colombian companies, whenever they can and without risking the capital of its shareholders and other investors, will develop quality of life improvement programs in the communities where they are located and will promote and stimulate participation of the individuals connected to the company in projects of general interest.
  
- e. **E-Governance:** Colombian companies will establish mechanisms to guarantee that the information transmitted electronically answer to the highest standards of confidentiality and integrity.
  - i. **Integrity:** Colombian companies guarantee that all the operations that they perform via electronic devices identify the participating subjects, prevent any rejection to those making these declarations, will maintain the integrity of the disclosed communications

and will preserve the confidentiality of the information.

- ii. **Intimacy:** So as to respect the rights of intimacy and protection of personal information relating to all the people, there should be a policy established which protects their privacy and manages personal information of the consumer and third parties and disclosures to the general public.
- iii. **Homologation:** Due to the fact that the use of data messages should fulfill the same requirements as the information that has physical backup, establish systems that will allow them to fulfill their obligations regarding registration and filing of the information.
- iv. **Training:** Implement internal manuals that regulate the use of electronic systems.

- v. **Self-regulation:** Create regulatory frameworks for the relationships with third parties through web sites and establish control mechanisms for the appropriate use of same, at all times respecting personal rights of the individual.

## V. The Principal Executive

The mission of the Principal Executive of the company is to execute all the company directives and corporate strategies approved by the Board of Directors.

1. **Nomination:** The nomination of the Principal Executive of the company should be done by the Nominating and Compensatory Committee of the Board of Directors in accordance to the established profiles.
2. **Designation:** The designation of the Principal Executive should be done by the Board of Directives.
3. **Responsibilities:** The Principal Executive of the company, should be responsible for the following:

- a. Legally represent the Company and have, under his direct supervision, the direction and management of the company.
- b. Sign all contracts in the name of the company relating to the main functions and range of activities of the company.
- c. Carry out and fulfill all the decisions made by the General Shareholders Assembly and Board of Directors.
- d. Freely name and remove any and all employees within the company based on criteria of efficiency, evaluation and corporate governance.
- e. Utilize the necessary measures for the appropriate conservation of the company's main function as well as the appropriate collection and use of company funds, protect and direct the activities of all company employees and impart orders and instructions that are important for the best running of the company.
- f. Invite the Board of Directors members to extraordinary meetings when he considers it necessary or convenient, and keep them informed regarding the business activities of the company. Present them with trial balances for review, as well as any other information that any of the committees require.
- g. During the annual meeting, present the General Shareholders Assembly with the balance at the end of his terms, as well as the reports and the distribution of profits and other appropriate data, as

per required by law, after careful study, consideration and approval by the Board of Directors.

- h. Present possible conflicts of interest.
- i. Guarantee the fulfillment of the corporate governance standards adopted by the General Shareholders Assembly.
- j. Keep the investors informed as to form and time established by the Corporate Governance Code.

## **VI. Conflicts of Interest**

Colombian companies will implement mechanisms to assist in the prevention, handling and disclosure of the conflicts of interest that could present themselves among investors, key executives, groups of interest and members of the Board of Directors.

1. **Forbidden Practices:** Colombian companies will forbid their key executives, members of the Board of Directors and employees, to incur in any of the following practices:
  - a. Receive remuneration, bribe, or any other type of compensation in cash from anyone be they outside individuals or companies, regarding their work or services at the company.



- b. The key executives may not grant extraordinary compensations to the members of the Board of Directors.
  - c. To unlawfully use the privileged or confidential information to obtain a profit or to safeguard personal interests or of a third party
  - d. To carry out political proselytism using their company position or relationships within society
  - e. The key executives will abstain from hiring employees with whom they have financial, family or any type of personal relationship.
2. **Disclosure:** Key executives, shareholders and members of the Board of Directors, will disclose any and all conflicts of interest that are in progress and will abstain from voting favorably or unfavorably regarding these matters.
3. **Policies:** Colombian companies will establish a policy manual for the management, prevention and solution of conflicts of interest, which will be placed at the disposal of the public.
4. **Special Mechanisms:** Companies will adopt mechanisms for the administration of conflicts of interest among key executives, members of the Board of Directors and controlling shareholders.

#### **IV. Management and Conflict Resolution**

Colombian companies will utilize systems for management and resolution of conflicts such as mechanisms to improve foreign investments, business relationships and ease of coexistence among the shareholders, interest groups and management. Colombian companies will utilize systems of management and resolution of conflicts for the following situations:

1. **Facing third party investors:** Colombian companies will utilize mechanisms to resolve conflicts easily, economically and specifically especially those derived from the relationship between them and the interest groups. For this reason, and in accordance with the needs and characteristics of the company, they will arrange for special quiet areas, designate employees to assist and/or will establish offices for customer service, programs for direct negotiation, reconciliation mechanisms and the stipulations detailed in the specialized arbitrary clauses.
2. **Internal resolution of company conflicts:** Colombian companies will utilize prevention, attention and resolution mechanisms regarding the conflicts that might arise among employees as well as those between the employees and the key executives. These mechanisms will be utilized to ensure the healthy coexistence among the workers and the executives.

3. **Conflict solutions derived from the Corporate Governance:** Colombian companies will utilize arbitration clauses for the resolution of conflicts derived from the use and fulfillment of the precepts of the corporate governance adopted. The alternative resolution mechanisms for these conflicts (negotiation, reconciliation and arbitration) should be used as fundamental tools to effectively resolve any derived claim from the non-observance of these precepts.

## **MEMBERS OF THE PRINCIPLES COMMITTEE**

The member organizations of the Principles Committee, worked on this document with the sole purpose of creating sufficient directives to promote the Corporate Governance Code in Colombia. This joint effort is due to the interest of the participants to promote competition, strengthen the capital market and increase foreign and local investment. The members of this Committee belong to the following organizations through their legal representatives:

### **Colombian Confederation of Chambers of Commerce (CONFEMARAS)**

Eugenio Marulanda Gómez - Executive President

### **National Association of Pension Funds (ASFONDOS)**

Luis Fernando Alarcón Mantilla - Executive President

### **Colombian Stock Exchange S.A. (BVC S.A.)**

Augusto Acosta Torres - Executive President

### **Chamber of Commerce of Bogotá (CCB)**

Maria Fernanda Campo Saavedra - Executive President

## **Chamber of Commerce of Cartagena (CCC)**

Bernard Gilschrist - Executive President

## **KPMG**

Jaime Bueno Miranda - Executive President

## **Dinero Magazine**

Rosario Cordoba Garcés - Executive Director

## **SpencerStuart Consultants Colombia**

Alvaro Cadavid - Principal Partner

## **Juan Carlos Varón Palomino**

Attorney-at-Law

Director of the Financial Law Specialization Degree at the Universidad de los Andes and Arbitrator for the Chamber of Commerce in Bogotá

### **Technical Secretariat**

The Technical Secretariat of the Principles Committee, organized and coordinated the joint activities of the participating companies, representing the Technical Cooperation program undersigned by the Center for International Private Enterprise (CIPE) and the Colombian Federation of Chambers of Commerce (CONFECAMRAS).

## **Corporate Governance Program for Colombia**

### **CIPE - CONFECAMARAS**

Paula Gutiérrez – Program Manager

### **Operative Committee**

The Operative Committee contributed with the investigation, analysis and writing of the principles contained in this Corporate Governance Code document.

#### **Executive Vice-president - Asofondos**

Rodrigo Galarza Naranjo

#### **Vice-President of Legal Affairs- BVC**

Germán Darío Abella Abondano

#### **Executive Vice-President for the CCB**

Andrés López Valderrama

#### **Vice-President of Legal Affairs - CCB**

Jaime Moya

## **Program Manager, Key Clients and Targets - KPMG**

Maria Claudia García

## **Corporate Governance Program Manager – Confecámaras - CIPE**

Paula Gutiérrez – Program Manager

## **Economist Analyst - Dinero Magazine**

Paula Duran

### **Thanks to other contributors**

Gustavo Sindes Ulloa

Maria Jose Caro Upegui

Jaime Pineda Garcia

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## **Center for International Private Enterprise (CIPE)**

Jhon Sullivan

John Zemko

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Mike Lubrano

Peter Taylor

**Organizacion Economica para la Cooperacion y el Desarrollo (OECD)**

Mats Isaakson

**Corporación Andina de Fomento (CAF)**

Camilo Arenas



## Information

If you require additional information, have comments or suggestions regarding the Principles established in the Corporate Governance Code, we urge you to submit them to:

<b>REFERENCE</b>	<b>DATA</b>
Name	Paula Gutierrez V.
Position	Corporate Governance Program Manager for Colombia CIPE - (CONFECAMARAS)
Organization	Colombian Confederation of Chambers of Commerce (CONFECAMARAS)
Address	Carrera 13, No. 27 – 47 - 5 <sup>th</sup> Floor Bogotá, Colombia, South America
Telephone	(57) (1) 346-7055
Fax	(57) (1) 346-7026 (57) (1) 346-7517
E-mail	<a href="mailto:cgcolombia@confecamaras.org.co">cgcolombia@confecamaras.org.co</a>
website	<a href="http://www.gobiernocorporativo.com.co">www.gobiernocorporativo.com.co</a> <a href="http://www.latincorporategovernance.com.co">www.latincorporategovernance.com.co</a>

