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# Colombian Corporate Governance Rules in the OECD's Era

On May 30, 2018, in Paris, Angel Gurría, as Secretary-General of the Organization of Economic Co-operation and Development (OECD), and Juan Manuel Santos, as Colombian President, signed an agreement that made Colombia the 37<sup>th</sup> member of this organization. These signatures represented the end of a path initiated on June 25, 2013.

In order for Colombia to be accepted as a permanent member of the OECD, it was necessary, in addition to the adoption of the International Financial Reporting Standards back in 2009, to

fulfill the so-called “roadmap” issued on September 29, 2013. The objective of this document, which contained recommendations of each of the 23 OECD's committees, was to assure the other members of Colombia's compliance to OECD standards, through changes to its public policies, when necessary.

Within the recommendations of the committees in the so-called Corporate Governance in Colombia issued back in 2017 are some recommendations regarding the adoption of measures, for both public and listed companies, to

guarantee the applicability of corporate law best practices, observing the five principles included in the “G20/OECD Principles of Corporate Governance.”

According to these principles, the main recommendations for Colombia were:

1. assure the existence and maintenance of a regulatory framework that guarantees the protection of shareholders rights, both minor and foreign shareholders, and the equalitarian treatment;



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2. information transparency according to the International Financial Reporting Standards;
3. establish the effective separation of the state roles as regulator, in the first place, and shareholder in the second, especially in the field of market regulation and state-owned companies;
4. assure a competitive environment where public and private companies can interact without market distortions; and
5. acknowledge and enforce the duties and rights of the stakeholders considered in the Colombian provisions, as well as the duties and responsibilities of the members of the board of directors.

On a more specific level, there are additional recommendations including:

1. the Colombian legal framework should enhance fair and transparent markets, with an efficient resources allocation;
2. strengthening the basis for the promotion of transparent markets is necessary;
3. allowing the minority shareholders effective participation in the shareholders meeting and in its decisions should be an objective of the legal framework;
4. eliminating the alternate directors system is desirable;
5. increasing transparency information regarding company directors, including, for example, both their employments and the participation in other boards of directors should be pursued;
6. Colombian government should approve provisions to grant regulatory powers to the Financial Superintendence, over holding companies of financial conglomerates; and
7. in order to secure a different treatment in the roles of both regulator and shareholder of the state,

in public companies, removing the ministers of the public companies' boards of directors is necessary.

Given the importance that the Colombian government gave to the possibility of entering the OECD as a permanent member, some changes have been included in local legislation as part of the effort to comply with the recommendations listed above. Some of the most important initiatives were:

1. The adoption of the "Colombian Best Practices Code," through the approval of the "Circular Externa," September 28, 2014, issued by the financial superintendence. This code is generally applicable to listed companies.

The code, based on the principle of "comply or explain," contains 33 measures with more than 148 recommendations on subjects such as:

- rights and equalitarian treatment to shareholders;
- shareholders assembly, functions and participation of shareholders;
- board of directors – duties, responsibilities, compensation etc.;
- control architecture; and
- information transparency – financial and non-financial.

Within the changes incorporated in this version of the code, with respect to the one approved back in 2007, are:

- board of director dynamics;
  - internal control and risk management;
  - board of directors' and administrators' differences and compensation; and
  - corporate law recommendations for financial sector companies and financial conglomerates.
2. The issuance of the general policy of the state-owned companies through the approval of the CONPES 3851 of November 23, 2015, by the national Council for Economic and Social

Policy. The scope of this initiative is to enhance the corporate law standards applicable to state-owned companies to guarantee a more effective approach of the board of directors.

This provision seeks to avoid an interference between the public shareholder and the board of directors in the field of company activities.

Additionally, based on this policy, it also issued the Decree 1411 of 2017, which created an inter-sectorial commission for the use of public Assets, CAPP, so called after the Spanish initials.

3. Finally, in 2017, Law 1870 was issued, in order to strengthen the mechanisms of supervision of financial institutions and financial conglomerates. This law included rules related to:

- adequate capital requirements for financial conglomerates;
- establishing the criteria to assess if a third party makes up part of a financial conglomerate and/or it is linked to the financial holding;
- creating new limits, or updating existing ones, regarding risk exposition and concentration;
- attribute new functions to the financial superintendence to execute comprehensive and consolidated supervision of the financial conglomerates with the idea of identifying the beneficial owner in the center of the regulation.

The OECD found the actions implemented by the Colombian government satisfactory to assure, among other things, compliance with the corporate governance standards and, as a result, Colombia is now a permanent member of the organization. The challenge for the country is to continue with this effort in order to create a strong legal framework that allows stakeholders protection of their interests in a fair market. 