

# Colombia

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## Recent developments in securities legislation

**José Luis Suárez and Andrea Fradique-Méndez  
Gómez-Pinzón Linares Samper Suárez Villamil  
Bogotá**

Because of today's globalized economy, and as a response to international bankruptcy scandals, the concern for corporate governance regulations and standards in line with the US Sarbanes-Oxley Act is no longer exclusive to developed nations, but is now also a concern for emerging markets. On a regional level, Latin American countries have joined efforts through corporate governance roundtables in cooperation with several multilateral organizations (such as the Organization for Economic Cooperation and Development, the World Bank, the Global Corporate Governance Forum, the Inter-American Development Bank and the International Finance Corporation) to discuss trends and characteristics particular to the region. This will allow those bodies to better assess the main obstacles to be dealt with when implementing legal policies.

The Colombian quest to achieve a more attractive and trustworthy environment for investors in the Colombian securities market (the CSM) was initiated at the beginning of this decade. In 2001, the government presented a bill to the Colombian congress that included corporate governance provisions for certain participants of the CSM. Unfortunately, that bill was dismissed by congress, which claimed that there was no clear consensus between the affected groups and that, because it was a time of governmental transition, the new government should be in charge of major legal reforms.

Notwithstanding this initial set-back, the Superintendency of Securities issued some regulations regarding corporate governance and good practices of the securities market, among which Resolution 275 of 2001 is most successful. It provides that issuers of securities who wish to be targeted by pension funds require the incorporation of good corporate governance standards, which should be published as a code. As a result, to date more than 100 entities have adopted corporate governance codes.

### Latest developments – Law 964 of 2005

Despite the initial dismissal by congress, the new government (led by the Superintendency of Securities) filed a new bill to modernize the CSM, including the introduction of special provisions relating to corporate governance standards. As a result, Law 964 of 2005 (Law 964) was enacted on July 8 2005, adopting some of the provisions of the 2001 bill as well as introducing new ones. This new

law was inspired by the recommendations set out by the International Organization of Securities Commissions (IOSCO) in the Objectives and Principles of Securities Regulations, and it intends to observe international standards for protecting investors' rights and ensuring the fairness, competitiveness, transparency and efficiency of the CSM.

With these aims in mind, Law 964 includes progressive provisions (at least by Colombian standards) relating to listed companies and issuers (Law 964 defines listed companies as those whose *shares* are registered on the stock exchange; issuers are defined as any entity whose *securities* are registered on the stock exchange). Such provisions refer mainly to regulations of the board of directors, disclosure of shareholders' agreements, compliance with financial and accounting regulations and legal representatives' accountability.

#### *Encouraging transparency and independency of the board of directors*

Pursuant to Law 964, listed companies will be able to adopt different election methods from the one provided by the commercial regulations, as long as they increase the possibilities for minority shareholders to be elected to the board. Also, shareholders holding at least 5% of the outstanding shares can file petitions or proposals to the board, and the board is obliged to consider and respond to those proposals.

An issuer's board of directors must comprise at least five and no more than 10 members, at least 25% of which must be independent, including the alternates with which principals are paired up. To be recognized as independent, a member must not be an employee, shareholder or advisor of the issuer, be in receipt of donations or gifts, or be part of the management team of entities in which the issuer's legal representative acts as a board member. The new legal framework also allows the statutory abolition of the alternate director figure.

#### *Encouraging disclosure of control and shares' offering*

Law 964 establishes that shareholders' agreements of listed companies will only be valid and enforceable if they are disclosed to the public through registration on the national registry of securities and issuers. The new law also provides that the price for the offer of new shares of listed companies must be settled by independent entities, subject to technically approved procedures.

#### *Ensuring the integrity of financial reporting*

Issuers must set up an audit committee, made up by at least three board members, and including all independent members. This committee will be in charge of assuring that the issuer is complying with

its internal audit programme; it will also observe that the preparation, presentation and disclosure of financial and accounting information are in accordance with the legal reporting framework. Furthermore, issuers will be obliged to deliver to investors periodical financial information.

#### *Ensuring legal representatives' accountability*

Issuers' legal representatives will be responsible for setting up, preserving and evaluating disclosure and control systems with regards to financial and accounting information, to make sure that it is properly presented to stakeholders. Legal representatives will also be in charge of notifying the audit committee, the statutory auditor and the board of directors of frauds or material deficiencies concerning the design or performance of internal controls, which might result in inaccuracies in the disclosed information. According to such responsibility, legal representatives will have the duty of certifying that financial statements and other material reports are accurate and error-free.

#### **Future developments**

Some of the provisions of Law 964 are yet to be regulated and implemented by the government. Some of the corporate governance provisions will enter into force one to two years after the publication of the new law.

Furthermore, it has been announced that it is the government's intention to merge the Banking Superintendency and the Securities Superintendency, creating a single authority to control all the participants in the financial markets. This will certainly have a profound effect on financial regulation in Colombia.

The efforts made by the policymakers are admirable, despite the fact that the private sector (and, in particular, small and medium-sized businesses) is not fully aware or confident of the impact of incorporating good governance standards in terms of attracting capital, promoting confidence on the financial market and creating competitiveness. For that reason, much remains to be done, especially in respect of fostering a good practice environment for non-listed companies with the potential to go public in the short-term. There is also uncertainty over how this new regulation will impact corporate finance perspectives both of listed companies and of issuers that have already been accessing the CSM for resources in the past few years.

## Banking and capital markets

### Recommended firms

#### Tier 1

Baker & McKenzie  
Brigard & Urrutia  
Cárdenas & Cárdenas Abogados  
Gómez-Pinzón Linares Samper Suárez Villamil

#### Tier 2

José Lloreda Camacho & Co  
Parra Rodríguez & Cavelier  
Posse Herrera & Ruiz  
Prieto & Carrizosa  
Zuleta Suárez Araque & Jaramillo Abogados

## Mergers and acquisitions

### Recommended firms

#### Tier 1

Baker & McKenzie  
Brigard & Urrutia  
Gómez-Pinzón Linares Samper Suárez Villamil  
Prieto & Carrizosa

#### Tier 2

Cárdenas & Cárdenas Abogados  
José Lloreda Camacho & Co  
Parra Rodríguez & Cavelier  
Posse Herrera & Ruiz  
Zuleta Suárez Araque & Jaramillo Abogados

## Project finance

### Recommended firms

#### Tier 1

Baker & McKenzie  
Brigard & Urrutia  
Gómez-Pinzón Linares Samper Suárez Villamil  
Parra Rodríguez & Cavelier  
Zuleta Suárez Araque & Jaramillo Abogados

#### Tier 2

Cárdenas & Cárdenas Abogados  
Holguín Neira Pombo y Mendoza  
Prieto & Carrizosa

### **Baker & McKenzie**

"Baker & McKenzie has excellent technical capacity in all areas," enthused one major client, which has clearly been extremely impressed with the service offered by the firm that has been in Colombia for more than 50 years. It uses its "excellent network" to provide a full range of corporate finance work that is well respected in the market. In particular, the "very good" Jaime Trujillo is singled out by commentators for his "superb legal advice", especially with regard to M&A matters. Indeed, the firm has benefited from the increase in M&A activity this year due to added interest in previously high Colombian assets because of an interest rate rise in the US. Trujillo has been more than equipped to provide quality for Baker & McKenzie through this sudden

rise, however, associate Ricardo Trejos has been brought in to increase workload capacity.

Over the past year, Baker & McKenzie has advised Avon Products in relation to its \$154 million indirect acquisition of a Colombian cosmetics distributor, and advised Maurel & Prom in the \$460 million acquisition of Knightsbridge Petroleum's oil assets in Colombia and Venezuela, called Hocol. However, the largest M&A deal the firm closed was in advising Telefónica of Spain in acquiring 50% plus-one-share in Colombia Telecomunicaciones. This investment into the state-owned fixed line telecommunications company had an enterprise value of \$4 billion.

Despite remaining somewhat in the shadow of this year's M&A work, Baker & McKenzie's banking department has been active too. In one lending highlight, it represented Citivalores in the structuring and disbursement of a syndicated loan to Leonisa for its international operations. However, the bulk of the work this year was of a regulatory nature. For example, the firm counselled Banco Davivienda in relation to the negotiation of a licence agreement between Diners Club International and BANSUPERIOR, and it was also hired by the Bank of Montreal to advise on legal issues in Colombia relating to derivatives operations. At the time of writing, the banking team was conducting a legal feasibility study for Corporación Andina de Fomento on a compliance issue regarding the incorporation of its operations in Colombia, Ecuador, Peru and Venezuela.

In project finance, meanwhile, Baker & McKenzie is also being kept busy by Hidro Ecológica del Teribe in structuring the EPC and documents needed for the financing of a 30MW hydroelectric plant in Panama.

#### Leading lawyers

Jorge Lara  
Jaime Trujillo

#### Key contact partners

Jorge Lara  
Jaime Trujillo  
Andrés Williamson

### Brigard & Urrutia

Founded in 1934, the six partners and 40 associates at Brigard & Urrutia can draw from a wealth of experience when advising on financial law matters. The firm boasts many reputable clients such as Sony, British Airways, Hewlett-Packard, Merrill Lynch, Morgan Stanley and Sony, and frequently picks up work from new clients too. This is a trend that looks set to continue due to predictions that foreign direct investment in Colombia is to increase over the coming year. While the US is expected to remain the main investor, significant contributions are expected from Canada, Spain, China and Brazil. Brigard & Urrutia will be among the firms expecting to benefit from this prediction, particularly in the oil and gas sector where it is well respected in the market.

Over the past 12 months there have been two particularly large transactions in which Brigard & Urrutia has been involved. First, respected capital markets expert Sergio Michelsen Jaramillo led representation to SABMiller on its \$7.8 billion acquisition of 71.77% of Bavaria's capital stock as part of its merger with BevCo. Mónica Acevedo Cueller must also be congratulated for her role in the most prominent deal in Colombia this year. The other impressive deal that the firm was hired for arose in late 2005, when banking specialist Carlos Urrutia Valenzuela led his team in advising Citibank's \$250 million financing package to enable Isagen to invest in five power stations.

Brigard & Urrutia remains an active member of Lex Mundi, the Pacific Rim Advisory Council, the World Services Group, Club de Abogados and the Bomchil Group.

#### Leading lawyers

Sergio Michelsen Jaramillo  
Carlos Urrutia Valenzuela

#### Key contact partner

Sergio Michelsen Jaramillo

### Gómez-Pinzón Linares Samper Suárez Villamil

In September 2005, Gómez-Pinzón Linares Samper Suárez Villamil joined Affinitas – a Latin American alliance of lawyers. This move proves that this young firm is beginning to spread its influence into the international arena. The eight partners and 34 associates at the firm will then hope to attract more clients akin to ABN Amro, Morgan Stanley, JP Morgan Chase and Credit Suisse First Boston, who already appear on the firm's increasingly impressive client list.

This year, Gómez-Pinzón has been involved in "the largest transaction of a Colombian company in international markets" – commentators have certainly been impressed by the firm's involvement in the merger between BevCo and SABMiller. The deal centred on the latter acquiring 71.77% of Bavaria's stock for \$7.8 billion, and closed in October 2005. Gómez-Pinzón advised the Santo Domingo Group in the structuring, negotiation and closing on the sell side. Other notable M&A transactions have included counselling the Haime Group in relation to the \$187 million sale of a 100% participation in Tubocaribe, along with equity interests in Colmena and Advane, and advising the Santo Domingo Group, RCN TV and RTI on the \$67 million capitalization of TV Cable. In addition, April 2006 saw the firm complete its advice to Banco Davivienda in the Col\$450 billion (\$182 million) purchase of a 100% share participation in Banco Superior, and the subsequent merger of both banks.

Angela Natalia Garcia waved goodbye to the practice of banking and capital markets law in August 2005 to complete a masters degree at New York's Colombia University. But four new associates have been brought in to counteract this departure, and this minor shake-up has not affected Gómez-Pinzón's tier one position in this sector. The firm continues to attract big clients for big deals. In particular, it represented Banco Colpatria in its \$143 million loan from a local syndicated loan facility, and advised Credit Suisse Nassau branch in a \$19 million master revolving agreement with a Colombian company. With regard to regulatory work, Gómez-Pinzón advised the Inter-American Development Bank in relation to the structuring of its trade facilitation programme in Colombia.

In capital markets work, the firm served as advisor in the \$35 million standby credit facility for the purchase of subordinated bonds to be issued by Banco Davivienda, granted by the International Finance Corporation. On the equity side, Gómez-Pinzón counselled Banco Pactual and Banco de Credito del Peru on the purchase of \$15 million and \$4 million of Colombian stock respectively.

Gómez-Pinzón is managed by Alejandro Linares Cantillo who is widely perceived as the driving force of the firm. Many market analysts see him as an especially good lawyer, particularly in capital markets and project finance.

#### Leading lawyers

Ricardo Fandiño de la Calle  
Alejandro Linares Cantillo  
José Luis Suárez Parra

#### Key contact partners

Ricardo Fandiño de la Calle  
José Luis Suárez Parra  
German Villamil Pardo

## Posse Herrera & Ruiz

Clients perceive the “extremely professional” Posse Herrera & Ruiz as “a well rounded firm with a very pleasant team that is easy to deal with.” There are six partners and 27 associates at the Bogotá office, but it is Jaime Herrera and Mariana Posse that are highlighted by analysts for being “very good”.

In banking and capital markets the firm has had a productive year. In the final quarter of 2005, it advised the Interamerican Investment Corporation in a \$30 million loan to Bancoldex and in its first bond issuance (worth Col\$150 billion) in the local market for lending funds in local currency. Around the same time, Posse Herrera & Ruiz represented the International Finance Corporation in a \$35 million standby subordinated credit facility to Banco Davivienda. More recently, March 2006 saw the firm counsel Nexu and Diligo in their role as arrangers of the Col\$170 billion Bogatá mass transit system securitization.

In restructuring work, Posse Herrera & Ruiz represented large clients on two notable pieces of work. First, at the end of 2005, the firm advised Termoemcali on a \$165 million bond restructuring. It then counselled Termocartagena on a restructuring and power plant sale valued at \$417.5 million in March 2006.

In keeping with the rest of the market, Posse Herrera & Ruiz has also seen increased work in the M&A sector over the past year. At the time of writing, the firm was advising ABN Amro and Sumatoria in the structuring of an \$800 million joint venture for the Cartagena Refinery. In addition, the firm has already closed some big transactions in 2006. The most noteworthy of these was the advice given to Colombia Telecomunicaciones in April 2006 regarding Telefónica's \$435 million investment in a 50% plus-one shareholding. This was preceded by representing the same client in the \$90 million acquisition of a local telecoms company.

### Leading lawyers

Jaime Herrera  
Mariana Posse

### Key contact partners

Jaime Herrera  
Mariana Posse

## Prieto & Carrizosa

Prieto & Carrizosa is a seven-partner, 33-associate firm based in Bogotá. In the past year, Diana Holguín has left the practice, but Santiago Arango and Laura Vejarano have been brought in as new associates. This continues the firm's year-on-year growth in the market. At the same time, Prieto & Carrizosa's reputation has also improved. The market reports that Prieto & Carrizosa, the only Colombian member of the State Capital Global Law Firm Group, is “particularly excellent in corporate law and M&A”.

A shining example of this was the firm's role advising Philip Morris in the \$300 million acquisition of Coltabaco. Claudia Barrero led the team on this deal, which is universally seen as one of the most important transactions of the year by commentators. In addition to this, the firm represented Banco de Occidente on its acquisition of Banco Unión Colombiano in December 2005, and in the same month Prieto & Carrizosa guided Steag and Vattenfall Europe through the sale of a 49% shareholding in Compañía Eléctrica de Sochagota.

Over the last few years, the market has noticed the firm's rising presence in banking and capital markets, and the trend looks set to continue. Indeed, this year it represented Credit Suisse and the Royal Bank of Scotland on loans to the value of \$80 million and \$165 million respectively. In addition, Prieto & Carrizosa is

proud to advise clients such as Banistmo, Société Générale and Banco de Bogotá on regulatory issues on a regular basis.

However, it is in structured finance that the firm has made the most progress this year. In December 2005, Prieto & Carrizosa served as legal counsel to Isagen on a \$250 million loan granted by Citibank and guaranteed by OPIC. And another highlight came in May 2006 when the firm advised Credit Suisse and Deutsche Bank in the structuring and financing of an \$80 million acquisition of contract rights derived from US air ticket sales from a major Colombian airline.

At the time of writing, the firm was also proving its presence and ability in the project finance market, advising Cerromatoso and Cementos Argos in the finance and construction of a 150MW self-generation energy plan.

### Leading lawyers

Martín Acero  
Juan Carlos Rocha

### Key contact partners

Martín Acero  
Martín Carrizosa  
Juan Carlos Rocha  
Jorge di Terlizzi

## Zuleta Suárez Araque & Jaramillo Abogados

Zuleta Suárez Araque & Jaramillo Abogados has been boosting its presence in Colombia by recruiting heavily this year. There are now six partners and 17 associates at the specialist business law firm, the most important additions being Arturo Acosta and Gabriel Ibarra at partner level. They joined in April 2006 from Acosta Carrizosa Abogados and Ibarra Prías Abogados respectively, and their arrival bolsters a team that clients already describe as “very good at delivering at an excellent technical advice.”

The firm is still seen as a boutique by the market, and once again it has prospered at M&A. Indeed, Zuleta Suárez has been involved in some sizeable transactions this year. At the end of 2005, for example, it advised Johnson Controls in its acquisition of York International for a global value of \$3.2 billion. At the same time, the firm closed its counsel to Amalfi – the largest non-institutional minority shareholder – in the \$1 billion merger between Corficolombiana and Cordivalle. Zuleta Suárez subsequently represented the same client during Amalfi's decision to sell of \$70 million of stock in Corficolombiana in April 2006. At the time of writing, the firm was advising Tyco International in the Colombian legal aspects of its separation into three publicly traded companies.

Another promising area for Zuleta Suárez this year has been project finance and this is recognized in its retaining of a tier one placing. In December 2005, the firm was hired by Promigas to overlook its \$90 million financing from the International Finance Corporation. More importantly, at the time of writing, the “very professional” Gustavo Suárez is leading advice to British Petroleum regarding the \$850 million expansion of the Cartagena refinery. He is also representing the same client in preliminary regulatory aspects of the Gas to Liquids Project which initial valuations have been cited between \$2 billion and \$3 billion.

In banking and capital markets, meanwhile, the firm has provided regulatory advice to Rabobank, the Royal Bank of Scotland, the Royal Bank of Canada and CMR Falabella over the past 12 months. It has also acted for ING Bank in relation to a \$200 million loan to Comcel, and represented Blue Orchard Finance on the placement of \$106 million-worth of notes in the debt capital markets.

Zuleta Suárez Araque & Jaramillo Abogados remains a member of TagLaw, the International Bar Association and the American Bar Association.

**Key contact partners**

Gustavo Suárez

Eduardo Zuleta

**Other notable firms**

**Parra Rodriguez & Cavelier** is renowned for its expertise in advising on large aircraft leasing transactions. This service has been boosted by the recent restructure of the airline sector in Colombia, and the firm has worked for a great deal of foreign lessors in many large deals. The firm has also seen an increase in M&A activity, landing leading roles on BBVA's \$404 million acquisition of Granahorrar, Gerdau's acquisition of Diaco and Telefónica's 50% plus-one participation in Colombia Telecomunicaciones. In the project finance arena, Parra Rodriguez & Cavelier advised Fedepalma, the Colombian Oil Palm Producers Association, on the feasibility studies related to the structuring of the \$20 million financing for various biofuel plants. Finally, the firm advised Gaspais in the structuring of a \$10 million syndicated loan, and guided Glencore International through the \$360 million restructuring of the Atlantic Railroad.

**José Lloreda Camacho & Co** has also benefited from an increase in M&A work. It assisted Gruenthal Colombiana on its merger with Librapharma and worked with Credit Suisse on the reorganization of offices in Colombia after its merger with a local entity. The 26-strong legal team also represented Parker Drilling in the sale of assets, assignments of debts and employer's substitution to Todco. In banking and capital markets, meanwhile, José Lloreda was hired by Comcel when the company issued \$208.3 million-worth of bonds, and advised the Media Development Loan Fund in relation to the execution of a large loan agreement and guarantee with Abrenuncio. This year has seen the regulatory department attract work from Credit Suisse, Corredores Asociados and Fiduciaria Unión.