

Colombia

Chamber of commerce:

Cámara de Comercio de Bogotá
Carrera 9, no. 16-21
Bogotá
Colombia
Tel: +57 1 381 0270
Fax: +57 1 284 7735
Website: www.ccb.org.co

Professional body:

Colegio de Abogados de Bogotá
Carrera 8, no. 16-79, of. 402
Bogotá
Colombia
Tel: +57 1 284 2959
Fax: +57 1 282 0258

José Luis Suárez and Andrea Fradique-Méndez Gómez-Pinzón Linares Samper Suárez Villamil – Abogados 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

Zuleta Suárez Araque & Jaramillo Abogados

Project finance

Recommended firms

Tier 1

Baker & McKenzie

Brigard & Urrutia

Cárdenas & Cárdenas Abogados

Gómez-Pinzón Linares Samper Suárez Villamil

Holguín Neira Pombo y Mendoza

Prieto & Carrizosa

Zuleta Suárez Araque & Jaramillo Abogados

Baker & McKenzie

Baker & McKenzie is long established in Colombia, and indisputably a leading firm for advice on domestic and international corporate finance work. One client goes so far as to describe the practice as “one of the best, if not *the* best, law firms in Latin America today,” while another states that the firm’s lawyers stand out “not just for their level of professionalism, but also for their affability and speed of work”. A regular representative on the most important foreign investment and infrastructure projects in Colombia, Baker & McKenzie’s team also has an excellent track record in privatization and cross-border transactions, particularly in the telecommunications industry. Among the firm’s numerous clients are Citigroup, ABN Amro, Bank

Boston, HSBC, Bellsouth Enterprises, Pfizer, Sony and British American Tobacco.

Baker & McKenzie's work for international banks this year has included advising Standard Bank on the structuring of the \$20 million note purchase of Diaco, and Bank Boston with respect to a \$160 million loan portfolio sale to Banco de Bogotá. Two acquisitions deals were the \$1.05 billion buyout of Bellsouth Colombia by Telefónica Móviles, and the sale of Lloyds TSB's Colombian subsidiary to Banistmo. At the time of writing, Jaime Trujillo and his team continue to advise Corporación Financiera del Valle in the legal applicability and financial sustainability of a new transport system in the city of Pereira.

Jaime Trujillo is widely commended for providing "prompt and very sound legal advice" and for being "very sensitive to his clients' needs". One interviewee described him as "a real M&A specialist, who understands the problems foreign corporations are likely to face". Banking expert Andrés Williamson is similarly praised for offering "a very good professional service," as is rising star Cristina London Rueda, "a knowledgeable lawyer who is very pleasant to deal with".

Leading lawyers

Jorge Lara
Jaime Trujillo

Key contact partners

Jorge Lara
Jaime Trujillo
Andrés Williamson

Brigard & Urrutia

The oldest law firm in Colombia, Brigard & Urrutia is a prestigious practice recognized for its excellent knowledge of international business and financial markets and extensive global connections. With foreign investment in Colombia rising by 70% over the last six years, the firm has experienced a corresponding growth in areas outside its normal staples of project finance and corporate law. In particular, the firm has been quick to capitalize on the resurgence in Colombian restructuring and oil transactions following the country's political stabilization.

Clients of the firm include leading commercial and financial institutions such as Merrill Lynch, Sony, Morgan Stanley, the Inter-American Investment Corporation, Duke Energy, British Airways, McDonald's and Hewlett-Packard. The firm maintains its strong international presence through its memberships of, and associations with, Lex Mundi, the ABA, ASIL, the Bomchil Group and the International Bar Association – all well-known alliances of global law firms.

Two partners at Brigard & Urrutia held in particularly high esteem are Carlos Urrutia-Valenzuela and Sergio Michelsen Jaramillo. Urrutia-Valenzuela heads the firm's financial services group and is an expert on commercial law, banking and project finance. He is known as an excellent negotiator and draws on much experience in structuring complicated transactions.

Jaramillo, meanwhile, specializes in capital markets, project finance and telecommunications law, and is an authority in Colombian e-commerce legislation. At the time of writing, he is advising a range of international clients regarding fixed telephone services, satellite telecommunications and private networks.

Leading lawyers

Sergio Michelsen Jaramillo
Carlos Urrutia Valenzuela

Key contact partner

Sergio Michelsen Jaramillo

Gómez-Pinzón Linares Samper Suárez Villamil

Gómez-Pinzón Linares Samper Suárez Villamil is a young firm that is making a name for itself in the finance and corporate sectors, with a range of international banks and companies on its client roster, such as Credit Suisse First Boston, ABN Amro, JP Morgan Chase, Morgan Stanley, TransGas de Occidente and IBM. The 46-strong legal team, which has been aggressively recruiting this year, comprises a good mix of seasoned partners and younger lawyers, all with international experience and fluency in English.

The firm is experienced in representing underwriters and developers in large project finance operations, and is considered expert counsel on cross-border derivatives transactions and on the development of due diligence procedures. It is also capable of acting on a range of international investment matters, and has participated in many privatization processes in Colombia over the last decade, especially in finance, energy and telecommunications.

Interviewees noted Gómez-Pinzón's increasing activity, particularly in securitization transactions. The firm advised on an unprecedented future fund using tuition fees from Piloto University. Elsewhere the firm acted for Chivor, Colombia's fourth-largest power generator, in relation to a \$90 million syndicated loan and a \$170 million debt refinancing, and represented BNP Paribas and JP Morgan Chase in their capacity as lenders of a \$250 million syndicated loan to the Republic of Colombia.

Alejandro Linares Cantillo is a deemed a highly distinguished capital markets and project finance lawyer, while José Luis Suárez Parra is considered a great negotiator on banking deals. Ricardo Fandiño de la Calle is "extremely pro-business – honest, and able to deliver on time".

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
Alejandro Linares Cantillo

Prieto & Carrizosa

A “very professional, committed and high-quality firm,” Prieto & Carrizosa is a leading light in corporate law and M&A, and has also been developing a reputation for excellence in banking and finance in recent years. The firm has 33 lawyers, including nine partners – the most recent of whom is José Antonio Lloreda, an M&A expert who joined the firm in November 2004 having previously been senior partner at rival firm José Lloreda Camacho.

In M&A, where Prieto is strongest and most active, the firm’s visibility on high-profile deals is evident. Among the year’s highlights, it acted on Banistmo’s acquisition of Lloyds TSB Bank Colombia and Lloyds Trust, Manuelita’s purchase of Inversiones del Darien and its palm oil production business, and airline Avianca’s \$63 million merger with synergy group Oceanair. In other sectors, the firm has advised Biofilm in various project finance loans totalling \$45 million, and represented Société Générale as lender to the Republic of Colombia.

Juan Carlos Rocha is Prieto’s banking expert, and Martin Acero has considerable expertise in corporate deals. Claudia Barrera, who advises on M&A, insolvency and energy matters, is “amazingly committed and extremely knowledgeable”.

Prieto counts Phillip Morris, Banistmo, Transtel and Isagen among its clients, and is the only Colombian member of the State Capital Global Law Firm Group.

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 is a four-partner boutique that has been active on some prominent M&A deals, including the \$400 million joint venture of Dynobel and Indumil for the production of explosives in Colombia, Grupo Gloria’s \$14 million acquisition of Algarra, Group 4 Falck’s acquisition of Wackenhut de Colombia in January 2005.

The firm’s finance practice – bolstered by the recent recruitment of five new associates – has also handled some good deals over the year, including working on the \$180 million fiscal restructuring of Termoemcali, advising Opic on financing granted to a group of sponsors to develop new facilities in a group of flower growing companies in Colombia and Ecuador, and acting for the Bank of America (as administrative agent) on Chivor’s \$400 million Rule 144A syndicated facility.

And Zuleta’s insolvency and restructuring work over the past year has also been at the top level: standout mandates included serving as Colombian counsel to the official committee of unse-

cured creditors of Avianca before the US Bankruptcy Court, advising ABN Amro as a creditor in the Teleglobe restructuring process and, at the time of writing, acting for Deutsche Bank in relation to the assignment of rights and distressed assets from Sojitz Corporation.

Key contact partner

Eduardo Zuleta

Other notable firms

Cárdenas & Cárdenas Abogados is a mid-sized practice with a good reputation for acting on finance and infrastructure projects, although some in the market suggested that its visibility on deals might be diminishing slightly. “Young and dynamic” firm **Parra Rodríguez & Cavelier** is considered to be excellent in telecommunications and mining. And **Posse Herrera & Ruiz** is developing into a banking specialist to be reckoned with, advising JP Morgan Chase, ABN Amro and PNC Bank among others, and acting on deals such as the arrangement of the Hydrocarbons Investment Fund in Colombia and the \$800 million financial restructuring of Cartagena Refinery.