

# FRAMEWORK CODE OF GOOD CORPORATE GOVERNANCE FOR SMALL AND MEDIUM-SIZE ENTERPRISES

Specialized Management Network – “Colombia Compite” Network



**CORPORATE GOVERNANCE PROGRAM**  
**CIPE – CONFECAMARAS**

**DNP (National Planning Department)**  
**Public Sector Coordinator**



**COLOMBIA  
COMPITE**

**“NETWORK COLOMBIA COMPITE”**

Ministry of Commerce, Industry and Tourism

**FRAMEWORK CODE OF GOOD CORPORATE GOVERNANCE  
FOR SMALL AND MEDIUM-SIZE ENTERPRISES**

**CIPE – CONFECAMARAS Corporate Governance Program Message**

Eugenio Marulanda Gómez

President of CONFECAMARAS

The Corporate Governance Program developed by the Colombian Federation of Chambers of Commerce (CONFECAMARAS) and the Center for International Private Enterprise or CIPE (an affiliate of the U.S. Chamber of Commerce) as part of the “Colombia Compite” Network formed an interagency committee to adapt international corporate governance standards to the characteristics and needs of small and medium-size enterprises (SMEs) in a crucial step towards gaining access to the global marketplace. Well aware of the majority ownership structure of closed corporations in our corporate sector and attentive to the need to develop efficient tools for tailoring new management models and procedures to country dynamics, we invite business owners and entrepreneurs to examine and discuss the content of this White Paper.

The paper is an original tool for introducing the concept of corporate governance to the Latin American environment. It is the product of an exhaustive study by various public and private Colombian agencies and organizations. Coordinated by CONFECAMARAS within the framework of the “Colombia Compite” Network – Specialized Management Network, it is the fruit of a synchronized effort by the Colombian Association of Small-Scale Manufacturers, the Colombian Securities Exchange, the Bogota Chamber of Commerce, the Cartagena Chamber of Commerce, the Medellin Chamber of Commerce, the National Planning Department, Emprecapital S.A., the Federation of Colombian Insurance Underwriters, Incubar Colombia, Innovar Colombia, KPMG, the Ministry of Commerce, Industry and Tourism, Naturasol, the Office of the Superintendent of Corporations, Transparencia por Colombia, the Universidad de la Sabana, the Universidad de los Andes and the Universidad Externado de Colombia to jointly devise and introduce basic building blocks for the competitiveness and development of SMEs.

The main objective of this paper is to provide business owners and entrepreneurs with a useful instructional tool for introducing their organizations to general principles of corporate governance with a view to improving their competitiveness, reducing operational risk factors, overcoming barriers to trade, successfully meeting the challenges of globalization, accessing lower-cost sources of financing and reconciling business practices with commitments incurred under agreements entered into with the World Trade Organization.

This paper reflects the engagement of different national economic players and underscores the importance of the concept of corporate governance as part of today's business dynamics. On behalf of the entire corporate sector, I would like to thank the agencies and organizations involved in crafting this paper, whose content is essential to the development of Colombian private enterprise, for their efforts in and contributions to this endeavor.

## **Message from the Public Sector**

Jorge Humberto Botero

Minister of Commerce, Industry and Tourism

The Ministry of Commerce, Industry and Tourism heads up efforts to carry out national productivity and competitiveness policy. The “Colombia Compite” Network was set up as part of this policy as an operating mechanism for synchronizing efforts by the public and private sectors and the academic community to address issues requiring cross-cutting initiatives to overcome barriers to competitiveness in each of the areas addressed by the World Economic Forum (WEF).

One of the steps in this process was the establishment of the so-called “Red Especializada de Gerencia” (the Specialized Management Network) coordinated by the National Planning Department (DNP), representing the public sector, and by CONFECAMARAS, representing the private sector, to help solve competitiveness problems plaguing Colombia within the management area. The “Framework Code of Corporate Governance for SMEs” and the “Corporate Governance Competition” are projects mounted in furtherance of the Network’s agenda for action.

Thus, the Specialized Management Network is pleased to present this paper entitled “*Framework Code of Corporate Governance for SMEs*” as the product of a synchronized effort by government agencies and entities, the academic community, trade associations and business owners and entrepreneurs to develop a tool for promoting the use of corporate governance best practices by Colombian firms and furnishing small and medium-size businesses around the country with innovative instructional materials for introducing the concept of corporate governance as a means of strengthening the nation’s competitiveness.

## **MEMBERS OF THE TECHNICAL COMMITTEE**

Acopi

The Colombian Securities Exchange

The Colombian Federation of Chambers of Commerce (CONFECAMARAS)

The Bogota Chamber of Commerce

The Cartagena Chamber of Commerce

The Medellin Chamber of Commerce

Corporación Innovar

The National Planning Department (DNP)

Emprecapital S.A.

Ernst & Young

Fasecolda

Incubar Colombia (a Business Incubator)

Innovar Colombia

KPMG

The Ministry of Commerce, Industry and Tourism

Naturasol

The Office of the Superintendent of Corporations

Transparencia por Colombia

The Universidad de la Sabana

The Universidad de los Andes

The Universidad Externado de Colombia

The Universidad ICESI

## INTRODUCTION

The objective of this Framework Code of Good Governance is to furnish closely held SMEs with a tool for ensuring the sustainability and competitiveness of Colombian businesses in today's globalized economy.

This Framework Code of Good Governance is a guide for the independent, phased implementation of corporate governance best practices by the business sector on an individual basis. The Committee would like to point out that disparities in the organizational structure of business enterprises preclude the adoption of the Framework Code, in its entirety, by all business organizations and that, in some cases, there may be specific matters not contemplated in this paper which will need to be addressed.

The Code is designed to serve as a frame of reference for businesses attempting to craft Internal Codes of Corporate Governance. The standards established in this paper are general guidelines with respect to the Corporate Governance model to be adapted by each firm to its own organizational structure, line of business and sources of financing.

### General principles

The underlying principles of the Framework Code are transparency, accountability, the fair treatment of partners/shareholders<sup>1</sup> and the responsibility of small and medium-size enterprises vis-à-vis their respective interest groups.

The Code is designed specifically for small and medium-size enterprises (SMEs) as defined in Law 590 of 2000.<sup>2</sup>

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<sup>2</sup> Law 590 of 2000, Article 2. "Definitions: For all purposes and effects, micro, small and medium-size enterprises include any economic unit operated by a natural individual or body corporate engaged in business, agricultural or industrial activities, trade or service delivery in rural or urban areas meeting the following specifications: 1. Medium-Size Enterprises: (a) A full-time staff of from fifty-one (51) to two hundred (200) workers; and (b) Total assets valued at anywhere from five thousand and one (5,001) to fifteen thousand (15,000) current legal minimum

## TABLE OF CONTENTS

### GLOSSARY

- I. RIGHTS AND FAIR TREATMENT OF PARTNERS/SHAREHOLDERS
- II. ADMINISTRATORS
- III. CONFLICTS OF INTEREST
- IV. INTEREST GROUPS (STAKEHOLDERS)
- V. SOCIAL RESPONSIBILITY OF BUSINESS ENTERPRISES
- VI. TRANSPARENCY, FREE FLOW AND TRUTHFULNESS OF INFORMATION
- VII. DISPUTE MANAGEMENT AND SETTLEMENT

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wages (SMLV); 2. Small Enterprises: (a) A full-time staff of from eleven (11) to fifty (50) workers; and (b) Total assets valued at anywhere from five hundred one (501) to under five thousand (5,001) current legal minimum wages (SMLV).” [sic]

## GLOSSARY

*Partners'/shareholders' agreements:* Agreements between two or more partners or shareholders other than company administrators to vote in the same or in a specific way at partners' or shareholders' meetings.

*Administrators:* Legal representatives, members of the Board of Directors or of oversight committees, the disbursing officer, the factor and anyone holding or exercising such authority under the provisions of the company bylaws or partnership agreement.

*Partner/shareholder:* Anyone contributing funds, work or property with a monetary value or, in other words, business partners or stockholders.

*Auditing:* Systematic collection and impartial analysis of evidence of claims with respect to economic acts or events with a view to evaluating such claims in the light of established criteria and reporting the findings to interested parties.

*Partnership or share capital:* The figure representing all paid-in capital or pledged contributions of capital by partners or shareholders.

*Compensation:* The financial remuneration received by key company executives for the performance of their duties. Compensation systems may be fixed, variable or mixed.

*Unfair competition:* Practices designed to secure a larger market share through false or misleading advertising, the adoption or use of the trademark of a rival firm, discriminatory pricing, dumping or the sale of products at below-cost prices, preferential purchases of raw materials, the establishment of exclusive sales contracts with distributors, the obtention of discounts from suppliers or the use of any other means to maliciously take unfair advantage of the situation of a competing firm.

*Conflict of interest:* A situation in which an individual, in the course of his employment, is faced with a choice of different courses of conduct involving conflicting interests, none of which may be given preference by virtue of his legal or contractual obligations.

*Chief executive officer:* The individual serving as the company's top manager and legal representative: executive presidents or general managers.

*Key executives:* The group of individuals forming the company's top management: executive presidents, managers, directors, vice presidents and the holder of any other position by virtue of which he (or she) is vested with authority to serve as the company's legal representative or to take important decisions on the company's behalf.

*Interest groups:* This refers to all spheres of activity and individuals over which the company has some sort of influence. Interest groups include, without being limited to, partners/shareholders, employees, consumers, competitors, security holders, regulatory, supervisory and oversight agencies, the community and suppliers of goods and services or, in other words, so-called *stakeholders*.

*Incidental information:* Any legal, economic or financial fact of material importance to the firm, its business activities, its pricing policies or the trading of its shares on the securities market.

*Inside information:* Material information for the securities market which has not yet been publicly disclosed or released.

*Institutional investor:* Legal entities with a large investment capacity active in the securities market which manage public funds such as banks, mutual funds, pension funds, insurance companies, etc.

*Investors:* Partners/shareholders and any eventual security holders and creditors.

*Top governing body:* The Partners' or General Shareholders' Meeting.

*Executive or internal directors:* Members of the Board of Directors holding executive or managerial positions within the company or in any firm owned by the company.

*Outside directors:* Members of the Board of Directors who are not company executives or employees and do not meet the criteria to be regarded as independent directors. In the case of family businesses, in addition, they may not be family members.

*Independent directors:* Independent members of the Board of Directors are Board members who: (i) are not employed by the company; (ii) do not represent its majority shareholders; (iii) have not been employed by the company anytime in the past three years; and (iv) are not suppliers of goods and/or services.

*Comprehensive management plan:* This refers to the strategy for each and every functional area (administration, finance, marketing, technology, production, human resources, etc.) for a given year.

*Family businesses:* These are businesses whose economic, financial or administrative control is in the hands of persons related by marriage, by ties of kinship up to the second degree or by civil union.

*Security holders:* Holders of financial instruments such as bonds, commercial paper, securities stemming from securitization processes, etc.

*Third-party investors:* Any members of interest groups or *stakeholders* other than company employees and supervisory and oversight bodies.

## **I. RIGHTS AND FAIR TREATMENT OF PARTNERS/SHAREHOLDERS**

Partners/shareholders in SMEs are to be protected under the company's rules of corporate governance, which should ensure that their rights are duly respected and that their interests are duly protected.

### **1. The rights of partners/shareholders in Colombian SMEs entitle them to:**

- a. Be notified of, take part in and vote at meetings of the company's top governing body;
- b. Share in company dividends and profits;
- c. Have a say in the appointment and dismissal of administrators and evaluate their performance;
- d. Have full, timely access to company information;
- e. Enter into mutual agreements for the exercise of their rights;
- f. Refer matters to the Board of Directors for discussion. In cases where the Board objectively determines such matters to be immaterial as far as the company is concerned, the partners/shareholders are to be informed of its determination and of the grounds for its decision;
- g. Be compensated for services rendered as company employees or executives;
- h. Be informed of the company's comprehensive management plan;
- i. Record business transacted at meetings of the company's top governing body, which information is to be used only for legitimate purposes;
- j. Know exactly who controls the company and any other firms they may control.

### **2. The obligations of partners/shareholders in Colombian SMEs are as follows:**

- a. Evaluate and approve amendments to company bylaws or partnership agreements, including but not limited to business reorganization processes such as mergers, break-ups, restructuring, etc.;
- b. Examine, approve or reject year-end financial statements and balance sheets;

- c. Declare dividends and ensure that company bylaws or partnership agreements include clear policies for the protection of minority or noncontrolling partners/shareholders;
- d. Appoint and dismiss members of the Board of Directors and establish fair compensation systems for Board members;
- e. Appoint a statutory auditor (*revisor fiscal*) where required by law and set his fee. In cases of companies not legally required to have a statutory auditor, the partners/shareholders are to appoint an outside auditor and set his fee;
- f. Discuss reports and actions by the Board of Directors;
- g. Establish fair compensation systems for partners/shareholders and their family members working as company employees or executives;
- h. Set statutory ceilings on the authority of administrators to engage in and approve business transactions;
- i. Approve business transactions exceeding the statutory ceiling imposed on the Board of Directors;
- j. Prohibit payments of any household or personal expenses of partners/shareholders with company funds;
- k. Establish rules for the granting of loans by the company to its partners/shareholders and vice versa. It is recommended that Colombian firms not make company loans to partners/shareholders as a way of protecting the security interests of their respective creditors;
- l. Refrain from using company information for illegitimate purposes;
- m. Establish principles of business ethics.

### 3. **Partners'/shareholders' agreements**

Two or more partners/shareholders other than company administrators may enter into agreements for the protection of their mutual interests under which they may promise to vote in the same or a specific way at Partners' or General Shareholders' Meetings.

Any partners'/shareholders' agreement involving company assets or the appointment or dismissal of company administrators must be disclosed to the other partners/shareholders prior to carrying out the decisions established thereunder.

Partners/shareholders are to be encouraged to freely adhere to preexisting agreements by a particular group.

Companies are to encourage such agreements to ensure that their partners/shareholders have a representative with a deciding vote on their Board of Directors.

#### **4. Fair treatment of partners/shareholders**

Colombian firms are to ensure the fair treatment of their minority and foreign partners/shareholders through the following types of mechanisms:

- a. Minority partners/shareholders holding at least 10% of the partnership or share capital may request that the Office of the Superintendent of Corporations convene a meeting of the top governing body;
- b. Absent or dissenting partners/shareholders may exercise their right of withdrawal in cases of a decision by the Partners' or General Shareholders' Meeting to restructure, merge or break up the company increasing their liability or undermining their ownership rights;
- c. Companies are to establish necessary mechanisms for furnishing all partners/shareholders with material information.

#### **5. Regular or special meetings of the top governing body**

The bylaws or partnership agreements of Colombian business enterprises are to include provisions for mechanisms designed to ensure the rights and fair treatment of partners/shareholders at regular or special meetings of their top governing body. At a minimum, company bylaws or partnership agreements are to address the following specific issues:

- a. **Notices of meetings:** Legal requirements notwithstanding, notices of meetings of the top governing body may be given as follows:
  - (i) Notices of Partners' or General Shareholders' Meetings for the approval of financial statements, business reorganization processes and major business transactions are to include attachments referring to the matters to be addressed;
  - (ii) Companies may notify their partners/shareholders by electronic media, fax, registered mail and, in general, by any appropriate means of communication ensuring that they are duly informed of the meeting in question.
- b. **Agenda:** All partners/shareholders must be furnished with a copy of the agenda prior to the scheduled date of the meeting of the company's top governing body. Colombian firms are to make every effort to ensure that the agenda does not include an item labeled simply as "other business" to make certain that their partners/shareholders are in a position to make informed decisions.
- c. **Representation and voting mechanisms:** All companies are to establish mechanisms allowing their partners/shareholders to vote through proxies, hold teleconferences and vote *in absentia*. It is prohibited for partners/shareholders to be represented at meetings by members of management, except for purposes of their legal representation.
- d. **Disclosure of information:** Partners/shareholders may raise any questions considered relevant by the statutory auditor (*revisor fiscal*), the accountant and the Board of Directors at meetings of the company's top governing body.
- e. **Qualified majorities:** Company bylaws or partnership agreements are to include provisions requiring qualified majorities representing at least 70% of the partnership or share capital for the approval of business reorganization processes (mergers, breakups, restructuring).

## II. ADMINISTRATORS

The members of the Board of Directors and the chief executive officer are company administrators, who are to act in good faith, with the loyalty and due diligence of good businessmen. They are to act in the company's best interests, bearing in mind the interests of its partners/shareholders.

In carrying out their duties, company administrators are to:

- a. Make every effort to duly and properly achieve the company objective;
- b. Ensure strict compliance with legal or statutory provisions;
- c. Ensure the due and proper performance of statutory auditing functions;
- d. Look after and protect the company's goodwill;
- e. Refrain from using any inside information for illegitimate purposes;
- f. Treat all partners/shareholders fairly and respect their wishes to exercise their inspection rights;
- g. Refrain from engaging in any activities competing with the company's own operations or in any acts liable to engender conflicts of interest, either personally or through an intermediary, in their own personal interest or on behalf of a third party, except where expressly authorized to do so by the company's top governing body, and furnish the appropriate body with all necessary information for making an informed decision on such matter;
- h. Respect and enforce the rules of corporate governance adopted by the company's top governing body;
- i. Keep investors informed in the manner and with the regularity required by the Code of Good Corporate Governance.

## 1. Board of Directors

1.1 Organizational structure of the Board of Directors: The Boards of Directors of Colombian firms should be structured in such a way as to ensure that they have the proper capabilities and experience and independent decision-making authority, as outlined below:

- a. **Number of members:** The Board of Directors should have an odd number of members ranging from a minimum of three (3) up to a maximum of nine (9), according to the needs of the firm in question.
- b. **Make-up of the Board of Directors:** The Board of Directors should include at least one outside and/or independent director.
  - i. *Outside directors:* Outside directors are Board members other than partners/shareholders who do not work for the firm in question.
  - ii. *Independent directors:* Independent directors are Board members who: (i) do not represent controlling partners or majority shareholders; (ii) have not worked for the firm for the last three years; (iii) do not supply the firm with goods and/or services; (iv) are not employed by the firm; and (vii) [sic] are not related to any of the parties referred to above by ties of kinship up to the second degree, by marriage or by civil union.
  - iii. *Qualifications of outside or independent Board members:* The members of the Board of Directors must have mutually complementary, interdisciplinary skills and attributes such as: (i) experience in business management and/or economics, administration, law or related fields; (ii) a good name and reputation for professional competence and integrity; and (iii) they may not simultaneously sit on more than five Boards of Directors.

1.2 Role of the Board of Directors: The Board of Directors is the top authority responsible for producing reasonably good earnings for partners/shareholders and for overseeing the work of key

company executives. It is also responsible for preventing disputes and reconciling the interests of different groups.

The responsibilities of the members of the Board of Directors are to be spelled out in the company bylaws and should include, without being limited to, the following:

- a. Ensure that the company's performance is in line with market conditions;
- b. Ensure the effectiveness of its information disclosure mechanisms;
- c. Devote sufficient time to the performance of their duties as Board members;
- d. Ensure implementation of the good corporate governance policies adopted by the company;
- e. Meet at least once a month;
- f. Brief new Board members on decisions taken prior to the date of their appointment, on the company's financial standing and on rules and standards of corporate governance;
- g. Work with key executives in the framing of a business strategy, approve the strategy and monitor and oversee its implementation, which strategy is to include the following elements: (i) the company's mission and vision; (ii) management objectives and indicators; (iii) a financial plan; (iv) a risk management plan; (v) a plan for protecting the company's image; (vi) a marketing plan; (vii) labor policies; (viii) policies for handling conflicts of interest; (ix) policies for settling internal and outside disputes; (x) business shutdown policies; (xi) a training plan for reassigning some of the duties of the CEO;
- h. Establish policies for the selection, appointment, performance evaluation and dismissal of key company executives;
- i. Establish compensation systems for key executives. The Board of Directors is to establish fair fixed or variable compensation systems in line with company needs. Likewise, it is to make provisions for unique circumstances under which key executives may receive special bonuses;
- j. The Board of Directors will establish criteria for defining and distinguishing business and nonbusiness expenses;
- k. Request reports from key executives on the company's standing as deemed necessary. The Board of Directors and/or Board committees on auditing, corporate governance

- and/or compensation and hiring are to solicit any and all necessary information from key company executives to enable them to discharge their duties;
- l. Confirm that accounting procedures meet legal requirements and reflect the company's true financial position;
  - m. Ensure the soundness of statutory or other audits;
  - n. Refer what they consider to be necessary amendments to the company's Code of Good Corporate Governance to its top governing body;
  - o. Authorize the company to engage in business transactions with partners/shareholders and/or related parties;
  - p. In the case of family businesses, in order to ensure the firm's continuity, the Board of Directors should: (i) advocate the adoption of a Family Business Protocol or Agreement including a succession plan; (ii) encourage family members involved in the business to undergo professional training; (iii) help prevent and settle family disputes by forming and holding family councils.

### 1.3 Board committees

It is recommended that the Board of Directors form committees to advise it on specific matters such as auditing, corporate governance, hiring and compensation.

These Board committees are to be made up of members of the Board of Directors and, wherever possible, independent Board members. They may also include outside experts in their specific sphere of work.

1.4 Compensation systems for members of the Board of Directors: Companies are to set up compensation systems for members of their Board of Directors. The compensation plan must be approved by their top governing body and be in keeping with the level of effort of Board members, their work on Board committees, where applicable, and the company's financial standing.

## **2. Chief executive officer**

The chief executive officer or CEO is in charge of implementing the guidelines and business strategies approved by the Board of Directors or the Partners' or Shareholders' Meeting.

1. Selection: All companies must have an explicit statement of necessary qualifications for the position of chief executive officer as the basis for the hiring process. Among the factors to be taken into account are experience, professional training, knowledge and skills.
2. Appointment: The chief executive officer is to be appointed by the Board of Directors or top governing body, as the case may be.
3. Responsibilities of the chief executive officer

As the company's top manager and legal representative, in addition to the normal responsibilities of company administrators, the chief executive officer will:

- a. Implement the business strategy devised by the Board of Directors;
- b. Appoint and dismiss company officials according to policies set by the Board of Directors or the top governing body;
- c. Submit periodic and management reports at the request of the Board of Directors or as required by the top governing body;
- d. Duly furnish the Board of Directors with necessary information for discharging its functions, which information must be timely and complete;
- e. Issue notices of meetings of the top governing body and Board of Directors, attaching any and all necessary information for the transaction of business at such meetings in keeping with the guidelines established by this Code with respect to notices of meetings.

### **III. CONFLICTS OF INTEREST**

A conflict of interest is any situation or event in which the direct or indirect personal interests of any partners/shareholders, administrators or officials are incompatible with those of the company per se, interfere with the performance of their assigned duties or give them cause to act otherwise than in a manner befitting the due and proper fulfillment of their responsibilities.

Companies are to establish effective mechanisms to help prevent and to facilitate the handling and disclosure of any eventual conflicts of interest between partners/shareholders, executives, interest groups and members of the Board of Directors.

Suggested mechanisms include:

- a. The submission by candidates for appointment to the Board of Directors or for executive positions with the company of bios and information on their business career and activities;
  - b. The requesting of express authorization from the top governing body or Board of Directors to proceed in the case of a conflict of interest;
  - c. Families controlling one or more businesses should establish a separate fund completely independent from the business for handling family emergencies or for making necessary loans to family members. Members of family businesses could earmark a percentage of their earnings from the business for this fund;
  - d. The establishment of procedures for ensuring that company procurements of goods and services are in keeping with principles of efficiency and transparency.
1. Proscribed practices: Company executives, members of the Board of Directors and employees are to be barred from engaging in any of the following practices:
    - a. Taking or offering bribes or any other type of compensation in species or in kind liable to influence official decisions;

- b. Under no circumstances may company executives grant any special compensation to members of the Board of Directors;
  - c. Unlawfully use inside or privileged information to their own advantage or to protect their personal interests or those of any third parties;
  - d. Use their standing, position or relationship with the company to engage in politicking;
  - e. Bring family members into the company without regard for their qualifications or for established policies.
2. Disclosure: Company employees, executives, partners/shareholders and members of the Board of Directors and its committees are to disclose any conflicts of interest they may be experiencing and to refrain from voting either for or against the matters in question.

#### **IV. STAKEHOLDERS**

Companies are to recognize the rights of stakeholders and help strengthen synergies with a view to fostering the creation of wealth and jobs and improving their competitiveness.

Each company will identify its corresponding interest groups according to its particular line of business and the location of its facilities, which groups may include but are not limited to:

- a. Partners/shareholders: Companies will strive to create wealth for corresponding investors and ensure that their requests and requirements are treated fairly, with respect and with due diligence.
- b. Customers: Companies will establish mechanisms for allowing their customers to make inquiries, suggestions and claims.
- c. Suppliers: Companies will establish fair and impartial procurement procedures for goods and services based on considerations of quality, pricing and performance.
- d. Creditors: Companies are liable to their creditors for debts incurred according to the terms and conditions of corresponding agreements.
- e. Government regulatory and oversight agencies: Companies are to establish mechanisms for monitoring compliance with laws and regulations governing their line of business and furnish regulatory and oversight agencies with adequate, timely, complete information for such purpose.
- f. Competitors: Companies are to establish mechanisms designed to prevent their engaging in unfair competition or unfair practices stifling free competition and to take appropriate measures to comply with labor policies.

- g. Employees: In addition to complying with labor legislation, companies are to institute mechanisms designed to ensure the fair treatment of their employees, foster their comprehensive development and merit-based promotion, prevent brain drain and espouse values promoting good business ethics and establish incentive policies for employees.
- h. The local community: Companies are to establish mechanisms for passing benefits along to the surrounding community and for creating growth and employment opportunities, according to the company's financial resources and the needs of each particular community.
- i. The family: Family businesses will need to establish mechanisms for distinguishing between business and family relationships and property and for reconciling corresponding interests such as family councils, a family business protocol or agreements between family members.

## **V. SOCIAL RESPONSIBILITY**

Businesses should inspire confidence among the members of the local community and set goals serving the common good, without neglecting their objective of maximizing financial returns for their partners/shareholders.

Business firms are to establish mechanisms designed to help them meet the requirements of the globalization process, commerce policies and international agreements with a view to strengthening their competitiveness and promoting foreign investment.

Companies are to establish the following as well as other types of policies:

### **1. Environmental policy**

Each company will need to develop strategies for preventing and minimizing environmental and human impacts and risks, protecting the environment in their local area through the efficient and effective use of natural resources, raw materials and energy, prevent and minimize pollution, wastes and environment impacts and introduce the use of clean technologies and continuous improvement practices through the promotion of cleaner production processes and of business environmental self-regulation and self-management procedures.

Colombian enterprises, including industrial as well as other enterprises, will promote sound environmental management and help control the environmental impact of their operations, products and services based on the following guidelines:

1.1 *Planning.* Companies will need to familiarize themselves with applicable environmental legislation and regulations, to expand their strategic plans or planning processes to include environmental assessment and enhancement programs to comply with legal requirements and to mount projects going beyond minimum statutory

requirements in cases where corresponding costs are deemed reasonable in the light of expected benefits.

1.2 *Prevention.* Companies are to establish pollution prevention policies grounded in the use of clean technologies and due and proper industrial waste management.

1.3 *Clean technologies.* Companies are to develop environmental management systems as part of their routine production processes and promote the use of clean technologies in different stages of their production processes with the active involvement of employees, suppliers and other outside parties.

1.4 *Industrial wastes.* Companies are to develop safe, efficient collection, disposal, storage and recycling systems for industrial wastes.

1.5 *Efficient use of resources.* Companies must consider the efficient use of energy and other inputs, the sustainable use of renewable resources and the minimization of adverse environmental effects in the development, design and operation of their facilities, as well as in their business operations and corresponding products and services.

1.6 *Education and promotion.* Companies are to establish mechanisms for promoting environmental management, proper industrial waste management, sustainable development and the use of clean technologies and for educating their employees, suppliers, contractors and the general public in their local community with respect to these concepts.

## 2. Protection of intellectual property rights

Companies must ensure compliance with domestic legislation and international agreements with respect to copyrights and industrial and intellectual property rights protecting third-party innovations by establishing the following types of mechanisms:

2.1 *Internal regulations* governing the use, replication, distribution and other related actions with respect to their own internal and other products protected by intellectual property rights (such as software, background music, photocopies, trademarks, patents, etc.) designed to prevent employees or the company per se from deliberately or unintentionally infringing on any such rights.

2.2 *International agreements* recognizing the protection accorded different elements of intellectual property in other countries to ensure their international protection, where appropriate, regardless of the provisions of domestic legislation.

2.3 *Contractual provisions* inserting special clauses for the protection of intellectual property (copyrights and patents and trademarks) into contracts with employees, suppliers and other outside parties dealing with the company clearly establishing corresponding right holders and defining the due and proper use of such property to prevent any future misinterpretations.

2.4 *Promotional activities* for educating, training and motivating employees with respect to the importance and legal ramifications of intellectual property protection.

2.5 *Contraband*. Companies are to help promote the protection of intellectual property rights by their suppliers and contractors by discouraging the purchasing of any contraband or unlicensed products.

2.6 *Valuation of intellectual property*. Colombian firms are to consider their innovations precious assets, to be valued according to established accounting practices.

### 3. Anti-graft and anti-corruption policies

It is recommended that businesses institute the following types of mechanisms designed to preclude and prevent internal graft and corruption:

- 3.1 Embrace ethical principles, preferably developed as part of an internal, collective effort from within the company.
- 3.2 Publicize standards of ethics and issue warnings with respect to the company's steadfast determination to enforce such standards as part of its day-to-day operations.
- 3.3 Have prospective bidders in competitive bidding and prequalification processes sign pledges of truthfulness and transparency as a tool for addressing structural problems in government procurement processes by publicly discussing corresponding bids, evaluating bids on bases emphasizing the spirit of the law rather than matters of form and promoting company monitoring.
- 3.4 Develop clear, equitable, viable, transparent internal procedures.
- 3.5 Report any irregularities observed within the company or in any other enterprise.
- 3.6 Train company personnel in civics and social responsibility as part of the business strategy.
- 3.7 Form ethics committees within the company to examine and settle any disputes between its members.
4. Social investment policies

Business enterprises are to develop programs designed to improve the quality of life in their local communities and to promote and encourage their members to get involved in public projects.

5. Information policy – E-governance

Colombian companies making use of information technologies are to establish mechanisms designed to ensure that any and all electronically transmitted data meets the highest standards of confidentiality, truthfulness and integrity.

6. Law enforcement policy

Companies will need to establish mechanisms for ensuring compliance with constitutional provisions, legislation and regulations with respect to labor and tax issues and free competition.

## **VI. TRANSPARENCY, FREE FLOW AND TRUTHFULNESS OF INFORMATION**

Businesses are to strive to establish mechanisms for ensuring the accurate, regular and timely reporting of company information. Such information disclosure mechanisms should not place an unduly heavy administrative or financial burden on corresponding firms. Businesses are responsible for disclosing only material facts and not any information liable to endanger their competitive position and are to maintain books of account conforming to current accounting standards.

### ***Disclosure of financial information***

*Recipients of financial information:* This information is to be disclosed to the company's partners/shareholders, Board members and statutory and other auditors, as well as to any interest groups for which such information is deemed relevant in light of their relationship with the company.

*Balance sheets and financial statements:* (i) At a minimum, company financial statements are to include a general balance sheet, an income statement, a cash flow statement, a statement of changes in financial position and notes to the financial statements. (ii) Balance sheets and income statements are to be accompanied by a descriptive report by the company's chief executive officer. (iii) Business groups or controlled and controlling corporations are to present consolidated annual financial statements.

*Compensation systems for company administrators:* Companies must disclose the compensation systems established by their Boards of Directors for key executives, as well as the compensation systems established by their top governing body for members of their Boards of Directors.

### ***Disclosure of nonfinancial information***

At a minimum, Colombian businesses are to disclose the following types of information:

- a. Information on the company's mission, vision and objectives;
- b. Their Code of Good Corporate Governance;
- c. Information on voting rights and procedures;
- d. Reports on the implementation of good corporate governance practices;
- e. Information on the make-up, qualifications and performance evaluations of company executives and members of their Board of Directors.

*Types of nonfinancial incidental information:* (i) information on appointments and dismissals of key executives; (ii) information on business reorganization processes; (iii) information on changes in the company's image; (iv) information on nonfinancial risks; (v) information on changes in the business strategy; (vi) information on high-impact labor disputes.

*Information disclosure mechanisms:* Companies are to establish appropriate, accessible information mechanisms. It is recommended that businesses host web sites and use electronic media (fax transmissions or e-mail) for this purpose.

*Auditing systems:* Businesses will permit their partners/shareholders to establish an outside auditing mechanism, whose cost is to be borne by the requesting party.

*Statutory audits:* Statutory audits are designed to protect the rights of partners/shareholders and other investors and, as such, are to be conducted in good faith, with no interference from key executives, members of the Board of Directors or partners/shareholders.

## VII. DISPUTE RESOLUTIONS

Colombian businesses are to establish dispute management and settlement systems as a means of promoting foreign investment, trade and harmonious relations between partners/shareholders, interest groups and management. Colombian businesses will establish dispute management and settlement systems for the following types of cases:

- 1. Disputes with outside parties:** Companies are to establish mechanisms designed to expeditiously, economically and skillfully settle disputes stemming from company relations with administrators and interest groups or stakeholders. To this end, they are to establish direct negotiation programs, mediation mechanisms and specialized arbitration procedures tailored to their specific needs and characteristics.
- 2. Internal dispute settlement mechanisms:** Colombian businesses are to establish internal procedures for the prevention, handling and settlement of disputes between the company per se, its key executives and company employees. Such mechanisms are designed to promote harmonious relations between labor and management.
- 3. Family businesses:** It is recommended that the Family Business Protocol include provisions for alternative dispute settlement mechanisms such as direct settlements and family councils.

**For more information please contact:**

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