Executive summary

This report assesses Colombia's legal, regulatory and institutional framework for corporate governance and the country's implementation of the *G20/OECD Principles of Corporate Governance* ("the Principles") and the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* ("the Guidelines"). It first examines the corporate governance landscape, then turns to the five "core corporate governance principles" set out in the *Roadmap for the Accession of Colombia to the OECD Convention.*

Colombia's corporate governance landscape

This report finds that Colombia's government has devoted considerable attention to aligning its corporate governance framework for listed companies with the Principles in order to promote transparent and efficient markets consistent with the rule of law and that clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities. It appears to have established effective co-ordination mechanisms, and its decisions are communicated clearly and transparently to the market. Nevertheless, Colombia faces important challenges with respect to low trading volumes and a gradually diminishing number of listed companies, as well as concentrated ownership in the context of large conglomerates that play a dominant role in the economy. In this context, the Colombian regulatory and supervisory authorities have rightly given a strong focus to tracking ownership structures and related party transactions among companies within these groups, and have worked actively to ensure adequate disclosure and to require appropriate treatment of conflicts of interest. The revised *Código País,* issued in 2014, has established a higher level of aspiration for practices at the company level that is broadly consistent with the Principles. The Colombian government has also developed legislation, approved by the Congress in June 2017, that would enhance the authority of the SFC to oversee and obtain information from holding companies of financial conglomerates.

Colombia's corporate governance framework for state-owned enterprises (SOEs) has undergone an important transformation aimed at establishing a framework broadly consistent with the Guidelines. Further implementation of its new national ownership policy will be important as the SOE sector continues to account for a significant share of Colombia's economy and includes particularly important holdings in the energy, oil and gas and financial sectors.

Colombia and the core corporate governance principles

Ensuring the enforcement of shareholder rights and equitable treatment.

Colombia has extensive requirements in place to ensure the enforcement of shareholder rights and their equitable treatment. While private actions through the regular court system to enforce these rights are rare, Colombia has developed an active public enforcement programme, alternative dispute resolution mechanisms and administrative courts to help ensure that shareholders have recourse to ensure their equitable treatment. Some weaknesses have been identified, particularly with respect to the availability of information and functioning of the annual general meeting. However, the revised national corporate governance code, the *Código País,* provides numerous recommendations aimed at improving the timeliness and quality of information available to

shareholders. It will be important for the SFC to monitor progress and consider further requirements if necessary to ensure implementation. SOEs with mixed ownership, particularly Colombia's listed SOEs, were also found to generally respect shareholder rights and equitable treatment of investors.

Timely and reliable disclosure in accordance with international standards

Colombia has extensive and well-elaborated disclosure requirements with respect to quarterly and annual financial reports, corporate ownership and share structures, related party transactions, and immediate reporting of material information. Colombian listed companies have completed the transition to International Financial Reporting Standards, while SOEs also have begun reporting according to IFRS. Full implementation of international audit standards also entered into force as of January 2016, and has been coupled with extensive efforts to raise awareness and understanding of the new requirements. While the 2014 review of Colombia identified some disclosure weaknesses, such as on board member qualifications, independence and nomination processes, executive and non-executive remuneration, and material risk factors, Colombia's revised *Código País* provides specific recommendations in each of these areas. The framework for disclosure by SOEs has been strengthened with the initiation of annual national aggregate reporting. While some SOEs have clearly specified public policy objectives established by law or through other public documents, the more systematic development of reporting and costing of public policy objectives is an important priority to be implemented more fully.

Effective separation of the government's roles as owner and regulator

Colombia's national ownership policy sets out a comprehensive plan to implement this core principle. Its first phase has assigned greater co-ordination responsibilities to the Ministry of Finance and Public Credit (MHCP), assisted by a new Directorate General for SOEs. This will also serve as the Secretariat to an Inter-Ministerial Co-ordinating Committee to help ensure effective implementation of good practice across other ministries. The MHCP has direct responsibility for exercising the ownership function in 21 of the government's 40 majority-owned SOEs, and 88.5% of the government's SOE assets. The ownership policy further recommends processes and criteria to ensure that boards are nominated and elected through well-structured, merit-based and transparent nomination processes. A key reform announced in the ownership policy was the intent to remove all ministers from the boards of 12 SOEs where they have been participating, along with a reduction in the number of deputy ministers. A new SOE corporate governance code, issued in January 2017, should seek to ensure that boards play a stronger role in CEO appointments, including in the 17 SOEs where the President currently has the legal responsibility to appoint and remove the CEO. For the longer term, the government plans to review the experience of the MHCP and other ministries in implementing the above measures before preparing legislation in 2018 that would further centralise the ownership functions of the Directorate General for SOEs as a separate ownership entity.

Ensuring a level playing field

Generally, SOEs face the same conditions as private sector companies with respect to the application of tax and other laws, and access to debt and equity finance, albeit with some exceptions. Owing inter alia to their corporate form SOEs further appear to have a higher level of legal protection with respect to insolvency and bankruptcy proceedings, and in exceptional cases, have received government guarantees in support of loans. Measures to streamline public procurement requirements for SOEs following the EICE legal form would help to ensure a more level playing field between SOEs and their private sector competitors. The national ownership policy seeks to enforce a level playing field by strengthening the development of and disclosure of public policy objectives and their associated costs and impact on commercial objectives, to help ensure that subsidies are avoided. The playing field may also in some cases be uneven in the

disfavour of SOEs, for example, due to extra reporting and approval burdens for SOE budgets, investments and staff changes.

Recognising stakeholder rights and the duties, rights and responsibilities of boards

Colombia has in place legal provisions to protect stakeholder rights with respect to corporate conduct, to ensure stakeholder participation in some corporate governance processes, to provide mechanisms for lodging complaints, and has established processes to address them. SOEs also generally respect stakeholder rights and have implemented mechanisms, including codes of ethics and reporting on corporate social responsibility, that help to support a framework for the respect of stakeholder rights.

On a general level, board members in Colombia have responsibilities and legal duties of loyalty and diligence that correspond to OECD recommendations, and these responsibilities are actively enforced by the SFC. The SFC, with support from BVC and market participants, has made a concerted effort to enhance the practices of boards of directors through a much more detailed set of recommendations in the *Código País,* which companies were required to report against for the first time in January 2016. Among some of the key improvements in practice that the code seeks to promote are a reduction in use of alternate directors; increased disclosure of board member backgrounds, service on other boards and other employment; increased use of board evaluations; and stronger alignment of key executive and board remuneration with the long-term interests of the company. For SOEs, as noted above, Colombia is in the process of removing ministers from all SOE boards and to establish well-structured, merit-based and transparent nomination processes aimed at enhancing the performance of these boards. The SOE corporate governance code is also intended to further reinforce good board practice.

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