



# Banking Regulation

in 27 jurisdictions worldwide

Contributing editor: David E Shapiro

# 2012



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# Colombia

**Mariana Posse and Pablo De La Torre**

Posse, Herrera & Ruiz

## Regulatory framework

- 1** What are the principal governmental and regulatory policies that govern the banking sector?

The government is responsible for intervention in the financial, insurance and other activities related to the management, use and investment of funds raised from the public, given the following governmental and regulatory purposes and criteria are followed:

- the performance of such activities is in accordance with the public interest;
- in the performance of such activities the users' interests are adequately safeguarded, in particular the interests of the savers, depositors, policyholders and investors;
- entities engaged in these activities have appropriate equity levels in order to safeguard their solvency;
- the operations carried out by such entities are performed in adequate safety and in transparent conditions;
- those entities carrying out such activities promote competition and efficiency;
- credit is democratised to avoid unlimited access to credit as well as risk concentration;
- the development of economic financial institutions' solidarity is protected and promoted;
- the financial system must have a regulatory framework in which institutions may compete with others under equity and equal conditions; and
- access to financial and insurance services to the low-income population and to small and medium-sized enterprises is promoted.

Additionally, entities under the surveillance of the Colombian Financial Superintendency, managers, directors, legal representatives, auditors and other officials must carry out their duties and obligations with good faith and public interest service including the obligation to refrain from certain behaviours.

Furthermore, the Colombian Financial Superintendency has the faculty to sanction supervised entities, their managers, administrators, statutory auditors or other employees of such entities in accordance with the following principles, criteria and procedures:

- the principle of contradiction;
- the proportionality principle;
- the exemplary principle sanction; and
- the relevance principle.

Any administrative acts that the Colombian Financial Superintendency issues must follow the economy, celerity, efficiency, impartiality, publicity and contradiction principles.

- 2** Please summarise the primary statutes and regulations that govern the banking industry.

The Colombian Constitution establishes the general regulatory framework and the principles that contain the capacities and specific responsibilities of the entities, creating a broad and complex structure of financial regulation.

The Constitution establishes that the enactment of laws related to financial activities, should be made through master laws enacted by the Colombian Congress. These laws are characterised by setting objectives, principles and general regulations that subsequently the government (the president of Colombia and the minister of the respective sector) develop through regulatory activity. The most representative regulations developed include:

- Law 45 of 1990 (regarding rules in financial intermediation, regulation of insurance activity, among others);
- Law 35 of 1993 (objectives and criteria that the government should consider when regulating financial, stock market and any other activity related to the management, use or investment of funds raised from the public);
- Law 964 of 1995 (objectives and criteria that the government should consider when regulating the activities of management, use and investment of funds raised from the public through securities);
- Law 510 of 1995 (provisions in relation to the financial, insurance and stock market system); and
- Law 1328 of 2009 (which establishes rules in financial, insurance and stock market matters).

The Constitution also provides that the president of Colombia should intervene in financial activities, regulating matters related to such activities in the development of master laws issued by the Colombian Congress. Such intervention is done through the Ministry of Finance and Public Credit. It is important to note that recently a great part of the financial, insurance and stock market regulation was compiled in Decree 2555 of 2010.

The Colombian Congress may also give special, limited and temporary power to the government to issue decrees. Further to such powers, the government issued Decree-Law 663 of 1993, known as the Financial System Organic Statute, which contains the basic regulation of the financial system, the financial institutions, authorisations, transactions, sanctions, etc.

The Colombian Financial Superintendency performs its tasks based on the regulations that the Ministry of Finance and Public Credit issues. The Colombian Financial Superintendency has issued the Legal Basic Circular 007 of 1996 and the Basic Finance and Accounting Circular 100 of 1995, which establishes some of the legal, financial and accounting characteristics of entities operating in the Colombian financial and securities markets sectors.

The Colombian Central Bank (the CCB), is an entity with legal, administrative, financial and technical autonomy created by the Colombian Constitution as the supreme monetary, foreign exchange and credit authority in Colombia through its board of directors. The board may issue 'external resolutions' governing mandatory bank reserves, the amount of active credit operations that financial entities can perform, the maximum interest rates financial institutions can collect or pay, and interbank lending operations. The most relevant resolutions, are the following:

- DCIN – 83 regarding foreign exchange;
- DODM – 144 regarding derivatives transactions;
- DODM – 317 regarding trading systems foreign currency registration; and
- External Resolution 5 of 2008 and DODM-147 of 2009 regarding bank reserves.

**3** Which regulatory authorities are primarily responsible for overseeing banks?

The Colombian Financial Superintendency, which has the following duties:

- granting authorisation to incorporate a financial institution;
- authorising certain activities and fundamental changes to financial institutions, such as mergers, acquisitions, offshore investments, incorporating affiliates, opening of new offices, banking hours;
- issuing regulation regarding accounting standards, insecure or non-authorised practices, and information reporting requirements;
- performing supervision in situ visiting supervised entities;
- receiving and providing the market with all necessary information to promote transparency and to protect the interests of savers, depositors and investors;
- exercising limited jurisdictional capacities; and
- investigating and imposing sanctions on financial entities and their officers.

The CCB, which is the supreme monetary, foreign exchange and credit authority in Colombia, governs:

- mandatory bank reserves;
- the amount of active credit operations that financial entities can perform;
- the maximum interest rate financial institutions can collect or pay; and
- interbank lending operations.

It also manages the CCB Electronic Services (SEBRA), which allows the interbank clearing checks, the interbank clearing of electronic payments of low value (CENIT), the Central Securities Depository (DCV) where the government securities are kept, and the electronic negotiation of government securities (SEN). One of the main responsibilities of the CCB in connection with the foreign exchange market is the registration of foreign investments in Colombia.

**4** Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

Deposits in the Colombian financial system are insured by the Financial Institutions Guarantee Fund (Fogafin) to those financial institutions registered before it in case of liquidation. The following is the list of products subject to deposit insurance:

- deposits (ie, savings accounts, checking accounts);
- fixed-term deposits (CDTs);

- mortgage bonds;
- payable documents;
- collection banking services; and
- capitalisation securities.

The maximum amount insured that the Financial Institutions Guarantee Fund will recognise to each individual for each bank regardless of the amount of products each individual may have in each financial entity is a maximum of 20 million Colombian pesos.

In the late 1980s and early 1990s the Colombian government initiated a privatisation process of almost all of its companies, including its banks. Later during the financial crisis of 1998 and 1999 it had to intervene in a number of financial institutions and as a consequence acquired the majority of the ownership of such entities, which it then sold after a restructuring and strengthening process. Since then it has shown no interest in having an ownership interest in the banking sector with the exception of the ownership of the Banco Agrario de Colombia S.A., which is the only commercial bank the government owns at present.

This bank was established in June 1999, and currently finances agricultural, livestock, fisheries, forestry, among other activities, and is primarily focused on granting loans to those sectors and individuals that do not have access to the other financial institutions.

**5** Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

Affiliates are entities subordinated or controlled, in which their power of decision is subject to the will of other entities or individuals that will be their parent or controller, either directly, in which case it is classed as an 'affiliate', or with the assistance or through the subordinates of the parent company, in which case it will be considered as a 'subsidiary'.

Transactions with affiliates, including investments in them, are subject to several rules. The aggregate amount of the capital investments in affiliates may not exceed 100 per cent of the aggregate amount of the capital and the patrimonial reserves of the investor financial entity.

Depending on the condition in which the entity is acting (parent company or subsidiary), certain restrictions may apply.

Subsidiaries are not allowed to:

- acquire shares or any other type of ownership interest of any kind of company or association;
- acquire shares issued by the parent company or its affiliates; or
- acquire or negotiate securities that have been issued, guaranteed, accepted, or managed by the parent company or its subsidiary.

Administrators and legal representatives are not allowed to occupy any such positions in the parent company.

Parent companies are not allowed to:

- acquire assets from the subsidiary for any purpose, except for liquidation purposes of the subsidiary;
- carry out active credit transactions with their affiliate trust companies, stockbrokers, or severance or pension fund managing companies (with certain exceptions); or
- carry out operations in which a conflict of interest is involved. Conflicts of interest are defined as a situation in which a person, because of their activity, faces various conduct alternatives with regard to incompatible interests, none of which can be privileged in response to legal or contractual obligations.

The following are the general authorised activities for banks:

- taking funds from the public by means of demand deposits, checking accounts, saving accounts, time deposits (with or without issuing time-deposit certificates), and savings time deposits (with or without issuing savings time deposit certificates);
- issuing securities;
- taking loans in Colombian currency with liquidity purposes from other local financial institutions through interbank lending or from the Central Bank as lender of last resort;
- taking loans in foreign currency;
- acting as underwriters of public debt securities;
- acting as market makers for public debt securities;
- participating in the derivatives and money markets;
- performing leasing operations;
- acting as dealer in the securities market;
- acting as depositaries and as transfer agents;
- acting as non-fiduciary managers of loan portfolios for other financial institutions; and
- lending funds for the acquisition of companies different from financial institutions.

- 6 What are the principal regulatory challenges facing the banking industry?

Under the market liberalisation strategy, Colombia has acquired and will eventually continue commitments in the liberalisation of financial services, which implementation has been agreed within a reasonable period of time (by 15 July 2013) with the purpose of carrying out the necessary regulatory adjustments and providing the national industry time to adequately prepare itself to face the challenges ahead. (See 'Update and trends'.)

Additionally, Colombia, with the Trade Promotion Agreement signed with the United States and with other countries, will assume opening obligations in banking and financial services, which will require major regulatory changes.

The major banking challenge is and will continue to be increasing the extension of banking facilities in Colombia, which will play a major role in the development of the country and in the reduction of poverty.

In Colombia in 2006, only 48 per cent of the adult population had at least one banking product, which was a very low percentage even compared with other Latin American economies. As of August 2011 it increased to 62 per cent of the adult population in Colombia.

Many efforts have been made to increase banking facilities in Colombia, creating a legal framework that fosters the creation of new service channels, providing incentives to expand coverage in places where there is no banking presence and additionally promoting the opening of electronic accounts for certain government programmes that help low-income families with certain subsidies.

Another of the efforts to improve banking facilities is the introduction of non-banking correspondents, which basically consist in having banking stands that will function in small commercial establishments such as supermarkets, stores, and even bakeries that didn't previously have proper financial offices (with various service advisers for customers).

The non-banking correspondents effort started in June 2007 and in the past year has increased exponentially. As of March 2011 there were 6,676 non-banking correspondents and between June 2007 and April 2011, 67 million transactions were carried out through non-banking correspondents.

- 7 How has regulation changed in response to the recent crisis in the banking industry?

Colombia faced a financial crisis in 1982 that originated from several macroeconomic adverse factors that affected the Colombian financial system. Decree 2920 of 1982 was issued, allowing the

government to intervene in the equity of financial entities that were in crisis, and in addition the activities that threatened the stability of the system were penalised. Furthermore, to continue the strengthening of the financial system, the financial regulations began to emphasise risk management, such as managing credit risks and market risks.

After the 1998–1999 financial crisis, which mainly involved the deposit-taking institutions specialised in mortgage loans, affected the economy performance, the situation demanded new legislation for the banking entities responsible for the financing of housing. Because of such crisis, Law 510 of 1999 introduced amendments to the Financial System Organic Statute related to crisis management, through the regulation of entry conditions to the financial system, the abilities of the government intervention, the capital investment regime and the regimes of various types of financial intermediaries. In addition, after this crisis, the financial regulation focused on the management of risks, creating risk-management systems such as the Money Laundering and Terrorism Financing Risk Management System (SARLAFT) and the Credit Risk Management System (SARC), among others.

As a consequence of both financial crises, Colombia had already taken the necessary measures to avoid the current financial crisis having an impact on the Colombian banking sector by having a very regulated and controlled financial system, and therefore no major regulation changes were required.

- 8 In what ways do you anticipate the legal and regulatory policy changing over the next few years?

The current financial crisis affecting European countries and the United States has raised important changes for policymakers around the world. The higher capital and control requirement, controls and systems proposed to supervise systemically important entities, and the limitations over universal banking schemes, among others, will serve as a reference for Colombian regulation. There have also been several events that demand, from authorities and entities, special responses in the face of a number of risks that increasingly acquire greater importance. The efforts to identify risks in the financial system cannot be directed only towards the operational, market and credit criteria. The actual changes arising from the globalisation phenomenon have implied a growing sensibility with respect to environmental (ie, global warming), catastrophes (ie, natural disasters) and reputational issues (ie, illegal activities), as well as a rejection of all types of corrupt practices.

Taking the above into account, modern risk management should include all of these new risks, to cover in depth the threats to which it is subject, and in this way respond to the demands of society.

In addition, Law 1314 was issued in 2009, seeking that accounting regulations will match high, understandable, applicable and accepted global standards, such as the International Financial Reporting Standards (NIIF). The initial date of the transition period will start on 1 January 2013, the date on which financial entities may register their accounting with both local standards and NIIF standards, until 1 January 2014, at which time it would be necessary to have NIIF standards.

## Supervision

- 9 How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

The Colombian Financial Superintendency supervision is based on risks, which means that it is based on the early detection and evaluation of risks that entities are exposed to. This type of supervision is a process that seeks to identify the activities that present a bigger risk to the health and solvency of an entity, and at the same time evaluate the management that the entity carries out regarding such risks.

To carry out supervision of the Colombian entities, the Colombian Financial Superintendency has developed the Comprehensive Monitoring Framework (CMF). This framework is a structured process that allows the Superintendence to carry out a consolidated, integrated risk and solvency evaluation of the entities supervised, to design the most effective and efficient supervision strategy, which allows the Superintendence to make effective use of its remedies. The CMF includes both the way to evaluate the risks (Risk Measurement and Evaluation System) and the way in which to carry out the supervision (Monitoring Process).

In addition, the Colombian Financial Superintendency outlines some requirements relating to the examination of certain information. These requirements are of several types and are to be sent at different periods of time: some information must be sent on a daily (ie, exchange rate), weekly (ie, weekly financial report), monthly (ie, management of assets and liabilities), quarterly (ie, total active credit operations), semi-annual (ie, transactions and operations reports) and annual basis (ie, minimum capital), depending on the nature of the information to be reported.

**10** How do the regulatory authorities enforce banking laws and regulations?

The law states that the Colombian Financial Superintendency has the purpose of supervising the Colombian financial system in order to preserve its stability and security, as well as to foster, organise and develop the Colombian securities market and the protection of investors, depositors and policyholders. In such a way, the Colombian Financial Superintendency has the faculty to sanction supervised entities, their managers, administrators, statutory auditors or other employees of such entities. Such faculty is oriented and carried out in accordance with the following principles, criteria and procedures:

- the principle of contradiction;
- the proportionality principle;
- the exemplary principle sanction; and
- the relevance principle.

The Colombian Financial Superintendency carries out permanent control through annual or occasional visits and with the information that must be sent periodically by financial entities. From such visits and using the information received, the Colombian Financial Superintendency verifies the compliance of financial regulations and, if any breach of the regulations is detected, the following process will be carried out:

- a warning or reprimand;
- a monetary penalty in favour of the National Treasury;
- a suspension or disqualification for up to five years for performance of positions in entities supervised by the Colombian Financial Superintendency;
- the removal of managers, directors, legal representatives or statutory auditors; and
- the administrative takeover for administration or liquidation.

**11** What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

The most common enforcement issues in the past few years (2007 to 2011) are related to non-compliance with the reporting of information to the Colombian Financial Superintendency regarding different matters, and to the breach of the duty to comply with certain requirements and regulations (such as minimum capital requirements, financial statements obligations, risk management and foreign exchange statements).

These issues are normally handled by first issuing a warning or reprimand to the entity that is not complying with the requirements; then, if the situation continues, a monetary penalty will be imposed.

**12** How has bank supervision changed in response to the recent crisis?

As stated in question 7, the regulation has not actually changed in response to the recent crisis, but rather to the Colombian crisis in the 1990s.

### Capital requirements

**13** Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

Deposit-taking institutions must comply with certain regulations to have an adequate equity and solvency ratio.

The solvency ratio is understood as the value of technical equity divided by the value of the weighted assets by credit and market risk level. This ratio is expressed as a percentage and the minimum solvency ratio deposit-taking institutions can have is 9 per cent. The average is around 12 per cent and special surveillance is adopted when such ratio lowers to 10 per cent.

Compliance with the solvency ratio will be carried out based on the technical equity that each deposit-taking institution has, which will be calculated throughout the sum of Tier I and Tier II capital.

Tier I and Tier II are composed in the following way:

Tier I capital	Tier II capital
<ul style="list-style-type: none"> <li>• The subscribed and paid-up capital</li> <li>• The legal reserve, other reserves and not distributed profits of previous periods</li> <li>• The balance result that the patrimony adjustment changes account yields</li> <li>• The balance resulting in the patrimony revalorisation account when positive and the conversion by adjustment of financial statements</li> <li>• The current year profits period</li> <li>• The shares that represent the guarantee capital (the computation depends on a certain factor)</li> <li>• The subordinated bonds subscribed by the Financial Institutions Guarantee Fund (Fogafin) (the computation depends on certain factors)</li> <li>• The total value of the dividends decreed in shares</li> <li>• The value of the minority interest account determined in the financial statements consolidation</li> <li>• The patrimony account of surplus donations, as long as the funds in which it originates are permanent and are available to carry out its commercial activities, the account clear out losses if they appear and its distribution or allocation in case of liquidation of the entity are subordinated to the payment of the external liability</li> <li>• The following deductions must be made: (i) losses from previous and current year; (ii) revalorisation account when negative; (iii) the existing balance in the account of accumulated 'inflation adjustment' originated in non-monetary assets, while the respective assets haven't been transferred until concurrence for the sum of the existence balance in the revalorisation account and the capitalised value in such account, when such sum is positive</li> </ul>	<ul style="list-style-type: none"> <li>• 50 per cent of the balance in the account of accumulated 'inflation adjustment', originated in non-monetary assets, while the respective assets haven't been transferred</li> <li>• 50 per cent of the assets valorisations, accounted in accordance with the criteria established by the Colombian Financial Superintendency</li> <li>• Bonds mandatorily convertible into shares that are effectively placed and paid that meet certain conditions</li> <li>• Subordinated monetary obligations, as long as they do not exceed 50 per cent of Tier I patrimony. Certain rules must be taken into account</li> <li>• The value of general provision formed by deposit-taking institutions, in accordance with the Colombian Financial Superintendency instructions</li> <li>• The patrimony donations surplus account, as long as the funds originated have a permanent basis, the account clear out losses if they appear and its distribution or allocation in case of liquidation of the entity are subordinated to the payment of the external liability. It will be deducted from Tier I the investment valorisation account</li> </ul>

**14** How are the capital adequacy guidelines enforced?

Banks are required to submit certain information at different periods of time to the Colombian Financial Superintendency, as indicated above in question 9:

- on a weekly basis, a financial report must be sent;
- on a monthly basis, the evolution of the solvency ratio must be sent, as well as the management of assets and liabilities (liquidity); and
- on an annual basis the minimum equity for entities must be sent.

**15** What happens in the event that a bank becomes undercapitalised?

It is important to point out that there are measures to prevent the taking of control. Among these measures the Colombian Financial Superintendency may carry out the following:

- establish the requirements the financial entity should observe for its proper functioning in order to amend the situation that resulted in a situation whereby the bank became undercapitalised;
- order the corresponding recapitalisation;
- promote the management of the assets and businesses of the financial entity by another authorised financial entity;
- total or partial transfer of the assets, liabilities, agreements, commercial establishments, among others, to another authorised financial institution;
- merge with another financial institution (if the latter agrees); and
- approve a recovery programme presented by the financial entity in order to restore the capital.

Additionally other measures include:

- the assets exclusion with the purpose of protecting the public confidence in the financial system and in such way the transfer of such; and
- the disassembly programme when the financial entity foresees that in the mid-term it may not comply with its legal requirements to function in an adequate way and as a result the Colombian Financial Superintendency may consider the transfer of its assets and liabilities.

If the measures mentioned above do not work, the Colombian Financial Superintendency is authorised to take control when either the net patrimony is reduced below 50 per cent of the subscribed equity or the financial entity does not comply with the minimum equity function requirements provided by law.

Additionally the Colombian Financial Superintendency will take immediate control of the financial entity when the technical equity is reduced below 40 per cent of the minimum level provided by the adequate equity regulations.

The main goal in the taking of control is to determine whether the financial entity should be liquidated, whether it is possible to place it in a position to adequately develop its main purpose, or whether it is possible to perform other operations that will allow depositors, savers and investors to improve the conditions to obtain the full or partial payment of their credits.

So as a result, the main purpose of the taking of control is to manage or liquidate the corresponding financial entity.

**16** What are the legal and regulatory processes in the event that a bank becomes insolvent?

As explained in question 15, one of the main reasons for initiating a taking of control procedure is when the technical equity of a financial entity is reduced below 40 per cent of the minimum level provided by the adequate equity regulations.

The Colombian Financial Superintendency has a limit of two months, which may be extended for a further two months, to determine, with the prior opinion of the National Savings Fund, whether

the financial entity should be liquidated, whether it is possible to place it in a position to adequately develop its main purpose, or whether it is possible to perform other operations that will allow depositors, savers and investors to improve the conditions to obtain the full or partial payment of their credits.

**17** Have capital adequacy guidelines changed, or are they expected to change in the near future?

Capital adequacy guidelines have not changed and are not expected to change in the near future.

**Ownership restrictions and implications****18** Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?

Under Colombian law there are no legal and regulatory limitations regarding the types of entities that may own a controlling interest in a bank. However, the Colombian Financial Superintendency, with its discretionary powers, will verify the suitability of the shareholders of a bank or other supervised entities and verify their financial capacity to carry out the investment. In no event will the Colombian Financial Superintendency accept the nomination of persons that have committed certain felonies or criminal offences, been subject to a right of property termination procedure, violated the credit risks limitations, or been responsible for the mismanagement of a financial institution.

A company is considered to be subordinated or controlled when its power of decision is subject to the will of a third party or parties, as explained in question 5 above.

In this regard, there are a series of factual corporate situations, which by virtue of the law are deemed as determinant of a corporate subordination: (i) when over 50 per cent of the equity of a company belongs directly to a company or a person or indirectly through one or more of its own subsidiaries; or (ii) when a person or a company directly or jointly with other subsidiaries or through agreements, can determine the voting majority of the shareholders' meeting and/or holds the number of votes required to appoint the majority of the members of the board of directors.

**19** Are there any restrictions on foreign ownership of banks?

No. Nevertheless, there are two main requirements to acquire a Colombian bank: (i) acquisition of 10 per cent or more of the share capital of a bank, which requires approval from the the Colombian Financial Superintendency (this authorisation is also required in the case of Colombian residents); and (ii) registering the foreign investment before the CCB by filing a form 4 with a foreign exchange market intermediary.

**20** What are the legal and regulatory implications for entities that control banks?

The legal and regulatory implications for entities that control banks are:

- in the presence of any of the situations of control or subordination (described in question 18), the parent or controlling company must disclose it by filing before the corresponding Chamber of Commerce of the domicile of the subordinated local company a private document evidencing its name, domicile, nationality and corporate purpose together with a declaration of the situation that gives rise to the formal declaration of control;
- for the purpose of consolidated supervision from the Colombian Financial Superintendency, the parent company either under the permanent supervision of the Colombian Financial Superintendency or not may have to consolidate its financial information

### Update and trends

As of 15 July 2013, it will be possible to establish a branch of a foreign bank in Colombia, which will be subject to the surveillance of the Colombian Financial Superintendency. For such purposes it would be necessary to file a petition before the Colombian Financial Superintendency filing the same documentation required of Colombian banks and with the same minimum assigned capital as Colombian banks. Such assigned capital must be incorporated in Colombia and converted into Colombian pesos further to exchange regulations. Foreign branches will have the same rights and obligations as Colombian banks and the parent company will be responsible at all times for the obligations of its Colombian branch. The Colombian creditors will have preference over the assets of the Colombian branch in the case of an initiation of a liquidation process and it will not be necessary for such branches to have a board of directors in Colombia, but there must be a duly authorised representative to represent the branch in Colombia. This representative will have to comply with the moral and professional standards required by the Colombian Financial Superintendency.

with the information of its subsidiaries, so the management of conglomerates and corporate governance of the Colombian Financial Superintendency will monitor their financial activities;

- the controlling entity could be held responsible for the insolvency of the controlled entity. For further information please see question 22 below;
- the subsidiary or controlled company cannot have shares or participation in its parent company or controlling company (please see question 5).

- 21** What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

An entity or an individual that controls a bank must follow the provisions outlined in question 5.

- 22** What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

When a company is in insolvency or a mandatory liquidation (including administrative takeover), and such situation was caused by the decisions and the actions made by the parent company or the controlling entity in connection with the subordination and in the sole interest of the latter or of any of the subordinated companies and against the interests of the affected company, the parent company or controlling entity will be held liable (if the relevant company does not have enough assets) for the obligations of the company undergoing reorganisation or liquidation. It will be presumed that the affected company has wound up into the reorganisation or liquidation procedure for actions of the parent or controlling company, unless otherwise proven by the parent company or controlling company.

### Changes in control

- 23** Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?

As mentioned above, regulatory approvals are needed to acquire 10 per cent or more of the subscribed shares of an entity under the permanent supervision of the Colombian Financial Superintendency (whether listed or non-listed), and they must obtain prior approval of the transaction from the Colombian Financial Superintendency (including the purchase or subscription of mandatorily convertible bonds). There are no limits on the maximum shareholding that may be held by a foreign entity or foreign investors in a bank. However,

it is important to note that any person, either a Colombian resident or a foreign national, shall not have 95 per cent or more of the outstanding shares of a joint-stock corporation (that is the usual way of incorporation of a bank in Colombia) because such situation is a reason for dissolution of the financial entity.

An investor shall not request this approval if it has been authorised to conduct a similar transaction within the three years preceding the new investor's investment, unless the investor is acquiring more than 50 per cent of the subscribed shares, in which case the investor shall file a request authorisation containing the same process described above.

- 24** Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

The regulatory authorities are receptive to foreign acquirers. In the past five years there has been an increase in the participation of foreign entities in the subscribed shares of entities under the permanent supervision of the Colombian Financial Superintendency.

The regulatory process is not different in the case of foreign acquirers. However, when a foreign investor files a request of authorisation before the Colombian Financial Superintendency, the request may be completed with additional information to that indicated in question 23. For example, in the case of foreign financial investors a summary of the financial regulations of the country where the foreign investor has operations is required, as well as evidence of the consolidated supervision of the foreign investor.

- 25** What factors are considered by the relevant regulatory authorities in considering an acquisition of control of bank?

The Colombian Financial Superintendency analyses the suitability, qualification, moral character and economic capacity of all intended investors. The suitability of the intended investors is evaluated on the basis of a form of curriculum vitae for each person that includes personal data regarding educational background, work history, financial situation, creditworthiness, criminal records and investments in other local financial entities along with its financial capacity, where the investor shall demonstrate that it holds an equity of at least 1.3 times the proposed investment and the source of funds where loans may not be more than two-thirds of the total investment. This information is thoroughly analysed and verified by the Colombian Financial Superintendency. The Colombian Financial Superintendency also considers the benefit of the public welfare arising from the transaction.

- 26** Describe the required filings for an acquisition of control of a bank.

For the regulatory approval from the Colombian Financial Superintendency, the investor shall file a request of authorisation containing at least the following information:

- identification of the parties;
- the number of shares that the investor intends to purchase and corresponding shareholding percentage;
- the number of shares that the investor owns at the time of the request;
- the purchase price and payment method;
- an explanation of the origin of the funds that will be used to pay the purchase price;
- other investments of the investor in Colombian companies;
- indebtedness of the investor with Colombian financial entities;
- a statement of any common interest with other shareholders of the company;
- evidence of due incorporation, good standing and legal representation;
- curricula vitae of the legal representatives of the investor;

- authorisation to request investor's records;
- financial statements of the investor;
- certification of the legal ability of the investor to perform the investment; and
- information related to conglomerates and corporate governance.

**27** What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

Once the investor submits the information outlined in question 26, the Colombian Financial Superintendency conducts a 'fit and proper test' of the investor, and aims to decide whether to approve the investment within three to four months of the date the complete documentation was delivered. In practice a decision is usually made within six to eight months.



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