

Development of the Microfinance sector

On April 2016 the Guatemalan Congress passed the Microfinance and Non-profit Microfinance Institutions Law, an initiative that had already been outlined in the 2000 Template Programme to strengthen the national financial system.

The law regulates the microfinance sector: how microfinance institutions are to be set up, authorised, merged and operated; what transactions and services they will offer; and how they might be resolved and liquidated. It also covers the filing, risk management and information disclosure of non-profit microfinance institutions. The law aims to strengthen the market for the financial services provided by these entities and help to develop a more robust sector.

Three legal figures have been created: (i) Savings and Loan Microfinance entities (MAFs: Microfinancieras de Ahorro y Crédito), that can take deposits from the public and issue debt as well as providing microcredits and other financial services; (ii) Investment and Credit Microfinance entities (MIFs: Microfinancieras de Inversión y Crédito), those that offer microcredits and other financial services and may only raise funding by issuing debt; and (iii) Non-profit microfinance institutions that may neither take deposits nor issue debt but may offer microloans and other non-savings financial products.

Microfinance institutions

To establish themselves, MAFs and MIFs (Microfinance Institutions) need to present an application to the banking supervisor authority, the *Superintendencia de Bancos*, which will submit it to the Monetary Board, the body that grants the authorisation. Microfinance Institutions will take the legal

form of limited companies.

MAFs will be required to put up USD 5 million or its equivalent in quetzals, and MIFs USD 1.8 million or its equivalent in quetzals, as initial minimum capital.

Amongst other provisions, the regulation covers measures for transparency and good governance, such as the obligation to present detailed information about their transactions, balance sheets and financial statements to the banking supervisor; to disclose information about their activities and financial position; requirements for membership of the Board of Directors; duties, attributions and responsibilities of the members of the Board; conflicts of interest, etc. The new law also makes it mandatory for microfinance institutions to create and implement internal controlling policies, processes and systems to enable them to manage appropriately the risk to which they are exposed.

The Deposit & Investment Guarantee Fund has been created in order to ensure that savers' and investors' deposits and/or investments are covered.

Non-profit Microfinance institutions

These institutions receive deposits or contributions from their associates and from third parties, such as cooperatives, community development associations, NGOs, private development organisations and others, that grant microcredits for financing, development or consolidation.

The Ministry for the Economy will keep a registry of all the non-regulated institutions operating in the microfinance sector which can thus bid for the programmes implemented by the Ministry. The aim is that in the future they can be set up as institutions supervised by the banking supervisor.

Non-profit microfinance entities will be required to provide the information the supervisor asks for and to afford public

disclosure about their activities. The information generated will be used to formulate and enhance the programmes rolled out by the Ministry.

Acceptance of online payment in small business

This Bill is part of the set of reforms the Uruguay government has been implementing since 2005 to promote financial inclusion in the country. It is one of several measures designed to encourage more use of online payments in small stores.

In the current context, merchants with annual revenues of below 305,000 Indexed Units (equivalent to [33,955 USD aprox](#)) are taxed under special regimes: (i) the simplified regime (ii) single-tax regime or (iii) MIDES social single-tax*. The Bill proposes that revenues generated by sales paid online should be partially eligible for the applicable tax base, so that merchants are not applied a more onerous tax regimes simply for accepting such online payments.

The initiative provides for a gradual, progressive transition between tax regimes, which will help to encourage the transformation of payment systems and give an incentive to small merchants in Uruguay to move into the formal economy.

* This is a single tax paid by members of households below the poverty line or deemed to be in a vulnerable social situation,

producing and/or trading in any kinds of goods or services (Law 18 .874, 23rd December 2011).

Amendments to the Law of Support to SMEs

On 29th December, the Amendment Law to the Law of Support to Microenterprises, Small and Medium-sized Enterprises (Law of Amendments) was enacted. The Law reinforces the measures adopted in the 2014 Law of Support to SMEs and endows the sector with more resources as a result of the positive impact that these measures have had on the local economy.

One of the measures adopted in the 2014 Law of Support was to allocate 20% of the Government's procurement budget to purchases from microenterprises and small and medium-sized enterprises. The recent Law of Amendments raised this percentage to 30% for the fiscal year 2016-2017 and establishes a progressive increase from then until 2020-2021. The percentages it sets forth are as follows:

- 30% for fiscal year 2016-2017
- 32% for fiscal year 2017-2018
- 35% for fiscal year 2018-2019
- 38% for fiscal year 2019-2020
- 40% for fiscal year 2020-2021

According to the annual report from the SME Support Board

(Junta de Apoyo a las Pymes), in 2014 USD 157m were spent on purchases from the sector, compared to the USD 83m in 2013, and 146 new enterprises were filed under the government's Procurement Reserves Programme

Another important aspect of the Law of Amendments is that it assigns new funds for employability and training in the sector. The 2014 law set out a policy of preferences for government subsidies, granting incentives to companies for creating jobs and enhancing employee training. The Law of Amendments specifies that the funds allocated by the 1998 Workforce Investment Act for capacity building for employees will be used for the Microenterprises and small and medium-sized enterprise sector and the regulations for the use of these funds will be referred to the Department of Economic Development and Trade for development.

New network to overcome extreme poverty

The Congress of the Republic of Colombia is debating the draft for a new law to create RED UNIDOS, a network to overcome extreme poverty and to help fight inequality.

The participants in RED UNIDOS would be public regional institutions such as municipalities and administrative departments, represented by their mayors and governing bodies; private-sector parties and civil-society organisations, as well as households in situations of extreme poverty,

beneficiaries of family and community support programmes, households receiving priority housing projects, indigenous communities and households that have been victims of armed conflict.

RED UNIDOS, whose operations would be managed by the Administrative Department for Social Prosperity, has the aim of extending the State's social services provision, offering support to households in extreme poverty, targeting social public spending, and consolidating a social services management scheme, among others.

Among other issues of particular interest, in this draft law are the synergies that would be created with the private sector through RED UNIDOS, participants from the private sector from different economic sectors could execute part of this programme.

The participation of the financial sector in RED UNIDOS is essential to service the funding needs required to develop the network. Similarly, the programme to combat extreme poverty would make it possible to identify the real needs of those households in this situation and, in turn, for the private sector to make appropriate proposals to match these needs.

Explicit consent needed to access financial services

The House of Representatives of the Congress of the Republic

of Colombia passed the first reading of a new version of Bill 119-C, 2015. This would make the explicit written or online consent of financial consumers a mandatory prerequisite for entering into deposit contracts, and also for access to any financial services sold by financial institutions and linked to such contracts.

This version of the bill changed article 1, replacing it with the following text: “deposit contracts in savings, current or term accounts, may not offer services other than for the deposit initially made. Each contract or service other than those listed above should be entered into separately and signed by hand or using other valid means of documentation.”

This bill sets out the legal repercussions of non-compliance with the requirement of explicit consent by financial consumers: contracts that do not meet this formality will be void.

The new text specifies the sanctions that institutions will incur if they do not abide by this law. These oscillate between 10 and 100 monthly minimum wages (MMW): COP 6,894,540 to COP 68,945,400 (approximately USD 2,253 to USD 22,529, respectively).

Promoting agricultural microinsurance

Agricultural insurance was introduced into Colombia in 1993 as

a system for subsidising farmers' insurance premiums. There is currently no product defined specifically for small producers. Although micro-insurance is sold on the market, it is not specifically adapted to the needs of small farmers.

Against this backdrop, a bill to formalise and encourage the uptake of micro-insurance by smallhold-farmers has been submitted to Congress. This bill would create a special-purpose insurance product, in which the insured party would be the smallhold-farmer. It defines these as farmers with total assets of under 145 MMW (COP 99,970,830, approx. USD 33,059), adding together their assets to those of their spouse or long-term partner.

When it comes to the payment of claims made by small producers, the bill sets out that the value for which farming insurance policies will accept liability is to be based on the value of short-cycle crops with a verifiable historical price series in the agricultural region in question. The insurable value of the crop may not be higher than 12 MMW (COP 8,273,448, approx. USD 2,736).

Microloans can be used to fund crop-protection micro-insurance policies as a way of servicing future debts. This option will enable microfinance institutions to provide a more appropriate value proposition for their customers who work in agricultural activities.

In addition, agricultural micro-insurance would be offered by all insurance companies authorised to operate in the agricultural sector in Colombia, under a Public-Private Partnership (PPP) arrangement that would be regulated by the government once the law is passed.

The new list of abusive clauses and practices

Colombia's financial authority (SFC, *Superintendencia Financiera de Colombia*) in response to complaints made by financial consumers, has identified a number of clauses and practices that it views as infringing consumers' rights.

It has issued this circular updating and modifying some of the instructions in this subject with the purpose of defining new abusive practices and clauses.

It classifies clauses as abusive when they:

1. empower institutions to enter into insurance contracts on the debtor's behalf and at their cost when debtors have not been informed beforehand of this financial product's basic terms and conditions;
2. impose a limit on the early payment of instalments and/or on choosing the form of applying these payments;
3. transfer to the financial consumer the responsibility for transactions carried out with an assigned password;
4. authorise the sharing of consumer data, without prior authorisation from the title owners to that effect;
5. legitimise the offer of promotional interest rates that do not last for the duration of the promotion;
6. impose stricter requirements on cancelling their products than those required to open them;
7. exonerate institutions from their responsibility for carrying out transactions with unauthorised third parties, for paying out on false cheques or cheques that do not meet the minimum requirements for payment;
8. legitimise accelerating the recovery of a payment

obligation without notifying the debtor beforehand.

The new instructions to the SFC, the financial services authority, consider the following practices to be abusive when they:

1. make bundled sales of products and/or financial services;
2. renew products without explicit customer authorisation;
3. demand payment for managing collections without showing proof of said management;
4. charge for certificates when these are required to make early payment of a loan;
5. do not provide the terms and conditions of collective policies when an insured party or beneficiary asks for them;
6. oblige financial consumers to provide certificates to prove they are operating from a secure computer before carrying out online transactions.

Any financial institution may be subject to investigation and may be fined if proof is found that its operations have involved abusive practices and/or it has included abusive clauses in its contracts.

Regulating Electronic Money Payment Agreements

The Central Reserve Bank of Peru (BCRP), after considering the Payment Systems and Settlement of Securities Act, Law 29440,

and Law 29985, already commented in [Progreso 1](#) regulating the basic specifications of electronic money as a financial-inclusion instrument, has considered it advisable to issue Circular 013/2016-BCRP. The circular regulates “Electronic Money Payment Agreements” (hereinafter, “APDE”), to ensure that this new payment mechanism works properly.

The Central Bank has established the principles applicable to APDEs in order to guarantee reporting security, the risk control system and an adequate supervision of the system.

The regulation offers definitions and procedures for non-financial entities and financial institutions to enter into APDEs for managing transfers, payments and settlements of electronic money. It also sets out rules for clearing and settling the real money flows that underpin movements of electronic money. The rules establish, for example, that financial or non-financial signatories to an APDE must make transfers during specified times, just like the rest of the banking system.

Likewise, the regulation establishes the responsibilities of “APDE Administrators”, legally established entities that administer or manage APDEs. As well as the general obligations established in the regulation, their obligations specifically include: (i) complying with and enforcing the principles and regulations applicable to the APDE, (ii) drawing up the operating regulations of the APDE that must set out the policies, services, procedure and other activities covered by an APDE in order to ensure the proper interconnection and operational ability of the system in order to be able to reduce operating and other risks, (iii) administering the electronic money accounts recorded in the APDE, (iv) receiving and processing electronic money-transfer orders, (v) co-ordinating proof of continuity with the Central Bank at least once a year.

The circular also defines the responsibility of the

“Participant Issuers”, issuers of electronic money that participate in an APDE, their role in the chain transferring the electronic money. They are held liable for monitoring the issuance process and enforcing obligations, and must therefore have the necessary systems infrastructure and comply with all the provisions of the APDE.

Finally, the rule requires that trust managers have to be able to open accounts in the Central Bank, in which to keep the assets of the electronic money trusts under management.

Affordable microinsurance for low income people

After pre-publishing the draft and receiving feedback from the general public, the Micro-insurance Policy Regulations were published on 20th May 2016 defining micro-insurance as “insurance available to low-income individuals and/or micro-entrepreneurs to cover personal and/or equity risk by paying premiums in proportion to the risks covered by the policy, as an individual or group or collective insurance policy with the following specifications:

- a. Coverage designed to meet the protection needs of low-income people and/or micro-entrepreneurs;
- b. Marketed by sales agents with a target public including low-income individuals and/or micro-entrepreneurs;
- c. The monthly premium may not exceed two percent (2%) of

the minimum living wage.”

The regulation –as discussed in bill form in [Issue N° 5](#) of Progreso – establishes standards to enhance the identification of micro-insurance by modifying parameters, including the definition and specifications of micro-insurance; marketing conditions and the procedure for registering micro-insurance policy forms.

The provisions on selling contemplate the possibility of using electronic insurance policies and remote marketing systems. It also makes it possible to use proof of payment as proof of contract, when the payment document includes relevant information on the policy conditions.

Finally, the regulation allows the sale of micro-insurance over the ATM’s of banks and electronic-money issuers.

Incentives for farming insurance premiums

In its capacity as administrator of the National Agricultural Risk Fund (FNRA), the Agricultural Sector Fund (Finagro) has added new instructions to its Service Manual, affecting agricultural insurance. These instructions set out the main parties in agricultural insurance, describing what is meant by insurance company, policy holder, insured party and beneficiary. The insurance policy may be taken out either on a person’s own behalf, by the farmers or by third parties, when

the contract is entered into through a collective policy underwritten by the insurance company and, usually, a financial institution.

Distinction is made between small, medium-sized and large farmers when these are the insured parties, for the purposes of calculating the premium's incentive percentage.

It also sets out the conditions of access to the agricultural insurance incentive, which include the activities that can be insured (for example agricultural crops, pastureland, forest plantations and cattle, pig and/or sheep breeding).

The new instructions in Finagro's Service Manual specify the threshold figures for the incentive, the insurance payouts, the premium's incentive percentage and the procedure for the payment by the insurance companies of 1% of the value of agricultural insurance premiums, as established in the Single Decree on the financial, insurance and security market sector.

Measuring the development of our most important stakeholders: customers

In his popular [TED talk](#) about how great leaders inspire action, Simon Sinek tells us that all organisations know what they are doing (their end product or service, their *what*) and some even know how they are doing it (their differential value proposition, their *how*). However, very few know *why* they are

doing it, what their purpose is: their mission, their *why*. And among those that know, even fewer communicate and act from that point outwards.



Rodrigo Peláez

The BBVA Microfinance Foundation (BBVAMF) is clear about its *why*: “To promote the inclusive and sustainable development of disadvantaged people in society”. We are also clear on the *how*: “Responsible Productive Finance”. In fact, not only are we clear on these points, but also continually ensure alignment with them in everything we do.

In 2012 the BBVAMF set up the Social Performance Measurement Unit to oversee compliance with our mission, on the premise that rigorous and detailed measurement of our activity’s social performance would steer us towards excellence in achieving our purpose, so we could work in line with this goal.

Since then the Foundation has made strenuous efforts to collate, process and store historical data on the 1.7 million customers serviced by BBVAMF-Group microfinance institutions today; always monitoring the consistency, accuracy and completeness of this valuable information.

The Foundation has gone beyond recording how many entrepreneurs it services, how many are male or female, and the average loan being granted. BBVAMF now obtains further insight into their financial and social performance over time. Our measurement of social performance is based on understanding changes in our customers’ key attributes and business activities. These entrepreneurs’ needs and development lie at the core of the Foundation’s *why*?

Our fourth annual social performance report “*Measuring what*

really matters", covering 2015 in detail, records that customers' sales grew at an annual rate of 16% and their assets grew at 30%. The figures show that after two years of a relationship with Group institutions, at least 32% of customers who had been classified as poor at the outset of their first loan managed to generate a surplus above the per capita poverty line. This represents over 40,000 entrepreneurs between 2011 and 2015 in the countries where the Foundation operates.

The report also reveals that after the same two-year period, 8% of customers succeed in creating new jobs, thereby helping to strengthen their community's business economy; and that in some Group institutions, 15% of customers improve their healthcare cover.

Without alleging causality, these results suggest that the Foundation's activity is aligned with our mission. Its customers' social and economic patterns over time show that our aim of helping our low-income borrowers' businesses grow stronger is being achieved.

So what makes this approach to social-performance measurement different?

Firstly, a particularly distinguishing feature comes from the nature of the BBVAMF Group. Our scale enables us to process, aggregate and compare social performance indicators across our member institutions. This ability stands as an example for other players in this sector, for which it is a major challenge. Our approach discerns local and global patterns of social performance that enable the Foundation to position ourselves and communicate externally in a clear and unified fashion. Everything stems from our *why*, our social mission.

Secondly, the approach is grounded on information captured and updated whenever our microfinance institutions assess and monitor a customer. This means that nearly 100% of the

customers are included in the analysis, and that the results obtained are very robust. They are not founded on surveys about the past and present that a sample of customers answer at a given moment, but on information that is constantly collated and updated as a matter of course during the various interactions with customers. In turn, this means that social performance analyses and reports within the organisation are put together more often, and become an integral part of our management and strategy.

Thirdly, this approach allows us to dig deeper into our knowledge of customers and to reach informed conclusions about their social performance. These are useful for the institutions' business intelligence and risk areas, improving the products and services we offer customers. For example, the report shows that in one of the Group institutions, 91% of credit customers who also have savings products continue their credit relationship with the institution after one year, while this proportion shrinks to 73% when customers have credit, but no savings products. This result suggests that fomenting saving among our borrowers makes it possible to generate better, longer-term relationships. This means the social impact generated by the Foundation's activity is greater.

The BBVAMF group is creating and sharing knowledge about social performance based on a closer and more systematic understanding of our customers. The challenge lies in being able to turn this knowledge into action, interweaving it more closely into management and strategy so that this perspective becomes an inherent part of decision-making within the organisation. This is the way, finally, in which BBVAMF not only will fully know its *why*, as Sinek argues it, but even more so, will be acting constantly and automatically from that *why*, in the interests of its most important stakeholders: its customers.

Measures to boost financial inclusion

Argentina's central bank, Banco Central de la República Argentina (BCRA), adopted two resolutions in March: Communication A-5927, on fund transfers, and Communication A-5928, on financial consumer protection and savings accounts*.

In their press release, the BCRA announced that the purpose of the measures is to promote financial inclusion by means of basic, universal and free financial access for all citizens, which in its turn encourages competition between financial institutions.

Free fund transfers

Communication A-5927 affects the commissions levied by financial institutions on fund transfers. The entities to which the notification is addressed (financial institutions, ATM network administration schemes and cooperative credit savings banks) will not be allowed to charge commissions on the transfers that individuals originate or receive using ATMs or online banking.

Transfers of up to ARS 250,000 (about USD 18,000 USD) made by legal persons through ATMs and online banking services will be exempt from commissions.

User protection and free savings accounts

Communication A-5928 amends and adds new practices affecting user information and transparency. It also requires all savings accounts to be free of charge. It is aimed at

financial institutions, foreign-exchange agencies and bureaux, non-financial companies that issue credit cards, financial trustees, cooperative credit banks and non-financial companies that issue store cards.

1. Protecting users of financial services

– Notifications and transparency

Institutions must notify customers 60 calendar days prior to any changes to the conditions agreed in their financial contracts. When the change is in the customer's favour, prior notification is not mandatory.

Each notification should inform the client of the following: (i) that they have the option of cancelling the contract before the changes come into effect, at no cost and (ii) that they can consult the "Transparency Framework", a registry compiled by the BCRA for comparing the costs, specifications and requirements of the products and services offered by different institutions. All institutions must give the address of the Transparency Framework website in the notification.

When fees are changed, eg, on issuing additional debit cards, credit cards or others linked to the current account, the notification must include a comparison chart displaying fees charged by other institutions.

Finally, as of July 2016, those institutions providing online banking must include on their website's home page a "Price Comparison" hyperlink to the BCRA webpage showing the charges that the participating institutions apply for the different products.

The client may not be charged for receiving notifications.

– Reporting to the Central Bank

Financial institutions and non-financial companies that

issue credit cards are obliged to inform the BCRA of commissions and payments they receive from clients.

Fees on new products and increased fees on products already being sold may not be notified to customers until 30 calendar days after the BCRA is informed.

2. Savings accounts: charge-free

The BCRA has announced that all savings accounts, named “*cajas de ahorro*” will service account holders free of charge without minimum amount requirements. Thus, no cost can be passed on to customers for: (i) opening and maintaining accounts; (ii) carrying out transactions at ATMs and self-service terminals, over the counter at bank branches or online banking; (iii) each account holder’s first debit card when the account is opened, and; (iv) card replacements as a result of normal wear and tear or damage to the magnetic strip.

Opening this type of savings account may not be conditional upon acquiring another financial product or service; the account must be offered as an independent product. Furthermore, when clients apply to open a sight deposit account, institutions must offer them information on savings-accounts, “*cajas de ahorro*” and the “Transparency Framework” registry.

On the other side, the BCRA allows institutions to apply an aggregate increase of up to 20% on each of the fees they receive on products that are not free of charge. From September onwards this limit will be lifted.

* Relating to the products offered, not the savings banks as credit institutions.

Compilation of agricultural credit regulations

This year CNCA, the *Comisión Nacional de Crédito Agropecuario* (National Agricultural Credit Commission), has set itself the task of compiling all the regulations that apply to the agricultural and rural credit in Colombia.

National Agricultural Credit Commission (NACC)

NACC has issued its first resolution of the current year Resolution 1/2016, laying down the definition of agricultural and rural development credit, activities that can be funded, beneficiaries, financial conditions for these credits, matters relating to the standardisation and purchase of this type of portfolio and the mechanisms for oversight and tracking of investments financed with this line of credit.

Resolution 2/2016 unified the regulations in the Agricultural Guarantee Fund (*Fondo Agropecuario de Garantías*), AGF, which establish: i) which transactions can be secured (and which cannot) by the AGF; ii) the AGF's annual Plan; iii) the individual and total limits on AGF guarantees; iv) conditions applying to the titleholder of the collateral; v) how the collateral is issued and the period it covers, and vi) paying the guarantee.

Meanwhile, Resolution 3/2016 brings together the regulatory provisions on the Rural Capitalisation Incentive (*Incentivo de Capitalización Rural*), RCI. The key aspects of this regulation address: i) those who can access the incentive, ii) the value of the incentive; iii) the conditions for receiving the benefit, and iv) the application procedure for the incentive. This Resolution also regulates matters concerning Special Lines of Credit (SLC), which contain a subsidy on the interest rates applicable to National Agricultural Credit System

credits that are granted and rediscounted through financial intermediaries.

Finagro

FINAGRO has issued a series of regulations for financial intermediaries in response to these resolutions. The regulatory Circulars updating its Service Manual are numbered as follows: CR P-3-2016, CR P-4-2016, CR P-5-2016, CR P-8-2016 and CR P-9-2016.

With the re-issue of this compilation of regulations on agricultural and rural credit, credit brokers and the recipients of financing are protected by a more robust regulatory framework.

Secured transactions to be admissible as collateral

As of 17th March 2016, secured transactions have officially been considered admissible collateral in active transactions made by credit institutions in Colombia. From now on obligations that, added together, represent more than 10% of the creditor institution's technical assets can be secured.

This new regulation on secured transactions gives the corresponding regulatory framework greater legal certainty regarding the terms of credit transactions carried out by financial institutions in Colombia.

Introduction to the agricultural credit programme

Farming is a sector that for many years has been weighed down by a number of social conflicts, poverty and, most recently, the effects of climate change, with the result that rural development has been an imperative in the last few legislatures in Colombia. One of the issues that has been pinpointed as particularly critical for rural development is access to funding. Because of this, after Act 16/1991 was enacted, the National Agricultural Credit System (NACS) was created in order to design credit policy for the agricultural sector, as well as to manage and streamline the use of its financial resources to provide and maintain appropriate financing for the sector's activities.

NACS is managed by the National Agricultural Credit Committee, NACC, a licensed body made up principally of senior governmental representatives. It is in charge of setting policies and guidelines so that the flow of credit resources has an impact on all kinds of farming. NACS works at three main levels. The first consists of the Agricultural Financing Fund, FINAGRO, an entity that not only functions as the NACC's technical division, but is also in charge of executing the policies decided by the division and of handling the resources and instruments necessary to finance arable and livestock businesses. To do this, FINAGRO issues special securities called "Agricultural Development Securities" (TDAs in the

Spanish acronym). Their general conditions are governed by the central bank's Management Board, and financial institutions operating in Colombia are required to invest in them. With the money raised, FINAGRO funds its activities and acts as a second-tier institution, granting funding under development conditions to financial intermediaries so that they may distribute these among subsistence farmers and farmers in general (rediscounting). The second tier is made up of banks in the first tier and other financial institutions (among them BANCAMÍA, within the BBVA Microfinance Foundation Group); the third tier is composed of the beneficiaries of these policies, loans and other financial instruments.

In addition, FINAGRO has been given the responsibility of administering the Agricultural Guarantee Fund (AGF) which operates as a specialist fund to back credits and microcredits granted to arable and livestock projects and others in the rural sector.

To implement this, different lines of credit have been created (loans for associated parties with individual liability, loans with associative structures, agricultural and rural microcredits, among others), and special collateral for each line of credit. These contribute to the development of the rural sector in that they encourage access to financing and to other existing support instruments as part of Colombian public policy. NACC and FINAGRO have issued the regulation necessary to provide the structure to underpin this system, applicable to both agricultural and rural credit, as well as to collateral, incentives and subsidies, among other considerations. This set of regulations consists of resolutions and circulars that are also available online through *Progreso*.

Bill on financial charges and negative reports

The Bill governing regulations on charges for financial services and negative reports in financial information bureaux is currently awaiting final debate.

The draft text lays down that those institutions authorised to take deposits from the general public may not set a mandatory minimum balance in the online savings and/or deposit account. Similarly, financial charges may only be applied during the first sixty (60) days of the account being unused (ie, when there are no financial transactions).

Among the matters covered in the discussion paper is the inclusion of the ban on credit bureaux being given negative reports about financial obligations whose outstanding balance is less than the current legally binding minimum daily wage (COP 22.981, or about USD 8).

This reading has brought aspects back into the bill that had been deleted from the versions passed in previous Congress debates. In any event, this addition lowered the threshold below which negative reports would no longer be presented to the credit bureaux. The initial draft laid down that obligations below 20% of the legal minimum monthly wage (SMMLV in the Spanish acronym) would not trigger negative reports when the amount in default was equivalent to 20% of the SMMLV (COP 27,578 or approx. USD 9). Furthermore, it laid down that a negative report would not be generated when an obligation of more than 20% of the legal minimum monthly wage had an unpaid balance of less than 5% of a minimum monthly wage (COP 34,472 or approx. USD 12).

The new wording of the Bill, while simplifying and reducing the threshold for not filing financial information, contains a provision that, if passed into law, would distort credit risk assessment systems and NPL portfolio placement. This is something the legislature should not encourage, particularly for institutions with microloans and small consumer loans in their product offering, which, in practice, would not be reported.

Rules for formalising, registry and checking collateral

The Rules for the Formalisation, Registry and Checking of Collateral set out new procedures that financial intermediation institutions must follow in order to manage different types of collateral; it has been prepared in response to the provisions in the Asset Valuation Regulation and to take into account the new law's dispositions over the development of the mortgage and trust market in the Dominican Republic.

The Asset Valuation Regulation (REA in the Spanish acronym), which came into force on 29th December 2004, established the procedure by which financial intermediation companies handled different types of collateral that underpin the loans. After setting up the trust market, with the passing of Law 189/11 on the Development of the Mortgage and Trust Market in the

Dominican Republic, and the regulations on Collateral and Trust Agents (16th July 2011), the REA regulation needed to be updated. The banking watchdog decided to prepare a set of rules to bring together all the REA provisions concerning collateral, and to include the provisions on trusts in the same document.

On 15th March 2016 the “Rules on Formalisation, Registry and Checking of Collateral” came into force, by virtue of SIB Circular 002/16, having determined that “financial intermediation institutions should have appropriate policies and procedures in place in order to manage collateral received to underwrite credit transactions, with the aim of ensuring that this collateral serves at all times to mitigate effectively the credit risk assumed”.

The Rules establish the procedure that financial intermediation institutions should follow to manage multiple security transactions, sets a clear position as to the admissibility or not of letters of proof, establishes minimum requirements and criteria for the initial valuation and formalisation of collateral, and unifies criteria for the transactional and accounting records of this collateral. It will be applicable to multiple banks, banks offering savings and loans, credit corporations, savings & loans associations and to public-sector financial intermediaries.

Collateral, formalisation and filing

The types of collateral covered in the new rules are: cash deposits and financial instruments, real estate, moveable goods and fiduciary warranties. For the formalization process, a series of requirements, fully explained in the rules, must be met. Financial intermediation institutions must file the transaction with the book entry for collateral received, complying with the stipulations in the “*Accounting Manual for Financial Institutions*”, issued by the regulator.

Monitoring and control

Amongst other new requirements, “financial intermediation institutions must set up policies and procedures to identify particular situations or events that may give rise to the potential impairment of the collateral received, with the purpose of taking corrective measures at an early stage”.

If the provisions are breached, the rules refer the reader to the sanctions established by the banking watchdog in Law 183-02, Monetary and Financial Code, 21st November 2002 and the Regulations on Sanctions, 18th December 2010 and subsequent updates.

European Regulation on Data Protection

On 14th April this year, the European Parliament approved the EU Regulation to protect the handling of natural persons' personal data and the free circulation of this data, thus revoking the 95/46/EC Directive (General Regulation on data protection).

As we reported in [*Progreso 2*](#), the new Regulation is the result of negotiations that lasted four-years, culminating in a reform that aims to return citizens control over their personal data, to guarantee the consistent and even application of rules on general data handling, and to ensure that all countries in the European Union have the highest

standards of protection, adapted to the digital age.

The Regulation will be applicable from April 2018 to all companies, even if they do not have a presence in the EU, that handle the personal data of European citizens in the course of marketing their goods or services to them, whether payment takes place or not.

Key changes

Among other provisions, the new Regulation includes:

- Duty of information and explicit consent: requirement to have a clear and positive consent from the person whose personal data is being handled, that may be withdrawn at any time.
- Right to be forgotten: through the correction or elimination of personal data under certain conditions.
- Right to portability: the right to move one's data to another service provider.
- Greater data protection for minors: minors under 13 years old will need parental consent to open accounts on social media. This age limit may be raised to 16 by individual member states.
- Notification of security breaches: in a maximum timeframe of 72 hours the control organ must be notified of security breaches, as must the party concerned if there is a high risk to their rights and liberties.
- New data protection principles: accountability, data protection by design and by default. The implications are that anyone who processes personal data should do so bearing in mind this fundamental right from the outset in such a way that, by adopting measures that are commensurate with the risk intrinsic to data processing, compliance can be proven.

- Designation of a Data Protection Officer, obligatory for certain companies (in the public sector and in Big Data activities). Attention should be paid, when appointing this Officer, to their specialist legal knowledge and experience in data protection issues.
- One-stop shop: a company with subsidiaries in several member states will only have to deal with the data protection authority in the member state of its main establishment.
- Sanctions: of up to EUR 20 million or up to 4% of their turnover (whichever is the higher).

The measures passed by the European Parliament also include a Directive on personal data protection for law enforcement and legal purposes. The aim is to make it easier to transfer data within the European Union while retaining basic ground rules in terms of data processing and supervision. These new measures seek to protect those involved in police investigations or legal proceedings, whether in the capacity of victims, defendants or witnesses and, at the same time, facilitate cooperation between the security services and legal authorities.

Governmental plan to support good corporate governance

As part of the national plan to promote corporate governance in public institutions that issue securities, and to encourage

local and foreign investment, the government of Kenya published its new corporate governance code of practice in March.

As was the case in the 2002 version this one replaces, the new Code is based on the “apply or explain” approach, and provides some basic corporate governance guidelines, that institutions will apply depending on their size, composition and activity. They can be summarised as follows:

1. Board of Directors

Appointment, composition, diversity and succession planning

- Appointment: A formal, transparent appointments policy must be approved. The appointments committee will be in charge of proposing the election of new board members.
- Composition: A majority of board members will be non-executive and at least a third of all members should be independent.
- Diversity: A policy must be put in place to ensure diversity in the composition of the board (profiles, experience, gender, race, age, nationality).
- Succession planning: The institution must approve a succession plan for board members. If possible, no more than a third of all members should resign from the board at any one time.

Structure

- The board’s structure should reinforce its effectiveness and add value to the company.
- The board may set up committees to support certain areas. Specifically, it should at the very least set up an audit committee and an appointments committee.
- The appointments committee will be made up of independent and non-executive directors and will be chaired by an independent board member.
- The audit committee should be composed of at least 3

independent and non-executive members, and chaired by an independent board member.

Separation of functions

- The posts of Chair of the board and company CEO may not be held by the same person.
- The CEO must be a non-executive member of the board.

Company secretary

- The function of the Company Secretary must be carried out by a member of the Institute of Certified Public Secretaries of Kenya.

Independence

- The board must have policies and procedures that ensure that its members are independent.
- The independence of the board members will be reviewed every year by the board. In particular, independent board members are to have a maximum mandate of 9 years.

Age limit

- No board member may be over 70 years old.

Induction and training

- All board members should receive an induction when they join the company and regular training sessions.

Annual evaluation

- The board's activity will be evaluated every year, as will that of its Chairman, its committees, its CEO and the Company Secretary.

Remuneration policy

- Board members' remuneration policy must be fair and responsible, so as to attract and retain talent.

- The board may set up a remunerations committee, made up of independent, non-executive members who recommend board members' remuneration.
- The remunerations policy is to be approved by company shareholders during the Annual General Meeting.

Compliance with good government practices

- Every year, the board must assess whether the company is applying good practice in its corporate governance. The evaluation will be made by a professional who is accredited by the Institute of Certified Public Secretaries.

2. Shareholder rights

- The board must acknowledge, respect and protect the rights of company shareholders, as well as guaranteeing that they are treated fairly.
- Important information about the company in terms of its good governance must be disclosed, in order to inform the market, and to protect investors and other stakeholders.

3. Stakeholder relations

- The board must identify the company's interest groups and develop strategies and policies to manage relations with the same, bearing their interests in mind when making decisions.
- There must be effective, fluid communications with the interest groups.

4. Ethical and social responsibility

- The board must apply the principles of responsibility, accountability, justice and transparency when taking decisions and in its actions.
- It must ensure that its corporate strategy is aligned with the company's sustainability.

- It will approve an Ethics and Conduct Code that applies to all members of the company.
- It must set up a whistle-blowing channel.
- It will ensure that the company acts as a responsible citizen

5. Accountability, risk management and internal control

Financial reporting

- A structure should exist within the company that verifies and protects the integrity of financial reports.
- The board will be responsible for the veracity of the financial statements published in the annual report.
- At the Annual General Meeting, company shareholders must appoint an external audit company, whose members should rotate every 6 – 9 years.

Risk management and internal control

- The board must approve a risk management policy. This will set the risk tolerance level, as well as assessing and monitoring risk in order to safeguard the interests of investors and shareholders.
- The board must establish an effective internal control system. It will delegate to senior management the responsibility for designing, implementing and monitoring the effectiveness of this control system.
- At least once a year, the effectiveness of the risk management and internal control systems will be reviewed.
- The board must set up the internal audit function, the chief officer for which will report directly to the audit committee.

6. Transparency and information disclosure

- The board must encourage the disclosure of all relevant

information about the company: its statutes, the structure and make-up of the board, the ethics and conduct code, mission, vision and strategic goals, compliance with the law, non-financial information (CSR), compliance with good practice in corporate governance, technology information, risks, stakeholders and corporate governance policies, among others.

Institutions will be given a year from the publication of the Code to adopt the principles and, in any event, must report annually on their application or else explain the reasons why certain standards have not been adopted.

You may find these interesting too:

- [The State of Corporate Governance in Africa: An Overview of 13 African Countries](#)

We provide a global perspective of the most relevant regulations on microfinance and corporate governance



Progreso is the BBVA's Microfinance Foundation Group digital

legal news update, which provides a general overview of the most relevant regulation with an impact in microfinance. It also includes corporate governance recommendations as a key element to promote the sustainable development of the sector.

Our legal news update serves as a reference to those interested on inclusion and social and economic development, compiling regulation, articles and documents of special interest, which are available for consultation on our website.

Guidelines of basic principles for MSMEs

The [PSOJ](#) (Private Sector Organization of Jamaica), which groups together associations, companies and businesspeople operating in the Jamaican private sector, has published the first version of its code of good governance for MSMEs (micro, small and medium-sized enterprises).

The code unifies the core principles of corporate governance that smaller enterprises should apply to build a more robust system of governance and enhance their transparency, reporting and efficiency, and also improve their investment opportunities.

The following chart includes a schematic outline of the main recommendations in the code, applicable to companies as a function of their size, business turnover and complexity of their operations:

1. Board of Directors (or Advisory Board)

Board of Directors

- Responsible for approving businesses' policies and adopting decisions to reach strategic goals.
- Must act with due diligence.
- Possibility of receiving external support for effective decision making.

Composition

- Diversity of profiles: talent, experience, independence and knowledge.
- Appointment of directors:
 - Formal and transparent procedures ensuring best candidates are chosen.
 - Number of independent, non-executive directors: minimum 1/3 of total membership of board, and 1 at the very least.
- The positions of chairman of the board and CEO should preferably not be concentrated in one person, and there should be a clear separation of roles and responsibilities of both positions.

Functioning

- Should meet sufficiently often to ensure effective exercise of its duties.
- Annual assessment of the Board and its members. The corporate governance committee (where it exists) will be responsible for supervising the assessment.
- Induction plans for directors, especially non-executive and independent directors.

Support committees

- Constitute at least one Audit Committee and one Remuneration Committee, both chaired by a non-executive independent director.

2. Transparency and shareholder relations

- General Meeting of Shareholders as principal channel of

communication with shareholders (at least 21 days notice of meeting)

- Annual report useful for disseminating information to shareholders on: financial situation, performance, ownership, governance and financial statements.

3. Control environment

Audit

- Appointment of an internal auditor under transparent, objective criteria and targets.
- The head of the internal audit must report directly to the Audit Committee.
- One external audit to be carried out each year.
- Every year, the independence of the audit function must be assessed, and every 7 years the possible renewal of the contract with the external audit firm must be assessed.
- Suitable risk management mechanisms must be put in place.

Risks

- Define the risks policy and regularly review the risk management systems.

4. Relations with stakeholders

- Maintain good relations and regular communications with different stakeholders: employees, customers, financiers, regulators, environmental groups, etc.
- Have a Code of Ethics and Conduct.
- Whistleblower channel for employees.
- Focus on long-term sustainability of the enterprise.

The code also contains a specific section with recommendations for family-owned firms. Its appendix details the requirements for eligibility and corporate governance incumbent on enterprising wishing to list on the JSE Junior Market, namely:

- Have a board of directors with an appropriate level of talent and experience, which must meet at least once a quarter;
- Have at least two non-executive independent directors;
- Establish an audit committee and a remunerations committee comprising a majority of independent directors and a fully non-executive membership.

Amendment to the Transparency Law

At the end of 2015 the new 2013/50/EU Directive on transparency came into force, driving the member states of the European Union to adapt their legislation to the new transparency requirements.

As a result, on 10th May this year, the Grand Duchy of Luxembourg passed the new Transparency Law, which amends the 2008 Act, and transposed the European Directive's provisions into Luxemburg's body of law.

The new Directive aims, essentially, to make capital markets more attractive for small and medium-sized investors, reducing their bureaucratic paperwork and making the information requirements placed on them more proportional. The key changes being introduced are summarised below:

Financial information

- Financial statements no longer have to be published every quarter.
- The time limit for the publication of half-yearly financial statements has been extended from 2 to 3 months after the end of the semester.

Transparency in payments to the government

- There is a new requirement report annually and separately any information about payments made to the government by issuers whose activity involves exploiting natural resources.

New loan issues

- New loan issues no longer have to be reported.

Information on modifications to the articles of association

- The requirement to report any change to the company structure or the statutes to the competent authority ([*CSSF: Commission de Surveillance du Secteur Financier*](#)) has been removed.

Information on significant stakes

- The regime for the notification of significant stakes in voting rights has been harmonised, in order to ensure that the information on total voting rights which can be accessed by the investor is as accurate as possible.

Additional powers for the CSSF

- The supervisor has been given additional powers, being able to:
 - Request the withdrawal from the market of particular financial instruments, if it discovers, or has good reason to believe, that the provisions in the Transparency Law have been breached.
 - Request that regulated information or corrections

or future modifications to said information be made public.

- Give orders to prevent behaviour that breaches the Transparency Law.

Rules on penalties

- The penalties for non-compliance with transparency requirements have been toughened up: administrative sanctions and measures that include very high fines.
- In the case of non-compliance by a legal person, the possibility of penalising members of the organs of administration, management or supervision has been introduced, and/or of persons who may be considered liable for said non-compliance.
- Similarly, the suspension or possibility of suspending voting rights for those holding shares or stakes and financial instruments and who do not comply with the notification requirements can be considered.

The legislation stipulates that the administrative measures or penalties should be made public, in order to act as a deterrent against the decisions that have led to their imposition.

Updated standards for financial institutions

In March, the Malaysian Central Bank ([Bank Negara Malaysia](#)) published two papers for public consultation: one on corporate

governance and the other on shareholder suitability. Both are applicable to licensed financial institutions.

The *Consultation Paper on Corporate Governance* is intended to help institutions adopt sound corporate governance practices in line with long-term value creation and a corporate culture based on ethical, prudent and professional behaviour at all levels of the organisation.

Thus, institutions must adopt the minimum standards presented in the paper and operate effectively, in accordance with their size, the nature of their business, the complexity of their activities, their structure and their systemic importance.

The paper includes the following blocks, analysed here in schematic form:

1. Board of Directors

Responsibilities

- The board must have a charter regulating its roles, responsibilities and business requiring its approval.
- It will be responsible for promoting the institution's sustainable growth, taking into account the short and the long-term outlook in its decision-making.
- In general, its duties will be: to approve the risk-appetite framework and strategy plan; supervise the appointment, performance, remuneration and succession planning of the institution's CEO; supervise the activity of the institution and the different control mechanisms; promote a robust corporate governance culture, and ethical, prudent professional behaviour; supervise and approve financial plans; promote suitable communications between the institution and the regulator regarding matters that could affect the institution's reputation.

Meetings

- The chairman of the board will be responsible for its correct performance.
- Board members must devote sufficient time to the fulfillment of their duties and attend at least 75% of the board meetings.
- The minimum quorum for meetings is half the board members.
- Meetings must be minuted, clearly reflecting the resolutions adopted and policies approved, as well as any dissenting voice.
- Board members may receive input from external advisors on specific matters.

Appointment and severance of directors

- The institution must establish a procedure for the appointment, re-election and severance of directors.
- Incompatibilities. Directors may not:
 - Be actively involved in politics;
 - Have commitments that could hinder them from carrying out their duties in an effective manner;
 - Be or have been members of the external financial audit firm appointed to audit the institution's financial statements until at least two years after: (i) having left the firm, or (ii) the firm having provided such audit services.
- The board must establish and regularly review the succession plans for directors, to promote the renewal of this governance body and cover vacancies.
- The institution must request authorisation from the Malaysian Central Bank for the appointment of its directors. It must also request its approval to appoint, re-elect or dismiss independent directors.

Composition

- The board will be of sufficient size to promote the active participation of its members. It must specify the

criteria and skills necessary to be a director and review these regularly.

- The chairman of the board may not be executive or have held the position of CEO in the institution during the preceding 5 years.
- The board must comprise of one executive director, at most, and a majority of independent directors.
- Except under exceptional circumstances, the maximum term of office for independent directors will be nine years.

Support committees

- The board must constitute the following support committees: appointments, remuneration; risks; audit.
- The appointments and the remuneration committees may be constituted jointly.
- Each committee must comprise a minimum of 3 directors, with a majority of independent directors. Its chair must be an independent director.
- With the exception of the appointments committee, support committees may not have any executive members.

Assessment and training

- The activity of the board and its committees, and of their individual members, must be assessed every year.
- The board must dedicate the resources required for the directors to receive periodic training sessions.

Conflicts of interest

- The board must establish a written policy to manage potential conflicts of interest with respect to directors. This must include: circumstances that could generate a conflict of interest; procedures to report on these; persons or bodies responsible for managing them; and the consequences of any breach of this policy.

2. Senior management

Appointment and incompatibilities

- The appointment of the CEO will require approval from the Central Bank of Malaysia.
- The CEO may not be a member of the senior management or any significant shareholder in the institution.

Succession plan

- The institution will formulate a clear, transparent succession plan for all members of the senior management, and should review it every year.

Annual assessment

- The performance of each member of the senior management will be assessed every year.

3. Transparency

Information on corporate governance

- The institution must report on its corporate governance practices and procedures, as described in Appendix 4.
- The information will be published in a simple, clear and disciplined manner:
 - It will be given to the directors before the General Meeting is held;
 - It will be published on the Institution's website;
 - Listed companies will publish it in their mandatory annual reports.

The paper contains a chapter on institutions' responsibility to provide effective supervision of their subsidiaries.

In addition, there will be a transition period for institutions to implement the standards contained in the paper, most specifically with respect to the number and classification of the directors on their boards.

Finally, it incorporates the following appendices:

- Appendix 1: Responsibilities of the board support committees
- Appendix 2: List of guidelines and circulars replaced by the paper
- Appendix 3: Procedure for appointment of directors and senior managers
- Appendix 4: Publication of information on corporate governance

Meanwhile, the *Consultation Paper on Shareholders Suitability*, which substitutes an earlier version published in October 2014 is also applicable to licenced financial institutions. It establishes requirements with which shareholders of these institutions must comply:

1. **Maintain honesty, integrity and reputation.** Shareholders may not act in any manner that prejudices or could prejudice their reputations or that of the institution.
 2. **Exercise of influence.**
 - Shareholders must act in line with standards of good governance in exercising their rights.
 - Significant shareholders in the institution may not exercise their position of influence in such a manner that it could prejudice the institution's security and solvency.
 3. **Financial security.** Shareholders must have adequate control of their financial risks and maintain a sound financial position, such that this can serve as an additional source of funding in the event of the institution requiring further capital.
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Corporate governance principles for listed companies

The [Corporate Governance Code Monitoring Committee](#) has recently published a draft of the new version of the Dutch Corporate Governance Code. The initial Code from 2003 (reformed in 2008) was created by the market and not by the regulatory bodies.

The Committee has been gathering feedback from the stakeholders -corporations, markets and regulators- in order to reform the Code, adapting to the new standards of corporate governance ensuing on the worldwide financial crises.

The Code follows the *comply or explain* principle and must be referred to in listed companies annual reports. Its main focus is on the following points:

- Long-term value creation
- More robust risk management
- More effective supervision and management systems
- A longer-term culture as an essential element in corporate governance
- Transparent, simplified design of remuneration policy
- Better protection of shareholders

The proposed reform of the Code is structured as indicated in the following chart:

1. Long-term value creation

Long-term sustainability

- The Board of Directors is responsible for formulating and approving the corporate strategy with a long-term focus; and the Supervisory Board is responsible for

supervising that this is applied.

Risk management

- Entities must have suitable risk and internal control mechanisms. The Board of Directors is responsible for determining risk appetite and how to manage risks associated to the entities' activity.

Internal Audit

- The Audit department must assess the effectiveness of the risk management and control systems. The Board of Directors is responsible for its performance.
- The Supervisory Board will supervise the Internal Audit activity and will be in regular contact with the head of the department.

Accountability

- The Board of Directors is accountable for ensuring that the design and activity of the risk-management and internal-control mechanism are effective. The Supervisory Board oversees their activity, with the support of the Audit Committee, for suitable decision making.

Appointment and assessment of external auditor

- The Supervisory Board must propose the appointment of the external auditor to the General Meeting, taking into account the recommendations from the Audit Committee, and is responsible for supervising its activity.

Audit Committee

- The Audit Committee and the external auditor must discuss the observations in the auditors' paragraphs of emphasis.
- It should meet at least once a year without the presence

of the Board of Directors.

- The Board of Directors and the Supervisory Board will maintain regular contact with the external auditor.

2. Effective management and supervision

Composition and size. Gender diversity

- The Board of Directors and the Supervisory Board must comprise members with experience, skills and knowledge of the corporation's activity.
- Supervisory Board:
 - Should design a diversity policy regarding members of both boards, which must ensure gender diversity with a minimum of 30% female board members.
 - A minimum of one of its members must be an independent director.
 - Must be chaired by an independent director.
 - The entity may designate supervisory directors holding a minimum of 10% of the company shares, up to a maximum that may not be more than half the total members of the board.
- The entity must also have an Executive Committee to support both Boards.

Appointment, succession and assessment

- Members of the Board of Directors and the Supervisory Board will be appointed for a maximum term of four years, and may be re-elected for a further maximum four years in office.
- Members of the Supervisory Board may be re-elected for a further two years after their second term of office in exceptional cases.
- The Supervisory Board must ensure that the entity has a succession plan for members of both boards.

- The Supervisory Board:
 - Will ensure that its members receive an induction plan on joining the entity.
 - Will carry out yearly assessments of the Board of Directors and its individual members.
 - Will assess its own activity, that of its members and of the operation of its Board Committees that may be set up to support it.
 - Will ensure there is a succession plan for the members of the Board of Directors and the Supervisory Board.

Support Committees for the Supervisory Board

- The Supervisory Board may appoint committees to support it in the performance of its duties.
- If the Board comprises more than four members, it must appoint an audit committee, an appointments committee and a remuneration committee.
- Half the seats on the committees must be held by independent directors.
- Committees may not be chaired by the chair of the Supervisory Board or by a member of the Board of Directors.

Conflicts of Interest

- The Supervisory Board will be responsible for making decisions on the prevention and management of conflicts of interest relating to members of the Board of Directors and the Supervisory Board.

3. Remuneration

Board of Directors remuneration

- Must be transparent and promote the creation of long-term value for the entity

- The Supervisory Board will determine the remuneration, after submission of a report from the Remuneration Committee, and following the policy approved by the General Meeting of Shareholders. The Supervisory Board will also determine the remuneration of the members of the Executive Committee, after consultation with the Board of Directors.

Supervisory Board remuneration

- The Supervisory Board will propose its remuneration to the General Meeting. It must promote suitable performance of its duties and not depend directly on the earnings of the corporation.
- Remuneration should reflect the time members spend on performing their duties.

Accountability

- The remuneration report (published on the corporation's website) must contain a clear, transparent account of the remuneration policy of the Supervisory Board members.

4. General Meeting of Shareholders

- The General Meeting will deal with actions taken by the members of the Board of Directors and Supervisory Board that play a fundamental role in the corporation's results.
- Shareholders should participate actively in the General Meeting decision-making process.
- The Board of Directors and the Supervisory Board must ensure that the shareholders receive all information necessary for the General Meetings.
- The external auditor will attend the General Meetings to report on the veracity of the financial statements.

The Code also contains a proposal on technical changes that

may be made as a consequence of the adoption of new provisions.

Good practices in corporate governance

In March, Nigeria's [Financial Reporting Council](#) published the draft 2016 National Code of Corporate Governance, which harmonises and unifies the corporate governance codes published by a number of regulators in Nigeria. The new Code has three sections: one for the public sector, one for the private sector, and a third for not-for-profit organisations.

We analyse below that part of the Code that applies to companies in the private sector; it is mandatory and divided into the following chapters:

1. Board of Directors

Responsibilities of the board

- The board shall be in charge of leading the company, of ensuring that senior management acts in the interest of its shareholders and stakeholders, and of enhancing and sustaining the value of the company over time. To this end, it will carry out its functions with leadership, integrity and good judgment.
- It shall serve as a link between shareholders and the company.
- It shall ensure the establishment of a succession plan

for both its members and senior management.

- It shall be responsible for the board members receiving clear, appropriate and timely information in order to prepare their meetings.
- It shall meet with non-executive board members privately, without the presence of company executives.

Structure and composition

- The board shall be of a sufficient size relative to the scale and complexity of the company's operations and be composed of directors with diverse profiles, experience and gender.
- It shall include a combination of executive and non-executive directors. In particular, executive directors may not represent more than a third of all members; non-executives should make at least two thirds of the total, with at least half of these being independent directors.
- The board should have at least eight members.
- The board shall appoint one of the independent non-executive directors as the lead director, who will serve as an intermediary between the other directors and the Chair of the board, when necessary; and between the board and the company shareholders.

Members of the board

Chair

- Must be a non-executive director.
- The positions of Chair of the board and CEO may not be held by the same person, and their responsibilities must be clearly defined.
- The company CEO may only become Chair of the board after 10 years have elapsed since being CEO.

Executive Directors

- Will be involved in the day-to-day operations and

management of the company.

- Their remuneration must be linked to their performance and to company results. It will be disclosed in the annual report.
- They may not be members of the appointments and governance, remunerations or audit committees.

Non-Executive directors

- Chosen on the basis of the experience and specialist knowledge they can bring to the company.
- Responsible for the CEO's performance evaluation.
- Led by the lead director, they will also be responsible for the performance evaluation of the Chair.
- Shall have unfettered access to executive directors, the company secretary and the internal auditor.

Independent Non-Executive Directors

- They will be chosen to bring objectivity into the company.
- Their condition as independents will be reviewed annually and this will be published in the annual report, in the corporate governance report and in the company webpage.

Appointment of directors

- The board shall approve a formal, rigorous and transparent procedure for appointing directors, and should specify the criteria used in their choice.
- The appointments committee shall guide the process of appointing directors, in support of the board.

Meetings

- The board should meet at least once a quarter.
- Every director must attend at least 2 or 3 of the meetings held.

Committees

- The board may appoint committees to support its roles, the composition of which should be reviewed every 3 years.
- The committees that must be set up are; an appointments and governance committee, a remunerations committee, an audit committee and a risk committee.
- The Chair of the board may not preside any of the committees and no director may serve on more than two committees from the following: appointments and governance, remunerations and audit.
- All committees will be chaired by an independent director.
- The appointments and governance, remunerations and audit committees will each have at least 3 non-executive members, with a majority of independent directors.
- The risk committee will be composed of a majority of executive directors, and at least one of them shall be independent. A member of senior management will be responsible for the risk function, and will report directly to the risk committee.
- These committees may convene as often as their statutes stipulate, except for the audit and risk committees, which must meet at least once a quarter.
- Only the Chair and the members of the committee in question may attend their meetings.

Induction and training plan

- The board must establish an induction programme for the directors who join the company.
- Similarly, there must also be a training plan to bring director's' knowledge and skillsets up to date.
- The training courses will be published in the annual report.

Term of office and re-election of board directors

- Board directors must stand for re-election at least once every 3 years.
- Non-executive directors may not hold the position for longer than 12 years.
- Executive directors may not hold the position for longer than 15 years.
- In order to conserve their independence, independent non-executive directors may not serve in the company for longer than 9 years.

Annual performance evaluation

- The activity of the board, its committees and its individual directors will be assessed every year.
- At least every three years, the assessment should engage the services of an external consultancy.
- The lead director, in addition, will be responsible for leading the meetings between non-executive directors in order to assess the annual performance of the Chair.
- The result of the performance evaluation must be disclosed in the annual report.

2. Risk management and audit

Risk management

- The board will be responsible for approving the risk management and risk appetite policies.
- It must ensure that the risk policy is integrated at all levels of the company, and will prepare regular reports to assess effectiveness.
- The risk management policy will be published in the annual report.

Internal audit function

- All companies must set up the internal audit function, clearly defining its functions and responsibilities in an internal audit charter approved by the board.

- The Head of the Internal Audit unit will be a member of senior management, who will report directly to the audit committee.
- The Head of the Internal Audit Unit shall report at least once a quarter to the audit committee on the adequacy and effectiveness of management, governance, risk and control environment, as well as on the deficiencies observed.
- The internal audit function will develop an annual plan to audit risk management, which will be approved by the audit committee.
- There is to be an external assessment of the effectiveness of the internal audit function at least once every three years by an independent external adviser.

Whistle-blowing

- There should be a whistle-blowing policy, which the board will ensure is in place throughout the company.

External auditors

- The audit committee will be responsible for recommending to the board the appointment, reappointment and removal of external auditors.
- This firm will provide its services to the company for a maximum of 7 years, and may be reappointed once another 7 years have passed after their disengagement.
- The audit partners assigned by the external audit firm to provide their services to the company must rotate every 3 years.

3. Relationship with shareholders

- The board must ensure continuous dialogue with shareholders in the company, to protect their interests, guarantee their rights are treated fairly and, in particular, to protect minority shareholders.

- The Annual General Meeting will be a key channel to communicate with investors and encourage their participation.
- It should be convened with at least 21 days' notice.

4. Relations with other stakeholders

- Companies shall disclose all transactions between related parties.
- The board will have a policy on managing conflicts of interest.
- Companies should bear in mind the interests of all stakeholders: employees, creditors, customers, suppliers, regulators, among others.

5. Transparency

- In line with governance best practice, companies should publish in an annual report all financial and non-financial information required in the Code: issuance of share capital, financial statements, corporate governance (composition of the board, number of meetings held, the names of the company secretary and senior management members, diversity policies, board functions, results of the annual evaluation, among others), risk management and internal control, CSR policies, transactions with related parties, etc.
- Similarly, every year an external evaluation should be carried out as to how corporate governance practices are followed in the company.
- The report of this evaluation will be presented at the Annual General Meeting and a copy sent to the regulator; it will also be available on the company's investors' portal (shareholders, stakeholders and general public).

6. Code of Business Conduct and Ethics

- Companies must define a Code of Business Conduct and Ethics, which is applicable to all members of the same.

Nigeria's Financial Reporting Council gives a 30-day window for stakeholders to make comments to the draft code and the new Code is scheduled to pass into law on 1st July 2016.

You may find these interesting too:

- [The State of Corporate Governance in Africa: An Overview of 13 African Countries](#)

Code for Premium Listing companies

In April the [Financial Reporting Council](#), an independent regulatory body which seeks to promote good corporate governance and information transparency, published the final draft updates to the Corporate Governance 2016 Code (hereinafter, "the Code"), which replaces the September 2104 version.

The new Code, applicable to the nearly 900 companies with a Premium Listing on the London Stock Exchange, is an essential guide to applying the highest international standards and is governed by the "comply or explain" principle.

The provisions in the Code are based on the five principles outlined below:

1. LEADERSHIP

The role of the Board of Directors

Companies must be led by an effective Board of Directors that will be responsible for their long term success:

- The board must meet sufficiently often to be able to fulfil its functions effectively.
- The company's annual report will identify the Chair of the board, the replacement Chair (if one has been appointed), the CEO, the Coordinating Director and the Chairs of the respective committees, together with these committees' members. The number of meetings held by the board will be disclosed, as well as members' attendance.
- The company should have professional indemnity insurance for every board member that covers them in the event of legal proceedings.

Division of responsibilities

There must be a clear division of responsibilities between the board of directors and senior management.

- The positions of Chair of the Board and CEO may not be held by the same person, and their responsibilities must be clearly defined.

Chair of the board

The Chair will be responsible for leading the board and for ensuring its effectiveness. The person must meet the independence criteria*.

Non-executive Directors

- The board must appoint, from among its non-executive directors, a coordinating or lead director, to act as direct link between the board and shareholders.
- The Chair of the board must meet the non-executive directors without the executive directors being present. Similarly, the non-executive directors, guided by the lead director, will meet at least once a year to assess

the performance of the Chair of the Board.

2. EFFECTIVENESS

Composition of the board

The board and its committees must be appropriately balanced in terms of profiles, experience, independence and knowledge of the company.

- Committee meetings may only be attended by the committee Chair and its members, although other members of the institution may attend as guests.
- The board must identify every non-executive director in the annual report and disclose whether each is independent.
- At least half of the board members, excluding the Chair, must be independent non-executives.

Appointment of board directors

The company must have a formal, rigorous and transparent procedure for appointing directors.

- The appointments committee will drive the director's appointment process, to support the board. This committee must be formed of a majority of non-executive independent members and chaired by an independent board director.
- Non-executive directors will be appointed for a maximum of 6 years, after which time they may be reappointed following a rigorous review process.
- In a separate section of the annual report, the committee's activities must be described, including the procedure for appointing directors, the institution's diversity policy (particularly gender diversity), among others.

Commitments

Board members must dedicate the time necessary to perform their functions effectively.

- To appoint the Chair of the board, the appointments committee must specify the functions to be performed and the time required to carry them out, including the requirement to be available in the event of a crisis. Any other commitments must be disclosed to the board before the appointment can be confirmed, and disclosed in the annual report.
- The terms and conditions for appointing non-executive board directors may be subject to inspection. They must have enough free time to be able to carry out their functions.

Induction and training

All Board members must receive induction sessions when they join the company and regularly update their knowledge and skillset.

- The Chair of the board must ensure that new directors receive these induction sessions, and regularly review their training and development needs.

Information and backup

The board must receive enough information, of an appropriate scope and quality, to enable them to perform their functions correctly.

- Care will be taken that board members, particularly non-executive directors, have access to independent external advice, should they need it, in order to fulfil their roles.
- All board directors will receive the support and services of the Company Secretary.

Evaluation

An annual performance evaluation must be conducted on the board, its committees and its individual board members.

- The outcomes of this evaluation will be published in the annual report.
- In the case of directors of companies listed on the FTSE 350, the evaluation will be conducted with the support of an external firm at least every 3 years.
- Non-executive directors, guided by the lead director, will be in charge of evaluating the Chair, and will take into consideration any input provided by the executive directors.

Reappointment of board directors

All members of the Board may be reappointed at regular intervals.

- Board directors of companies listed on the [FTSE 350](#) must be re-elected every year by the shareholders. All other board directors will be elected during the first Annual General Meeting after their appointment, and may be re-elected for periods each of no more than 3 years.
- Those non-executive directors who have served for more than 9 years should be re-elected every year.

3. ACCOUNTABILITY

Financial reporting

The board must present a fair, balanced and comprehensible evaluation of the company's financial situation in the annual report. It must also include an explanation of how the company will generate or preserve its value in the long term, and of the strategy that will be employed to achieve its goals.

Risk management and internal control

The board will be responsible for deciding the nature and scope of the main risks it is prepared to assume in order to

achieve its strategic goals. It must maintain solid systems for internal control and risk management.

Audit committee and auditors

The board must lay down a formal and transparent procedure for deciding how to apply the financial information report and the information about the internal control and risk management systems, so as to maintain an appropriate relationship with the company auditors.

It must also set up an audit committee that has at least 3 non-executive independent board directors. In the case of small companies, it may be set up with a minimum of 2 independent members, including the Chair, but the latter may not be the Chair of this committee.

One of the audit committee's areas of responsibility will be as the key decision maker on the appointment, re-election or dismissal of the company's external auditor.

4. REMUNERATION

Level and components of remuneration

The remuneration of executive directors will be designed in such a way as to ensure the long-term success of the institution.

Remunerations policy

There must be a transparent and formal procedure for defining the remunerations policy of executive directors, and for putting together remuneration packages. No executive director may be involved in the decisions taken about his or her remuneration.

The board will appoint a remunerations committee, to contain at least 3 independent members (2 in the case of small companies), that will be in charge of deciding the

remuneration of executive directors and the Chair of the board, and of making recommendations for and assessing the level and structure of remunerations of the members of senior management.

The remuneration of non-executive directors will be decided by the board itself or by the shareholders, in accordance with company statutes.

5. RELATIONSHIP WITH SHAREHOLDERS

Dialogue with shareholders

Dialogue with company shareholders must be on the basis of mutual understanding of each other's goals and interests. The Board will be responsible for ensuring an effective dialogue with the same, and for protecting their rights.

Constructive use of Shareholders' Meetings

The General Shareholders' Meeting should be an event that is used for meaningful communication with investors and for fomenting their participation.

The document complements the remuneration section with the A clause, which specifies how the performance-related pay of executive directors should be structured; and completes the accountability principle with the B clause, which defines which specific matters companies should disclose in their annual reports: composition of the board and committees, functions, meetings, activity of the appointments committee, evaluation of the board, of its committees and individual members, among others.

The [Financial Reporting Council](#) has programmed the new Code to come into force in June 2016.

*A director is independent if he:

- Hasn't been an employee of the company or group within the

last 5 years;

- Hasn't, or hasn't had within the last 3 years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- Hasn't received or doesn't receive additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or isn't a member of the company's pension scheme;
- Doesn't have close family ties with any of the company's advisers, directors or senior employees;
- Doesn't hold cross-directorships or doesn't have significant links with other directors through involvement in other companies or bodies;
- Doesn't represent a significant shareholder; or
- Hasn't served on the board for more than 9 years from the date of their first election.

Draft Report on Corporate Governance 2016

In March, the [*Institute of Directors in Southern Africa*](#) published the draft of the new 2016 edition of for South Africa's corporate governance code (known as King IV), which

replaces the 2009 code (King III), and includes the latest international corporate governance standards.

The new code reduces the number of principles to 17, from the previous code's 75. Principles that may be applied by the companies listed on the Johannesburg Stock Exchange, on a voluntary basis (taking into consideration their resources, size, turnover, complexity of their operations and strategic goals), and that are complemented with good practices that must be implemented if they are to be introduced in the organisations.

King IV follows the "apply and explain" principle. Thus, the annual reports of companies that apply the principles must explain in detail the practices they have implemented to make them effective. To report on this, companies will complete a form which will be formally approved by the board of directors, reviewed at least once a year and published on the communication platforms where the institution has a presence (webpages, general media, etc).

The key issues addressed in the new code are as follows:

1. Values, ethics and culture

The board will exercise its functions in an ethical manner, and must approve a corporate strategy that gives priority to value creation that is economically, socially and environmentally sustainable.

2. Performance and information reporting

- The board must approve the company's strategy, defining its key purpose and actions in the short, medium and long term, with a focus on value creation that is sustainable over time.
- It should ensure that the different stakeholders receive all the information about the organisation that will enable them to shape their criteria on its performance,

activity and capacity to create sustainable value.

3. Governance structures and delegation of functions

- The board is responsible for ensuring that good practice in corporate governance extends throughout the organisation.
- It must ensure that its members have the range of profiles (talent, experience, independence, nationality, age, race and gender) needed to carry out their functions.
- The board will be made up of a majority of non-executive directors; most of these will be independent.
- As a general rule, independent members may not serve for longer than 9 years.
- The Chair of the board will be a non-executive director and there must be a clear division of roles between this post and that of the company CEO.
- The procedure for appointing new board directors must be formal and transparent. When they join the company, new board directors will receive induction sessions.
- The board must approve a succession plan for all directors, the CEO and other members of senior management, to include the identification, mentorship and development of future candidates.
- The board may appoint committees to support its work, particularly to cover the areas of auditing, risk, remuneration, appointments and ethics.
- The committees will be chaired by an independent director, and will be made up as follows::
 - Audit: at least 3 independent directors;
 - Risk: at least 3 directors, with a majority of non-executives;
 - Appointment/Remuneration: non-executive directors with a majority of independents;
 - Ethics and social: at least 3 directors, of whom at least one must be non-executive.

- The board must ensure that their activity and that of their members is assessed at least once every three years.
- The CEO and the Company Secretary must be evaluated every year.
- The evaluation of Chair of the board will be overseen by an independent board director.

4. Areas of governance

- o **Risk.** The board must approve the nature and scope of the risk that the company is prepared to assume in order to achieve its strategic goals and may delegate to senior management the responsibility for applying risk management policy.
- o **Technology and information.** The board must approve policies to correctly apply technology around the company and to manage information.
- o **Compliance.** The board must approve policies that guarantee compliance with the law and with the adoption of other non-binding rules, codes, norms and standards.
- o **Remuneration.** The board must make sure that the company pays its employees in a fair, responsible and transparent manner, one which fosters value creation within a sustainable model. Employee remuneration policy must be designed in such a way so as to encourage the attraction, motivation and retention of talent, taking into account the strategy set and avoiding taking on undue risk.
- o **Control systems.** The board must ensure that there is an appropriate control framework and accurate information to optimise decision taking. It will delegate to the audit committee oversight of:
 - The existence of an effective and appropriate internal control framework, and

- The accuracy, clarity and transparency of information disclosed

Similarly, the audit committee will be responsible for ensuring that the internal audit function serves to support the company in achieving its strategic goals, and must decide whether it is necessary to appoint a senior executive to be responsible for this function. If the decision is taken to hire, the person in charge of the audit function must have an independent brief and will report directly to the audit committee.

5. Shareholders and interest groups

- The board must make sure that it takes into account the interests, needs and expectations of shareholders, investors and other stakeholders, when taking decisions and approving corporate policy.
- It should also ensure that company employees receive training sessions so that they keep their knowledge base and skillset up to date.

King IV also includes a specific chapter with recommendations for particular sectors such as state-owned companies, non-governmental organisations, small and medium-sized companies and pension funds, among others. The chapter was published a month after the rest of the report, but is now available on its [website](#).

The [Institute of Directors in Southern Africa](#) plans to publish the document in November 2016. Meanwhile, it is currently open to public consultation.

You may find these interesting too:

- [The State of Corporate Governance in Africa: An Overview](#)

Group Corporate Governance Code

The BBVA Microfinance Foundation, as a multinational group with specific governance requirements in each jurisdiction, is aware of the importance of having some core guidelines on corporate governance for its entire group of entities. Thus, it has adopted a Group Corporate Governance Code upholding the highest international standards.

The BBVA Microfinance Foundation Group Corporate Governance Code is a benchmark document for all corporate groups operating in different jurisdictions. It lays down the shared lines of good governance for the microfinance entities making up its Group and underpins the Foundation's commitment to maximum transparency in its relationship with stakeholders.

The Code has been acknowledged as one of the **ten best initiatives for transparency and corporate governance** ([las 10 mejores iniciativas de transparencia y buen gobierno 2015-2016](#)) by *Fundación Compromiso y Transparencia*, for having designed a governance model through which an organisation can be recognised as working with a cohesive corporate culture and language while adapting to multiple legislations with internal rules and standards.

How global executives grapple with today's reputation risk and capitalize on opportunities

[Reputation Institute](#) is a leading consultant in reputation management. This report describes its survey of over 150 executives in more than 20 countries, going on to identify the tendencies, practices and priorities they found in reputation management. The executives polled belong to various areas linked to this subject matter, working in communications, public relations, marketing, corporate strategy, legal and risks departments.

The paper analyses the following aspects:

- Maximum priority areas for executives
- Links between reputation and corporate purpose
- Reputation management: successful organisational structures
- Communicating corporate social responsibility
- Tendencies in measuring and communicating with stakeholders
- Strategies to minimise reputational risk and take advantage of opportunities

Approaching the future

The [Research Center of Governance, Sustainability & Reputation](#) is an initiative of IE Business School and the Corporate

Excellence Centre for Reputation Leadership. This independent research institution was set up in April this year to promote greater cooperation between academics and professionals in research, analysis and training of corporate governance on the impact of good governance and sustainability in corporate reputation and reputational risks.

This paper starts by identifying some global trends in managing key intangibles: greater trust but greater social division and climate change as a critical point. It then goes on to analyse worldwide trends in:

- Sustainability (strategic partnerships, new actors, sustainable business models);
- Reputation (risk management, the value of reputation, authority among the sectors of influence, flexible and comparable metrics, new powers and responsibilities for senior management), and
- Corporate governance (gender diversity, CSR and risks).

Latin American Boards Diversity Analysis

This study from 2016 has been carried out by the consultancy firm, Egon Zehnder. It provides a summary of the key findings obtained from a survey of 179 female directors on boards of companies listed in Latin American countries (Argentina, Brazil, Chile, Colombia and Mexico).

They analyse their career paths, the challenges they have

faced and the support that they think they should have been received.

Ingredients for success: Striking the right balance

This report analyses the possible challenges facing board members during 2016.

Each aspect of the report was drawn up with the contribution from Deloitte's partners throughout the world. It covers key questions that board members should be dealing with regarding their own situation and that of their companies, in order to help their organisations succeed.

The report also includes interviews with three independent directors who give their viewpoints on the key matters affecting their own boards of directors.

A crisis of confidence

This document gives the results of a survey carried out with over 300 directors regarding their companies' preparation for responding if a crisis struck tomorrow. It discusses:

- Board members' confidence in their organisations' crisis-related abilities to face adverse situations
- Perceived vulnerabilities and companies' efforts to address them

- The role of the board before, during, and immediately after a crisis—what to ask and do
 - Practical steps to advance on the journey from crisis awareness to crisis readiness
-

2016 Global Board of Directors Survey

The US consulting firm [Spencer Stuart](#) and [WomenCorporateDirectors Foundation \(WCD\)](#) have published a report which captures the good government practices, strategic priorities and views on board effectiveness of more than 4,000 corporate directors in more than 60 countries.

Among the highlights of the report:

- Directors are uncertain about global growth prospects.
- The economy, the regulatory framework and cybersecurity are the three top policy issues for directors.
- The directors favour the introduction of tools to trigger board renewal.
- The reasons for the lack of gender diversity on boards are different depending on whether a man or a woman responds. Men think it is because there is a lack of qualified female candidates; women, however, state that diversity is not achieved because it is not a priority and because most board members deciding on new appointments are men.