COLOMBIA

PILOT OF THE DRAFT ASSESSMENT METHODOLOGY

February 2016

DETAILED ASSESSMENT OF OBSERVANCE

KEY ATTRIBUTES OF EFFECTIVE RESOLUTION REGIMES FOR FINANCIAL INSTITUTIONS

Financial Stability Board
International Monetary Fund
The World Bank

CONTENTS

Glossary

AM	Assessment methodology
BR	Colombian central bank (*Banco de la República*)
CCSBSO	Central American Council of Banking Supervisors (*Consejo Centroamericano de Supervisores Bancarios, de Seguros y de Otras Instituciones Financieras*)
CCSSF	Financial Sector Coordination and Monitoring Committee (*Comité de Coordinación y Seguimiento del Sistema Financiero*)
DL	Decree Law
EC	Essential Criteria
EOSF	Organic Statute of the Financial System (*Estatuto Orgánico del Sistema Financiero*)
FMI	Financial market infrastructure
FOGACOOP	Deposit insurance fund for cooperative institutions (*Fondo de Garantías de Entidades Cooperativas*)
FOGAFIN	Deposit insurance fund for financial institutions (*Fondo de Garantías de Instituciones Financieras*)
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
G-SIFI	Global systemically important financial institution
IMF	International Monetary Fund
ISDA	International Swaps and Derivatives Association
KA	Key Attributes of Effective Resolution Regimes for Financial Institutions
MHCP	Ministry of Finance (*Ministerio de Hacienda y Crédito Público*)
MOU	Memorandum of understanding
OTC	Over-the-counter financial contracts
P&A	Purchase and assumption
SES	Superintendency of the solidary economy (*Superintendencia de la Economía Solidaria*)
SFC	Superintendency of financial institutions (*Superintendencia Financiera de Colombia*)
SIFI	Systemically important financial institution
SSoc	Superintendency of corporations (*Superintendencia de Sociedades*)
URF	Financial Regulation Agency (*Unidad de Regulación Financiera*)

EXECUTIVE SUMMARY

The Colombian authorities have strong powers to manage weak and failing financial institutions, and a track record of using them. While there have not been any failures of banks or institutions of systemic importance for many years, the failures of several non-bank financial institutions important in their subsectors, and many smaller institutions, have been managed effectively. While not without passing controversy, the authorities have been able to manage these events in an orderly and efficient way, without adverse consequences for financial stability, and without putting public funds at risk.

Colombia's resolution regime, however, has shortcomings with respect to the standards set in the Key Attributes (KA). Important resolution powers are not available to the authorities, the regime does not emphasize minimizing the exposure of taxpayers to loss, and taking resolution actions does not hinge on an assessment of non-viability. While weak, failing and insolvent financial institutions are subject to administrative powers that share features with those described in the KAs, and the authorities' objectives to preserve financial stability are similar, the regime is premised on timely intervention to forestall triggering an official takeover of the firm, rather than resolution as considered in the KAs. There are no requirements for, and few tools enabling, the imposition of losses on the shareholders responsible for the institution's failure, or the avoidance of taxpayer exposure to loss or unwarranted protection of unsecured and uninsured creditors. Rather, the Colombian regime seeks to minimize financial stability risks by avoiding failures of systemic financial firms where possible, firstly through shareholder action under threat of official takeover, but also through the use of public or deposit insurance funds. In this sense, while the Colombian framework has some of the features needed for orderly resolution, it falls short of the KAs' other central objective of avoiding bail-outs of shareholders and unsecured and uninsured creditors.

Colombia has a large and diversified financial system compared with peer countries, with significant cross-border institutions and large mixed function conglomerates. The four largest banking groups are considered systemic, and account for over 70 percent of banking assets. Of these four groups, the top three are domestic and privately owned, while the fourth is foreign-owned and, at the time of writing, part of a global systemically important institution (G-SIFI) following a multiple point of entry resolution strategy. Two other G-SIFIs have a smaller presence in Colombia, which is not the home jurisdiction of any G-SIFIs. The three largest domestically-owned banking groups are regionally systemic financial institutions in Central America, with subsidiaries that are materially important for the groups, and systemically important for the host jurisdictions. These large groups are part of mixed-function conglomerates, with significant financial interests besides banking (organized under separate controlling entities, including nonfinancial holding companies), and common ownership with large real sector operations across a wide range of economic activities.

This context informed the assessment of the KAs. While the absence of non-viability triggers for resolution or a focus on the protection of public and deposit insurance funds constitute differences

between the Colombian regime and the KAs that were reflected in the assessment, due weight was given to the authorities' ability to ensure orderly outcomes in the economic and financial circumstances in which their resolution powers are exercised. The Colombian banking system is overwhelmingly deposit-funded, interconnectedness is assessed as low by the authorities, and there are no markets in many complex financial products. Some of the provisions of the KAs are less relevant in this context. A number of the essential criteria in the draft assessment methodology relating to KAs 8, 9 and 10 are relevant only with respect to G-SIFIs, and thus were not assessed (although some of the substantive points would appear equally relevant for regionally or domestically systemic institutions). Finally, the absence of some powers or provisions in the law, implied that other aspects of the KAs were not relevant or not applicable. As this pilot assessment was undertaken with a draft methodology that is subject to change, implying that grades would not be comparable, these were not given.

The scope and applicability of resolution powers, and the authority to apply them, are clear and extend to all banks and systemically important financial companies (KAs 1 and 2). The regime covers a broad spectrum of financial entities, including all systemically important banks, but does not extend to holding companies (either for the financial part or the overall conglomerate). While the scope of the powers and responsibilities of different agencies is defined, there is no clear lead authority for resolution of conglomerates including nonfinancial firms (notably holding companies). While this raises the potential that resolution could be impeded, the regulatory requirement to organize financial and nonfinancial activities separately within a group is a mitigating factor in the Colombian context. Resolution authority for financial firms is clearly delegated to the financial superintendency (SFC), while FOGAFIN has a consultative or specific operational roles in the execution of some resolution tools. The resolution authority is operationally and financially independent, and has shown capacity to make resolution decisions on a technical basis. Recent reforms established a fixed term of four years for superintendents, with early termination requiring public justification. Nonetheless, formal safeguards and protections of that independence could be strengthened further to ensure freedom from political or industry influence is maintained, especially if more complex situations were to arise.

While the SFC can apply a range of preventive measures and take control of a troubled firm, its ability to employ resolution powers by overriding shareholders' consent is limited (KA3). The SFC can take control of the business and property of an institution upon a wide range of triggers, although these are not specifically based on the institution's non-viability. The SFC can also apply preventive measures—such as an order to raise capital or to transfer assets and liabilities—aimed at rescuing an institution. These measures enable the SFC to exercise pressure on banks' shareholders and management, since failure to comply with the SFC orders will lead to takeover and control. However, the SFC cannot transfer assets and liabilities to a private sector buyer or a bridge bank through directly binding powers that explicitly override shareholders' consent (and allocate losses to shareholders and creditors) in the public interest. Transfer powers affect shareholders' economic and governance rights, altering fundamental competences under corporate law, hence the need for an explicit override of shareholder consent. Under the current framework, it is unclear what would happen if shareholders did not consent to such intrusive orders, potentially leaving the

authorities with few options beyond liquidation or nationalization. Introducing effective transfer powers (such as purchase and assumption and bridge bank) is a key reform that would give the authorities a powerful tool for preserving financial stability and confidence in resolution, while minimizing fiscal costs or outlays from the deposit insurance fund. Introducing an assessment of non-viability, based on clear criteria, as a trigger for resolution would enable timely action, minimizing disruption and economic losses. Finally, the legal framework should foresee speedier pay-out of insured deposits, within seven working days, to better ensure financial stability is preserved.

The legal framework does not include the stays and legal safeguards used in connection with resolution powers (KAs 4 and 5). Rights to terminate financial contracts early, triggered by takeover actions or other forms of intervention, cannot be stayed. However, it is not clear that powers to impose a temporary stay are immediately needed considering the resolution tools currently available. Similarly, the lack of effective transfer powers reduces the need for the legal safeguards that are appropriate where creditors of the same class are treated differently as a result of a partial transfer of assets and liabilities. If the framework is revised to allow transfer of selected assets and liabilities, a stay power would be highly desirable to support their effective use, and appropriate legal safeguards will be needed. Similarly, introducing safeguards to ensure that creditors are not left worse off in resolution than they would be in liquidation would become important once such powers have been adopted.

There are few constraints on the use of public funds in resolution (KA6). Resolution funding is provided through the deposit insurance reserve, which is privately funded by the industry *ex ante*, with possible recourse to borrowing, or public resources should the fund be depleted. The obstacles to the use of public funds in resolution are not onerous, and there are no provisions requiring that shareholders or unsecured and uninsured creditors absorb losses before resolution funding is provided, including through measures that would effectively bail-out these shareholders and creditors, protecting them from loss. There is no requirement or mechanism for the recovery of losses incurred in the provision of public funding from the industry.

The SFC can coordinate with other jurisdictions, and has agreed supervisory memoranda of understanding with home and host jurisdictions important for Colombia (KAs 7, 8 and 9). However, no cross-border cooperation or coordination mechanisms focused on resolution strategies exist. Although Colombia is a host jurisdiction for three G-SIFIs, the authorities have not been invited to participate in a crisis management group or enter into a cooperative arrangement. There are no provisions for the recognition of actions taken by foreign resolution authorities, or any specific provisions regarding support for such resolution measures. A foreign resolution action would lead to consideration of whether and what actions would be appropriate by the Colombian authorities. While there are no impediments to taking supportive actions, not all resolution measures are available (e.g. bail-in, transfer of assets to another firm or stays on termination rights in some financial contracts), and such measures taken by foreign authorities could not be given effect in Colombia. Nevertheless, given the current structure of the Colombian market, the limited

mechanisms available to support foreign resolution measures appear adequate to enable orderly implementation of foreign resolution actions in most circumstances.

Recovery and resolution planning are absent, and are a priority reform area (KAs 10, 11, and 12). The SFC does not require recovery plans, prepare resolution plans or carry out resolvability assessments for systemically important banks; developing a work program managed by a small unit of specialized staff is a key area for progress. The importance to both home and host jurisdictions of the cross-border activities of the large Colombian financial groups implies a need to cooperate in developing resolution strategies, and internal cooperation with FOGAFIN is similarly important. The SFC currently lacks the power to require firms to change their business organization and legal structure in order to improve resolvability (although the draft law on conglomerates will allow the SFC to do this for supervisory purposes, which could help to achieve this aim). While the legal framework allows for access to information and information sharing (with adequate safeguards) with domestic and foreign authorities, management information systems have not been tested for their capacity to address the needs of recovery and resolution planning. Nevertheless, the legal framework provides authority to elicit information from firms, and to require the maintenance of information systems capable of producing the required information.

INTRODUCTION

A. Background

1. **At the request of the Colombian authorities, the bank resolution regime was assessed against the Key Attributes of Effective Resolution Regimes for Financial Institutions (KAs).** The assessment was conducted by staff of the Financial Stability Board (FSB), International Monetary Fund (IMF) and World Bank utilizing the draft KA Assessment Methodology (AM)[1]. The assessment reviewed the resolution regime as of October 2015, and was limited to the banking sector, considering only those elements of the AM that directly relate to bank resolution without assessing those addressing the resolution of insurance firms, investment firms and financial market infrastructures (FMIs).

2. **As a draft methodology was used, the findings of the assessment should be viewed as preliminary.** A central goal of this assessment was to test the draft AM, and a future revision of the AM might yield different results with respect to the adherence of the Colombian bank resolution regime to the KAs. In this light, no ratings were assigned in this review. This assessment was the first one undertaken in a country that is not a member of the FSB, or home to a Global Systemically Important Financial Institution (G-SIFI).

3. **The authorities provided a detailed self-assessment in accordance with a template and questionnaire prepared by the assessment team, which was reviewed off-site.** The comprehensive report with this assessment was coordinated by the Superintendency of Financial Institutions (SFC), with contributions from the deposit insurance fund (FOGAFIN), the central bank (BR) and the Financial Regulation Agency (URF—an operationally independent office of the Ministry of Finance (MHCP)). In addition, related laws, decrees and other relevant documentation were reviewed. The team benefitted from the findings of the Financial Sector Assessment Program (FSAP) undertaken in 2012/13. A mission then visited Bogotá from September 28 to October 13, 2015, to meet with the authorities and market participants. During the onsite visit meetings were held with SFC, FOGAFIN, BR and URF, and a closing meeting was held with the Minister of Finance, the Financial Superintendent, the Director of FOGAFIN, and BR. In addition, the mission met with representatives of the large domestically owned banks, foreign banks, law firms, the stock exchange and clearing house, and other market participants.

4. **The authorities extended full cooperation to the assessment team.** There were no substantive impediments to the completion of the assessors' work. The cooperation, time dedicated, and frank and cordial discussions that the authorities offered the team is greatly appreciated.

[1] The mission was led by Mr. Alvaro Piris (IMF, Monetary and Capital Markets Department), and comprised Ms. Ruth Walters and Mr. Vijay Tata (FSB Secretariat), and Messrs. Alessandro Gullo (IMF, Legal Department) and Jan Nolte (World Bank, Finance and Markets Global Practice).

B. Institutional Setting and Market Infrastructure

Overview of the resolution regime

5. The Colombian legal framework does not include the full range of resolution powers and related attributes as specified in the KAs. Weak, failing and insolvent financial institutions are subject to administrative powers that share many features with resolution powers as described in the KAs. The objectives of the resolution authority are consistent with some of those described in the preamble to the KAs, namely the avoidance of "severe systemic disruption… while protecting vital economic functions." However, the early intervention tools available (known as rescue tools—*"institutos de salvamento"*)—are focused on avoiding the need for "takeover and control" rather than the resolution of failing financial institutions when assessed as non-viable by the resolution authority, and there is no clear priority given to avoid exposing taxpayers to loss. The framework does not recognize resolution as a stand-alone legal proceeding, empowering the authorities to impose resolution measures (such as restructuring or winding down a firm's operations) through a directly binding measure, without shareholder and creditors' consent.[2] The scope for shareholders to absorb losses is limited to liquidation, nationalization or capitalization with deposit insurance funds, and only to liquidation with respect to unsecured and uninsured creditors. In trying to preserve financial stability, the authorities have few options beyond actions to avoid takeover and control, including through use of public funds and without explicit powers to override shareholder consent, liquidation, and nationalization.

6. This context informs the assessment of the KAs. While the Colombian resolution regime goes well beyond subjecting failing banks to ordinary corporate insolvency proceedings, the motivation and feasibility of avoiding bail-outs of shareholders and unsecured and uninsured creditors that lie behind the KAs is absent. The approach taken by the assessors was to judge the regime's adherence to each KA and essential criterion (EC) on its own merits, while the overall conclusions acknowledge that the current regime deviates from the intent and spirit that lies behind the KAs in important respects.

7. Colombia's constitution gives primary responsibility for regulating and supervising the financial system to the President of the Republic. The MHCP has delegated powers of legislative initiative and regulation of the financial sector, the latter through the URF, while supervision is the competence of the SFC.

8. Responsibility for bank resolution is delegated to the SFC and FOGAFIN. The SFC is responsible for deciding when a bank should be resolved, working closely with FOGAFIN, that has specific functions in the execution of resolution. The SFC, an administratively and operationally

[2] The authorities' have noted their disagreement with this representation (see "The Authorities' Response", p. 68). Given the interference with shareholders' economic and governance rights under ordinary corporate law, the assessors decided to leave the representation unchanged, considering that an explicit legal provision for overriding shareholder consent, applying generally to resolution actions, is necessary to support effective implementation of resolution and allocate losses to shareholders and creditors in the public interest in line with the KAs.

independent agency of the MHCP, is responsible for supervision of all financial institutions, including banks, insurance and securities firms, except a narrowly defined subset of cooperatives. The deposit insurance agency, FOGAFIN, has a separate board and mandate, also deriving its authority from the MHCP, and is subject to the oversight of the SFC. The SFC and FOGAFIN, along with the BR and MHCP play a key role in monitoring financial stability, with policy in this area coordinated through the Financial Sector Coordination and Monitoring Committee (CCSSF). The BR ranks financial firms by their systemic importance, for consideration by the CCSSF twice a year.

9. The specific resolution regime for cooperatives is not reviewed in this assessment. Approximately 11,400 cooperatives that accept deposits (only from their members) are supervised by the Superintendency of the Solidary Economy (*Superintendencia de la Economía Solidaria*—SES). The SES has broadly similar supervisory and resolution powers as the SFC, and there is a separate deposit insurance fund (*Fondo de Garantías de Entidades Cooperativas*—FOGACOOP). These cooperatives are subject to limits on financial functions and funding sources, and must convert to financial cooperatives supervised by SFC when a size threshold is reached. Due to their small size—total assets are equal to under 5 percent of financial system assets—and the low exposure of the banking sector—loans to cooperatives account for about 0.5 percent of the total loan portfolio of credit institutions—these entities are not considered to be of systemic importance. Failing institutions have usually been managed through arranged mergers within the cooperative sector.

10. The financial system, SFC and FOGAFIN are governed by the body of law contained in the organic statute of the financial system (EOSF). This decree compiles the many laws governing the financial system and has the legal hierarchy of the underlying laws. It includes all the powers available to the SFC and FOGAFIN in resolution. Financial regulation, including with respect to resolution powers, is expressed through Presidential decrees, and is compiled in Decree 2555 (2010), which is lower in the legal hierarchy than the EOSF.

11. The SFC has administrative powers to manage failing financial institutions. The law enables the SFC to intervene ("*toma de posesión*", henceforth "takeover and control") a bank if triggers are met, including a capital adequacy threshold, failure to comply with a rehabilitation plan addressing identified weaknesses and several other conditions including payments failure, breaches of regulations or supervisory orders, and unsafe and unsound management. Once takeover and control has been triggered, a strategy to enable recovery of the institution or initiate a liquidation is taken. The SFC may also take actions to prevent the triggers for takeover and control being reached, including changing management and requiring a rehabilitation plan, among others.

Overview of the financial system

12. Colombia's financial system is relatively large and diversified in relation to other middle income countries. Total financial system assets are equivalent to close to 150 percent of GDP, with credit institutions (overwhelmingly banks) accounting for about 45 percent of the total. Of 57 credit institutions, 25 are banks (the others being financial corporations of various types and financial cooperatives, subject to limitations on their operations and the nature of their liabilities). About 30 percent of financial system assets are held in trust structures, including investment funds

administered on behalf of third parties (including private wealth vehicles), public sector infrastructure investment funds, and collective investment vehicles such as mutual funds. The largest private trusts are part of financial groups that include banks. Pension funds account for a further 16 percent of financial sector assets, with all four pension funds being part of financial groups that include banks. The remaining assets are held by insurance companies and special purpose public financial entities (about 4.5 percent of total assets each), and capital markets intermediaries.

13. The degree of banking system concentration is moderate. The largest four banks account for about 60 percent of banking system assets. Taking into account that one group (Aval) owns four banks, including the second largest, the largest four banking groups account for over 70 percent of total assets. Of these four groups, the top three are domestic and privately owned, while the fourth is foreign-owned and part of a G-SIFI (BBVA). Banks are overwhelmingly funded with local deposits, with sizes and concentration in relation to deposits similar to the pattern for assets.

14. The three largest domestically-owned banking groups have substantial overseas operations. Grupo Aval, Grupo Bancolombia and Grupo Bolívar are regionally systemic financial institutions in Central America. All three groups own overseas banking subsidiaries that are materially important for the group, and systemically important for the host jurisdictions. Colombian banks have a presence in all countries in the Central American region. They have a combined market share (by assets) of 54 percent in El Salvador, 27 percent in Panama, 23 percent in Nicaragua and 19 percent in Honduras. Grupo Suramericana does not own banks, but is considered a regionally systemic insurance group. Colombia is also host to a regionally-systemic financial institution (the Brazilian firm Itaú owns Corpbanca, the sixth largest bank with a 6 percent market share by assets).

15. The large financial groups are part of mixed function conglomerates (see Box 1). These groups have significant financial activities beyond banking—the pension funds, the largest trust vehicles (excepting those created for public investments) and brokerage and investment banking firms are owned by them. The three largest domestic groups, noted above, have common ownership with significant real sector operations across a wide range of economic activities. They have consolidated assets totaling a little over 20 percent of GDP, and account for over 70 percent of total consolidated assets of financial and mixed conglomerates. There are two other domestically-owned conglomerates with mixed functions (including Grupo Suramericana).

16. The four largest banking groups are considered domestically systemic. Systemic importance stems mainly from the size of the groups, as the banking system is predominantly deposit-funded and interconnectedness is generally measured as low. Depending on the methodology, the fifth largest group is also sometimes measured as systemic. There are no explicit additional supervisory or regulatory requirements for systemic firms.

Box 1. Mixed Conglomerates—Implications for Bank Resolution

Mixed conglomerates dominate the Colombian financial system, posing specific challenges from a resolution viewpoint. Interconnectedness and intra-group financial flows give rise to specific channels of contagion, or reputational and confidence impacts, across very different businesses and markets. These potential obstacles to effective resolution of financial firms that are part of mixed conglomerates raise questions for the assessment and implementation of the KAs.

Regulation and supervision are the first line of defense. Rigorous prudential regulation of intra-group exposures (limits on large and related party exposures) and effective conglomerate supervision are essential. This requires having sufficient powers to ensure that those groups are organized transparently, including with respect to separation of financial and nonfinancial activities, and the visibility of nonfinancial firms such as holding companies, essential service providers or overseas operations (including in non-transparent jurisdictions). In this respect, adoption of the draft conglomerates law would be an important step complementing existing powers that grant extensive powers to gather information on all parts of conglomerates, but limit the perimeter for consolidated supervision to supervised entities.

With respect to resolution, key issues include:

- **Institutional cooperation**: Different authorities manage insolvency processes for financial and nonfinancial entities. The SFC has a mandate to preserve financial stability, while the SSoc seeks to protect creditors and minority shareholders through corporate insolvency proceedings. Action by creditors of different entities in a conglomerate can raise coordination challenges, with a risk of undermining resolution strategies or transmitting financial stress to otherwise sound financial institutions. The SFC and the SSoc have coordinated effectively in the past. Information-sharing and cooperation protocols could be formalized in an MOU, with a view to avoiding that legal or operational impediments hinder resolution, and enhancing crisis preparedness.
- **Including holding companies in the bank resolution regime**: The lack of resolution powers over holding companies may prevent the SFC from gaining sufficient control over a failing conglomerate to implement a comprehensive, orderly resolution of the financial sector component. Extending resolution powers to (financial and nonfinancial) holding companies could avoid uncoordinated action and facilitate the carve-out of the financial parts of the conglomerates. Triggers for resolution should still be bank-specific: the weakness of the holding company must have an impact on the viability of the bank before resolution actions are justified.
- **Resolvability**: Complex, opaque corporate structures are difficult to resolve, and powers to require a firm to reorganize to improve resolvability are desirable. Removal of operational or legal impediments to conversion of intra-group claims into equity should be considered. Cross-default clauses in debt or other financial contracts of nonfinancial affiliates could have serious implications for financial stability, and mechanisms to prevent such an impact should be in place. Mechanisms are also needed to ensure that nonfinancial affiliates providing operational services to banks can continue to do so in resolution, or if subject to insolvency.

17. The Colombian financial system has performed well in recent years, and the authorities consider financial stability risks to be contained. Total financial assets doubled in nominal terms between 2009 and 2015, with the banking system growing at a similar pace. Banks appear well capitalized, with the system average CAR standing at over 15 percent. Although Colombia is undergoing an economic slowdown and its currency has recently experienced a large depreciation, credit growth remains positive and banks remain profitable. Nonperforming loans (defined as credits 30 days or more past due) ratios have risen modestly since 2012, but remain low at 3 percent of total loans and coverage ratios are in excess of 100 percent. Dollarization in Colombia is low (about 12 percent of credit institution assets), but is significantly higher in the Central American subsidiaries of the banking groups. The Central American economic cycle is not synchronized with Colombia's; for a start, Central American countries are oil importers, while Colombia is an oil exporter. Subsidiaries in the region are currently supporting the profitability of the internationally-diversified firms. At the same time, housing loans in Colombia have grown quickly in recent years, but NPL ratios remain very low, and prudential standards are conservative (including a 70 percent maximum loan-to-value ratio).

C. Review of Preconditions

Precondition A: A well-established framework for financial stability, surveillance and policy formulation.

18. The MHCP is responsible for issuing prudential regulations, and the SFC for supervision. In coordination with the URF, the SFC plays a critical role in the proposal and development of financial regulation and policy formulation. The SFC also has the authority to issue instructions of mandatory compliance on a broad range of issues, including risk management, loan classification and provisioning, and accounting and reporting. The 2013 Financial Sector Assessment Program (FSAP) found Colombia's financial sector oversight to be comprehensive and well-integrated, with appropriate technical input into the development of regulation and with no evidence of political interference.

19. The CCSSF was established by statute in 2003 to improve coordination among financial safety net entities. It is composed of high-level representatives of the key agencies responsible for financial stability, including the Minister of Finance, the Governor of the BR, the Financial Superintendent, the Managing Director of FOGAFIN and the director of the URF as a permanent observer, meeting at least quarterly. The CCSSF provides a forum for information sharing and coordination, but is not a decision-making body; powers reside in the member institutions. Its main responsibilities are to monitor systemic risk, macro- and micro-prudential policy coordination, crisis preparedness and management, and information sharing. Technical sub-committees follow up on agenda items and reinforce cooperation and communication.

20. The BR can provide emergency liquidity through a lender of last resort facility. Conditions for access to the facility are set by the Board of Governors of the BR, and are laid out explicitly. The current conditions stipulate that the BR must lend to credit institutions that produce an audited statement attesting solvency and providing acceptable collateral, regardless of the BR's

or the SFC's opinion on the viability of the firm. While a repayment plan is required, and a wider range of collateral than government securities is accepted with haircuts, other lending terms including maximum maturity are pre-set. All conditions of lending can be modified by a decision of the BR's Board of Governors.

Precondition B: An effective system of supervision, regulation and oversight of financial institutions

21. The SFC has a broad oversight mandate. The SFC's objectives include to preserve financial stability and confidence, protect depositors, investors and insurance policyholders, consumer protection and capital markets oversight and development. While presenting significant resource and organizational challenges, the SFC's broad mandate also facilitates the development of a consistent supervisory framework across financial activities and access to information for consolidated supervision of financial groups.

22. The 2013 FSAP found that bank supervision had been strengthened in relation to previous assessments, and also identified shortcomings. The Basel Core Principles assessment noted shortcomings, including with respect to the independence of the SFC, legal protection of supervisors, the capital adequacy framework, risk management, the supervisory approach, external audit and consolidated supervision. The SFC enforces a robust framework for assessment of credit risk and asset classification and provisioning, and ensures that banks manage market, liquidity and operational risks prudently. The authorization processes are well designed and thorough, including licensing, transfers of ownership and investments. The SFC has issued resolutions and circulars on risk management, as well as other topics such as valuation, accounting and reporting requirements. The FSAP recommended that the large exposure and related party regulations be made more comprehensive and allow fewer exceptions, most importantly by changing the rules to include unconsolidated local affiliates and available unused credit lines in calculating large exposures and related party lending. Also, the definition of corporate control may create opportunities to bypass the related party limits. A MHCP proposal on large exposures is under review: the SFC provided comments building on the Basel Committee for Banking Supervision methodology for large exposures. The new regulation was expected to be issued in the fourth quarter of 2015.

23. According to the 2013 FSAP the consolidated supervision of financial conglomerates has been significantly enhanced since the creation of the SFC. Improvements in the legal framework have empowered the SFC to conduct onsite exams and obtain necessary information from unsupervised members of financial conglomerates, to order the consolidation of financial statements of companies of these conglomerates, to exchange information with foreign supervisors and to authorize investments in the capital of foreign entities. Supervisory procedures are in place and a dedicated team is responsible for the supervision of financial conglomerates. The scope of the analysis covers the financial conglomerate, as well as the broader mixed conglomerate.

24. The 2013 FSAP recommended adoption of a law extending SFC's full regulatory and supervisory powers to holding companies of financial institutions. The SFC can supervise such firms to the extent that they issue publicly-traded securities (the holding companies of all the large

groups in Colombia do so). Draft legislation currently being considered by the MHCP will enable the SFC to require (i) additional information from nonfinancial firms (including holding companies) in conglomerates that include financial firms; (ii) organizational changes and corporate governance changes where the conglomerate structure is deemed to impede effective supervision; (iii) that the conglomerate or holding company meet prudential regulations; and (iv) that the firm cease activities that could put the financial entities at risk. It will not, however, extend resolution powers to holding companies.

25. **The SFC has established a network of cooperation with other countries to exercise effective cross-border supervision.** There are no legal limitations on supervisory cooperation. Based on several memoranda of understanding (MOUs), SFC engages in regular exchanges of information with these agencies. The SFC is in the process of becoming a full member of the Central American Council of Banking Supervisors (CCSBSO), a forum for coordination with most of the host supervisors of the largest Colombian financial groups.

Precondition C: Effective protection schemes for depositors and clear rules on the treatment of client assets

26. **Colombia has an effective deposit insurance system, managed by FOGAFIN.** The current coverage limit is about US$7,000 (COP 20,000,000) per depositor per institution. All deposit-taking financial institutions are required to participate in the system (except for the cooperatives covered by FOGACOOP), paying quarterly deposit insurance premiums. The scheme covers 98 percent of the depositors in full. As of August 2014, the deposit insurance fund had resources of US$4.6 billion (COP 14.0 trillion), and there is currently no target ratio. In the event that the fund is depleted, FOGAFIN is allowed to raise extraordinary contributions or ask for contributions from the national budget (EOSF art. 319). FOGAFIN has to pay out insured deposits within two months, but is developing the capabilities to start the reimbursements of insured depositors two days after the liquidation order. It has only recently started to collect depositor data directly from member banks for the purpose of deposit insurance. The current long payout timeframe raises concerns as it could contribute to depositor uncertainty in cases of bank failures.

27. **FOGAFIN has specific roles in bank resolution, including providing capital for recapitalization and granting loans and providing guarantees, among others.** SFC must coordinate with FOGAFIN in the execution of some resolution tools. When the liquidation of an institution is decided, FOGAFIN designates and supervises the liquidator. FOGAFIN relies on the SFC to assess the financial soundness of credit institutions. FOGAFIN can provide open bank assistance.

28. **Only certain types of supervised entities, not including banks, are permitted to carry on activities that involve the holding or safeguarding of client assets.** Those entities—brokerage firms, trust companies, investment management companies and pension funds—are subject to rules and SFC instructions on the segregation and identification of client assets that require them to be held separately from the entity’s own funds and proprietary assets. By law, client assets held by a supervised entity do not form part of the insolvency estate in the event of the liquidation of the entity and must be returned to the owners or persons entitled them. The legal

framework also establishes the principle of pro rata distribution where the excluded assets are insufficient to meet those entitlements in full.

Precondition D: A robust accounting, auditing and disclosure regime

29. Colombia recently adopted International Financial Reporting and Auditing Standards (IFRS). The SFC applied the convergence process for moving to IFRS through 2014, and will review implementation of IFRS relative to the previous standards in 2015, providing an opportunity to address any outstanding issues.

Precondition E: A well-developed legal framework and judicial system

30. Colombia has a well-developed legal tradition. Commercial and corporate insolvency law are well-developed, and there is a legal framework for personal insolvencies. Corporate and financial insolvency processes are managed by administrative agencies of the state. The SFC exercises judicial functions on certain matters (e.g. consumer protection), while the Superintendence of Corporations (SSoc), an agency of the Ministry of Commerce, Industry and Tourism, has narrowly-defined judicial powers in corporate insolvency (for nonfinancial firms). Judicial decisions taken by administrative authorities are exempted from the jurisdiction of administrative courts. Administrative courts are in charge of ruling on challenges regarding decisions taken by public bodies or individuals that exercise an administrative function.

Detailed Assessment

31. The table below presents a detailed review of the compliance of the Colombian resolution regime with the KAs. As noted earlier, two key considerations to keep in mind are: (i) the review is based on a draft assessment methodology that is subject to change in future—therefore the assessment may not be directly comparable with future assessments; and (ii) the review pertains only to the banking sector, and ECs pertaining to insurance companies and financial market infrastructures are not reviewed.

Table 1. Colombia: Detailed Assessment Report	
1. Scope	
KA1.1	Any financial institution that could be systemically significant or critical if it fails should be subject to a resolution regime that has the attributes set out in the Key Attributes. The regime should be clear and transparent as to the financial institutions (hereinafter "firms") within its scope. It should extend to: (i) holding companies of a firm; (ii) non-regulated operational entities within a financial group or conglomerate that are significant to the business of the group or conglomerate; and (iii) branches of foreign firms.
KA1.3	The resolution regime should require that at least all domestically incorporated global SIFIs ("G-SIFIs"): (i) have in place a recovery and resolution plan ("RRP"), including a group resolution plan, containing all elements set out in Annex III; (ii) are subject to regular resolvability assessments; and (iii) are the subject of institution-specific cross-border cooperation agreements.
Essential criteria	
EC1.1	The scope of application of the resolution regime and the circumstances in which it applies are clearly defined in the legal framework. Any financial institution that could be systemically significant or critical in the event of failure is subject to a resolution regime.
Description and findings	The law governing the resolution regime is the EOSF, which defines the scope of the regime, and the circumstances under which it applies. The EOSF defines the range of financial companies covered by the law: (i) credit institutions (banks, finance corporations, savings and loan corporations, leasing and factoring companies, and financial cooperatives); (ii) financial services companies; and (iii) insurers and reinsurers, among others (EOSF art. 1-5). The regime applies to all institutions within its scope, including all systemically important financial institutions—no special provisions or exceptions for systemic firms are defined in the law. Nonfinancial firms are not covered by the resolution regime. Some classes of cooperatives that provide financial services only to their members are subject to supervision and resolution by the SES, which has substantively the same powers and responsibilities as the SFC with respect to those institutions. The small size and restrictions on the activities and financial operations of these cooperatives, imply that these institutions are not deemed to present stability risks to the financial system as a whole. **Findings:** The scope of application and circumstances in which the resolution regime apply are clearly defined in the legal framework. All systemically important financial firms fall within the scope of the resolution regime.

EC1.2	The scope of the resolution regime covers the following entities located within the jurisdiction: (i) holding companies of firms; (ii) non-regulated operational entities within a financial group or conglomerate that are significant to the business or continuity of the firm's critical operations; and (iii) domestic branches of foreign firms.
Description and findings	Branches of foreign financial institutions are subject to the same legal regime as domestically incorporated financial entities (Decree Law—DL— 1328 (2009), art 65-68). Mixed function conglomerates are required to hold firms undertaking financial and nonfinancial activities under separate sub-holding companies. Nonfinancial companies providing essential operational services to banks and financial companies are required to be owned (with a controlling stake) by the bank to which they provide services, and to be domiciled in Colombia. The resolution regime does not extend to holding companies or nonfinancial firms related through common ownership (the proposed draft law on conglomerates will not extend resolution powers to these firms). Insolvency proceedings for nonfinancial firms are undertaken by the SSoc. **Findings:** There is no provision in law to enable control or resolution of nonfinancial companies (in particular holding companies) that may materially affect financial companies covered by the resolution regime. In failure, these entities would be subject to corporate insolvency proceedings. Nonfinancial companies are required to be held under different sub-holding companies, and insolvency of the holding company would enable the SFC to act on grounds of the weakness of the shareholder of supervised firms. Upon passage, the draft law on conglomerates would allow the SFC to require changes to conglomerate structures and corporate governance arrangements that impede effective supervision that could have the effect of improving resolvability.
Assessment of KA1	
Comments	The resolution regime covers a broad spectrum of financial entities, including all systemically important banks. Resolution powers are distinct from ordinary corporate insolvency, and while their scope and applicability are generally clear and extend to all banks and systemically important financial companies, they do not extend to holding companies of financial firms, either at the financial group or overall conglomerate level. While this raises the potential that resolution could be impeded, or that resolution of a large, mixed-function conglomerate would be deemed impracticable, in the Colombian case the requirements to organize financial and nonfinancial activities separately could effectively mitigate the problem by allowing separate resolution of the financial firms should the top tier holding company become compromised.

2. Resolution Authority	
KA2.1	Each jurisdiction should have a designated administrative authority or authorities responsible for exercising the resolution powers over firms within the scope of the resolution regime ("resolution authority"). Where there are multiple resolution authorities within a jurisdiction their respective mandates, roles and responsibilities should be clearly defined and coordinated.
KA2.2	Where different resolution authorities are in charge of resolving entities of the same group within a single jurisdiction, the resolution regime of that jurisdiction should identify a lead authority that coordinates the resolution of the legal entities within that jurisdiction.
KA2.3	As part of its statutory objectives and functions, and where appropriate in coordination with other authorities, the resolution authority should: (i) pursue financial stability and ensure continuity of systemically important financial services, and payment, clearing and settlement functions; (ii) protect, where applicable and in coordination with the relevant insurance schemes and arrangements, such depositors, insurance policy holders and investors as are covered by such schemes and arrangements; (iii) avoid unnecessary destruction of value and seek to minimise the overall costs of resolution in home and host jurisdictions and losses to creditors, where that is consistent with the other statutory objectives; and (iv) duly consider the potential impact of its resolution actions on financial stability in other jurisdictions.
KA2.4	The resolution authority should have the authority to enter into agreements with resolution authorities of other jurisdictions.
KA2.5	The resolution authority should have operational independence consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources and be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures. It should have the expertise, resources and the operational capacity to implement resolution measures with respect to large and complex firms.
KA2.6	The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings.
KA2.7	The resolution authority should have unimpeded access to firms where that is material for the purposes of resolution planning and the preparation and implementation of resolution measures.
Essential criteria	
EC2.1	The legal framework clearly identifies one or more resolution authorities and provides it or them with a clear mandate. Where there are multiple resolution authorities, the resolution regime provides for the identification of a lead authority; sets out clear arrangements to coordinate the resolution of affiliated legal entities within that jurisdiction; and provides for a clear allocation of objectives, functions and powers of those authorities.
Description and findings	The law clearly delegates the decision to take resolution actions with respect to supervised firms to the SFC. The SFC can take actions preventive of intervention (EOSF arts. 113, 326), can takeover and control failing institutions (EOSF art. 326 no.5), and can order liquidation

	(EOSF art. 115-116, 326 no. 5). SFC has the initiative in requiring actions from firms, or their shareholders, and in deciding on resolution measures, while FOGAFIN has specific roles in execution of resolutions including in administering intervened institutions, appointment of liquidators and pay out of insured depositors (EOSF art. 320). The SFC initiates recapitalization by requesting this from shareholders: FOGAFIN's board must approve recapitalization using the deposit insurance fund, or the use of guarantees, and FOGAFIN has a consultative role when resolution through merger or acquisition is proposed. The SFC must request, and FOGAFIN provide, an opinion on the appropriateness of using the exclusion of assets and liabilities from a weak entity as a preventive measure to avoid intervention. In the case of mixed function conglomerates, SSoc is responsible for managing the insolvency of nonfinancial firms, including holding companies. There is no designation in the law giving a lead mandate to any one agency. In the recent failure of a mixed group with a significant financial firm and a holding company structure, cooperation was good under *de facto* SFC initiative, and no impediments to orderly resolution emerged from this cause. **Findings:** Resolution authority for banks is vested in SFC, with specific responsibilities given to FOGAFIN. No agency is formally designated as a lead resolution authority with respect to nonfinancial firms, including nonfinancial subsidiaries, nor are there clear arrangements for coordination of resolution of affiliated, nonfinancial legal entities, although this has not emerged as a practical limitation to date.
EC2.2	The statutory objectives and functions of the resolution authority include those set out in KA 2.3, as applicable to the sectoral responsibilities of the authority. Where the exercise of resolution powers requires court involvement, the objectives of that involvement are aligned with the statutory objectives and functions set out in KA 2.3.
Description and findings	SFC's statutory objectives include preservation of public confidence and continuity of essential financial services (EOSF art. 325 no. 1). FOGAFIN is charged with ensuring depositor and creditor confidence and economic stability (EOSF art. 316), by protecting insured depositors up to the specified limit, including through resolution actions determined with the SFC (EOSF art. 320). FOGAFIN is explicitly charged with participating in resolution actions when this can contribute to the recovery of the institution rather than liquidation, subject to meeting its objective of protecting depositor confidence and a least cost test (that is, contributing no more to resolution than would be used to protect depositors in a liquidation—EOSF art. 320 no. 6). In general FOGAFIN is required to conduct its operations in a manner minimizing the use of its capital and reserves (EOSF art. 316). There are no explicit provisions requiring consideration of the potential impact of resolution actions on other jurisdictions. There is no requirement for court involvement in resolution actions. **Findings:** The explicit objectives of the resolution regime include preservation of financial stability and maintenance of public confidence, including in a preventive manner, and with due regard to minimizing the costs of resolution.

EC2.3	The resolution authority is, by law and in practice, operationally independent in the performance of its statutory responsibilities. There are arrangements, procedures and safeguards against undue political or industry influence, which include: (i) internal governance arrangements which promote sound and independent decision-making; (ii) rules and procedures for the appointment and dismissal of the head of the authority, members of the governing body (where relevant) and senior management; and (iii) rules on conflicts of interest.
Description and findings	The SFC is an agency of the state, affiliated to the MHCP, whose authority derives ultimately from the Presidency, as specified in the Constitution. It has separate legal personality and administrative and financial autonomy (EOSF art. 325 no. 1, DL 2225, art. 11.2.1.1.1), and independent authority to regulate, supervise and take resolution actions (EOSF art. 325). The power to appoint and dismiss the Superintendent lies with the President of the Republic. Decree 1817 (2015) describes the suitability requirements for the Superintendent and due process for appointment and dismissal. Superintendents are appointed, after an open application process, for four year terms, concurrent with the Presidential term, and dismissal before the end of the term must be motivated and the reasons made public by decree (although the potential grounds for dismissal are not predetermined). Powers to appoint and dismiss senior staff and manage the work of the SFC are vested in the Superintendent (EOSF art. 329). The law specifies specific internal functions of the agency, including financial and control functions (EOSF art. 330-332). Conflicts of interest are addressed through general rules on suitability of candidates for supervisory positions (including exclusion of shareholders, directors and executive officers of supervised entities), with additional specific provisions for the Superintendent (EOSF art. 337). Internal decision-making processes that could lead to early intervention measures or takeover and control are driven from supervisory staff upwards through three processes of review (including the Advisory Council—see below). There is no evidence of interference in the work of the supervisory staff. Major regulatory decisions, including takeover and control and associated (or pre-emptive) measures, must be consulted with an Advisory Council appointed by the President of the Republic, chaired by the Superintendent of Financial Institutions and including the technical advisor to the Minister of Finance as well as external experts. The Council comprises five members that must be experts in economics, finance, capital markets or law, but are not otherwise subject to explicit fit and proper or conflict of interest requirements. The Council's view is not mandatory and the final decision rests with the SFC (EOSF art. 326; DL 2225, art. 9.1.1.1.1; 11.2.1.4.2). The Advisory Council can meet urgently at the request of the Superintendent, and SFC staff noted that the need for such meetings does not create delays in decision-making. SFC staff note that the Advisory Council has never advised against a recommendation of technical staff, but rather requested better justification for proposed courses of action, and the SFC has never taken action without the final agreement of the Advisory Council. FOGAFIN has independent legal personality, and has operational and financial independence specified in law (EOSF art. 316, 319). The Director of FOGAFIN is appointed (and can be freely removed by) the President of the Republic (Decree 2757, 1991), while the board is presided by the Minister of Finance, and composed of the Governor of the BR, the Superintendent of

	Finance and two nominees of the President (one of whom is from the private sector) (EOSF art. 318). The board makes decisions by simple majority, subject to a quorum of three. The Director has powers to appoint and dismiss senior staff. The general suitability conditions applying to public officials apply to the Director, and conflicts of interest are also addressed through internal codes of conduct. Superintendents have been removed from office in some instances over the past decade, and the current Superintendent is suspended for a ten-month period following a decision of the Attorney General. These events have been subsequent to the SFC taking actions to resolve failing financial institutions or to cases of unlicensed deposit-taking and fraud, and the SFC has a consistent track record of taking action in such circumstances (e.g. five small financial institutions have been subject to takeover and control since the suspension of the current Superintendent). The courts have consistently found in the SFC's favour when their decisions have been challenged. **Findings:** The law grants the SFC and FOGAFIN operational and financial autonomy. The President of the Republic has the power to name and remove the Superintendent and the Director of FOGAFIN. Decree 1817 has strengthened the formal independence and authority of the Superintendent in particular by requiring public justification of the reasons for removal before expiry of their term of office (the same does not apply to the Director of FOGAFIN). The Superintendent and Director of FOGAFIN have wide discretion to manage their institutions, determine policy and select senior staff. Both institutions have internal audit and control functions, and SFC staff have the employment protections afforded to public servants. The SFC consider that the Advisory Council has played a positive role in reviewing proposed resolution decisions, and has not interfered with the fulfilment of the institution's mandate. Its views are not binding on the SFC. Considering the existence of other coordinating bodies (notably the CCSSF), its role is unclear and its composition could create scope, or the perception that there is scope, for the resolution actions to be subject to undue influence. The assessors found little or no recent evidence of interference or influence over intervention and resolution decisions. The SFC and FOGAFIN appear able to make decisions on technical grounds, and have built a track record of winning legal cases challenging resolution actions. Increasing formal safeguards, accompanied with appropriate accountability and transparency requirements, could further bolster independence and help protect against interference of political or private interests, or the perception of such influence.
EC2.4	The resolution authority is accountable through a transparent framework for the discharge of its duties in relation to its statutory responsibilities. This framework includes procedures for reviewing and evaluating actions that the resolution authority takes in carrying out its statutory responsibilities, and the periodic publication of reports on its resolution actions and policies.
Description and findings	The SFC is subject to general provisions on internal control, compliance and reporting for public entities set out in Law 87 (1993), as well as general provisions for disciplinary actions for public officials or those managing public funds (laws 610 (2000), 734 (2002) and 262 (2000)). It is required to report annually on its activities and objectives including through submitting a report to the MHCP and any institution of control that requests (these include Congress, the Presidency, the Comptroller General, Attorney General, and industry and citizen bodies (DL2555 art. 11.2.1.4.2)). SFC also must hold annual public hearings on its activities, and is subject to generally applicable transparency provisions for the public sector (law 1474 (2011), further developed through the accountability policy of the

	National Council of Economic and Social Policy (CONPES document 3654, 2010, and law 1712 (2014)). Administrative acts, including resolution decisions, must be disclosed publicly through circulars or press communications, and in case of takeover and control, in a newspaper of record. Finally, the SFC publishes audited financial statements and budgets. FOGAFIN is supervised by the SFC, and must submit annual reports describing its activities, and audited financial statements. It is subject to external audit by the comptroller general and an audit firm. **Findings:** The law provides for external review of actions taken and requires transparency and accountability. Procedures for formal evaluation of measures taken are not specified explicitly.
EC2.5	The resolution authority has adequate human and financial resources or access to such resources, sufficient to enable it to carry out its resolution functions effectively without undermining its independence, both before and during a crisis.
Description and findings	The SFC's financial resources to cover operating costs and investments derive from fees charged on the industry (decree 4327 (2005) art. 5). FOGAFIN's operating costs can be covered from the reserves constituted with deposit insurance premiums, and various additional sources, including subscription fees, borrowing or the national budget should resources be depleted in the course of its activities (EOSF art. 319). The SFC supervises and is the resolution authority for a large number of diverse financial institutions, representing an organizational and resource challenge. SFC staff are hired according to the regulations and salary scales applicable for public employees. There are no staff or specialized units within the SFC dedicated specifically to resolution. FOGAFIN may hire individuals or firms according to its recruitment needs, in accordance with laws governing private sector entities. Both entities may commission external experts to assist with specific tasks including resolution. **Findings:** Financial and human resources appear adequate to fulfilling the resolution mandates of the SFC and FOGAFIN. While increases in SFC staffing are anticipated, this challenge will grow with the size and complexity of the financial system for both institutions. Work on resolution may also require specialized staff (for example, to work on recovery and resolution planning).
EC2.6	The legal framework provides legal protection through statute for the resolution authority, its head, members of the governing body and its staff and any agents against liability for actions taken or omissions made while discharging their duties in good faith and acting within the scope of their powers, including actions taken in support of foreign resolution proceedings; including indemnification against any costs of defending any such actions.
Description and findings	The legal framework does not provide statutory legal protections to the SFC, the Superintendent or staff of the SFC or FOGAFIN, or the Director or staff of FOGAFIN. However, both institutions have liability insurance for their staff that covers losses, damages and expenses in legal defence in case of judicial or administrative proceedings against them. The National State Legal Defence Agency is charged with defending the interests of the state should the actions of an agency be challenged in the judicial system. Furthermore, a draft law is in preparation that will provide for the state to cover the legal costs of public employees that are sued in the course of executing their duties. The law will not cover damages.

	While nothing impedes claimants from bringing cases against individual officials, the authorities noted that in practice cases were first brought against institutions taking resolution actions, and that the success rate of the SFC in judicial cases brought against them in recent years was in excess of 90 percent. **Findings:** The liability insurance arrangements provide a substantial measure of comfort to staff involved in supervising weak banks or in resolution actions, and the proposed law providing for budgetary financing of legal costs in case of suit further protects officials fulfilling their responsibilities in good faith. There are no statutory legal protections for officials involved in bank resolution, raising the possibility that they could be involved in lengthy and unpredictable legal proceedings (even if their liability is covered). While, in practice, officials noted that the absence of statutory protection has not been a significant concern in taking resolution actions, such protections could strengthen confidence in making resolution decisions, and guide courts in judging cases.
EC2.7	Under the legal framework, the resolution authority has unimpeded access to the domestic premises of firms where that is material for the purposes of resolution planning and the preparation and implementation of resolution measures.
Description and findings	EOSF art. 326 no. 4 provides for unimpeded access of the SFC to all the necessary information to conduct their activities and meet their public policy objectives, including from entities not covered by the SFC's supervisory mandate. With respect to financial holding companies, the fact that they issue securities has enabled SFC to supervise them in this capacity (although resolution powers do not apply). FOGAFIN relies on information provided by the SFC. The proposed law on conglomerates would further bolster these powers, as well as allowing the SFC to request changes to corporate structures that impede effective supervision. **Findings:** The SFC has adequate powers to obtain sufficient information to plan and execute resolution actions. Passage of the draft conglomerate law would further strengthen resolution planning capacity, notably through enabling structural changes to increase transparency and resolvability of complex organizations.
Assessment of KA2	
Comments	Resolution authority for financial firms is defined and delegated in the legal framework, with a delineation of responsibilities between the key agencies. In the case of nonfinancial firms, including holding companies, within mixed function conglomerates, authority for insolvency lies with the SSoc. There is no clear lead authority for resolution in this case, although this has not emerged as significant limitation in recent cases. Regulations governing group structure and limits on intra-group financial operations also promote resolvability. Nonetheless, it is conceivable that insolvency proceedings for nonfinancial firms in a group, most notably holding companies, could impede effective resolution of the associated financial entities and a more formalized mechanism, such as an MOU, for designating a lead authority vis-à-vis SSoc could be desirable. Resources available to the SFC and FOGAFIN to undertake resolution actions are adequate. Arrangements to ensure transparency and accountability of the resolution authority are likewise adequate. Actual and planned coverage of legal costs for officials sued in the course of executing their duties gives a good measure of comfort that decision-makers are protected from undue influence, as does recent experience with law suits against the SFC. Nonetheless, the prospect of personal involvement in lengthy and unpredictable legal proceedings

	could act as a deterrent to prompt action in some cases, and a statutory protection would give potential litigants pause, and provide clearer guidance for judges without closing the channel for legal remedy in cases of bad faith. The assessors found no evidence that the SFC has been subject to undue political or industry influence, while recent resolution decisions appear to have been taken independently, on a technical basis. Formal structures protecting this independence have been improved with the adoption of fixed four year terms for the Superintendent and the requirement for public disclosure of the reasons for dismissal. These could be strengthened further, for example through extension of similar arrangements to the Director of FOGAFIN, allowing for dismissal only for a predetermined list of reasons, or of overlapping rather than concurrent terms with the Presidency. Consideration could be given to the role and composition of the Advisory Council and the board of FOGAFIN, to reduce further the possibility of real or perceived pressures on the resolution authority. Such increased protections could prove particularly valuable should the resolution authority have to deal with weakness in a large, systemically important institution.

3. Resolution Powers

KA3.1	Resolution should be initiated when a firm is no longer viable or likely to be no longer viable, and has no reasonable prospect of becoming so. The resolution regime should provide for timely and early entry into resolution before a firm is balance-sheet insolvent and before all equity has been fully wiped out. There should be clear standards or suitable indicators of non-viability to help guide decisions on whether firms meet the conditions for entry into resolution.
KA3.2	Resolution authorities should have at their disposal a broad range of resolution powers, which should include powers to do the following: (i) Remove and replace the senior management and directors and recover monies from responsible persons, including claw-back of variable remuneration; (ii) Appoint an administrator to take control of and manage the affected firm with the objective of restoring the firm, or parts of its business, to on-going and sustainable viability; (iii) Operate and resolve the firm, including powers to terminate contracts, continue or assign contracts, purchase or sell assets, write down debt and take any other action necessary to restructure or wind down the firm's operations; (iv) Ensure continuity of essential services and functions by requiring other companies in the same group to continue to provide essential services to the entity in resolution, any successor or an acquiring entity; ensuring that the residual entity in resolution can temporarily provide such services to a successor or an acquiring entity; or procuring necessary services from unaffiliated third parties; (v) Override rights of shareholders of the firm in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the firm's business or its liabilities and assets;

	(vi) Transfer or sell assets and liabilities, legal rights and obligations, including deposit liabilities and ownership in shares, to a solvent third party, notwithstanding any requirements for consent or novation that would otherwise apply (see Key Attribute 3.3); (vii) Establish a temporary bridge institution to take over and continue operating certain critical functions and viable operations of a failed firm (see Key Attribute 3.4); (viii) Establish a separate asset management vehicle (for example, as a subsidiary of the distressed firm, an entity with a separate charter, or as a trust or asset management company) and transfer to the vehicle for management and run-down non-performing loans or difficult-to-value assets; (ix) Carry out bail-in within resolution as a means to achieve or help achieve continuity of essential functions either (i) by recapitalising the entity hitherto providing these functions that is no longer viable, or, alternatively, (ii) by capitalising a newly established entity or bridge institution to which these functions have been transferred following closure of the non-viable firm (the residual business of which would then be wound up and the firm liquidated) (see Key Attribute 3.5); (x) Temporarily stay the exercise of early termination rights that may otherwise be triggered upon entry of a firm into resolution or in connection with the use of resolution powers (see Key Attribute 4.3 and Annex IV); (xi) Impose a moratorium with a suspension of payments to unsecured creditors and customers (except for payments and property transfers to central counterparties (CCPs) and those entered into the payment, clearing and settlements systems) and a stay on creditor actions to attach assets or otherwise collect money or property from the firm, while protecting the enforcement of eligible netting and collateral agreements; and (xii) Effect the closure and orderly wind-down (liquidation) of the whole or part of a failing firm with timely pay-out or transfer of insured deposits and prompt (for example, within seven days) access to transaction accounts and to segregated client funds).
KA3.3	Resolution authorities should have the power to transfer selected assets and liabilities of the failed firm to a third party institution or to a newly established bridge institution. Any transfer of assets or liabilities should not: (i) require the consent of any interested party or creditor to be valid; and (ii) constitute a default or termination event in relation to any obligation relating to such assets or liabilities or under any contract to which the failed firm is a party (see Key Attribute 4.2).
KA3.4	Resolution authorities should have the power to establish one or more bridge institutions to take over and continue operating certain critical functions and viable operations of a failed firm, including: (i) the power to enter into legally enforceable agreements by which the authority transfers, and the bridge institution receives, assets and liabilities of the failed firm as selected by the authority;

	(ii) the power to establish the terms and conditions under which the bridge institution has the capacity to operate as a going concern, including the manner under which the bridge institution obtains capital or operational financing and other liquidity support; the prudential and other regulatory requirements that apply to the operations of the bridge institution; the selection of management and the manner by which the corporate governance of the bridge institution may be conducted; and the performance by the bridge institution of such other temporary functions as the authority may from time to time prescribe; (iii) the power to reverse, if necessary, asset and liability transfers to a bridge institution subject to appropriate safeguards, such as time restrictions; and (iv) the power to arrange the sale or wind-down of the bridge institution, or the sale of some or all of its assets and liabilities to a purchasing institution, so as best to effect the objectives of the resolution authority.
KA3.5	Powers to carry out bail-in within resolution should enable resolution authorities to: (i) write down in a manner that respects the hierarchy of claims in liquidation (see Key Attribute 5.1) equity or other instruments of ownership of the firm, unsecured and uninsured creditor claims to the extent necessary to absorb the losses; and to (ii) convert into equity or other instruments of ownership of the firm under resolution (or any successor in resolution or the parent company within the same jurisdiction), all or parts of unsecured and uninsured creditor claims in a manner that respects the hierarchy of claims in liquidation; (iii) upon entry into resolution, convert or write-down any contingent convertible or contractual bail-in instruments whose terms had not been triggered prior to entry into resolution and treat the resulting instruments in line with (i) or (ii).
KA3.6	The resolution regime should make it possible to apply bail-in within resolution in conjunction with other resolution powers (for example, removal of problem assets, replacement of senior management and adoption of a new business plan) to ensure the viability of the firm or newly established entity following the implementation of bail-in.
KA3.7	In the case of insurance firms, resolution authorities should also have powers to: (i) undertake a portfolio transfer moving all or part of the insurance business to another insurer without the consent of each and every policy holder; and (ii) discontinue the writing of new business by an insurance firm in resolution while continuing to administer existing contractual policy obligations for in-force business (run-off).
KA3.8	Resolution authorities should have the legal and operational capacity to: (i) apply one or a combination of resolution powers, with resolution actions being either combined or applied sequentially; (ii) apply different types of resolution powers to different parts of the firm's business (for example, retail and commercial banking, trading operations, insurance); and (iii) initiate a wind-down for those operations that, in the particular circumstances, are judged by the authorities to be not critical to the financial system or the economy (see Key Attribute 3.2 xii).

KA3.9	In applying resolution powers to individual components of a financial group located in its jurisdiction, the resolution authority should take into account the impact on the group as a whole and on financial stability in other affected jurisdictions, and undertake best efforts to avoid taking actions that could reasonably be expected to trigger instability elsewhere in the group or in the financial system.
Essential criteria	
EC 3.1	The legal framework includes clear criteria that provide for timely and early entry into resolution before a firm is balance sheet insolvent, when a firm is no longer viable or when it is likely to be no longer viable and, in either case, has no reasonable prospect of return to viability. Adequate arrangements are in place to support the timely determination of non-viability or likely non-viability.
Description and findings	A "takeover and control" decision, giving control over the property, assets and business of a bank, can be made by the SFC immediately after having heard the Advisory Council, when any of the following events, which in its view make the measure necessary, occurs: a) The bank ceases to comply with payment obligations; b) The bank fails to comply with the requirement to provide specified information such as files, accounting books and other documents to the SFC; c) The legal representative of the bank refuses to testify under oath on matters regarding the bank's activities; d) The bank repeatedly breaches SFC's orders and instructions; e) The bank breaches its bylaws or any law; f) The bank persists in managing its business in an unauthorized or unsafe manner; g) The net worth of the bank is reduced below fifty percent (50 percent) of the subscribed capital; h) There are serious inconsistencies in the information delivered to the SFC which do not allow to properly evaluate the condition of the bank; i) The bank does not meet the minimum capital requirements established in article 80 of the EOSF; j) The bank breaches the recovery plans that have been adopted; k) The bank fails to comply with the order of exclusion of assets and liabilities given by the SFC; or l) The bank fails to comply with the progressive dismantling program that was agreed with the SFC. Moreover, the SFC shall take immediately takeover and control the property, assets and business of a bank when any of the following events occurs: a) Its solvency ratio falls below 40 percent of the required minimum; b) The term to present recovery programs has expired or their goals are not met, in the cases generally determined by the government (EOSF art. 114).

	The SFC can also take precautionary measures—such as those described under EC 3.5 below—to prevent that a bank incurs grounds for the takeover of its property, assets, and businesses or to rehabilitate it, after having consulted with the Advisory Council (EOSF art. 326 no.5).[3] **Findings:** A significant strength of Colombia's regime is that the SFC can take control of a bank upon a wide range of triggers which may precede its balance-sheet insolvency. However, while some of the triggers are based on capital ratios, they are not specifically resolution-related and may therefore not necessarily lead to a resolution action. Nor are specific arrangements in place to support the determination of the non-viability (or likely non-viability) of a bank, based on quantitative or qualitative criteria (e.g. liquidity requirements, reliance on public financial support). The resolution framework could be strengthened by enabling the entry into resolution on a determination of non-viability, and empowering the authorities to use the resolution powers recommended under KA 3 and more specifically EC 3.5. Clear criteria related to non-viability could be introduced in the legal framework to guide the SFC's exercise of discretion in reaching such a determination.
EC3.2	The resolution authority, either directly or through the supervisory authority, has powers to remove and replace senior management and directors of the firm in resolution. It or another authority has the power to pursue claims and recover monies, including variable remuneration, from persons whose actions or omissions have caused or materially contributed to the failure of the firm.
Description and findings	Upon takeover and control of a bank, the position of its managers and directors is terminated, unless the SFC determines otherwise. Such termination is deemed to be a removal for cause of the relevant employment relationship and excludes any right to indemnification[4]. When SFC orders the takeover and control of a bank, FOGAFIN is empowered to appoint a special agent, which can terminate the position of the managers and directors of the bank (EOSF art. 316 (f), D2555 art. 9.1.1.2.4). The SFC also has general sanctioning powers. These powers include the imposition of fines on directors, managers, auditors and legal representatives of a bank, as well as their removal, suspension or disqualification for up to five years. Sanctioning powers can be exercised in a broad range of circumstances, including in case of violation of law or requirements imposed by the SFC. Such officers are also liable for any loss incurred to third parties as a result of their acts or omissions which violate legal requirements (EOSF arts. 208 no. 3, 209 and 210). The amount of fines is automatically updated on an annual basis with reference to the consumer price index.

[3] While the text of EOSF art. 115 states that the takeover and control decision is subject to the approval of the MHCP, the authorities explain that a comprehensive interpretation of the legislation currently in force is that such approval is no longer necessary. Indeed, while the text of art. 115 has remained unaltered, the explanatory statements to the law 795 of 2003 amending the EOSF, refer to the abrogation of the requirement for the MHCP approval. Moreover, as a matter of practice, no approval was sought or given in the recent cases of application of art. 115, nor was this aspect raised by affected parties in litigation. The mission defers to the arguments made by the authorities.

[4] See Article 116.1 of the EOSF. It should be noted that, while this article regulates takeover and control in a liquidation context, Articles 9.1.1.1.1, 9.1.1.1.2 and 9.1.2.1.1 of D2555 provide for the appointment of a special agent in the context of a takeover and control to administer the bank that is specifically relevant for this KA. It may therefore be argued that the power to remove managers and directors could apply also to takeover and control for administration purposes.

	Findings: Takeover and control triggers the removal of a bank's senior management and directors. Should SFC determine not to terminate their appointment, senior management and directors can be removed at any time by the special agent appointed by FOGAFIN. While the SFC does not have specific powers in a resolution context to pursue claims and recover monies from persons whose actions or omissions have caused or materially contributed to the failure of the firm, it has general sanctioning powers which may, in principle, allow for achievement of an equivalent outcome. However, the value of fines that can be imposed by the SFC is not high enough to act as a meaningful clawback arrangement, or affect the incentives of managers and directors. The legislation could be revised so that the SFC can pursue claims and recover monies from persons who have contributed to the failure of the firm.
EC3.3	The resolution authority has powers, directly or indirectly through an administrator, to temporarily take control and operate a firm in order to achieve its orderly resolution. This includes powers to restructure or wind down the firm's operations; terminate, continue or assign contracts; enter into contracts and service agreements to ensure the continuity of essential services and functions; and purchase or sell assets.
Description and findings	The SFC has the power to takeover and control the property, assets and business of a bank with the aim of establishing whether such bank should be liquidated, its viability can be restored or other actions can be taken to ensure that the bank is able to meet its obligations towards depositors and investors. The relevant decision must be taken by the SFC within two months, subject to a one-term extension (EOSF art. 115). Upon the act of takeover and control, the special agent appointed by FOGAFIN acts as the legal representative of the bank and has the authority to conduct the bank's business (D2555, art. 9.1.1.2.4). The special agent may be assisted by a creditors' committee under terms provided by the Government. During the taking of possession for administration or liquidation purposes, the bank may conclude agreements with creditors, subject to the approval of 51 percent of creditors' claims. (EOSF, art. 291 nos. 5 and 15). **Findings:** Through takeover and control and the appointment of a special agent, SFC and FOGAFIN are able to take control of and run a troubled bank. The special agent appointed by FOGAFIN can conduct the bank's business and is therefore has the ordinary powers of management to enter, modify, assign or terminate relevant contracts. The special agent can conduct a number of ordinary transactions that can help preserve the business and franchise value of the troubled bank. It could also terminate contracts if these are not deemed necessary for the purposes of the administration or liquidation (EOSF art. 291 no. 14). However, as noted under EC 3.5, the powers of the special agent are not fully aligned with the goal of achieving orderly resolution, as the purpose of takeover and control is either the rehabilitation or the liquidation of the firm. This may limit the ability of the special agent to perform acts that are conducive to an orderly resolution, and may make some of the decisions recommended under EC 3.3—for example major asset sales, or encumbrances over assets—more vulnerable to legal challenge by shareholders and creditors. Lastly, while the special agent has the obligation to submit to SFC and FOGAFIN all information which may be requested by them (D2555 art. 9.1.1.2.4), no specific provisions require the special agent to comply with instructions which may from time to time be given, within their respective mandate, by the SFC and FOGAFIN. For completeness, it may be useful to add a specific legal provision on the oversight and possible removal of the special agent.

EC3.4	The resolution authority has powers to: (i) require that the firm in resolution temporarily provides, to any successor or acquiring entity to which assets and liabilities of the firm have been transferred, services that are necessary to support continuity of essential services and functions related to those assets and liabilities; (ii) require companies in the same group located within the jurisdiction (whether or not they are regulated) to continue to provide services that are necessary to support such continuity to the firm under resolution or to any successor or acquiring entity at a reasonable rate of reimbursement; and (iii) procure necessary services from unaffiliated third parties.
Description and findings	In takeover and control, the special agent—acting, as noted under EC 3.3, as the legal representative of the bank—may enter into contracts with any successor or acquiring entity for the provision of services and functions. Likewise, through its authority to run the bank's business, the special agent may enter into contractual arrangements with unaffiliated third parties regarding the provision of necessary services. Moreover, services necessary for the continuity of a resolution process (e.g., IT companies, legal or HR firms) are typically provided by companies controlled by the bank or are managed by the bank itself. In this case, the special agent might be able, through corporate control, to instruct such companies to continue to provide or renew services necessary to support the resolution process. This may be generally possible unless special circumstances apply; for instance, the group companies may be subject to insolvency or controlled under joint ventures, in which case the special agent's power to instruct them may not be effectively carried out. Likewise, when such services are offered by the bank itself, the special agent, as its legal representative, can authorize their continued provision. **Findings:** The ability to provide or to receive services necessary for the continuity of essential services and functions in a resolution process hinges on the special agent's power to enter into contractual arrangements, in their capacity as legal representative of the bank taken under official control. In a similar vein, if group entities are controlled by the bank or the bank itself provides essential services, the special agent—as legal representative of the controlling entity—may be able to procure the provision of essential services by such entities or by the bank. However, the law does not provide for mandatory mechanisms enabling the SFC to require companies to continue to provide essential services in a resolution process. This could be problematic to the extent that contractual powers or ownership links do not exist or cannot be effectively exercised, or where relevant services are not offered by the bank that has been intervened. Consideration should be given as to whether, given the current arrangements for the provision of essential services to banks, these mechanisms need to be put in place in the law.
EC3.5	The resolution authority has the power to effect the sale of the institution or its merger with another institution, or the transfer of assets or liabilities (including holdings of client assets) to a third party, asset management vehicle or bridge institution without requiring prior notification or the consent of any interested private party such as the shareholders, depositors or other creditors and clients of the firm in resolution.
Description and findings	The law provides for a variety of tools that can be applied by the SFC as precautionary measures to prevent that a bank is subject to takeover and control, or to seek its rehabilitation (EOSF art. 113). Such tools include (i) partial or total transfer of assets, liabilities and contracts; (ii) merger; and (iii) the exclusion of assets and liabilities.

The adoption of the tools under (i) and (ii) benefits from certain expedited procedural and substantive requirements relative to the ordinary regime for mergers and transfers of assets and liabilities. For instance, the timelines for the notifications to be given to the SFC and to shareholders, prior to the approval of the merger by the shareholders' assembly, are reduced. The transfer of assets and liabilities is subject to a general publication in an official newspaper. Except for fiduciary contracts, the consent of the counterparty is not required in order to effect the transfer. These expedited requirements also apply upon takeover and control. In the case of the merger, the law explicitly states that the failure to comply with the FSC order would prompt a takeover and control decision.

Article 113 of the EOSF refers to the approval of a merger or a transfer by the competent corporate governance bodies (respectively, shareholders' assembly or board of directors) (EOSF, art. 113.5 and 113.9.3 (c)). There is no provision in the legal regime explicitly exempting resolution actions from requiring these consents. Considering this, and more generally that the purpose of a precautionary measure is to rehabilitate a firm rather than to resolve it, shareholders' or board of directors' approval would therefore be required in order to conduct a merger or a transfer of assets. The same conclusion seems to apply with respect to the exclusion of assets and liabilities tool, in relation to which the law only states that directors are liable for failure to comply with the order of exclusion (EOSF, art. 113 no. 11 m). In addition, the requirement to transfer all "liabilities to the public"—that is, at least all deposits—to the receiving institution when using the exclusion tool (EOSF, art. 113 no. 11 b) reduce the possibilities for its effective use, imply that it will almost certainly violate the least cost test required for FOGAFIN resources to be used, and will lead to all uninsured depositors of the bank being protected from loss, possibly with FOGAFIN or taxpayer resources being put at risk. The requirement to transfer assets to a separate trust—rather than directly to a receiving bank—may complicate the execution of a resolution.

EOSF art. 291 no. 10 refers to a number of measures which can be adopted upon takeover and control of a bank, including share capital reduction, mergers, and transfers of assets and liabilities. Also in this case there is no provision explicitly exempting the authorities from the requirement to secure shareholder approval.

No power to conduct the sale of an institution, other than through a voluntary sale, is provided in the law.

The law vests FOGAFIN with the authority to perform a number of acts relevant for the purposes of this EC 3.5, such as acquiring assets of banks, and providing guarantees and loans to facilitate any merger, acquisition, transfer of assets and liabilities (EOSF art. 320).

Findings: The SFC can apply the above-described mechanisms as preventive measures aimed at rescuing a troubled institution. It can also exercise pressure on banks' shareholders and managers as, if they do not consent to a merger or transfer of assets, a formal intervention through takeover and control would take place. While these tools are important, they cannot be characterized as resolution tools, in that (i) they are measures aimed at rehabilitating a troubled institution at a stage prior to non-viability (or likely non-viability) of a bank in order to avoid that a bank be subject to takeover and control; and (ii) as a consequence, ordinary corporate governance rules continue to apply in their deployment, albeit with some limited exemptions, including with respect to the need for shareholder approval.

	Therefore, while it is understood that the failure to comply with an SFC order to perform any of the above-mentioned transactions may lead to takeover and control, the lack of explicit legal provisions overriding the need for shareholder consent implies that the SFC does not have directly binding powers to adopt any of the resolution tools mentioned under EC 3.5. The absence of these powers could significantly hinder the authorities' ability to conduct an orderly resolution in a manner that preserves the public interest, by allocating losses to shareholders and creditors of troubled banks, such as in a transfer of assets and liabilities. Indeed, by passing certain assets (typically, performing loans) and liabilities (typically, deposits) to another, healthier institution and leaving problem assets and liabilities that are not critical for financial stability in the liquidated bank, an effective transfer tool can help preserve public confidence and the business and franchise value of a bank, while eliminating or mitigating fiscal costs or outlays by the deposit insurance fund. Resolution powers under Colombia's framework should be thus enhanced by providing for a clearer authority to conduct a transfer of assets and liabilities to a third party purchaser or to a bridge bank. The law should specifically provide that no consent from shareholders is needed to effect such transfer and that the resolution measure adopted by the SFC is directly binding upon its publication. Likewise, the law should clarify that no creditor notification or approval is necessary for a transfer to have effect, and that publication is deemed to comply with any notification or approval requirement provided under the law.
EC3.6	The resolution authority has the power to transfer assets or liabilities back from the bridge institution to the firm in resolution, the estate of the firm or to an asset management vehicle. The exercise of that reverse transfer power is subject to appropriate safeguards.
Description and findings	In principle, the authorities can establish a bridge institution using their powers to incorporate entities. However, Colombia's legal framework does not provide for a bridge bank tool reflecting the specific requirements under EC3.7.
EC3.7	The resolution authority has the powers set out in KA 3.4 to establish one or more bridge institutions. The legal framework specifies, or gives the resolution authority the power to specify, the terms and conditions under which a bridge institution will be set up and operate as a going concern, including: (i) its ownership structure; (ii) the sources of capital, its operational financing and liquidity support; (iii) the applicable regulatory requirements, including regulatory capital; (iv) the applicable corporate governance framework; and (v) the process for appointing the management of the bridge institution and its responsibilities.
Description and findings	As Colombia's legal framework does not provide for a bridge bank tool, these requirements are not met.
EC3.8	The resolution authority has the power, either directly or indirectly, to establish a separate asset management vehicle for the purposes of managing and winding down assets transferred to it from a firm in resolution.
Description and findings	FOGAFIN is authorized to enter into contracts for the management of loans with financial institutions that are subject to a liquidation process and, in general, to acquire assets from financial institutions (EOSF art. 320 e and n). It may also enter into fiduciary contracts, as well as into contracts for a speedy collection of financial institutions' assets.

	The SFC may also seek the fiduciary administration by another financial institution of the assets and business of a bank, as a precautionary measure to prevent the bank from meeting the grounds for the takeover and control (EOSF art.113). Takeover and control for either administration or liquidation purposes may include measures such as the establishment of temporary mechanisms—not necessarily vested with legal personality—whose purpose is to optimize the management of assets. Assets shall be liquidated on market terms (EOSF, art. 291). **Findings:** FOGAFIN has a general authority to enter into contracts for the management of loans, as well as to acquire loans from banks. The fiduciary administration tool also has some features similar to those required under EC 3.18. However, the above-mentioned mechanisms are recovery tools whose objective is to rescue a troubled institution rather than to resolve it. Colombia's regime does not provide directly binding administrative powers to transfer of assets from an entity in resolution, in the public interest and in a manner that allocates losses to shareholders. Given their characterization as recovery tools, the mechanisms currently provided for may also not allow achievement of a "clean break" from the institution whose assets are transferred; for instance, in fiduciary administration shareholders of the transferring bank may argue that they are entitled to claims arising from the management of the assets.
EC3.10	The resolution authority has the power to give effect to all of the following actions as necessary to absorb losses: (i) cancel or write off equity or other instruments of ownership of the firm; (ii) terminate or write down unsecured and uninsured creditor claims; and (iii) exchange or convert into equity or other instruments of ownership of the firm, any successor in resolution (such as a bridge institution to which part or all of the business of the failed firm is transferred) or the parent company within that jurisdiction, all or parts of unsecured and uninsured creditor claims.
Description and findings	The SFC is authorized to reduce the share capital of a bank upon the circumstances that justify the precautionary measures examined under EC 3.5 above or upon takeover and control, and when such bank has incurred in losses that have reduced its net worth below the paid-in capital. Such reduction is not subject to creditors' agreement (EOSF art. 84 no. 2). In the context of a recovery program, the SFC can impose measures such as forced reduction of the share capital of a bank to an amount not less than the net worth, the mandatory placement of shares without preferential rights, and the forced sale of assets. When a bank fails to comply with a requirement to recapitalize, FOGAFIN can subscribe to an increase in its share capital in an amount which it deems necessary, without approval of the shareholders' assembly. FOGAFIN can also order a reduction of the nominal value of a bank's shares after having consulted the SFC and without the approval of the shareholders' assembly or of the creditors (EOSF art. 320 no. 4). **Findings:** Certain provisions allow both SFC and FOGAFIN to take measures that may have the effect of imposing losses on banks' shareholders, particularly by reducing the share capital of a bank without the approval of the shareholders' assembly. However, in order for this power to be exercised, losses have to be significant, as paid-in capital must have been eroded.

	These powers are broadly in line with one of the features of bail-in (the write-down of equity). The wording of the above-mentioned provisions is, however, quite general and the absence of procedural safeguards may give rise to significant legal uncertainties. For instance, it is not clear which criteria would guide the evaluation of the write-down, nor are there procedures for the appointment of an independent assessor. In addition, no provision allows the authorities to perform other actions necessary for the use of a bail-in power such as the write down of unsecured creditor claims and their conversion into equity. More generally, there is no comprehensive legal framework spelling out the triggers and criteria for the exercise of bail-in powers, nor the related procedural requirements.
EC3.11	The legal framework provides clarity as regards the scope of the bail-in power set out in KA 3.5, that is, the range of liabilities covered and provides for its application in a manner that respects the hierarchy of claims as established in KA 5.1.
Description and findings	Colombia's legal framework does not provide for bail-in powers (see further the general assessment under KA 3).
EC3.12	The legal framework enables the resolution authority to require or bring about, including through application to the court or through another authority, all of the following actions where necessary to give effect to the write-down or conversion, quickly and without the need for existing shareholder consent: (i) the cancellation of share capital and instruments; (ii) the issuance of new shares or other instruments of ownership; (iii) the overriding of pre-emption rights of existing shareholders of the firm; (iv) the issuance of warrants to equity holders or subordinated (and if appropriate senior) debt holders whose claims have been subject to bail-in (to enable adjustment of the distribution of shares based on a further valuation at a later stage); and (v) the suspension of shares and other relevant securities from listing and trading for a temporary period.
Description and findings	As mentioned under EC 3.10, SFC and FOGAFIN can order the reduction, but not the cancellation, of share capital. FOGAFIN can also increase the share capital of a bank by subscribing to newly issued shares. In the context of a recovery program, SFC can order the placement of shares without pre-emption rights. Given the absence of a bail-in power, the legal framework does not enable the authorities to require the issuance of warrants to equity holders or subordinate (and if appropriate senior) debt holders whose claims have been subject to bail-in. The SFC is empowered to suspend the negotiation of shares and other securities, when it has reasonable ground to believe that damage may be caused to investors or to the stock exchange. **Findings:** The authorities have limited powers to perform some of the acts required under EC 3.12, while other powers are not contemplated. For instance, share capital can be reduced, but not cancelled; as a consequence, shareholders may continue to have corporate governance rights over the firm even if written down. The SFC can require recapitalization of an entity through the issuance of new shares as a preventive measure, but cannot issue new shares in the context of a resolution proceeding.

	FOGAFIN can increase the share capital of a troubled institution, but only in connection with a share capital increase subscribed by it. The overriding of pre-emption rights (briefly mentioned in D2555, art. 2.1.5.1.3) is possible in the context of a recovery program rather than in a resolution proceeding. More generally, the actions that can be performed by SFC and FOGAFIN are not linked to the write-down or conversion of creditor claims.
EC3.13	The legal framework enables contingent convertible instruments not triggered prior to entry into resolution to be terminated, written down or converted in accordance with the particular contractual terms immediately on entry into resolution, and enables bail-in powers to be applied to those instruments, or claims resulting from their termination, contractual write-down or conversion, pari passu with instruments of the same type, except if necessary to contain the potential systemic impact of a firm's failure or to maximise the value for the benefit of all creditors as a whole (see KA 5.1).
Description and findings	The legal framework does not enable the SFC to write down or convert contingent convertible instruments. If a bank enters into resolution, the SFC cannot apply bail-in powers with respect to such instruments. Contingent capital instruments have been recently regulated by Decree 1648 (2014) and their loss absorbing features are determined by the SFC. No contingent convertible instruments incorporating such features have been issued so far. **Findings:** Given the absence of a general bail-in regime in Colombia, the legal framework does not enable the authorities to apply bail-in powers to contingent convertible instruments, or to claims resulting from their termination, contractual write-down or conversion.
EC3.16	The resolution authority has the power to impose a moratorium (stay of creditor actions to attach assets or otherwise collect money or property from the firm and suspension of payments).
Description and findings	Upon takeover and control of a bank for liquidation purposes, the SFC can suspend the payment obligations of the bank and the attachment proceedings against such bank (EOSF art. 116 no. 1, d and f). In takeover and control for administration purposes, the SFC must communicate to the courts the suspension of attachment proceedings against the bank and the non-admissibility of new attachment proceedings. In this context, the special agent appointed by FOGAFIN may terminate contracts entered into by the bank (D2555 art. 9.1.1.1.1). **Findings:** The power to impose a moratorium is only provided for in takeover and control under a liquidation proceeding. SFC does not have a similar power upon takeover and control for administration, that is, at an earlier stage when resolution measures should be possible prior to the bank becoming balance sheet insolvent and subject to liquidation.
EC3.18	The resolution authority has the power to effect the closure and orderly wind-down and liquidation of the whole or part of a failing firm, and in such event, has the capacity and practical ability to effect or secure any of the following: (i) the timely pay-out to insured depositors or other protected clients; (ii) the prompt transfer of insured deposits to a third party or bridge institution; (iii) the timely transfer or return of client assets.

Description and findings	The SFC can take over a bank to liquidate it. A special agent is appointed by FOGAFIN to act as liquidator, with powers to represent the bank, establish the inventory of the liquidation estate and collect assets (EOSF arts. 116 and 117, D2555 art. 9.1.1.2.4). FOGAFIN must pay out insured deposits, within two months from the date on which a bank is intervened through takeover and control for liquidation purposes, upon such depositors presenting a valid claim for their reimbursement (External Circular 001 of 2015). FOGAFIN is developing the capacity to start pay-outs to insured depositors within two days from the triggering event. The law does not provide for a prompt transfer of insured deposits to a third party or bridge institution. Banks are generally prohibited from holding client assets (see also description and findings under EC 4.1 below). **Findings:** While it is not possible to effect, upon liquidation, a prompt transfer of insured deposits to a third party, Colombia's framework provides for certain mechanisms aimed at ensuring the closure and orderly wind down and liquidation of a bank. However, the timeframe for the required payouts to insured depositors is excessively lengthy and should be reduced, in line with international best practices, so as to preserve public confidence and depositors' interests.
EC3.20	The legal framework does not restrict the resolution authority from combining resolution actions and does not require it to apply such actions in a particular order.
Description and findings	No specific provision restricts the SFC or FOGAFIN's ability to combine resolution measures or to apply them in a particular order.
Assessment of KA3	
Comments	Colombia's framework includes useful features for managing problem banks. The triggers for takeover and control of a bank are general and allow the authorities to intervene at an early stage of a bank's financial difficulty. Likewise, upon takeover and control, senior managers and directors can be removed and sanctioned by the SFC. However, a number of key elements required by KA 3 are missing in the framework. The mechanisms envisaged by the legislation, which would be typically associated with resolution tools (e.g., sale or exclusion of assets and liabilities, mergers), are, rather, precautionary measures that have the fundamental goal of preventing that a bank be subject to takeover and control. The SFC does not have the authority to adopt a resolution tool (such as restructuring or winding down a firm's operations, allocating losses to shareholders and creditors while ensuring continuity of essential services) through a directly binding measure, without shareholder and creditors' consent. The toolkit available to the authorities for managing problem banks should be reinforced, by enhancing the legal framework to allow explicitly for overriding shareholder and creditor consents, and in particular for transfer powers of selected assets and liabilities to a healthier institution (e.g. a bridge bank or a strong private sector buyer). Indeed, this is an essential tool that helps achieve a cost effective and orderly resolution in the public interest. Colombia's framework also does not include other resolution powers such as bail-in and asset management vehicles that are required for it to comply with the relevant recommendations of KA 3. The question arises, however, as to whether, given the features of Colombia's financial system, it is appropriate—and in line with proportionality principles—to prioritize the introduction of certain resolution powers

	(such as transfer powers), over others such as bail-in and asset management vehicles. Indeed, the amount of debt liabilities issued by banks is still small compared to their deposit liabilities, and is mainly held by pension funds owned by other financial firms, with possible contagion effects should a haircut of their claims or a conversion of debt-to-equity be exercised. Nor does the use of asset management vehicles seem to be a high priority at the current juncture, and targeted legal amendments may allow, in due time, achievement of similar outcomes to those recommended under EC 3.8.
	4. Set-off, Netting, Collateralisation, Segregation of Client Assets
KA4.1	The legal framework governing set-off rights, contractual netting and collateralisation agreements and the segregation of client assets should be clear, transparent and enforceable during a crisis or resolution of firms, and should not hamper the effective implementation of resolution measures.
KA4.2	Subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of the firm in resolution to exercise contractual acceleration or early termination rights provided the substantive obligations under the contract continue to be performed.
KA4.3	Should contractual acceleration or early termination rights nevertheless be exercisable, the resolution authority should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in connection with the exercise of any resolution powers. The stay should: (i) be strictly limited in time (for example, for a period not exceeding 2 business days); (ii) be subject to adequate safeguards that protect the integrity of financial contracts and provide certainty to counterparties (see Annex IV on Conditions for a temporary stay); and (iii) not affect the exercise of early termination rights of a counterparty against the firm being resolved in the case of any event of default not related to entry into resolution or the exercise of the relevant resolution power occurring before, during or after the period of the stay (for example, failure to make a payment, deliver or return collateral on a due date). The stay may be discretionary (imposed by the resolution authority) or automatic in its operation. In either case, jurisdictions should ensure that there is clarity as to the beginning and the end of the stay.
KA4.4	Resolution authorities should apply the temporary stay on early termination rights in accordance with the guidance set out in Annex IV to ensure that it does not compromise the safe and orderly operations of regulated exchanges and FMIs.
Essential criteria	
EC4.1	The legal framework requires firms to maintain effective arrangements for the identification and safeguarding of client assets that facilitate rapid identification of which assets are client assets and support legal clarity about the nature of the claims and entitlements of individual clients to those assets and clear rules as to how losses are shared between clients in the event of shortfalls in a pool of client assets.
Description and findings	Banks are not permitted to carry out custody, trading on behalf of clients or any activity that involves holding client assets. Deposits are treated as bank assets rather than client assets, but banks are required to separate and identify funds representing deposits from the public using account coding specified by the SFC (External Circular 24 of 2014, as modified by

	External Circular 33 of 2014). The rules on safeguarding of client assets (see Section C, Precondition C) therefore apply to those supervised entities that do hold client assets in the course of their permitted activities, namely brokerage firms, trust companies, investment management companies and pension funds. **Findings:** Banks are not permitted to carry on activities that involve holding client assets. The requirements relating to the identification and safeguarding of client assets do not therefore apply to banks.
EC4.2	The legal framework does not establish or contain any statutory or common law set-off rights that arise solely by virtue of either a firm's entry into resolution or the exercise of resolution powers against that firm and prohibits the exercise by counterparties of early termination rights that arise by reason only of the entry into resolution or the exercise of any resolution power against that firm, except as provided in EC 4.3.
Description and findings	The legal framework does not establish or contain any statutory set-off or termination rights as a result of actions taken under EOSF art. 320. Article 301 no. 2 prohibits netting of creditors' liabilities to a bank in liquidation with their claims against that bank. There are no relevant provisions relating to the prohibition of the exercise of early termination rights that might arise by reason of interventions by the authorities prior to liquidation. The legal framework also generally preserves the rights of counterparties to exercise of contractual early termination rights that arise in the event of liquidation or debt restructuring agreements, and provides for settlement finality, for: (i) transactions that are settled through a clearing or settlement system or entered into payment systems; (ii) over-the-counter (OTC) derivatives where at least one of the parties is a supervised entity provided that the derivative instruments are registered in the market register (article 74 of Law 1328 (2009)); and (iii) for repo transactions and other forms of securities financing arrangements (article 14 of Law 964 (2005)). In connection with the takeover and liquidation of the brokerage firm, Interbolsa (November 2012), the SFC suspended the settlement of repo transactions issued by Interbolsa using shares in Fabricato for several months, pending an independent valuation to specify a price for those shares, using powers in article 6, paragraph (c) of Law 964 of 2005 (which enables the SFC to suspend the trading of an instrument to prevent credible risks of a disorderly market or to investors, coupled with article 291 of the EOSF and article 9.1.1.1.2 of Decree 2555 of 2010, which govern the procedures for takeovers by the SFC and the settlement of claims. **Findings:** Although it does not create early termination rights, the legal framework does not prohibit or restrict counterparties to many financial contracts (including OTC derivatives that are registered in a market register and securities financing transactions) from exercising contractual rights to close out and settle in the event of liquidation and of takeover by the SFC for the purposes of liquidation. The SFC has powers that were used in a recent case (Interbolsa) to suspend settlement of repo transactions in circumstances where the SFC had reason to believe that the transactions were being used for the purposes of market manipulation.
EC4.3	Where certain contracts or arrangements (for example, financial contracts) are not subject to the prohibition referred to in EC 4.2, the legal framework provides, in relation to such contracts, for a temporary stay on the exercise of early termination rights that arise by reason only of entry into resolution or in connection with the exercise of any resolution powers, subject to the conditions set out in points (i) to (iii) of KA 4.3 and section 2 of Annex

	IV to the *Key Attributes*. Those conditions include, in particular, that: (i) where the contracts to which the early termination right relates are transferred to another entity or remain with a firm that has been recapitalised in resolution, early termination rights can be exercised after the expiry of the stay period only in the event of a separate default under the terms of the contract that is not based on the entry into resolution or the exercise of resolution powers; (ii) where those contracts remain with the failing firm that has not been recapitalised, any early termination rights that were subject to the stay may be exercised immediately on the expiry of the stay or, if earlier, a notification by the resolution authority that the contracts will remain with that failing firm.
Description and findings	No relevant provision. Moratorium powers to stay enforcement actions only exist in relation to ordinary (nonfinancial) contracts in the event of insolvency proceedings, and Law 1328 (2009) art. 74 explicitly excludes the application of those powers to close out and netting rights in relation to derivatives. **Findings:** There are no powers under the legal framework to impose a temporary stay on the exercise of early termination rights that may arise under financial contracts either in connection with liquidation or a takeover for the purposes of liquidation, or any termination rights that might arise where the adoption of a 'precautionary measure' by the SFC constitutes an event of default under the terms of the financial contract. It is unclear whether measures under arts. 113, 115 or 326 of the EOSF would constitute an event of default under the terms of financial contracts, such as the ISDA Master Agreement for OTC derivatives. There is no clear legal ruling on the question, and no provision that would prohibit the inclusion of a term that such a measure does constitute an event of default in a financial contract to which a supervised entity is a party. Legal opinion is divided as to whether relevant provisions of the ISDA Master Agreement are sufficiently broad to encompass such administrative measures as events of default.
EC4.4	Under the legal framework, any contract with a domestically incorporated financial institution that contains early termination rights is subject to either a prohibition in accordance with EC 4.2 or a temporary stay in accordance with EC 4.3. Where the legal framework includes both kinds of provision, it is clear in advance, for any type of such contract, which provision would apply to those early termination rights in a resolution of the financial institution under the domestic regime.
Description and findings	There are no relevant provisions. For specified types of financial contract, early termination rights may continue to be exercisable in the event of an intervention by the SFC, and are not subject to a temporary stay.
Assessment of KA4	
Comments	The legal framework does not establish or contain any set-off or termination rights as a result of official intervention. However, contractual termination rights under certain types of financial contract remain exercisable where liquidation proceedings, a takeover by the SFC for the purposes of liquidation, or any other measure taken under EOSF arts. 113 or 326 constitutes an event of default that triggers early termination rights. There are no powers to impose a temporary stay on the exercise of such rights. Pending the introduction of transfer powers that comply with the KAs, it is not clear that powers to impose a temporary stay for a short period in accordance with the terms specified in KA 4.3 and I-Annex 5 to the KAs are relevant to support effective application of the intervention tools that are currently available to the authorities. A

	stay of 24 to 48 hours is intended to provide a short period, during which counterparties cannot close out and terminate contracts against a firm in resolution, to enable the resolution authority to carry out a resolution action (such as a transfer). The current Colombian framework does not support the completion of a resolution action during the timeframe of a temporary stay. However, if the framework is revised to include powers based on rapid administrative transfers of assets and liabilities without shareholder and creditor approval (such as purchase and assumption—P&A—or bridge bank), a power to impose a temporary stay on early termination rights would be highly desirable to support their effective use.
5. Safeguards	
KA5.1	Resolution powers should be exercised in a way that respects the hierarchy of claims while providing flexibility to depart from the general principle of equal (pari passu) treatment of creditors of the same class, with transparency about the reasons for such departures, if necessary to contain the potential systemic impact of a firm's failure or to maximise the value for the benefit of all creditors as a whole. In particular, equity should absorb losses first, and no loss should be imposed on senior debt holders until subordinated debt (including all regulatory capital instruments) has been written-off entirely (whether or not that loss-absorption through write-down is accompanied by conversion to equity).
KA5.2	Creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime ("no creditor worse off than in liquidation" safeguard).
KA5.3	Directors and officers of the firm under resolution should be protected in law (for example, from law suits by shareholders or creditors) for actions taken when complying with decisions of the resolution authority.
KA5.4	The resolution authority should have the capacity to exercise the resolution powers with the necessary speed and flexibility, subject to constitutionally protected legal remedies and due process. In those jurisdictions where a court order is still required to apply resolution measures, resolution authorities should take this into account in the resolution planning process so as to ensure that the time required for court proceedings will not compromise the effective implementation of resolution measures.
KA5.5	The legislation establishing resolution regimes should not provide for judicial actions that could constrain the implementation of, or result in a reversal of, measures taken by resolution authorities acting within their legal powers and in good faith. Instead, it should provide for redress by awarding compensation, if justified.
KA5.6	In order to preserve market confidence, jurisdictions should provide for flexibility to allow temporary exemptions from disclosure requirements or a postponement of disclosures required by the firm, for example, under market reporting, takeover provisions and listing rules, where the disclosure by the firm could affect the successful implementation of resolution measures.
Essential criteria	
EC5.1	The resolution authority is required to exercise resolution powers in a way that respects the hierarchy of creditor claims under the applicable insolvency regime.
Description and	Article 295 of the EOSF specifies that a liquidator appointed by FOGAFIN must act in accordance with the law. This means, inter alia, that the liquidator must respect the hierarchy

findings	of creditors. The statutory hierarchy is established by article 299 of the EOSF, articles 1154 and 1399 of the Commercial Code and article 9.1.3.2.4 of D2555. **Findings:** The provisions cited apply in the case of liquidation by a liquidator. Because the current Colombian legal framework does not include resolution powers that result in the allocation of losses to creditors, provision of the kind specified by EC 5.1 is not relevant.
EC5.2	The legal framework requires the resolution authority, as a general principle, to observe the principle of equal (pari passu) treatment of creditors of the same class while permitting departure from that principle where it is necessary for either of the following purposes: (i) to protect financial stability by containing the potential systemic impact of the firm's failure; or (ii) to maximise the value of the firm for the benefit of all creditors.
Description and findings	EOSF art. 295 no. 9(i) requires a liquidator to treat creditors of the same class equally. There is no provision in the legal framework that permits the liquidator to depart from pari passu treatment (other than in limited circumstances where a creditor fails to file a claim within the specified timelines in the liquidation of a financial institution). **Findings:** There is no provision for the liquidator to depart from the pari passu principle other than in the limited circumstances where a creditor fails to prove in the liquidation (which is not relevant to this EC). This is consistent with the fact that the current Colombian legal framework does not include resolution powers that result in the allocation of losses to creditors, so that loss allocation is only possible through liquidation under the insolvency regime for financial institutions.
EC5.3	The legal framework provides that creditors that receive less as a result of resolution than they would have received in liquidation have a right to compensation. The resolution regime specifies how the right to compensation can be exercised.
Description and findings	There are no relevant provisions. The legal framework does not contain the 'no creditor worse off than in liquidation' safeguard. This is consistent with the related facts that the current framework does not include resolution powers that allow loss allocation outside of insolvency and that there is no ability to depart from pari passu treatment of creditors of the same class.
EC5.4	The legal framework protects the directors and officers of a firm in resolution against liability, including to shareholders and creditors of the firm, arising from actions taken when acting in compliance with decisions and instructions of domestic resolution authorities.
Description and findings	Law 222 of 1995, art. 24 limits liability of directors and officers of a firm to losses arising from gross negligence or wilful misconduct. **Findings:** The statutory limitation of liability to cases where the actions of a director or officer constitute gross negligence or wilful misconduct appear to confer the protection required by EC 5.4 in relation to actions taken in compliance with decisions and instructions of one of the Colombian authorities.
EC5.5	The legal framework enables the resolution authority to exercise the powers in KA 3 in a timely manner and without any delay that could compromise the achievement of the objectives mentioned in KA 2.3. Where prior court approval is required, the timelines required for completing court proceedings are consistent with KA 5.4 and are incorporated into resolution planning.
Description and findings	When the SFC decides to effect a takeover and control under article 115 of the EOSF, the takeover happens immediately but the SFC then has two months (extendable to four months) to decide whether the firm should be liquidated or subject to measures to preserve its operations (such as merger, administration or nationalisation). Administration and

	liquidation orders by the SFC come into effect promptly, and do not require a court order; FOGAFIN may also transfer assets and liabilities promptly when a bank has been nationalised. However, delay is likely in cases where transfers of assets and liabilities by an administrator or special agent require approval by governing bodies or shareholders of the institutions involved, or where transfers of assets and liabilities are required to be notified in an official newspaper to give interested parties an opportunity to file an objection. **Findings:** Takeover and control of a bank that meets one or more of conditions set out in art. 114 of the EOSF and the appointment of an administrator or special agent for such a bank may be implemented rapidly. However, the requirement for public notification to give creditors an opportunity to file an objection could cause delays that undermine expeditious resolution.
EC5.6	The legal framework provides that the only remedy that can be obtained from a court or tribunal through judicial review of measures taken by resolution authorities acting within their legal powers and in good faith is compensation, to the exclusion of any remedy that could constrain the implementation of, or reverse, any such measure taken by the resolution authority.
Description and findings	Depositors and other creditors affected by resolution measures taken by authorities may apply to the court for the measures to be reversed where the authorities are acting within their legal powers and in good faith. The powers to reverse measures are founded in the general jurisdiction of the court under administrative law and the principles and procedures are codified in articles 138 and 162-167 of Law 1437 of 2011. There is no specific statutory provision relating to judicial remedies in relation to resolution actions. Compensation is also available as a remedy and is, in practice, the remedy that is generally sought and awarded given the long timeframe for a judicial ruling on a legal challenge to resolution actions. While there is a precedent (2007) for the court at first instance reversing recapitalisation orders at the request of shareholders, that decision was reversed by the Constitutional Court in 2011 on the grounds that the measure was not ultra vires (and compensation was granted). **Findings:** Reversal of resolution measures is possible under the general administrative jurisdiction of the court (rather than specific statutory provision relating to resolution) and does not depend on a finding that the action was not within the authorities' powers or taken in bad faith. However, that remedy is rarely sought or awarded, and compensation is the usual remedy where a challenge is upheld. Moreover, the SFC report that the courts generally grant the authorities a broad margin of discretion and defer to its technical expertise and judgment when the actions challenged are within its legal powers. Legal opinion suggests that there would probably be no constitutional obstacle to limiting the available remedies under the statutory framework to compensation in cases where an authority is acting within it legal powers and in good faith.
EC5.7	The legal framework allows for temporary exemptions from disclosure requirements, for example, under market reporting, takeover provisions and listing rules, or the postponement of a disclosure, by a firm to be granted in circumstances where that disclosure could affect the successful implementation of resolution measures.

Description and findings	Limited relevant provision. D2555 art. 5.2.4.1.7 gives the SFC, at the request of an issuer, the power to suspend the obligation of the issuer to comply with market disclosure requirements for a temporary period when it could damage the issuer or compromise market stability. EOSF art. 208, no. 1(d) provides for a power of directed disclosure as an aspect of the sanctions regime for the SFC, and the authorities report that this power enables the SFC to determine when information relating to a firm should be disclosed, having regard to the risk that disclosure might compromise the solvency or financial soundness of information relates or supervised entities collectively. That interpretation is based on Law 1328 (2009) art. 24, which provides that directed disclosure is available in connection with, among other things, recovery measures and preventative measures to avoid a takeover contemplated in EOSF art. 113. **Findings:** The specified powers provide some scope for the SFC to confer temporary exemptions from market disclosure obligations for a firm in resolution in certain circumstances, but do not cover the full range of cases where such an exemption might be desirable to support the successful implementation of resolution measures. The power to grant exemptions should be at the initiative of the authority rather than dependent on a request by the supervised entity (although this procedural obstacle may be mitigated in cases where the SFC has taken possession of bank and controls is management), and the own-initiative power is not available for all the resolution measures under the current regime.
Assessment of KA5	
Comments	The Colombian framework requires that the statutory hierarchy of claims be respected, and that creditors of the same class be treated equally. Directors and officers of banks in resolution appear to be protected from liability arising from actions taken in compliance with decisions and instructions of a resolution authority. The legislation establishing the resolution regime does not provide for judicial actions that reverse or constrain the implementation of resolution measures taken by authorities acting within their legal powers and in good faith, to the extent that it does not provide for judicial remedies in connection with resolution measures (KA 5.5). Such measures may be reversed by the court pursuant to its general jurisdiction under administrative law, although in practice the courts have generally restricted remedies to financial compensation. However, there is no power for an authority to depart from *pari passu* treatment and neither is there a “no creditor worse off than in liquidation” safeguard. The powers for the SFC to temporarily exempt a bank that is subject to intervention measures from complying with market disclosure obligations are limited and are either conditional on a request from the bank or are not available in relation to all resolution measures. The absence of these safeguards is in general consistent with the absence of some of the resolution powers specified in KA 3. The various legal safeguards specified in KA 5 are relevant where the resolution powers exercisable by a resolution authority result in interference with property rights and the allocation of losses. A regime would not be expected to give effect to safeguards for creditors in isolation from the KA 3 resolution powers.

6. Funding of Firms in Resolution	
KA6.1	Jurisdictions should have statutory or other policies in place so that authorities are not constrained to rely on public ownership or bail-out funds as a means of resolving firms.
KA6.2	Where temporary sources of funding to maintain essential functions are needed to accomplish orderly resolution, the resolution authority or authority extending the temporary funding should make provision to impose any losses incurred on (i) shareholders and unsecured creditors subject to the "no creditor worse off than in liquidation" safeguard (see Key Attribute 5.2); and recover them (ii) if necessary, from the financial system more widely.
KA6.3	Jurisdictions should have in place privately-financed deposit insurance or resolution funds, or a funding mechanism with ex post recovery from the industry of the costs of providing temporary financing to facilitate the resolution of the firm.
KA6.4	Any provision by the authorities of temporary funding should be subject to strict conditions that minimise the risk of moral hazard, and should include the following: (i) a determination that the provision of temporary funding is necessary to foster financial stability and will permit implementation of a resolution option that is best able to achieve the objectives of an orderly resolution, and that private sources of funding have been exhausted or cannot achieve these objectives; and (ii) the allocation of losses to equity holders and residual costs, as appropriate, to unsecured and uninsured creditors and the industry through ex-post assessments, insurance premium or other mechanisms.
KA6.5	As a last resort and for the overarching purpose of maintaining financial stability, some countries may decide to have a power to place the firm under temporary public ownership and control in order to continue critical operations, while seeking to arrange a permanent solution such as a sale or merger with a commercial private sector purchaser. Where countries do equip themselves with such powers, they should make provision to recover any losses incurred by the state from unsecured creditors or, if necessary, the financial system more widely.
Essential criteria	
EC6.1	The legal framework establishes arrangements to provide temporary financing to support the use of the resolution powers set out in KA 3, which include one or a combination of the following: (i) a privately funded resolution fund; (ii) a privately funded deposit protection scheme; (iii) a privately funded fund with combined deposit protection and resolution functions; (iv) recourse to public funds, coupled with a mechanism for recovery from the industry of any losses incurred in the provision of public funds.
Description and findings	FOGAFIN is *ex ante* privately funded through deposit insurance premiums, and can be used for deposit protection and resolution functions (EOSF art. 320 no. 1). FOGAFIN resources can be used to provide temporary solvency or liquidity support, as well as to fund resolution actions. Registration fees, commissions, profits and interest yield from operations also accrue to the fund, and FOGAFIN can borrow domestically or externally. If the deposit insurance

	reserve has insufficient funds to adopt a specific measure, honor a guarantee or absorb a loss, FOGAFIN can increase deposit premiums (including above the limit specified in the law) to recover the funds from the industry over time, or seek funding from the government budget or state guarantees on its borrowing (EOSF art. 319). The law specifies that private sources of funding should be used in preference to drawing on public funds (EOSF art. 320 no. 6c). There is no explicit requirement to repay government funding, nor is there a mechanism specified for recovering losses from the industry in order to do so. In the past, funding from the government has been repaid from funds recovered through sale of assets or re-privatization of nationalized firms. **Findings:** The resolution regime provides for resources to fund resolution actions from private sources, through deposit insurance premiums. Recourse to budgetary funding through loans or state-guaranteed borrowing, if needed, is also allowed. There is no explicit mechanism to recover losses incurred in the provision of public funding from industry sources.
EC6.2	If the resolution regime provides for the provision of temporary recourse to public funds under point (iv) of EC 6.1, it also ensures that such financing is made available only if: (i) it has been assessed as necessary for financial stability by supporting the implementation of a resolution option that best achieves the statutory objectives of resolution (see KA 2.3); (ii) private sources of funding have been exhausted or would not achieve those objectives; and (iii) losses are allocated to shareholders and, as appropriate, to unsecured and uninsured creditors (in accordance with the hierarchy of claims) and, if necessary, public funds are recovered from the financial industry through assessments or other mechanisms.
Description and findings	EOSF art. 319 limits the use of the resources of the deposit insurance reserve to meeting its statutory objectives, which are in line with the domestic financial stability objectives of KA 2.3. EOSF art. 319 no. 2(d) specifies that only if the reserve is or will be depleted should FOGAFIN develop a plan to raise deposit insurance premiums or seek budgetary appropriations (or state guarantees on its own borrowings). The legal framework makes no specific provision that losses will be allocated first to shareholders or unsecured, uninsured creditors before deposit insurance reserve funds can be used. EOSF art. 320 authorizes FOGAFIN to undertake open-bank assistance. Resolution actions must be shown to be least costly for the fund, and not require funding in excess of what would be paid out to depositors in liquidation, subject to a systemic risk override requiring a simple majority vote of FOGAFIN's board. **Findings:** Among the tools available for dealing with weak banks before takeover and control, several, such as exclusion of assets and liabilities and subscription of junior capital instruments, imply that shareholders and unsecured creditors could be protected from loss with public funds.
EC6.3	If the resolution regime includes the option of placing a firm under temporary public ownership as part of a resolution action, such an option is subject to the following conditions: (i) the failure of the firm, or its resolution through all other options, would cause financial instability; and

	(ii) there are clear rules regarding the allocation of losses to shareholders and creditors or, if necessary, recovery from financial system participants more widely.
Description and findings	FOGAFIN can take control of a firm through equity injection diluting the current owners to below 50 percent control, either as a preventive measure designed to avoid the firm triggering conditions for takeover and control, or as part of a resolution action once control has been assumed. There is no requirement to justify such a strategy on financial stability grounds (EOSF art. 320). There are no specific provisions regarding the allocation of losses to shareholders and creditors. **Findings:** The legal framework allows for temporary public ownership of failing financial firms, without placing specific constraints on this resolution option, or requiring shareholders, creditors or the wider financial system to absorb losses first.
Assessment of KA6	
Comments	Resolution funding is provided through the deposit insurance reserve, which is privately funded by the industry *ex ante*, with possible recourse to public resources should the fund be depleted. There is no requirement or mechanism for recovering losses incurred by the public sector from the industry, although public funding has been repaid in practice in the past through recoveries on the assets. The legal framework does not place significant obstacles to the use of public funds in resolution beyond the requirement that the deposit insurance reserve is used up first. Similarly, constraints to application of a systemic exception allowing FOGAFIN to lift the least cost test in deciding on the use of its funds are limited to a simple majority of FOGAFIN's board. There are no provisions requiring that shareholders or unsecured, uninsured creditors absorb losses before resolution funding is provided by FOGAFIN, including through measures that would effectively protect these creditors from loss.
7. Cross-Border Cooperation	
KA7.1	The statutory mandate of a resolution authority should empower and strongly encourage the authority wherever possible to act to achieve a cooperative solution with foreign resolution authorities.
KA7.2	Legislation and regulations in jurisdictions should not contain provisions that trigger automatic action in that jurisdiction as a result of official intervention or the initiation of resolution or insolvency proceedings in another jurisdiction, while reserving the right of discretionary national action if necessary to achieve domestic stability in the absence of effective international cooperation and information sharing. Where a resolution authority takes discretionary national action it should consider the impact on financial stability in other jurisdictions.
KA7.3	The resolution authority should have resolution powers over local branches of foreign firms and the capacity to use its powers either to support a resolution carried out by a foreign home authority (for example, by ordering a transfer of property located in its jurisdiction to a bridge institution established by the foreign home authority) or, in exceptional cases, to take measures on its own initiative where the home jurisdiction is not taking action or acts in a manner that does not take sufficient account of the need to preserve the local jurisdiction's financial stability. Where a resolution authority acting as host authority takes discretionary national action, it should give prior notification and consult the foreign home authority.

KA7.4	National laws and regulations should not discriminate against creditors on the basis of their nationality, the location of their claim or the jurisdiction where it is payable. The treatment of creditors and ranking in insolvency should be transparent and properly disclosed to depositors, insurance policy holders and other creditors.
KA7.5	Jurisdictions should provide for transparent and expedited processes to give effect to foreign resolution measures, either by way of a mutual recognition process or by taking measures under the domestic resolution regime that support and are consistent with the resolution measures taken by the foreign home resolution authority. Such recognition or support measures would enable a foreign home resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the host jurisdiction, as appropriate, in cases where the firm is being resolved under the law of the foreign home jurisdiction. Recognition or support of foreign measures should be provisional on the equitable treatment of creditors in the foreign resolution proceeding.
KA7.6	The resolution authority should have the capacity in law, subject to adequate confidentiality requirements and protections for sensitive data, to share information, including recovery and resolution plans (RRPs), pertaining to the group as a whole or to individual subsidiaries or branches, with relevant foreign authorities (for example, members of a CMG), where sharing is necessary for recovery and resolution planning or for implementing a coordinated resolution.
KA7.7	Jurisdictions should provide for confidentiality requirements and statutory safeguards for the protection of information received from foreign authorities.
Essential criteria	
EC7.1	The legal framework does not create any material barriers to cooperation with foreign resolution authorities, including by providing for automatic action as a result of official intervention or the initiation of resolution or insolvency proceedings in other jurisdictions that could undermine a cooperative solution.
Description and findings	Under the EOSF and related decrees, the SFC is not subject to any limitations on cooperation with foreign resolution authorities. EOSF art. 326 no. 8 empowers the SFC to cooperate and exchange information with home or host supervisory authorities in other jurisdictions. The legal framework does not specify any actions to be taken upon notice or knowledge of official intervention or the initiation of resolution or insolvency proceedings in other jurisdictions that may affect financial institutions regulated in Colombia. As such, the legal framework does not trigger any automatic action within Colombia that could interfere with a cooperative solution relating to cross border resolution or insolvency proceedings. Notice or knowledge on the part of SFC of foreign resolution proceeding affecting a parent or affiliate of a supervised entity would trigger (i) the exercise of SFC's investigatory and supervisory powers, and (ii) the option for the SFC to communicate with the foreign supervisory authority (EOSF art. 326, nos. 5 and 8, and relevant MoUs). While the SFC has supervisory powers to follow up on any notice or knowledge of actions taken by other jurisdictions that could affect supervised entities in Colombia, there is no requirement to take control or exercise specific resolution actions. However, if there are independent grounds under the EOSF for the SFC to act with respect to the local entity, the existence of a foreign resolution proceeding would not limit the SFC's powers (see EC 7.2 and EC 7.5 below).

	Findings: There are no provisions in the EOSF or other regulations that limit SFC's ability to cooperate with foreign resolution authorities. While the SFC does not have affirmative obligations requiring cooperation with other authorities on resolution matters, the EOSF empowers the SFC to coordinate with foreign supervisory authorities. The MoUs between the SFC and most home and host jurisdictions provide for exchange of information and consultation on an ongoing basis and in crisis situations. There are no triggers for automatic action in Colombia in response to action by foreign authorities that would have the effect of precluding cooperative solutions.
EC7.2	The legal framework of the jurisdiction under review establishes clear and transparent mechanisms or processes through which actions by a foreign resolution authority can be given prompt legal effect in the jurisdiction under review, either by way of recognition or by taking supportive measures under the domestic resolution regime. Those mechanisms or processes are sufficient to enable such legal effect to be achieved whatever the form of a foreign firm's establishment or operations in the jurisdiction under review (for example, subsidiary, branch or only assets within the jurisdiction) and, where a firm is being resolved under the law of a foreign jurisdiction, enable the foreign resolution authority to gain rapid control over the firm (branch or shares in a subsidiary) or its assets that are located in the jurisdiction under review.
Description and findings	There is no legal framework for the recognition of foreign resolution actions. While there are MOUs in effect or under discussion with all home and host jurisdictions material for Colombia, they contemplate information sharing and consultation on matters of supervision, and do not specifically address cross-border effects of resolution actions. However, the SFC has the legal capacity to take supportive measures to give effect to foreign resolution measures based on its resolution powers over local supervised subsidiaries and branches of foreign firms, under EOSF art. 326 no. 5. Under current law, the SFC would take foreign resolution measures into account in determining whether any of the grounds for action by the SFC are present, and in determining which resolution measures may be appropriate. The extent to which foreign resolution measures have effect in Colombia would thus be determined by the SFC, based on its assessment of the condition of the supervised entity and the preventative and resolution powers available under Colombian law (including requiring the recapitalization of a supervised entity). The Colombian authorities do not possess some of the resolution powers available in other jurisdictions such as transfer of assets, bail-in or stays of early termination rights, and could therefore not give them effect in Colombia. There is no provision requiring "prompt" action in either domestic or cross-border resolution cases. Colombian regulation does not provide a mechanism for a foreign resolution authority to gain rapid control of the supervised entity or assets that are in Colombia. However, where there is no related supervised entity in Colombia to bring the case within the scope of the powers of the SFC, the procedures for the recognition of foreign insolvency measures under Law 1116 (2006) may provide a means for giving effect to foreign resolution actions in relation to assets located in Colombia. The provisions under Law 1116 (2006) provide a mechanism for giving effect to foreign insolvency measures in Colombia for non-supervised entities, following the guidance of the Model Law on Cross-border Insolvency developed by the United Nations Commission on International Trade Law. **Findings:** There is no legislative mechanism for expedited recognition or implementation of

	foreign resolution measures in Colombia. Moreover, certain resolution powers relating to asset transfers, stays and bail in are not available in Colombia, and would not be given effect. However, the SFC has the power and authority to take supportive action provided that the grounds for intervention in the supervised entity are met under local law. Notice of home country resolution action would trigger an inquiry by the SFC of the subsidiary or branch in Colombia, but the determination of whether and what resolution action may be taken remains a decision within Colombian law subject to the same procedural and substantive rules as those that govern domestic entities. The Colombian authorities have noted that the significant differences in legal and regulatory systems among jurisdictions and the primary obligation of the SFC to ensure the safety and soundness of supervised entities and the Colombian financial system require a case by case analysis of the effect that might be given to foreign resolution actions. The need to follow these procedures may delay implementation of supportive action.
EC7.3	Recognition or support of foreign measures is provisional on equitable treatment in the foreign resolution proceeding of creditors of the firm in resolution that are located in the jurisdiction under review.
Description and findings	As noted, there are no provisions for the recognition of resolution measures taken by foreign authorities. The support measures available to the SFC to support foreign resolution action would be subject to safeguards applicable under local law. **Findings:** The SFC is required to safeguard the interests of all depositors and creditors of supervised institutions (EOSF art. 326, no.5). Support for foreign resolution measures that do not provide for equitable treatment of creditors located in Colombia would be inconsistent with these provisions. The SFC is not obliged to recognize or support foreign measures if these discriminate against creditors located in Colombia.
EC7.4	The resolution regime enables the resolution authority to exercise resolution powers with respect to the local branch of a foreign firm to support a resolution carried out by a foreign home authority and on its own initiative where the home authority is not taking effective action or is acting in a manner that does not take sufficient account of the need to preserve financial stability in the local jurisdiction.
Description and findings	The SFC has resolution powers over supervised entities, including branches of foreign firms that are not conditional on the actions of foreign authorities. The adoption by a home jurisdiction of resolution measures affecting a branch in Colombia would not, in itself, trigger resolution actions, but would trigger an SFC inquiry into the soundness of the supervised entity. If conditions of EOSF art. 114 are met or might be met if no action were taken, the SFC, in consultation with the Advisory Council, could determine that resolution measures taken by the home authority would be given effect with respect to the local branch provided that such measures were consistent with those available to the SFC. **Findings:** The SFC has broad powers and discretion to act with respect to branches. However, nothing in the existing legislation (nor in the MOUs), provides for any explicit criteria that the SFC might use in determining the nature and extent of its support. Nor is the authority of the SFC to initiate resolution measures with respect to supervised branches in Colombia constrained by or conditional on foreign actions. Within this framework, the SFC has the authority to (i) consider the effect that might be given in Colombia to the measures adopted by the home jurisdiction, or (ii) take such action as the SFC determined to be necessary on its own initiative to safeguard the safety and soundness of the supervised entity, the interests of its depositors and creditors and the Colombian financial system.

EC7.5	The resolution regime requires that, prior to exercising resolution powers in relation to a local subsidiary or branch of a foreign firm on its own initiative and independently of action taken by the home authority, the resolution authority give prior notice of the intended measures to and consult the home resolution authority of the firm.
Description and findings	Colombian law does not require the SFC to give prior notice to the foreign home resolution authority before exercising resolution powers over supervised entities in Colombia. However, the MoUs signed by the SFC with most home and host jurisdictions include provisions for the authorities of each jurisdiction to notify each other of events affecting the interests of supervised entities. **Findings:** There are no specific provisions requiring coordination with foreign authorities, but EOSF art. 326, no. 8 empowers the SFC to undertake such coordination. The MoUs provide a framework for the exchange of information among supervisory authorities and early notice of crisis situations. As a practical matter, the SFC is in touch with home regulators of subsidiaries and branches of supervised entities in Colombia through its usual supervisory activities, and would use these channels and those provided by the MoUs to share information with foreign authorities.
EC7.6	The resolution regime does not discriminate between creditors of the same class on the basis of their nationality, the location of their claim or the jurisdiction where their claim is payable.
Description and findings	In accordance with Article 300 of the EOSF, claims are required to be paid in accordance with the hierarchy of claims determined by the applicable priority rules that govern the relevant credit obligations. It should be noted that in order to ensure that adequate assets are available in Colombia to cover the claims of creditors resident in Colombia of branches of foreign firms, EOSF art. 45B no. 2 provides that creditors resident in Colombia have a preferential right to the assets of the foreign branch in the event insolvency measures are initiated that affect the branch or its foreign parent. However, there are currently no branches of foreign firms in Colombia. **Findings:** The resolution framework in Colombia does not discriminate among creditors on the basis on nationality, location of claim or payment, except for the provision relating to treatment of Colombian creditors of branches of foreign banks in Colombia. Any legal provisions that would allow discrimination among creditors on the basis of nationality are inconsistent with KA7.4. However, as there are currently no foreign branches in Colombia, this provision has no practical effect.
Assessment of KA7	
Comments	The SFC has the requisite authority to coordinate with other jurisdictions, and has used this power to enter into MOUs with relevant home and host jurisdictions. There is no provision for the recognition of determinations that might have been made by a foreign resolution authority, or any specific provision regarding support for resolution measures adopted by foreign resolution authorities. If the SFC receives notice of a foreign resolution action, it would initiate an inquiry into the condition of the affected supervised entity in Colombia. The same substantive and procedural resolution rules apply to subsidiaries and branches of foreign firms as apply to domestic entities. The SFC would determine, through these statutory procedures, if intervention is required and what resolution actions would be appropriate under the circumstances to support the foreign resolution measure.

	Not all resolution measures are available under the EOSF. Specifically, foreign bail-in measures and stays on early termination rights under financial contracts could not be given effect. There are no specific expedited procedures available under the existing laws for addressing cross-border resolution. Nonetheless, given the current structure of the Colombian market, the limited mechanisms available to support foreign resolution measures appear adequate to enable orderly implementation of resolution actions.
8. Crisis Management Groups	
KA 8.1	Home and key host authorities of all G-SIFIs should maintain CMGs with the objective of enhancing preparedness for, and facilitating the management and resolution of, a cross-border financial crisis affecting the firm. CMGs should include the supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes of jurisdictions that are home or host to entities of the group that are material to its resolution, and should cooperate closely with authorities in other jurisdictions where firms have a systemic presence.
Essential criteria	
EC8.4	The jurisdiction under review (if it is not itself the home jurisdiction) participates in the CMG for one or more G-SIFIs when invited.
Description and findings	Colombia is not home jurisdiction to a G-SIFI, but at the time of writing was host to four G-SIFIs (BBVA, Citigroup, JP Morgan Chase and Santander). The Colombian authorities have not been invited by any home jurisdiction to participate in a CMG. The legal framework would allow the authorities to join a CMG if they were to be invited, and they have indicated that they would consider doing so.
Assessment of KA8	
Comments	In principle, Colombian authorities could participate in CMGs, if they were invited by the home authority to join.
9. Institution-Specific Cross-Border Cooperation Agreements	
KA9.1	For all G-SIFIs, at a minimum, institution-specific cooperation agreements, containing the essential elements set out in Annex I, should be in place between the home and relevant host authorities that need to be involved in the planning and crisis resolution stages. These agreements should, inter alia: (i) establish the objectives and processes for cooperation through CMGs; (ii) define the roles and responsibilities of the authorities pre-crisis (that is, in the recovery and resolution planning phases) and during a crisis; (iii) set out the process for information sharing before and during a crisis, including sharing with any host authorities that are not represented in the CMG, with clear reference to the legal bases for information sharing in the respective national laws and to the arrangements that protect the confidentiality of the shared information; (iv) set out the processes for coordination in the development of the RRPs for the firm, including parent or holding company and significant subsidiaries, branches and affiliates that are within the scope of the agreement, and for engagement with the firm as part of this process; (v) set out the processes for coordination among home and host authorities in the conduct of resolvability assessments;

	(vi) include agreed procedures for the home authority to inform and consult host authorities in a timely manner when there are material adverse developments affecting the firm and before taking any significant action or crisis measures; (vii) include agreed procedures for the host authority to inform and consult the home authority in a timely manner when there are material adverse developments affecting the firm and before taking any discretionary action or crisis measure; (viii) provide an appropriate level of detail with regard to the cross-border implementation of specific resolution measures, including with respect to the use of bridge institution and bail-in powers; (ix) provide for meetings to be held at least annually, involving top officials of the home and relevant host authorities, to review the robustness of the overall resolution strategy for G-SIFIs; and (x) provide for regular (at least annual) reviews by appropriate senior officials of the operational plans implementing the resolution strategies.
KA9.2	The existence of agreements should be made public. The home authorities may publish the broad structure of the agreements, if agreed by the authorities that are party to the agreement.
Essential criteria	
EC9.3	If the jurisdiction under review is invited by the home jurisdiction to be party to a COAG for a G-SIFI it has concluded or is engaging in good faith negotiations towards the conclusion of an agreement with other members of the CMG.
Description and findings	Colombia is host to four G-SIFIs. However, the Colombian authorities have not been invited by any home jurisdiction to sign a COAG. The legal framework allows the Colombian authorities to negotiate and sign a COAG if requested, and they have expressed that they would consider doing so.
Assessment of KA9	
Comments	In principle, the Colombian authorities could negotiate and sign COAGs with foreign authorities, if they were invited to join such agreements.
10. Resolvability Assessments	
KA10.1	Resolution authorities should regularly undertake, at least for G-SIFIs, resolvability assessments that evaluate the feasibility of resolution strategies and their credibility in light of the likely impact of the firm's failure on the financial system and the overall economy. Those assessments should be conducted in accordance with the guidance set out in Annex II.
KA10.2	In undertaking resolvability assessments, resolution authorities should in coordination with other relevant authorities assess, in particular: (i) the extent to which critical financial services, and payment, clearing and settlement functions can continue to be performed; (ii) the nature and extent of intra-group exposures and their impact on resolution if they need to be unwound; (iii) the capacity of the firm to deliver sufficiently detailed accurate and timely information to support resolution; and (iv) the robustness of cross-border cooperation and information sharing arrangements.

KA10.3	Group resolvability assessments should be conducted by the home authority of the G-SIFI and coordinated within the firm's CMG taking into account national assessments by host authorities.
KA10.4	Host resolution authorities that conduct resolvability assessments of subsidiaries located in their jurisdiction should coordinate as far as possible with the home authority that conducts resolvability assessment for the group as a whole.
KA10.5	To improve a firm's resolvability, supervisory authorities or resolution authorities should have powers to require, where necessary, the adoption of appropriate measures, such as changes to a firm's business practices, structure or organisation, to reduce the complexity and costliness of resolution, duly taking into account the effect on the soundness and stability of on-going business. To enable the continued operations of systemically important functions, authorities should evaluate whether to require that these functions be segregated in legally and operationally independent entities that are shielded from group problems.
Essential criteria	
EC10.1	If the jurisdiction under review is home to one or more G-SIFIs, or domestically incorporated firms that are subject to a requirement for resolution plans, arrangements and processes are in place whereby the resolution authorities undertake, in cooperation with members of the firm's CMG group resolvability assessments regularly, including when there are material changes to the firm's business or structure.
Description and findings	Colombia is not home to a G-SIFI. Colombian banks are not subject to a requirement for resolution plans (see KA 11) and the law does not foresee a requirement for resolvability assessments. No such assessments have taken place so far.
EC10.2	If the jurisdiction under review is host to one or more G-SIFIs, or domestically incorporated firms that are subject to a requirement for resolution plans, it has in place arrangements and processes whereby the resolution authorities cooperate with the home jurisdiction and contribute to the development of the resolvability assessments where invited to do so by the home jurisdiction, including by sharing results of local resolvability assessments with the home authority.
Description and findings	Colombia is host to several G-SIFIs that are subject to resolution planning, but the authorities have not been invited to contribute to the development of resolvability assessments. Apart from bilateral MOUs with the supervisory authorities in 17 countries or exchange of information within the CCSBSO, no arrangements or processes exist at the moment which would support the information exchange or cooperation with home jurisdictions in regard to resolvability assessments.
EC10.3	The supervisory authorities or resolution authorities have the power to require changes to a firm's business practices, legal, operational or financial structures or organisation that are necessary to improve the resolvability of the firm.
Description and findings	The SFC currently does not have an explicit statutory power to require firms to adopt changes to their business practices or operational structure solely in order to improve their resolvability. A draft law on conglomerates including financial firms that is in preparation would grant the SFC powers to require the change of the group structure if this impedes effective supervision, cease business practices which endanger the group as a whole, or to stop opening branches abroad. Exercise of these powers could help to achieve the aim of EC10.3.

Assessment of KA10	
Comments	The authorities do not undertake resolvability assessments. The SFC currently lacks the power to require firms to adopt changes to their business organization and legal structure solely in order to improve their resolvability. The draft law on conglomerates would grant the SFC powers to require firms to make organizational changes if their structure impedes effective supervision, which could also help to improve resolvability.

11. Recovery and Resolution Planning

KA11.1	Jurisdictions should put in place an on-going process for recovery and resolution planning, covering at a minimum domestically incorporated firms that could be systemically significant or critical if they fail.
KA11.2	Jurisdictions should require that robust and credible RRPs, containing the essential elements of Recovery and Resolution Plans set out in Annex III, are in place for all G-SIFIs and for any other firm that its home authority assesses could have an impact on financial stability in the event of its failure.
KA11.3	The RRP should be informed by resolvability assessments (see Key Attribute 10) and take account of the specific circumstances of the firm and reflect its nature, complexity, interconnectedness, level of substitutability and size.
KA11.4	Jurisdictions should require that the firm's senior management be responsible for providing the necessary input to the resolution authorities for (i) the assessment of the recovery plans; and (ii) the preparation by the resolution authority of resolution plans.
KA11.5	Supervisory and resolution authorities should ensure that the firms for which a RRP is required maintain a recovery plan that identifies options to restore financial strength and viability when the firm comes under severe stress. Recovery plans should include: (i) credible options to cope with a range of scenarios including both idiosyncratic and market wide stress; (ii) scenarios that address capital shortfalls and liquidity pressures; and (iii) processes to ensure timely implementation of recovery options in a range of stress situations.
KA11.6	The resolution plan is intended to facilitate the effective use of resolution powers to protect systemically important functions, with the aim of making the resolution of any firm feasible without severe disruption and without exposing taxpayers to loss. It should include a substantive resolution strategy agreed by top officials and an operational plan for its implementation and identify, in particular: (i) financial and economic functions for which continuity is critical; (ii) suitable resolution options to preserve those functions or wind them down in an orderly manner; (iii) data requirements on the firm's business operations, structures, and systemically important functions; (iv) potential barriers to effective resolution and actions to mitigate those barriers; (v) actions to protect insured depositors and insurance policy holders and ensure the rapid return of segregated client assets; and

	(vi) clear options or principles for the exit from the resolution process.
KA11.7	Firms should be required to ensure that key Service Level Agreements can be maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer.
KA11.8	At least for G-SIFIs, the home resolution authority should lead the development of the group resolution plan in coordination with all members of the firm's CMG. Host authorities that are involved in the CMG or are the authorities of jurisdictions where the firm has a systemic presence should be given access to RRPs and the information and measures that would have an impact on their jurisdiction.
KA11.9	Host resolution authorities may maintain their own resolution plans for the firm's operations in their jurisdictions cooperating with the home authority to ensure that the plan is as consistent as possible with the group plan.
KA11.10	Supervisory and resolution authorities should ensure that RRPs are updated regularly, at least annually or when there are material changes to a firm's business or structure, and subject to regular reviews within the firm's CMG.
KA11.11	The substantive resolution strategy for each G-SIFI should be subject, at least annually, to a review by top officials of home and relevant host authorities and, where appropriate, the review should involve the firm's CEO. The operational plans for implementing each resolution strategy should be, at least annually, reviewed by appropriate senior officials of the home and relevant host authorities.
KA11.2	If resolution authorities are not satisfied with a firm's RRP, the authorities should require appropriate measures to address the deficiencies. Relevant home and host authorities should provide for prior consultation on the actions contemplated.
Essential criteria	
EC11.1	The resolution regime requires the development and maintenance of RRPs for all G-SIFIs for which the jurisdiction is the home country, and any other firm that could have an impact on financial stability in the event of its failure.
Description and findings	Based on their methodology for identifying systemically important financial institutions (SIFIs), the Colombian authorities have identified four banks as systemically important. No requirement for the development and maintenance of recovery or resolution plans for domestic SIFIs exists under the current law, and neither does the SFC require them in practice. Banks can be required to comply with a rehabilitation plan (EOSF art. 326, art. 116 no.6) to address specific problems. However, these plans are not "recovery plans" as defined under KA 11. **Findings:** The legal framework does not require recovery or resolution plans for domestic systemic banks, nor are they required in practice.
EC11.2	The development and maintenance of RRPs for firms covered by EC 11.1 that are not G-SIFIs-takes into account the specific circumstances of individual firms, including their nature, complexity, interconnectedness, level of substitutability and size and the extent of cross-border operations and involves appropriate arrangements for cross-border cooperation.
Description and	The legal framework does not require recovery or resolution plans for systemic banks and therefore no specific rules exist. Several banks in Colombia have sizeable cross-border

findings	operations (e.g. in El Salvador, Panama and Nicaragua) which would create the need for cross-border cooperation arrangements in the resolution plans. MOUs in place between the SFC and foreign jurisdictions cover to a different degree resolution issues. Older MOUs do not foresee any information exchange on resolution while more recent MOUs provide that the authorities of signatory jurisdictions will inform each other about any event that could have an impact on the stability of cross-border firms. Few MOUs provide for cooperation and information exchange regarding crisis management or recovery and resolution of supervised cross-border firms. Existing MOUs have been signed with other supervisory authorities, but not with resolution authorities that may be separate institutions. Discussions on resolution planning, resolution strategies and the exchange of information if resolution actions are implemented could also take place in the CCSBSO.
EC11.3	The legal framework imposes the responsibility for the development and maintenance of firms' recovery planning process on the board and senior management, subject to regular review by supervisory or resolution authorities. Maintenance includes reviewing and updating the recovery plan at least annually, and sooner in the event of material changes to the firm's business or structure.
Description and findings	The legal framework does not require recovery planning for systemic banks and therefore no rules regarding the firms' responsibility for such planning exist.
EC11.4	The legal framework requires recovery plans to: (i) include measures for addressing capital shortfalls and liquidity pressures; (ii) set out credible recovery options to deal with a range of stress scenarios covering both idiosyncratic and market wide stress; and (iii) define clear backstops and escalation procedures, identifying the quantitative and qualitative criteria that would trigger implementation of the plan by the firm.
Description and findings	The legal framework does not require recovery planning.
EC11.5	The resolution regime sets out the requirements for the content of resolution plans which, at a minimum, include a substantive resolution strategy and an operational plan that meets the requirements set out in points (i) to (vi) of KA 11.6 (for all firms) and, additionally, for insurers, paragraph 9.10 of II-Annex 2 on Resolution of Insurers.
Description and findings	The legal framework does not require resolution planning, therefore the content of such plans is not defined.
EC11.6	If the jurisdiction is home to a G-SIFI, or any other firm that could, in the judgement of its home authority, have an impact on financial stability in the event of its failure, the home resolution authority has a process in place for the authorities represented on the CMG or equivalent arrangement to review the substantive resolution strategy for the firm and for the agreement of that strategy by top officials of those authorities.
Description and findings	Colombia is home to several banks whose failure could have an impact on the financial stability of other jurisdictions (see EC 11.2). Currently, there are no resolution plans in place for these banks, nor do mechanisms exist which would ensure review or agreement of that resolution strategy with relevant host authorities.
EC11.7	The resolution regime requires firms to ensure that their Service Level Agreements that are required to maintain continuity of critical functions or critical shared services can be

	maintained in crisis situations and in resolution, and that the underlying contracts include provisions that prevent termination from being triggered by recovery or resolution events and facilitate transfer of the contract to a bridge institution or a third party acquirer.
Description and findings	There is no requirement for firms to ensure that Service Legal Agreements can be maintained in crisis situations and in resolution, or that termination of the underlying contracts is prevented. However, the relevance of this requirement is reduced in Colombia as firms are required to have these functions provided by in-house or by group entities domiciled in Colombia, in which they own a controlling stake.
EC11.10	If the jurisdiction under review is a host to a firm that is subject to a requirement for a group-wide resolution plan and maintains its own resolution plans for the firm's operations in its jurisdiction, there is a clear process for coordination with the home authority to ensure that the plan is as consistent as possible with the group plan.
Description and findings	G-SIFIs with a presence in Colombia are subject to group-wide resolution plans. The Colombian authorities do not prepare resolution plans, so there is no defined process for coordination with home authorities to ensure consistency. Colombia has not been invited to be a member of a CMG or a party to a COAG and neither has it been asked to participate in resolution planning for such banking groups, and there is no clarity on whether or when coordination would take place.
EC11.11	The resolution regime requires authorities to review and, to the extent necessary, update resolution plans at least annually, and sooner upon the occurrence of an event that materially changes the firm's business or structure, including its operations, strategy or risk exposure.
Description and findings	As resolution plans are not prepared, there are no review or updating requirements.
EC11.13	The supervisory or resolution authority has the power to require a firm to take measures to address deficiencies in its recovery plan or inputs to their resolution plan, and in cases where authorities require firms to prepare an initial resolution plan, its initial resolution plan.
Description and findings	Such a power has not been defined, as firms are not required to prepare recovery plans or collaborate in resolution planning.
Assessment of KA11	
Comments	There is no on-going process for recovery or resolution planning in place.
12. Access to Information and Information Sharing	
KA12.1	Jurisdictions should ensure that no legal, regulatory or policy impediments exist that hinder the appropriate exchange of information, including firm-specific information, between supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes. In particular: (i) the sharing of all information relevant for recovery and resolution planning and for resolution should be possible in normal times and during a crisis at a domestic and a cross-border level; (ii) the procedures for the sharing of information relating to G-SIFIs should be set out in institution-specific cooperation agreements (see Annex I); and (iii) where appropriate and necessary to respect the sensitive nature of information, information sharing may be restricted, but should be possible among the top officials of

	the relevant home and host authorities.
KA12.2	Jurisdictions should require firms to maintain Management Information Systems (MIS) that are able to produce information on a timely basis, both in normal times for recovery and resolution planning and in resolution. Information should be available at the group level and the legal entity level (taking into account information needs under different resolution scenarios, including the separation of individual entities from the group). Firms should be required, in particular, to: (i) maintain a detailed inventory, including a description and the location of the key MIS used in their material legal entities, mapped to their core services and critical functions; (ii) identify and address exogenous legal constraints on the exchange of management information among the constituent entities of a financial group (for example, as regards the information flow from individual entities of the group to the parent); (iii) demonstrate, as part of the recovery and resolution planning process, that they are able to produce the essential information needed to implement such plans within a short period of time (for example, 24 hours); and (iv) maintain specific information at a legal entity level, including, for example, information on intra-group guarantees and intra-group trades booked on a back-to-back basis.
Essential criteria	
EC12.1	The resolution authority has the power under the legal framework to access any information from firms that is material for the planning, preparation and implementation of resolution measures in a timely manner.
Description and findings	Articles 114 and 326 of the EOSF give the SFC power to access any information from, and perform onsite inspections of, supervised entities, and individuals and other corporations that may have information relevant to supervised entities, that is material for the supervision and surveillance of the firm, as well as for any actions relating to the restructuring or liquidation of the firm. These powers are anchored in Article 15 of the Colombian Constitution that empowers the State to require any individual or corporation to produce private documents or financial information for tax, judicial, or supervision purposes. Article 114 of the EOSF empowers the SFC to sanction supervised entities that fail to comply with information requirements, including by exercising the right to assume control of the entity. **Findings:** The SFC has the legal authority and power to access information from supervised firms relevant to its mandate. This access to information is backed by the SFC's authority to sanction supervised entities for non-compliance. As a practical matter, the SFC notes that, in the exercise of its supervisory and surveillance powers under Article 326 of the EOSF, it is in regular contact with supervised entities, including through on-site visits, and therefore has access to any information it may need to fulfil its duties. Moreover, the SFC may impose specific reporting requirements on supervised entities on an ad hoc basis if necessary.
EC12.2	The legal framework permits and contains adequate legal gateways for the disclosure, in normal times and during a crisis, of non-public information (including firm-specific information) necessary for recovery and resolution planning and for carrying out resolution to domestic and foreign authorities that could have a role in resolution, including as appropriate supervisory authorities, central banks, resolution authorities, finance ministries and the public authorities responsible for guarantee schemes. Disclosure under those legal gateways is conditional on the recipient authority being subject to adequate confidentiality requirements and safeguards that are appropriate to the nature and sensitivity of the

	information to be disclosed.
Description and findings	The Colombian legal framework provides for the exchange among domestic and foreign authorities of non-public (including firm specific) information that may be necessary for the monitoring of supervised entities, subject to appropriate safeguards. Article 9.1.1.1.1 of D2555 requires that the SFC and FOGAFIN have coordination and information exchange mechanisms regarding entities subject to a resolution process. Article 320 provides that FOGAFIN may enter into agreements with other public authorities for the exchange of information on a confidential basis. Article 92 of Law 795 of 2003 provides that the entities who are members of the CCSSF may share relevant information which may be useful in the fulfilment of their respective mandates. In addition, the SFC has MOUs with domestic public entities (such as BR and FOGAFIN) which are part of the CCSSF which allow the financial safety net members to share information under strict confidentiality. EOSF art. 326 no.8 provides for the exchange of information with foreign authorities, subject to confidentiality safeguards. MOUs with foreign authorities regarding information exchange include an understanding regarding confidentiality. **Findings:** The legal framework provides for cooperation and information sharing regarding supervisory matters, including firm specific information among domestic authorities as well as with foreign authorities, through MOUs. Although these arrangements are not specifically designed for recovery and resolution purposes, they can be used for such purposes and contain adequate safeguards.
EC12.3	The legal framework or resolution regime incorporates adequate safeguards to protect the confidentiality of non-public information received from other domestic or foreign authorities. Such safeguards: (i) require authorities to keep such information confidential and to use it only in accordance with the terms on which the information was provided; (ii) prohibit domestic authorities from disclosing such information to other domestic or foreign authorities or other third parties without the prior express consent of the authority that provided it, unless such disclosure is compelled by law; and (iii) exclude information received from foreign authorities from mandatory disclosure pursuant to freedom of information or similar legislation that may exist in that jurisdiction, or treat such information as falling under an exemption from disclosure requirements.
Description and findings	EOSF arts. 320 and 326 provide for adequate safeguards for non-public information received by the SFC and FOGAFIN from (or shared with) other domestic and foreign authorities. All MOUs entered into by the SFC with other domestic or foreign authorities for information exchange contain confidentiality safeguards. These safeguards include the obligation to maintain confidentiality and to use the information for the intended official purposes. Law 1712 (2014), art. 19 allows the SFC to restrict disclosure of non-public information that might otherwise be subject to freedom of information or similar legislation because of the risk of harm to the financial system or to financial stability. **Findings:** The Colombian legal framework provides for adequate safeguards for non-public information received from other domestic or foreign authorities.

EC12.4	The resolution authority has policies and procedures in place to control and monitor the dissemination within the authority of non-public information received from a foreign home or host authority.
Description and findings	Law 1712 (2014) art. 15 requires public entities to implement a document management program, which according to Decree 103 (2015) art. 35, must also have mechanisms to identify confidential or sensitive information. The SFC reports that it has implemented a comprehensive management information system which includes a complete manual regarding the security of information that describes the policies and procedures that the SFC must have in place for handling information (including non-public information from foreign authorities obtained on a confidential basis under EOSF art. 326 or a specific MOU). **Findings:** The SFC has adequate policies and procedures in place to ensure the appropriate management of non-public and sensitive information received from foreign home or host authorities.
EC12.5	Firms subject to a recovery and resolution planning requirement are required to maintain management information systems that are capable of producing information necessary for recovery and resolution planning, assessing resolvability and the conduct of resolution, including the items specified in KA 12.2, and delivering that information to authorities on a timely basis.
Description and findings	The legal framework does not currently require entities to have or maintain a recovery and resolution plan. The SFC has the power to require supervised entities to maintain management and information systems capable of producing all information that the SFC determines necessary for its supervision purposes. **Findings:** Supervised firms are currently subject to information management requirements that are monitored by the SFC. These systems are designed for supervisory purposes and would need to be adapted for the specific purposes of recovery and resolution planning if such requirements are put in place.
EC12.6	The jurisdiction has in place processes (for example, through regular examinations) to test the firm's capability to produce information for recovery and resolution planning and in resolution quickly.
Description and findings	The SFC currently has sufficient powers, if necessary, to assess a firm's capacity to produce information necessary for SFCs supervision purposes. These mechanisms could be adapted to test a firm's capacity to produce information for recovery and resolution planning if and when such requirements are introduced. **Findings:** The SFC has processes in place to ensure that firms have the capacity to produce the information required for supervision purposes. The suitability or adaptability of these systems to recovery and resolution planning, if such requirements are introduced, has not been examined.
Assessment of KA12	
Comments	The Colombian legal framework allows for adequate access to information, information sharing and safeguards. The legal framework provides due authority and power to government agencies to require information from firms, and to require the maintenance of appropriate information management systems for the production of information necessary for recovery and resolution planning once those processes are adopted. The law also provides for safeguards to protect non-public and sensitive information from disclosure.

	Given the vast amount of data to which the SFC has access, it will be important to ensure capacity is available to identify, prioritise and control the quality of information that is relevant specifically to fulfil its resolution mandate. The capacity of these information requirements and systems to address the needs of recovery and resolution planning and monitoring has not been tested.

RECOMMENDED ACTIONS AND THE AUTHORITIES' RESPONSE

A. Action Plan

32. **The action plan outlined below suggests reforms that would enhance the framework for orderly resolution in Colombia, in line with the KAs.** While the current framework has proven adequate for managing recent failures of financial institutions in a way that preserves financial stability, there are shortcomings with respect to the standards set by the KAs. Resolution powers enabling continued operation of a firm while losses are imposed on shareholders and unsecured, uninsured creditors are lacking; also, the regime does not contemplate timely resolution on an assessment of non-viability, or avoiding exposing taxpayers to loss. While public funds may be used in resolution, there is no mechanism for recovering any losses incurred from the industry. The reforms suggested aim to strengthen the authorities' tools and capacity to act, which would be particularly important should a systemic failure or event with systemic risks arise. They give due weight to the two aspects of the public interest that resolution regimes aim to further: preservation of financial stability, and protection of taxpayers from exposure to losses from failing financial firms. As the host of G-SIFIs and home of R-SIFIs, there are also important cross-border aspects to the recommendations. Table 2 ranks the different recommendations according to their priority (high – medium – low).

33. **A reformed resolution framework should include triggers based on the non-viability of an institution.** Delayed resolution of failing institutions almost always leads to increased economic costs and rising financial stability risks. Clear criteria for early entry into resolution based on a determination that a financial entity is no longer viable or will become so, allow authorities to take resolution action in a timely manner. Indeed, it is only when such a determination is made that resolution (that interferes with private property rights by allocating losses to shareholders and creditors before a firm is balance sheet insolvent) can be justified on public interest grounds.

34. **A key priority should be the creation of a power enabling transfers of assets and liabilities.** Introducing powers to transfer assets and liabilities, on a mandatory basis and without shareholders or creditors' consent, from a failing entity to financially sound institutions would significantly strengthen the resolution options available to the authorities. This resolution tool helps preserve public confidence by giving to depositors prompt access to their deposits, and maintains the going concern value of the assets transferred. The license of the failed entity should be withdrawn, and the residual assets and liabilities placed in liquidation. These liabilities should include

uninsured and unsecured credits, and shares, to the extent that insufficient good assets are available to cover them in the transfer. This tool minimizes outlays by the deposit guarantee fund (and by implication the public resources that backstop the fund). Bridge banks combine transfer powers with the creation of a new public bank, subject to the principle of protecting taxpayer's money, and can be a useful instrument in a systemic crisis, or where time is needed to find private buyers of failed bank assets.

35. Stay powers and safeguards of creditor rights are desirable to underpin the use of this power. A power to impose a temporary stay on the exercise of early termination rights in financial contracts is highly desirable to support the use of transfer powers, as entry into resolution may constitute an event of default under financial contracts with acceleration, or early termination clauses. A mass close-out of financial contracts can undermine a resolution transaction, and a stay of 24 to 48 hours is intended to provide a short period to enable the resolution action to be carried through. Legal safeguards should be put in place to ensure that the use of transfer powers strikes an appropriate balance between the public interest and the property rights of shareholders and creditors. Partial property transfers protects selected liabilities while other liabilities are left behind and liquidated. Sufficient flexibility in such transactions requires the legal framework to permit departure from the strict principle of equal (*pari passu*) treatment of creditors of the same class in resolution. Providing compensation under a 'no creditor worse off that in liquidation' principle provides a minimum protection to creditors, and strengthens the legal position of the resolution authority. Explicit changes to the creditor hierarchy for banks—depositor preference—is an alternative, less flexible, approach that may be easier to implement and does not interfere with fundamental legal principles. By ranking deposits higher than other unsecured liabilities, they can be transferred from a failing bank to a purchaser or bridge bank without breaching *pari passu*.

36. Legal certainty could be enhanced if the judicial remedies under the resolution regime are limited to financial compensation, unless the actions are unlawful. The possibility that a court might reverse a transfer action can significantly weaken the effectiveness of transfer powers, since purchasers may be reluctant to participate. In general, the risk that courts might suspend or order the reversal of a resolution decision could delay timely action. Reforms would not prevent courts from awarding other remedies in cases where the authorities had acted outside of their powers or in bad faith, and a statutory restriction of this kind can help enhance the legal certainty of resolution actions and support market confidence.

37. It is advisable that the SFC initiates recovery and resolution planning as soon as possible. Recovery planning is a powerful supervisory tool, helping in both the pre-emption and the planning of resolution. Banks should prepare the plans, to be approved by the SFC and the banks' own boards of directors, to ensure their "ownership." Resolution planning is important to prepare for the possible failure of firms, in particular systemically important entities, and to identify deficiencies in the resolution framework. Cooperation with FOGAFIN will be important, particularly to the extent that specific resolution strategies involve the use of deposit insurance funds. Resolvability assessments are a key part of the planning process, and the SFC should have the power to require firms to alter their structure if material impediments to resolution are found. To support

the planning process, a dedicated full-time resolution unit within SFC should be established. The unit should be operationally independent and its reporting line to the Superintendent should be separate from that of the Supervision Department to avoid potential conflicts of interests.

38. Cross-border cooperation on resolution matters should be enhanced to provide for prompt action and coordination between home and host authorities. Existing MoUs could be expanded to cover information exchange and cooperation on recovery and resolution matters on a firm-specific basis where the firms are significant in either jurisdiction. The law should be modified to provide for expedited action on cross-border matters. It would be helpful for SFC to provide guidelines clarifying the conditions under which support for cross-border resolution action would be available. SFC should have the power to support cross-border resolution action, if it deems appropriate, even if the domestic supervised entity is not subject to resolution proceedings.

39. Finally, consideration should be given to further strengthening the formal safeguards on operational independence of the resolution authority. While there is no evidence of undue political or industry influence over resolution decisions in recent times, and there is a track record of action with respect to weak and failing institutions, enhancing formal protections could be of great value in the unlikely, but not impossible, event of a systemic institution encountering serious difficulties. Potential reforms could include making the Superintendent's term in office overlapping, rather than concurrent, with the Presidential term, extending similar terms to the Director of FOGAFIN, allowing for dismissal only on a predetermined set of grounds, providing for statutory judicial protections of officials acting in good faith in resolution actions, reconsidering the role and composition of the Advisory Council, or requiring due process in cases of dismissal of the Superintendent through review by another branch of government, or an independent body.

Table 2. Colombia: Recommended Actions

Recommended Actions to Improve Compliance with the *Key Attributes*	
KA	**Recommended Action**
	High Priority
KA 2	• Agree an MOU between the SFC and SSoc detailing information-sharing and coordination protocols for managing the parallel resolution and insolvency actions for a mixed-function conglomerate, or the financial or conglomerate holding company of a financial group, including designation of lead authority. • Consider further strengthening formal safeguards of independence (see ¶39).
KA 3	• Introduce clear criteria for the timely and early entry into resolution of a firm, based on an assessment of its non-viability (or likely thereof) according to quantitative and qualitative indicators. • Give the resolution authority powers to transfer assets and liabilities of a resolved firm without requiring consent from shareholders or other interested parties. • In parallel with the above noted transfer powers, introduce rules on the use of a bridge bank tool in resolution (including with respect to ownership and corporate governance arrangements, funding, and regulatory requirements). • Provide for a legal requirement to pay-out insured deposits, within seven working days and without the need for insured depositors to file a claim for their reimbursement. • Introduce the power to impose a moratorium, in the context of a resolution proceeding, on creditors' actions to attach assets or collect money or property.
KA 4	• In order to support the effective exercise of transfer, including bridge bank, powers, adopt a power to impose a temporary stay (for example, up to 48 hours) on the exercise of acceleration early termination rights (including cross-default rights) in financial contracts that are triggered by entry into resolution of a bank or in connection with the exercise of resolution powers.
KA 5	• In order to facilitate partial transfers of selected, but not all, liabilities to a purchaser (through a P&A transaction) or a bridge bank: either: (i) provide for flexibility to depart from equal (*pari passu*) treatment of creditors of the same class; or (ii) as a minimum, introduce depositor preference to permit preferred deposits to be transferred while leaving lower ranking liabilities behind in the original bank. • If departure from equal (pari passu) treatment of creditors of the same class is permitted: Introduce a 'no creditor worse off that in liquidation' safeguard to provide a minimum protection to creditors that may suffer greater losses than other creditors in the same class as a result of the departure from *pari passu* treatment.

KA 6	• Consider making explicit a requirement to minimize the exposure of public and deposit insurance resources in resolution, subject to financial stability objectives having been met.
KA 11	• Start recovery and resolution planning as soon as possible based on existing supervisory powers for banks, carried out by a dedicated full-time resolution unit within SFC, and in cooperation with FOGAFIN with respect to resolution plans.
Medium Priority	
KA 1	• Enable exercise of resolution powers over holding companies of financial firms.
KA 2	• Plan for human and material resources adequate to meeting the resolution mandate of the SFC, considering the growing size and complexity of supervised institutions, and specific needs in recovery and resolution planning.
KA 3	• Clarify rules on the oversight of the special agent appointed upon the taking of possession for administration or liquidation purposes, as well as on its possible dismissal. • Enhance SFC powers to pursue claims and recover monies (including variable remuneration) from persons who have caused or materially contributed to the failure of a firm.
KA 5	• Specify in legislation that the forms of redress in relation to resolution actions should be limited to financial compensation, provided that the authorities were acting within their legal powers and in good faith.
KA 6	• Consider strengthening the safeguards on the use of public funds or nationalizations in resolution, with a view to ensuring that shareholders and unsecured and uninsured creditors bear losses first. • Introduce an *ex post* recovery mechanism, such that any losses incurred by the public sector through funding of resolution actions are recovered from the industry.
KA 7	• Introduce expedited process for evaluating and responding to foreign resolution actions that affect supervised entities in Colombia. • Establish clear guidelines and conditions for determining whether and what types of supportive action would be available for implementing resolution measures with respect to a supervised entity that is affected by foreign resolution action. • Expand existing MOUs with foreign authorities to cover consultation and cooperation on cross-border resolution matters.
KA 9	• After introduction of recovery and resolution planning requirements, develop cross-border resolution colleges comparable to Crisis Management Groups for the regionally systemic Colombian firms.
KA 10	• In parallel with resolution planning, start undertaking resolvability assessments. • Introduce powers for SFC to require firms to change their business organization or legal structure in order to improve resolvability.

KA 11	• Modify the law to introduce the requirement for banks to write recovery plans and support SFC in resolution planning. • Require the SFC to undertake resolution planning for systemically important firms. • Discuss cross-border resolution strategies with key host authorities of Colombian banks with material cross-border activities. • If necessary, explore the possibility of signing MOUs with resolution authorities separate from supervisory authorities.
KA12	• Establish appropriate information management requirements and systems to enable supervisors and supervised entities to monitor recovery and resolution plans, when these are introduced.
Low Priority	
KA 3	• Empower the SFC to require companies in the same group as the resolved firm to continue to provide services that are essential in a resolution process. • Enhance powers to transfer assets of a resolved firm to an asset management vehicle, for the purposes of their management and winding down, and subject to adequate rules on the public interest objectives, valuation criteria for pricing of assets, and governance of the asset management vehicle. • Introduce a bail-in regime, allowing for the write-down and conversion of unsecured and uninsured creditor claims into equity or other instruments of ownership.
KA 5	• Introduce a power for the SFC to allow temporary exemptions from market disclosure requirements (e.g., requirements under listing and takeover rules) or the postponement of disclosures for a bank in resolution in cases where disclosure could impede successful resolution. • Introduce protection for directors and officers of a bank in resolution from liability to legal actions arising from actions taken when complying with decisions and instructions from the SFC or FOGAFIN.

B. Authorities Response

Authorities' Comments – January 2016

Colombia's 2015 Detailed Assessment of Observance
Key Attributes of Effective Resolution Regimes for Financial Institutions
-FSB, IMF, World Bank-

Dear Assessment Committee Members,

The Colombian authorities involved in the execution of the resolution mechanisms are immensely grateful for your team's effort and dedication in the Assessment. Both your professional skills and your kindness were crucial factors for this rewarding experience. The recommendations obtained are valuable inputs for strengthening Colombia's financial public policy.

Hereafter, we submit the following comments regarding the final version of the Assessment:

General Comments

40. Except for a few that will be presented below, the Colombian authorities agree with the main conclusions of this Assessment. It is worth noting that the Assessment recognized the effectiveness of Colombia's legal framework and experience regarding resolution mechanisms. The effective use of our broad powers allowed that, in the past, financial institutions were orderly resolved and that the financial system's stability was preserved. The independence of the resolution authority and the other authorities involved in the exercise of such mechanisms has assured technically based decisions, free of political and the industry's influence.

41. The Colombian authorities agree with the context exposed by the Assessment. The document reflects the main characteristics of our strong and diversified financial system. Also, the institutional framework is correctly depicted, showing all relevant authorities, their coordination organs, the resolution regime and the overview of our financial system. Our strong international cooperation network, our effective protection schemes for depositors and our clear rules on the treatment of client assets are duly acknowledged and exposed.

42. The Colombian authorities are proud of the transparency and openness of the assessment proceedings. We strongly value the appreciations regarding the absence of impediments to the completion of the assessors' work, the cooperation, time dedicated, and the quality of the discussions that preceded this assessment.

43. Colombia values the useful recommendations issued by this Assessment. We recognize the importance of updating our resolution mechanisms' regime in accordance with the second generation mechanisms that arose from the 2008 financial crisis.

44. The Financial Superintendency disagrees with the conclusion regarding the absence of legal powers of the resolution authority to override the shareholders' consent during the exercise of the resolution mechanisms. As maintained throughout the assessment process, the SFC does not need any consent of shareholders or third parties for executing its resolution powers. Furthermore, if the firm in resolution does not satisfy an order given by the SFC, there is a set of tools that deter shareholders or administrators for not complying with it, including the possibility of imposing sanctions or liquidating the firm.

45. The SFC strongly considers that the resolution authority has the power to exercise several resolution powers without requiring any consent of shareholders or third parties. This is evident in the exclusion of assets and liabilities (number 11 of Article 113 of the EOSF), where it is clear that the transfer is mandatory and not subject to any further approval. This is expressly stated in letter a) of such norm: "Transfer of liabilities arising from the exclusion occurs automatically, subject to previous notice to holders of liabilities object of exclusion." According to this norm, it is openly expressed that the effects of the transfer are immediate and that it is not required any sort of approval from shareholders or any third parties.

46. Additionally, when a merger (number 5 of Article 113 of the EOSF) is ordered, Paragraph 1 states that the order emitted by the SFC is mandatory and shall be registered as soon as the administrative act is in force. This necessarily implies the absence of the requirement of the shareholders' consent.

47. Furthermore, it is clear within the provision for labor contract payments (number 11 of Article 113 of the EOSF) that the exercise of this power does not require any shareholders' consent.

48. Finally, it is worth noting that this conclusion is part of several arguments or observations throughout the document, from which we disagree. These are detailed in the following table:

Localization	**Fragment**
Pages 5 and 6	"However, the SFC cannot transfer assets and liabilities to a private sector buyer or a bridge bank, through directly binding powers that explicitly override shareholders' consent (and allocate losses to shareholders and creditors) in the public interest. Transfer powers affect shareholders' economic and governance rights, altering fundamental competences under corporate law, hence the need for an explicit override of shareholder consent. Under the current framework, it is unclear what would happen if shareholders did not consent to such intrusive orders, potentially leaving the authorities with few options beyond liquidation or nationalization."
Page 9	"The framework does not recognize resolution as a stand-alone legal proceeding, empowering the authorities to impose resolution measures (such as restructuring or winding down a firm's operations) through a directly binding measure, <u>without shareholder and creditors' consent</u>. In trying to preserve financial stability, the authorities have few options beyond actions to avoid takeover and control,

	including through use of public funds <u>and without explicit powers to override shareholder consent</u>, liquidation, and nationalization.”
Page 32	“Article 113 of the EOSF refers to the approval of a merger or a transfer by the competent corporate governance bodies (respectively, shareholders’ assembly or board of directors) (EOSF, art. 113.5 and 113.9.3 (c)). T<u>here is no provision in the legal regime explicitly exempting resolution actions from requiring these consents. Considering this, and more generally that the purpose of a precautionary measure is to rehabilitate a firm rather than to resolve it, shareholders’ or board of directors’ approval would therefore be required in order to conduct a merger or a transfer of assets. The same conclusion seems to apply with respect to the exclusion of assets and liabilities tool, in relation to which the law only states that directors are liable for failure to comply with the order of exclusion (EOSF, art. 113 no. 11 m).</u>”
Page 33	“Resolution powers under Colombia’s framework should be thus enhanced by providing for a clearer authority to conduct a transfer of assets and liabilities to a third party purchaser or to a bridge bank. The law should specifically provide that no consent from shareholders is needed to effect such transfer and that the resolution measure adopted by the SFC is directly binding upon its publication. Likewise, the law should clarify that no creditor notification or approval is necessary for a transfer to have effect, and that publication is deemed to comply with any notification or approval requirement provided under the law.”
Page 34	“Colombia’s regime does not provide directly binding administrative powers to transfer of assets from an entity in resolution, in the public interest and in a manner that allocates losses to shareholders.”
Page 37	“The toolkit available to the authorities for managing problem banks should be reinforced, by enhancing the legal framework to allow explicitly for overriding shareholder and creditor consents, and in particular for transfer powers of selected assets and liabilities to a healthier institution (e.g. a bridge bank or a strong private sector buyer). Indeed, this is an essential tool that helps achieve a cost effective and orderly resolution in the public interest.”
Page 43	“However, delay is likely in cases where transfers of assets and liabilities by an administrator or special agent require approval by governing bodies or shareholders of the institutions involved, or where transfers of assets and liabilities are required to be notified in an official newspaper to give interested parties an opportunity to file an objection.”
Page 49	The Colombian authorities do not possess some of the resolution powers available in other jurisdictions <u>such as transfer of assets</u>, bail-in or stays of early termination rights, and could therefore not give them effect in Colombia. (…)There is no legislative mechanism for expedited recognition or implementation of foreign resolution measures in Colombia. Moreover, <u>certain resolution powers relating to asset transfers</u>, stays and bail in are not available in Colombia, and would not be given effect.”
Page 62	“A key priority should be the creation of a power enabling transfers of assets and liabilities. Introducing powers to transfer assets and liabilities, on a mandatory basis and without shareholders or creditors’ consent, from a failing entity to

	financially sound institutions would significantly strengthen the resolution options available to the authorities."
Page 65	"Give the resolution authority powers to transfer assets and liabilities of a resolved firm without requiring consent from shareholders or other interested parties."

Specific Comments

49. On the following assertion on page 4: "Important resolution powers are not available to the authorities (…)": The SFC considers this assertion too ample. Precision in the important mechanisms missing was essential in the executive summary. In our opinion, the SFC has all main resolution mechanisms, although their scope and objectives may differ with the KA's perspective. The fact that the premises of the existing mechanisms differ from the ones of the KAs, does not mean that Colombia does not have important resolution powers.

50. On the following assertion on page 4: "There are no requirements for, and few tools enabling, the imposition of losses on the shareholders responsible for the institution's failure or the avoidance of taxpayer exposure to loss or unwarranted protection of unsecured and uninsured creditors." The SFC does not agree with this statement since there is at least one tool that requires and enables the imposition of losses on shareholders. When a recapitalization measure is ordered, for example, the shareholders must use their own resources to increase the capital of the entity and compensate for loses. If they do not respond to this order, the entity is subject to a takeover.

51. On the following assertion on page 13: "20. The BR can provide emergency liquidity through a lender of last resort facility. Conditions for access to the facility are set by the Board of Governors of the BR, and are laid out explicitly. They currently require that the BR must lend to credit institutions providing an audited statement attesting solvency and providing acceptable collateral, <u>regardless of the BR's or the SFC's opinion on the viability of the firm.</u>" In case the BR or the SFC have any doubts on the viability of the institution, the central bank has the discretion to deny access to the liquidity facility. In fact, article 6 of External Resolution of 2001 states that "Article 16 (Restrictions). At any moment the Banco de la República may deny access to lender of last resort facilities or demand their cancellation, when it verifies that the support operations carried out did not match or do not match the ends, conditions and requirements set out in this resolution, or when it establishes that the information contained in the requests does not correspond to the entities' situation.

52. On the description and findings of EC 3.13: Regarding EC3.13, it is important to note that a new decree was issued after the evaluation was performed. The Decree 2392 (issued on 11 December 2015) extended the loss absorbent features to Tier 2 instruments (in Decree 1648 of 2014 such features applied only to Additional Tier 1 instruments). Decree 2392 established that contingent capital instruments are written down or converted into equity at a trigger point before a bank enters into resolution, or when the SFC decides so. Even though these instruments have not

been issued so far, Decree 2392 of 2015 has set out a transition period to replace the current T2 instruments for instruments with the new loss absorbent features. This will enable authorities to apply their bail-in powers on such instruments.