

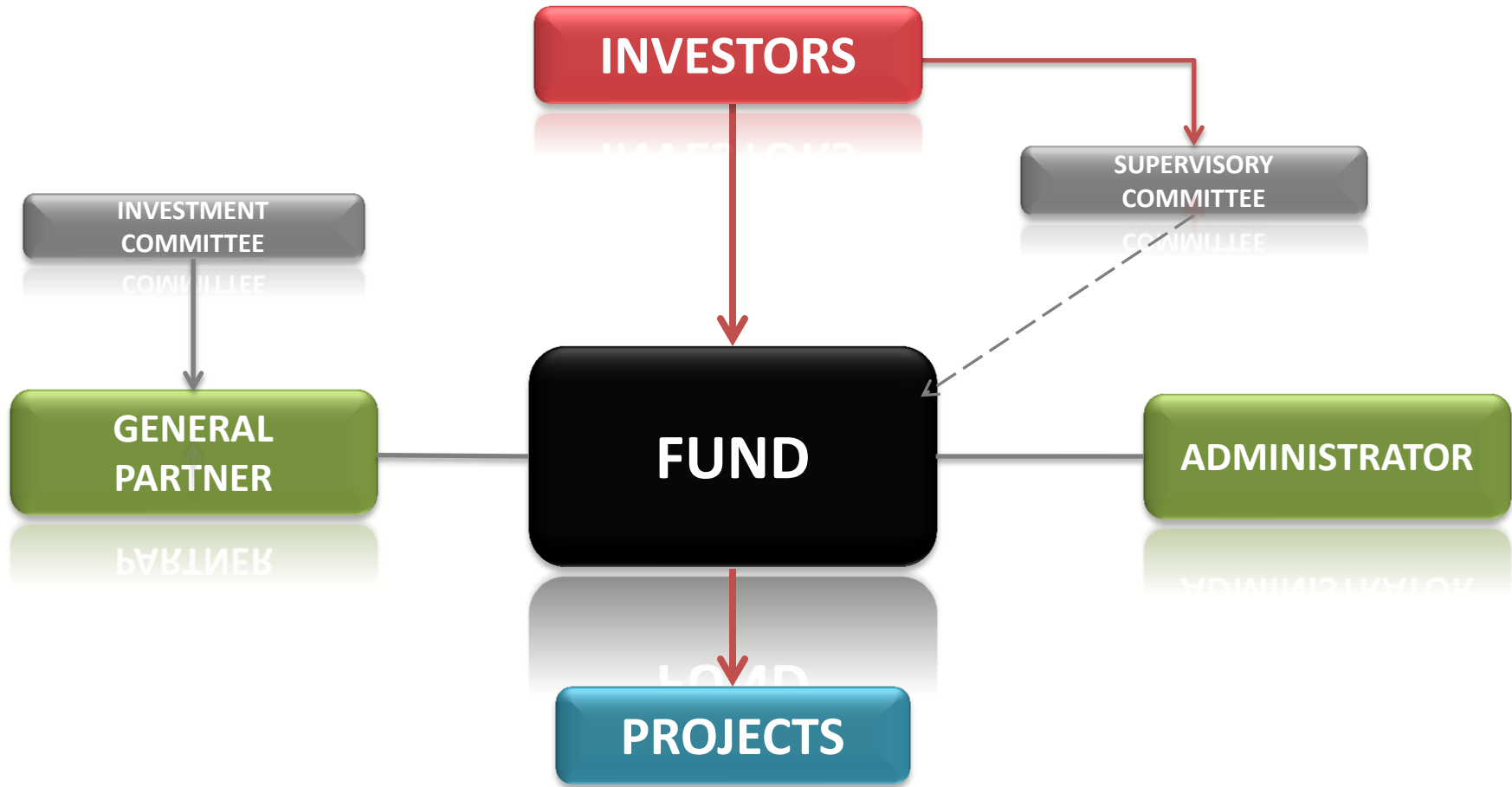


PRIVATE EQUITY IN COLOMBIA

Private Equity in Colombia

- Investment Grade credit rating has positioned **Colombia's private equity industry as a preferred target for investors and deal makers**. Local securities market has recently become one of the most dynamic and increasingly sophisticated in Latin America.
- In Colombia, Private Equity Funds (PEFs) are organized as special purpose vehicles and are **administered by trust companies or stock brokers**, which are regulated by Decree 2555 of 2010. These entities delegate investment management to a **General Partner**.
- The Administrator is responsible for the PEF's **back office and for the operative issues of investments' execution** pursuant to the General Partner's instructions and directives.
- General Partners are not required to be registered before the Superintendence of Finance but must have **at least 5 years of experience** in the administration of companies and/or portfolios either nationally or internationally.
- Foreign General Partners, must have **at least 5 years of experience** in the administration of private equity assets (companies or portfolios) and must prove **at least US\$1 billion assets under management**.

General Structure of a Local PEF



General Structure of a local PEF

ADMINISTRATOR	GENERAL PARTNER
<ul style="list-style-type: none"> Approval of the investors' engagement to the fund 	<ul style="list-style-type: none"> Investment decisions, portfolio, assets, due diligence, negotiation and fund's closing
<ul style="list-style-type: none"> Management of the fund's resources 	<ul style="list-style-type: none"> Capital calls
<ul style="list-style-type: none"> Valuation of the Fund and Units 	<ul style="list-style-type: none"> Valuation of Investments
<ul style="list-style-type: none"> Reporting obligations to investors and to the Superintendence of Finance 	<ul style="list-style-type: none"> Reporting obligations to investors
<ul style="list-style-type: none"> Payment of expenses and distributions 	<ul style="list-style-type: none"> Distributions and redemptions
<ul style="list-style-type: none"> Back office 	<ul style="list-style-type: none"> Follow-up, control and audit investments
<ul style="list-style-type: none"> Legal representation of the Fund 	<ul style="list-style-type: none"> Approval of the assignment of the contractual position
<ul style="list-style-type: none"> Accountability 	<ul style="list-style-type: none"> Appointment of the members of the Investment Committee
<ul style="list-style-type: none"> Anti-money laundering control 	<ul style="list-style-type: none"> Funds financing activities
<ul style="list-style-type: none"> Conflict of interests' management 	<ul style="list-style-type: none"> Conflict of interests' management

General Structure of a Local PEF

INVESTMENT COMMITTEE	SUPERVISORY COMMITTEE
<ul style="list-style-type: none"> Responsible for the investment analysis 	<ul style="list-style-type: none"> Not entitled to intervene in investment decisions
<ul style="list-style-type: none"> Evaluation of investment projects 	<ul style="list-style-type: none"> Verify compliance of the Administrator's and General Partner's duties
<ul style="list-style-type: none"> Define acquisition and exit strategies 	<ul style="list-style-type: none"> Verify investments take place according to the Investment Policy
<ul style="list-style-type: none"> Verify lack of conflicts of interests 	<ul style="list-style-type: none"> Verify lack of conflicts of interests
<ul style="list-style-type: none"> Approve the fund's debt 	<ul style="list-style-type: none"> Propose dismissal of Administrator and/or General Partner
<ul style="list-style-type: none"> Any additional duties established in the fund's placement rules 	<ul style="list-style-type: none"> Any additional duties established in the fund's placement rules

IMPORTANT INVESTOR RIGHTS:

- Investors appoint members of the Supervisory Committee.
- Decisions are taken with the vote of at least half plus one of the participation units present at the respective meeting (voting quorum is of at least 70% of the PEF's participation units).
- The capital commitments do not grant political or economical rights to the investors.

Fund formation

- In general, the formation of an FCP in Colombia **is relatively simple**, and usually undertakes the following steps:
 1. The Administrator and the manager or General Partner shall be appointed;
 2. The term sheet and placement rules are sent to potential investors;
 3. Potential investors and the General Partner negotiate and discuss the Placement Rules according to their interests;
 4. The Placement Rules are filed before the Superintendence of Finance; and
 5. The PEFs may commence operations within 15 business days after the filing before the Superintendence of Finance.



- Colombian regulation allows PEFs to have **partial closings** and a Final Closing.
- Private Equity rules are **under reform** with the purpose of amending GP's requirements, such as the **registration of the entity** acting General Partner before the Superintendence of Finance.

PEFs fees and distributions

- Fees are **not regulated**.
- Usual **2/20** structure.
- Management fees are **split** by the General Partner and the Administrator.
- The General Partner usually charges between **1.6% to 1.8%** and the Administrator **0.2% to 0.4%**.
- Hurdle rates vary between **8% + inflation rate** (IPC 5%) if the fund is denominated in Pesos, and **5% to 8%** if denominated in US Dollars.
- Full fund distributions - Deal by deal distributions are **not generally accepted**.



Relevant Tax Considerations

- PEFs are “**fiscally transparent vehicles**”: the fund’s income shall be distributed to investors under the **same terms and tax conditions** as if the investors had received such income directly.
- PEFs are **not contributors** with respect to income tax or any other complementary tax, costs and expenses are attributed to LPs each fiscal year.
- Usually, the PEF’s Administrator **registers the applicable tax withholding** before transferring the fund’s income to each investor.
- Local mandatory and severance pension funds are **not contributors** with respect to income tax.
- General Income Tax applies at a **33%** rate.
- No tax on repatriation of funds.

Foreign Exchange Considerations

- Under Colombian applicable regulation, foreign private capital invested in Colombia, such as investments in local PEFs, must take place through the **foreign exchange market as Foreign Direct Investments (FDI)**.
- FDI in Colombia are subject to **registration in the Central Bank**.
- In order to register FDI, foreign investors shall fill in a **special form** which shall be **updated every year** at no cost.
- Foreign investors shall appoint a **proxy** in Colombia to undertake the activities related to the registration of the FDI.



Usual Fund structures and Parallel Funds

- Due to tax, geographic and foreign exchange issues, local sophisticated General Partners have **incorporated parallel Funds** in Cayman or Canada.
- General Partners are allowed to **manage two or more parallel Funds** without any restriction.
- The Superintendence of Finance **does not intervene** in the local PEFs or its investments, but Investors restrict heavily time dedication of the General Partners.
- To attract local pension plans resources, foreign General Partners incorporate parallel funds in Colombia whenever they do not meet the requirement of **US\$1 billion under management**.
- Generally, pension plans **do not invest in parallel PEFs incorporated as local feeder funds** but in parallel PEFs which **co-invest with foreign PEFs**.

Reporting Obligations and Disclosure

- PEFs are required to send **management reports** at least once every **6 months**, but local investors usually require the Administrator to send it every **3 months**.
- The Administrator **reports daily the Participation Units' value** to the Superintendence of Finance.
- Other specific reporting requirements are **easily negotiated** between investors and the General Partner and the Administrator.
- ILPA reporting obligations have begun to be **accepted** in some new funds.
- PEFs are **automatically registered** in the national Registry of Issuers and Securities (RNVE) and therefore **reporting disclosure of relevant facts** is mandatory through the SFC's internet webpage.





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