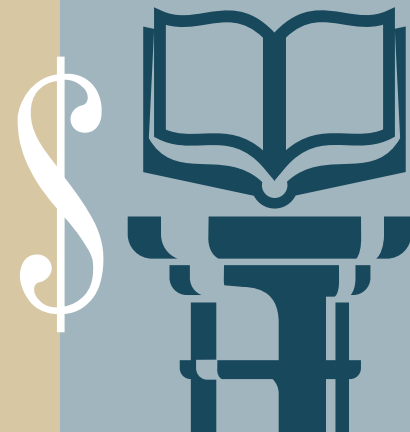


BASICS OF PRIVATE EQUITY FUNDS (PEFs) IN COLOMBIAN LEGISLATION



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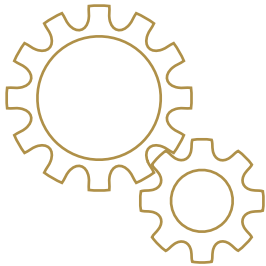


Government
of **COLOMBIA**



1. Definition

WHAT ARE PEFs?



Private Equity Funds are closed mutual investment funds, which must allocate at least two thirds of the contributions of their investors to buy assets or economic rights other than securities registered in the National Registry of Securities and Issuers (RNVE in Spanish).

A Mutual Investment Fund is any collection or administration mechanism of money or other assets that are integrated with the contribution of several individuals. Once the Mutual Investment Fund starts its operation, the resources will be managed collectively in order to obtain joint economic results. It is understood that they are closed because the redemption of the shares of investors can only be made once the established period has expired (e.g.: 10 years), as opposed to Open Mutual Investment Funds where redemption of contributions can be made at any time.

1. Definition

WHERE ARE THE PEFs REGULATED?

PEFs are regulated by **Decree 2555 of 2010¹**, especially in the provisions of Book 3 of Part 3, Sections 3.3.1.1.1. and following. Similarly, the Basic Legal Circular (Circular Letter 007 of 1996, and its amendments) of the Financial Superintendence Office of Colombia provides instructions on administration and management of Mutual Funds.

The investment regime of mandatory pension and severance funds is governed by Title 12 of Book 6 of Part 2 and subsequent articles of the said decree.

WHO MONITORS AND CONTROLS PEFs?

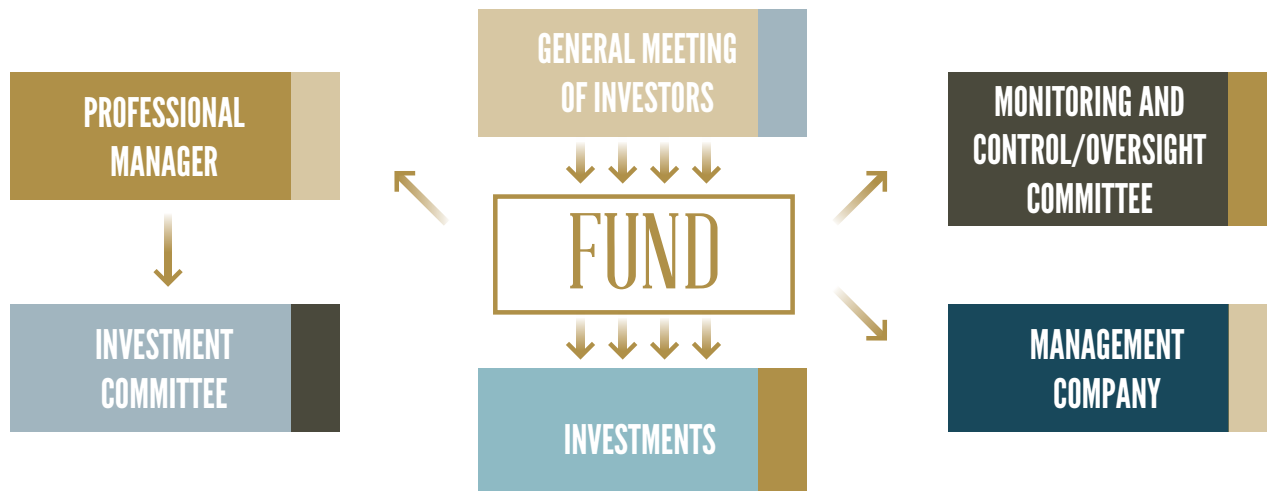
The Financial Superintendence Office of Colombia (SFC in Spanish) will monitor and control management companies that will be designated in each PEF.

1. Decree that collects and re-issues financial, insurance, and stock market rules and states other provisions.

2. Structure

HOW ARE PEFs FORMED?

PEFs are formed by a Management Company, a Professional Manager, an Investment Committee, a Monitoring and Control/Oversight Committee, and a General Meeting of Investors. The following diagram explains how a PEFs are formed:



2. Structure

What are the parties in PEF and their roles and responsibilities?

MANAGEMENT COMPANY:

All Mutual Investment Funds must have a Management Company.

Management companies may be: (i) brokerage firms, (ii) trust companies, or (iii) investment/asset management companies.

The Management Company ensures the implementation of investments in accordance with the instructions of the Professional Manager, as well as the monitoring and control of operational management of the PEF.

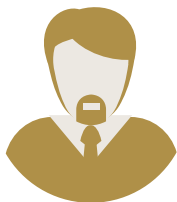
INVESTMENT COMMITTEE:

In the events where a Professional Manager is appointed, the latter will appoint the members of the Investment Committee, who are responsible for investments and issuers' analysis, determination of investment quotas and policies for the purchase and liquidation of investments of the PEF. If there is no Professional Manager, the Management Company must appoint the Investment Committee.

The Committee should meet regularly and when circumstances require it.

2. Structure

PROFESSIONAL MANAGER:



This must be a domestic or foreign individual or corporate body with extensive experience in the administration and management of portfolios and/or management of assets acceptable to invest. The professional manager must do capital calls, approval of investors, and selection of active portfolios, among others.

The Professional Manager can be a foreign corporate body. However, in this case its legal representative should grant power to an individual so he or she represents it in Colombia.

The Professional Manager's duties are those stated in the PEF bylaws and additionally:

- To act in a professional manner in compliance with the investment policy of the PEF and the bylaws.
- To keep the reserve the law requires regarding businesses and information he or she has access by virtue of his or her duties.
- To inform the Monitoring and Control/Oversight Committee of any situation that could give rise to a conflict of interest, and follow the recommendations made by that committee on the prevention, management, and disclosure of such conflicts.

The position of the Professional Manager is not mandatory. If there is no Professional Manager, a General Manager must be appointed.

2. Structure

MONITORING AND CONTROL/OVERSIGHT COMMITTEE:

All PEFs should have a Monitoring and Control/Oversight Committee which is elected by the General Meeting of Investors. This body performs a permanent oversight over the compliance of the duties assigned to the Management Company and Professional Manager.

It also verifies that investments are made in compliance with the Investment Policy, proposes the removal of the Professional Manager or Management Company, among other duties.

This committee will be formed by a plural odd number of individuals of the members elected by the General Meeting of Investors. The election period is of two years and they may be reelected.

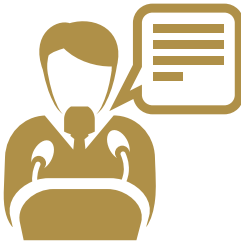
GENERAL MEETING OF INVESTORS:

The General Meeting of Investors consists of all investors in the PEF. It meets when called by the Management Company, Professional Manager, PEF investors representing at least 25% of the shares, or the SFC. The call must be made through the newspaper indicated in the rules or bylaws of the fund, and on the website of the Management Company of the PEF.

The General Meeting of Investors may make decisions with the presence of a plural number of investors representing at least 51% of the shares of the PEF. The bylaws may increase the deliberative quorum, which cannot exceed 70% of the PEF shares. Decisions are made by affirmative vote of at least half plus one of the shares present at the relevant meeting. Each share grants one vote.

2. Structure

GENERAL MEETING OF INVESTORS:



The participation of the Management Company of the PEF as investor of the PEF it administers/manages will not be counted toward the deliberative quorum nor entitles it to vote.

The duties of the General Meeting of Investors are set forth in the bylaws of the PEF and additionally as follows:

- To appoint an external auditor for the PEF when necessary.
- To provide that the PEF management is handed to a company legally incorporated for such a purpose.
- To order the wind up of the PEF and appoint the liquidator.
- To approve or not the merger project of the PEF.
- To request the removal of the Professional Manager to the Management Company as established in the bylaws.

2. Structure

What are the principles the Management Company of the PEF must keep in mind?

**IT MUST TAKE INTO
ACCOUNT THE
PRINCIPLES
APPLICABLE TO PEF
MANAGEMENT
COMPANIES,
WHICH ARE:**

- **Professionalism:** PEF management companies must act professionally in accordance with the investment policy of each fund.
- **Segregation:** Assets that are part of a PEF are independent and separate from the assets owned by the Management Company of the Fund and of those it may manage in other businesses.
- **Prevalence of investors' interests:** PEF management companies must manage PEF giving prevalence to investors' interests over any other interest.
- **Prevention and administration of conflicts of interest:** PEF management companies must set, in their corporate governance standards, policies and mechanisms to prevent and manage potential conflicts of interest that any of its officers or the Management Company may incur.
- **Equal treatment among investors with similar characteristics:** The Management Company must give equal treatment to investors in same objective conditions.
- **Preservation of proper functioning of the PEF and integrity of the market in general:** PEF management companies must act preventing the occurrence of situations that endanger the regular and proper continuity of the operation of PEF under their management or the market's integrity.
- **Best performance of duties:** PEF management must be done in the best possible conditions, always working with the necessary care so that the price and other terms of the operation correspond to the best conditions in the market at the time of the negotiation.

3. Requirements

WHAT ARE THE REQUIREMENTS PEFs MUST MEET?



Although the approval of the SFC for the operation of PEFs is not required, it is necessary to refer the following information to the SFC with a notice of at least 15 working days² prior to the incorporation of the PEFs:

- Model of the bylaws.
- The profile of the Professional Manager, if any.
- Copy of the minute of the board of directors of the Management Company by which the bylaws model is approved.
- Certificate issued by the legal representative of the Management Company certifying the compliance with legal requirements.

The investment policy must be defined prior to the incorporation of the PEF. The investment plan must contemplate the type of companies or projects where the fund aims to participate and the criteria for selection, including their economic activity and geographic location.

Management companies must meet certain requirements, both at the time of incorporation and during the term of the PEFs, such as having sufficient administrative capacity, technological and operational infrastructure, qualified staff exclusively devoted to the administration of the PEFs, having an internal control structure, corporate governance codes, contingency plans for the operation, management, and risk management systems, among others.

It must also comply with all applicable national laws.

3. Requirements

WHAT MINIMUM ASPECTS MUST THE PEFs BYLAWS INCLUDE?

In accordance with the Colombian law, the bylaws of the PEFs must contain at least:

1. General information such as name and address of the Management Company, the indication of being a PEF, its duration or term, main place of business, minimum amount to start operations, among others.
2. The PEF investment policy.
3. Indicate whether or not a Professional Manager will be hired. If this is the case, the requirement of experience, qualifications, compensation, duties, among others, should be stated.
4. Establish how the Investment Committee will be formed and its duties.
5. Define roles and how the Monitoring and Control/Oversight Committee will be formed.
6. Incorporation and redemption of shares: The incorporation and withdrawals of shares will be determined, as well as the events for partial or anticipated withdrawals of shares, and other features related to the PEF shares. In the event the exit strategy occurs through placement of shares, the stock(s) market(s) where the latter must be registered should be determined.

3. Requirements

WHAT MINIMUM ASPECTS MUST THE PEFs BYLAWS INCLUDE?

7. The ratio of expenses of the PEFs and the preference of how they will be covered. The remuneration of the Management Company and Professional Manager, if any, or the one of the General Manager must also be determined.
8. The powers, rights, and obligations of the Management Company, Professional Manager or General Manager, and investors.
9. The rules governing the General Meeting of Investors.
10. Mechanisms for the disclosure of information of the PEF stating the media for publication.
11. Grounds for dissolution of the PEF and procedure for its windup.
12. The procedure to amend the bylaws or rules.

ARE PEFs REPORTS NECESSARY?

The Management Company, or Professional Manager if it is the case, must deliver a detailed report of the management of the goods delivered according to the provision of the members, including the balance sheet and income statement of the PEF.

The accountability report should be filed semiannually as of June 30 and December 31. The deadline for this report is 60 days from the date of the relevant cut.

4. Legal issues

WHAT RESTRICTIONS DO INSTITUTIONAL FUNDS HAVE TO PARTICIPATE IN PEFs?

In accordance with the Colombian law, mandatory pension and severance funds management companies (AFPs in Spanish) may invest in PEFs³. The purpose of PEFs where AFPs invest should be to invest in productive enterprises or projects only.

As for the amounts permitted in Colombia for an AFP to invest in a PEF, Moderate Funds (Fondos Moderados) may invest up to 5% of its value in a PEF, while High Risk Funds (Fondos de Mayor Riesgo) may invest up to 7%.

The sum of all the resources of a AFP cannot exceed 40% of the value of the PEF.

CAN A PROFESSIONAL MANAGER INVEST IN PEFs HE OR SHE ADVISES/DOES CONSULTING FOR?

Yes, a Professional Manager may invest in a PEF he or she advises if permitted by its bylaws or rules, in which case the conditions for such investment must be set forth.

3. This authorization does not apply for Conservative (Conservador) and Programmed Retirement (Retiro Programado) pension funds, which cannot make this kind of investment.

4. Legal issues

WHAT ARE THE PROHIBITIONS FOR THE MANAGEMENT COMPANY AND PROFESSIONAL MANAGER OF A PEF?

Management Companies of mutual investment funds and the Professional Manager, if any, must refrain from illegal conduct or transactions in Colombia, act against the provisions in the bylaws, behave or operate in a manner that can be considered as disqualifications or incompatibilities, among others.

ARE THERE ANY RESTRICTIONS TO THE MINIMUM NUMBER OF INVESTORS IN A PEF?

Yes, a PEF must have at least two investors.

CAN A PEF BE CREATED WITH SEVERAL COMPARTMENTS FOR DIFFERENT INVESTMENT PLANS?

Yes, it is possible to create a PEF with compartments for different investment plans. This requires to explicitly establish them in the bylaws or rules, and in the prospectus, including the features that differentiate them.

Each compartment may start operations at different times and can be constituted with a single investor.

5. Tax regime

WHAT DOES IT MEAN THAT A PEF IS CONSIDERED A TRANSPARENT INSTRUMENT FOR TAX PURPOSES?

According to the provisions of the Tax Code (Estatuto Tributario), PEFs are not taxpayers of income tax. To this extent, any income derived from PEFs activities, after deduction of their expenses and of the remuneration of the Management Company, must be distributed among its members with the same title the PEF received it and with the same tax conditions they would have if they were directly received by the subscriber or participant. Thus, the fact that a PEF is considered transparent involves that:

1. The PEF is not considered an income tax and complementary taxpayer.
2. Income received by the PEF, after deducting its expenses and of the remuneration of the Management Company, is distributed among the members on the same basis that the fund received them and under the same tax conditions. For example, if a PEF receives dividends originated in earnings taxed at the head of the company, the fund must distribute them among its members as nonreturn income or nonwindfall-profit tax because that was the nature of such income when perceived by the fund. If in the example the investment in such shares had been made through another company, when the latter perceives this nonreturn income or nonwindfall-profit tax, they should be subject to taxation when distributing them as dividends since they did not pay tax on the head of the company.

5. Tax regime

WHAT IS THE TAX REGIME APPLICABLE TO PEFs?



Mutual Investment Funds are considered transparent entities, as explained above, for tax purposes. So they are not income-tax return taxpayers or supplementary income taxpayers in Colombia. Transparency means that the income of Mutual Investment Funds, after deduction of their expenses and of the remuneration of the Management Company, should be distributed among the members or subscribers with the same title the fund received them and with the same tax conditions as if they were directly received by the subscriber or participant.

Income that Mutual Investment Funds distribute among their beneficiaries or participants are subject to withhold tax provided they do not correspond to nonreturn income or nonwindfall income, exempt income, or contributions.

5. Tax regime

WHAT IS THE TAX REGIME APPLICABLE TO PEF?



Such withholding was regulated by Decree 1848 of 2013. This decree sets forth the following, among others:

- Withholding tax should only be performed upon payment to the participant or beneficiary.
- In any redemption of shares the payment shall be charged, firstly, to the entire profit susceptible of withholding at source.
- The applicable withholding tax rate will be determined by the type of income that originates such profit. In the event of Mutual Investment Funds that invest in several activities subject to different withholding tax rates, the Management Company of Mutual Investment Funds shall determine the participation of each investment component in the final profit and apply the relevant withholding rate to that part.

This scheme is applicable to all Mutual Investment Funds including, among others, PEF.

5. Tax regime

WHAT IS THE TAX TREATMENT OF RESIDENCE IN THE EVENT OF PEFs FOREIGN INVESTORS?

When a foreign investor invests in a PEF the income received must maintain the same treatment it would have if the foreign investor did it directly. To this extent, if the PEF invests in activities that are considered as domestic source income, the foreign investor, since he or she is not tax resident in Colombia, will be subject to income and complementary tax on his or her domestic source income. Likewise, provided the income corresponds to the one identified in the Tax Code, income tax on payments abroad, and subject to withhold tax, they will not be obligated to file annual income and complementary tax return.

In the event income received by nonresident foreign investors do not correspond to the income stated in the said articles of the Tax Code and have not been subject to withhold tax, they will be required to file the income and complementary tax return. In this case, they will be subject to a 33% tax rate.

Investments made by foreign investors in PEF are considered direct foreign investment, so the tax regime for foreign capital investment portfolio is not applicable.

5. Tax regime

**WHAT IS THE TAX TREATMENT
IN THE EVENT A PEF MAKES
INVESTMENTS IN EXEMPT
AND TAXABLE ACTIVITIES
(E.G.: PART FOR REAL ESTATE
INVESTMENTS AND PART FOR
FORESTRY INVESTMENTS)?**



According to the stated on the principle of transparency, income a PEF generates in activities exempt of income and supplementary tax should be distributed among its participants and subscribers with the same title the fund received it. Likewise, when a PEF distributes taxable income, it should practice the relevant withholding tax corresponding to the type of income and type of investor, as appropriate.

6. Foreign exchange regime

WHAT IS THE FOREIGN EXCHANGE REGIME APPLICABLE TO FOREIGN INVESTMENT IN PEFs?

The foreign exchange regime includes investment in PEFs as a modality of direct foreign investment.

Accordingly, any foreign investor who decides to invest in a PEF must register, directly or through proxy, the investment operation before the Central Bank.

Foreign investments duly registered with the Colombian Central Bank grant to foreign investors the following rights:

- To remit abroad dividends resulting from the registered investment.
- To reinvest dividends and income derived from such investment.
- To transfer abroad any income derived from: (i) the sale of the investment within the country; (ii) the liquidation (winding up) of the company or portfolio; or (iii) the reduction of the company's capital.

To register foreign investment, the investor must transfer the currency through the Foreign Exchange Market (i.e.: strictly regulated market which consists of all foreign currencies or foreign exchange transactions that have to be completed through foreign exchange intermediaries or compensation accounts) and fill in the so called Form No. 4 "Exchange Declaration for Foreign Investments." In general terms, foreign investments are registered automatically with the proper filing of Form 4.

6. Foreign exchange regime

WHAT IS THE FOREIGN EXCHANGE REGIME APPLICABLE TO FOREIGN INVESTMENT IN PEFs?

In the case of other types of contributions (e.g.: import of tangible goods, contributions in kind, funds in COP with the right to be remitted abroad, etc.), the foreign exchange regime requires the filing, within the following twelve months of the investment, of the following documentation:

- A so called Form No. 11 "Register of International Investment."
- The legal document that supports the investment made.
- The certificate of the statutory auditor or certified public accountant of the company receiving the investment, certifying the concept, date, and number of shares.
- Further documents may be required depending on the type of investment. In this case, registration will be done by the Colombian Central Bank provided all requirements are met.

Finally, it is important to note that foreign investors shall inform to the Central Bank, within the limits set forth in Regulatory Circular DCIN-83, any changes made to the registered investment (e.g.: substitution and cancellation of foreign investment).



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