



Legal considerations for Private Equity in Colombia

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Agenda

- I. Current trends in Private Equity in Colombia

- II. Recent economic reforms on an already proactive business environment

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Current trends in Private Equity in Colombia

- The promotion of foreign financial or securities-related products and/or services must be conducted through a Representative Office (“**RepOffice**”) incorporated in Colombia or under a **Correspondent Agreement** entered into with a local broker or a local investment bank (*corporación financiera*).
- **RepOffices shall be authorized by the Colombian Superintendence of Finance** and the foreign institution shall appoint a legal representative for the RepOffice. RepOffices allow foreign entities to undertake any type of promotional activities in Colombia including meetings, conferences, visits and conference calls.
- **Correspondent Agreements must be approved** by the Colombian Superintendence of Finance in order for local correspondents to undertake marketing activities in Colombia on behalf of the foreign entity.
- **Reverse solicitation exception:** Colombian potential investors requesting, information regarding the foreign entities’ products and/or services.
- Foreign entities may participate in **academic events** without promoting their entity or products.

Current trends in Private Equity in Colombia

Attractive pensions market has led to increasing investment of local and offshore managers in local pension fund administrators:

Parties	Acquisitions
Scotia Bank Colfondos	Scotia Bank acquired 51% interest in Colfondos
Protección ING	Protección acquired 100% interest in ING
Porvenir BBVA Horizonte	Porvenir acquired 100% interest in BBVA Horizonte

Current trends in Private Equity in Colombia

AFPs	AUM
PORVENIR (BBVA Horizonte)	US\$ 28.5 Billion
PROTECCIÓN) (ING PENSIONES)	US\$ 23.3 Billion
COLFONDOS	US\$ 8.5 Billion
SKANDIA	US\$ 3.2 Billion



Total Resources of Mandatory Pensions Funds amount to **US\$ 63.5 Billion approx.**

Current trends in Private Equity in Colombia

AFPs are allowed to invest in:

Local Securities	Foreign Securities
<ul style="list-style-type: none"> • Government and corporate bonds • Mortgage- backed securities • Central Bank bonds • Equity securities • Participation units in pooled funds and Private Equity Funds with some specific requirements. 	<ul style="list-style-type: none"> • Foreign government and Central Bank bonds • Multilateral agencies bonds • Corporate bonds • Equity • Stocks in foreign funds and Private Equity Funds

* The percentage limits and the requirements for each type of investment may differ.

Current trends in Private Equity in Colombia

The limits for investments in pooled investment funds , are summarized in the table below:

Type of Pension Fund	Minimum Limit	Maximum Limit	Special limit for Private Equity Funds
Conservative fund	0%	20%	Are not allowed to invest
Moderate fund	20%	45%	5%
Greater Risk fund	45%	70%	7%

- AFPs investment in Private Equity Funds cannot exceed 40% of the total Fund.
- AFPs are allowed to invest in Foreign Mutual Funds that have at least 10 investors provided that none of the investors has more than a 10% interest.
- AFPs are not allowed to invest in Private Equity Funds that invest in assets or participate in instruments in which the issuer, acceptor, guarantor or owner is the AFP, its affiliates, subsidiaries, or controlling company.

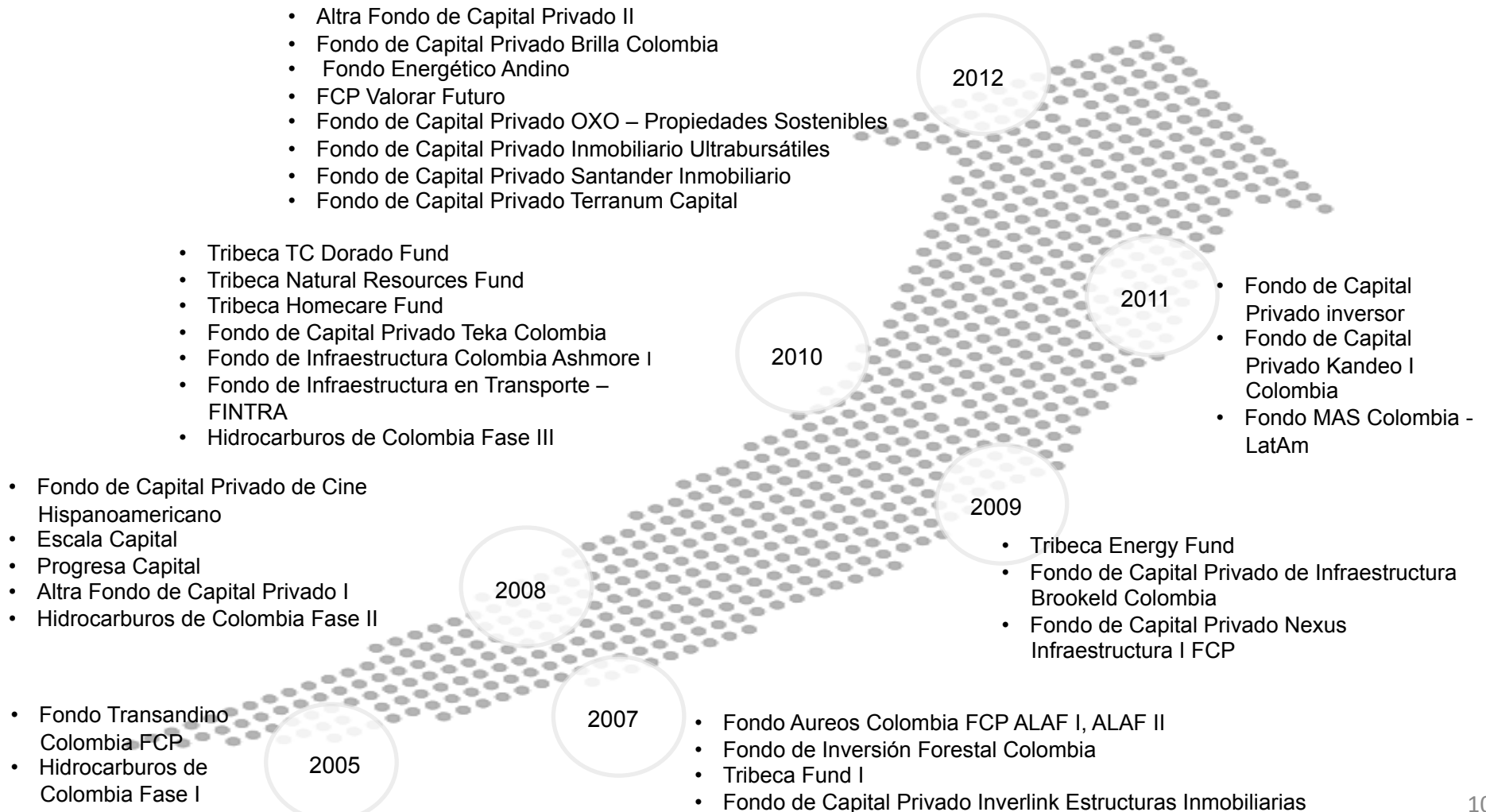
Eligibility requirements to raise funds for ETFs and Mutual Funds

Mutual Funds	ETFs	PE Funds
Credit US\$10 billion of AUM	Credit US\$10 billion of AUM	Credit US\$1 billion of AUM
Credit 5-year experience	Credit 5-year experience	Credit 5-year experience
Managers and the stock exchange or market where the interests are traded shall be incorporated in an investment grade jurisdiction	Managers and the stock exchange or market where the interests are traded shall be incorporated in an investment grade jurisdiction	Managers or their parent companies shall be incorporated in an investment grade jurisdiction
The Mutual Fund must have US \$50b AUM and at least 10 investors, none of which shall own more than 10% of the Fund.		

Local AFPs are increasing their KYC efforts and due diligence over the Fund and the GP (legal, investment and risk management perspectives).

Comply with the marketing and promotion of foreign products regime in Colombia.

Current trends in Private Equity in Colombia



Current trends in Private Equity in Colombia

- Colombian Private Equity regulations have set forth a strong and reliable framework for the development the industry in **fund formation** and **downstream investments**.
- Fund raising efforts are somehow constrained by a **strict investment regime** for pension and severance funds (AFPs) and insurance companies. Currently there are fundraising efforts for at least 20 additional PE Funds in all areas of business.
- As of November 2012, approximately 5%-7% **US\$3.2billion** are available for investment in local private equity funds.
- Similarly, 5%-7% **US\$3.2billion** are available for investment in offshore pooled investment funds, UCITS, SICAVS, and limited partnerships.
- Offshore investment managers have ratified their interest in AFPs funds and are **actively raising funds in local markets**.
- Of the total available **US\$6.4 billion** to be invested in local and offshore PE Funds only approximately US\$2.9 billion have been invested.

Current trends in Private Equity in Colombia

In order for PE Funds to raise funds from AFPs, foreign managers must comply with the following:

- **US\$1 billion** of AUM
- **5-year** experience
- Managers or their parent companies shall be incorporated in an **investment grade jurisdiction**
- Local AFPs are increasing their **KYC efforts** and due diligence over the Fund and the GP (legal, investment and risk management perspectives).
- Offshore managers shall comply with the **marketing and promotion of foreign products regime** in Colombia.

Current trends in Private Equity in Colombia

- Similarly, local general partners have increasingly been funded by **multilateral entities, sovereign funds, family offices and offshore institutional investments.**
- **Offshore PE Funds are not subject to registration** but must comply with several marketing and promotion rules that yet impose some constrains to the industry.
- **Local PE Funds** are not approved by local authorities but must undergo a **non-objection procedure.**
- A **new pooled funds reform is underway**, expected for II-Sem 2013. Private Equity Funds are expected to continue under the same rules, but **real estate funds are currently under close revision.**
- **Fair value regulations** applicable to private equity funds?

Current trends in Private Equity in Colombia

- PE economics fully applicable: **2/20 waterfall, clawback & drawback, GP Indemnity, co-investment structures, capital calls**, etc.
- Colombian Private Equity Association **COLCAPITAL** was recently incorporated to channel reform initiatives to protect and impulse the industry.
- From a **Tax perspective**, there is special attention to the New Tax Reform where the following issues are relevant:
 - Tax over **Carried Interest** may be subject to a withholding income Tax;
 - **VAT** over management fees
 - Special purpose vehicles in Cayman, BVI, Guernsey, Curacao, Panama, etc. are under scrutiny when local PE Funds deploy their **investments through offshore vehicles** into Colombian based projects.

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Recent economic reforms on an already proactive business environment

- **Investor Protection:**
 - In general Colombia provides for a safe and consistent legal framework for the conduct of business. Currently the Country's sovereign debt was rated as investment grade by international recognized rating agencies.
- **Project Finance:**
 - The introduction of Public-Private Partnerships (PPP Law) **opens a wide range of project finance opportunities for the improvement of Colombian infrastructure.** The PPP Law provides additional comfort to lenders and substantially improves the country's previous private finance initiatives regime.
- **Capital Markets:**
 - The growing interest of foreign investors in Colombian Capital Markets has increased portfolio investments in local securities to year records.
 - Recent reforms allow all investors to trade foreign securities in the foreign-securities global market, a special trading platform that allows offshore securities to be listed locally under the sponsorship of a Colombian stock broker without the prior registration in the National Securities Registry.
 - Current regulatory reforms are taking place in all the involved jurisdictions to incorporate fixed income trading to the MILA during 2013.

Recent economic reforms on an already proactive business environment

- **Insurance:**
 - Pursuant to Law 1328, 2009, after July 15, 2013 the Colombian insurance market will be opened to foreign insurers who will be able without incorporating a Colombian insurer, offer in Colombia insurance in connection with international maritime transport, international civil aviation and space launching.
- **Tax:**
 - For entities, whether national or foreign, capital gains tax rate is reduced from 33% to 10%.
 - Law 1429, 2010, created a special regime containing various tax benefits for newly incorporated companies which met certain requirements. They will be subject to a progressive income tax rate for the first 5 years after their incorporation, they will be subject to progressive payroll fees for the first five years after their incorporation and they will not be subject to income tax withholding for the first five years of operation.
- **Anticorruption:**
 - The Colombian Anticorruption Statute regulates the mechanisms to prevent, investigate and sanction acts of corruption in the private and public sector.

Recent economic reforms on an already proactive business environment

- **International Trade:**
 - A new regime for International Trading Companies (*sociedades de comercialización internacional* or “CI” in Spanish) was enacted allowing the increase in volumes of trade with Colombia.
- **Foreign Investment:**
 - Foreign investment does not require prior approval, but it must be registered with the Central Bank to guarantee access to foreign currency for repatriation.
 - Local fund managers are no longer required to register flows by filing fund-transfer forms with the Central Bank and to submit registration forms to the Colombian Superintendence of Finance, per Decree 4800 of 2010. There are no reserve requirement, minimum-stay requirements, or exchange controls.
- SAS and Trusts are commonly used investment vehicles with a **flexible and light management structure** to execute multiple transaction structures.
- **Dispute Resolution:**
 - Substantial reforms have been made in the judicial and dispute resolution system (New Arbitral Statute, General Procedure Code and Administrative Procedure Code) to provide legal certainty when doing business in Colombia. The reduction of the duration of the judicial proceedings in Colombia, together with the implementation of electronic means for the administration of the judicial proceedings will improve the judicial system in Colombia.



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