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# Introduction to Korean Private Equity Funds

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Private Equity Funds (PEF) were introduced in Korea on 5 October 2004 by adding related provisions to the Act on Business of Operating Indirect Investment and Assets. According to the announcement of the Financial Supervisory Service (FSS) there were 15 PEFs registered at the end of 2005 with a total subscription value of KRW2,895.52 billion (US$3 billion), of which only KRW338.79 billion (11.7 percent) was executed.

**Structures of PEFs**

PEFs shall be set up as a Hap-Ja Whay-Sa, a Korean business structure, which is similar to a limited partnership with at least one general partner (unlimited liability) and one limited liability partner. Only general partners are qualified and permitted to be managing partners of PEFs.

**Registration of PEFs**

PEFs shall be registered with the FSS within two weeks of the registration of the establishment of the business. FSS must review the registration filings and decide to either accept or reject within thirty days. Documents, such as Articles of Incorporation and business organization information, are required to be filed with the registration.

**The '60 percent Rule'**

A minimum of 60 percent of the total subscription money of the PEF shall be invested, within one year of the first subscription day, in the target company by way of acquiring at least ten percent of the target's outstanding shares or other interests. However, the 60 percent Rule shall not be applied, subject to FSS approval, where (i) PEFs encounter difficulty in selecting the target company to invest in; (ii) PEF assets are not sufficient to acquire the desired shares/interest in the target company; (iii) PEFs are in the process of concluding managerial participation in the target company; or (iv) PEFs propose a tender offer for the target company or participate in a capital increase of the target.

**Minimum holding period**

A PEF must hold the acquired shares, or other interests, for not less than six months after the acquisition date of the shares/interests and disposal of shares or interests are prohibited during this period, except where disposal of the shares/interests of the target company is essential to protect the interests of PEF members.

**Obligation to obtain managerial control**

PEFs are obligated to obtain managerial control over the target company within six months after the date of the initial acquisition of the shares/interests and, if the PEF fails, all of the shares/interests acquired shall be disposed within one month from the end of the six month period. Exceptions may be granted when (i) the invested company is delisted; (ii) the shares or interests acquired are less than 5% of a PEF's total assets; or (iii) immediate disposition of the shares or interests is not likely because of a merger, business liquidation or other similar causes.

**Merger and disposal of equity**

A PEF may not merge or be merged with other companies including other PEFs. Equities in the PEF owned by general members may not be assigned to others unless permitted by the Articles of Incorporation. Equities in the PEF owned by the limited liability members may be assigned to others with all general members' approvals.

**Obligation to report acquisitions of shares**

General and limited members owning over 30 percent of outstanding equities in the PEF are deemed related parties to that PEF. Hence, shares or other interests in the target company that the aforementioned members acquire outside of the PEF are to be reported to the FSS on an aggregated basis.

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