

SOUTH KOREA



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Registration requirements for foreign funds



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Over the past several years, Korea has become an increasingly popular destination for seeking investment into private equity funds, hedge funds, real estate investment funds, and other investment vehicles. Generally, under Korean law, a foreign collective investment security vehicle or foreign fund is required to register with the Financial Services Commission (the FSC) prior to performing sales or marketing activities in Korea. Failure to follow the proper registration procedures may not only result in the inability to consummate a sales transaction but also in fines and even criminal penalties. There are certain exceptions to this registration requirement such as a reverse inquiry exception but such exceptions will not be discussed in this article.

Registration procedure

Generally, the registration procedure for a foreign fund is straight forward and can take anywhere between two and six months to prepare an application and obtain approval, depending mainly on the complexity of the documents to be submitted. In order to register a fund in Korea, an application must be submitted to the FSC together with corporate documents related to the fund including the articles of incorporation, corporate registry certificate, copy of business delegation agreement, and certain financial statements. In addition, depending on the legal and capital structure of the fund, documents related to the corporate structure and personal information on the managers of the fund may be required. The FSC generally requires that material documents be translated and submitted in Korean.

It generally takes the FSC around one month to review the necessary documents, process the application, and grant certified registration status for the fund. Certified registration status does not allow a fund to be sold in Korea but merely connotes that the fund has been preliminarily approved for sale. Article 280 of the Financial Investment Services and Capital Markets Act (the

FISCMA) requires that foreign funds may only be sold through domestic investment dealers and brokers and thus the fund must enter into a brokerage or dealer agreement to complete registration. Once the brokerage or dealer agreement is submitted to the FSC, the fund may apply for complete registration upon which the fund may be sold in Korea.

As a practical consideration, most domestic brokerages are reluctant to execute brokerage agreements with foreign funds that have not obtained certified registration status. Accordingly, in most cases, a foreign fund must obtain certified registration status in advance of executing a brokerage agreement. We have seen a number of instances, however, where a fund has been able to execute the brokerage agreement in advance of certified registration status thus allowing certified registration and complete registration to occur simultaneously.

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Further requirements

Once the fund has been properly registered and sold, Article 280 of the FISCMA further requires that the net asset value per share for and public notice of each class of the fund must be provided to investors daily. However, in cases where it is difficult to make a public notice and post the net asset value daily for each class of fund, the regulations allow for the notices to be made every 15 days. Such notification of net asset value per share can be given by any reasonable method including electronic mail. In addition, investors must be provided with an asset management report once or more for every three month period. Such asset management reports are generally prepared by the asset management company or brokerage service provider. Other reporting requirements

may need to be satisfied depending on the type of fund being sold, the size of the fund and sale, and the type of investors that have bought into the fund.

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