

## GOVERNMENT APPROVES REVISION BILL TO STRENGTHEN INVESTOR PROTECTION WITH PEFs

The government approved a revision bill to the Enforcement Decree of the Financial Investment Services and Capital Markets Act during a cabinet meeting held on March 9 with an aim to strengthen investor protection in the private equity fund (PEF) market. The revision bill is a follow-up to the measures to improve the regulatory framework on private equity funds announced on April 27, 2020<sup>1</sup> and is scheduled go into effect immediately after promulgation in mid-March.

### **KEY PROVISIONS**

#### **I. CLOSE LOOPHOLES TO PREVENT EVASION OF TOUGHER REGULATIONS**

Currently, the number of investors for a private equity fund is limited to up to forty-nine.<sup>2</sup> When a feeder fund invests in a master fund and the amount of that investment makes up ten percent or more of the master fund, the number of investors from feeder fund is counted toward the number of investors of the master fund. Under the current scheme, when a number of feeder funds makes investments of less than ten percent each toward a master fund, the master fund can be operated as a PEF—and not as a publicly traded fund—even when the actual number of investors exceeds the regulated threshold of less than fifty.

To address this problem, the revised bill adds another provision to the current scheme, which requires that when a number of feeder funds from a single PEF management firm invests in a master fund and their total investment amount makes up thirty percent or more of the master fund, the number of investors in the feeder funds will be counted toward the total number of investors of the master fund.

#### **II. STRENGTHEN REGULATIONS ON UNFAIR AND INAPPROPRIATE SALES ACTIVITIES**

Cross investing or circular investing between PEFs managed by the same entity exposes the problem of artificially inflating the volume of trust or the possibility of dual compensations. In addition, recent PEF mis-selling cases revealed coercive sales tactics in return for other monetary benefits, such as business investment or loan from the fund. The revision bill prohibits these inappropriate sales activities and imposes sanctions for violating the rules.

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<sup>1</sup> Please click [here](#) to see the press release dated April 27, 2020.

<sup>2</sup> Publicly traded funds have fifty or more investors and are subject to more stringent regulations.

### **III. TIGHTEN REGULATORY MONITORING ON PRIVATE EQUITY FUNDS**

Currently, PEF managers are required to file a bi-annual report to the financial authority on their leverage status, etc. The revision bill requires PEF managers to file reports on a quarterly basis with an expanded list of criteria to be included in their reports, such as risk assessment on derivatives products.

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