



Financial Services Commission
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Press Release

August 27, 2009

LEGISLATION NOTICE OF AMENDMENTS TO THE ENFORCEMENT DECREES OF THE BANKING ACT AND THE FINANCIAL HOLDING COMPANIES ACT

Background

The Banking Act and the Financial Holding Companies Act were recently amended and will be enacted on October 10, 2009. Improvements were made to the restriction on shareholding of commercial banks and bank holding companies (hereinafter referred to as “banks”) by non-financial business operators (NFBO).

The Korean government decided on enforcement decrees regarding FSC oversight of bank ownership by NFBOs and private equity funds (PEF). The FSC has proposed amendments to the enforcement decrees of the relevant acts in order to improve and supplement the existing system, such as the reporting of changes to bank ownership. Thus, this legislation notice will be in effect from August 28 to September 7, 2009.

Main Points

A. Matter related to the delegation and enactment of the amended Acts

1. NFBO's participation in bank management

Under the amended Acts, when an NFBO wants to own more than 4% of bank shares and participate in management through appointing directors to the board, it must do so with a pre-approval from the FSC. Moreover, a stringent post-approval supervision* will be in place to prevent any conflict of interest or illegal transaction.

*eligibility assessment of the largest shareholder; limiting transactions such as the bank providing credit lines to the largest shareholder; and on-site FSS audits conducted when accused of illegal transactions.

“Participation in management” is defined as follows:

- The number of senior managers elected by the NFBO exceeds the regulated number of, for instance, one or two persons.
- The NFBO is involved in major decision-making process and regular business operations, and can limit bank management's decision-making authority through agreements and contracts.



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2. Approval of NFBO's bank ownership

- i) Under the amended act, an NFBO must gain approval from the FSC to acquire more than 4% of bank shares and become the largest shareholder or participate in management. The relevant enforcement decree dictates the following approval criteria to prevent any conflict of interest with depositors or other related parties.
 - The bank's credit line given to the largest shareholder must not exceed the limit (bank's total equity × the shareholder's proportion of bank's equity) at the time of the request for approval.
 - The relevant firm or its non-financial subsidiaries must have debt ratios below 200% and meet the regulatory criteria.
 - If the firm happens to be a financial institution, it must meet the financial soundness criteria as set by financial regulation.
 - The bank shares must be purchased using the firm's own equity and not through leverage.

3. Approval of PEF's bank ownership

- i) Under the amended act, when an NFBO invests more than 10% into a PEF as a limited partner (LP) and wishes to become the largest shareholder or participate in management by acquiring more than 4% of bank shares, the PEF's general partner (GP) is required to gain preapproval from the FSC. The FSC may request relevant information on the PEF's article of incorporation or the contract terms between the GP and LP.

This is to prevent the NFBO LP from exercising influence on the GP, thereby controlling the bank indirectly through the PEF.

- ii) The enforcement decree states criteria for GPs so that they can manage the fund independently.
 - The GP should not be individuals but business entities that have been incorporated for at least 3 years.
 - The GP should have experience as a GP of a single PEF that has more than 500bn won of invested funds. Blind pool PEF should have at least 300bn won invested in at least two companies.
 - The GP should not have a record of violating financial regulations.

4. Exemption of NFBO restrictions for public pension funds

- i) Under the amended act, public pension funds will be exempt from NFBO restrictions on the FSC's approval. The fund must be clear of any conflict of interest that may arise from holding both bank shares and non-financial shares. To be specific:



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- The fund must have rules for exercising voting rights. If no rules are set, shadow voting on shareholding exceeding 9% must be made mandatory.
- Information gathered from banks may not be used for purposes other than exercising shareholder rights.
- Internal control measures must be established to prevent conflict of interest within the pension fund.

B. Other complementary measures

A non-financial company owned by a bank-subsidiary PEF for buy-out purposes is exempt from NFBO status. This is to ensure that banks are not unfairly regarded as a NFBO through its investment in a non-financial company through a PEF.

The definition of “kin” in regards to related parties will be narrowed from the third cousin to the second cousin in accordance with similar changes made to the commercial law and the Fair Trade Act.

The reporting requirement on public pension funds for ownership of bank shares will be eased. Changes in shareholding must be reported for public pension funds that own more than 4% of bank shares if they become the largest shareholder or if their shareholding changes by 1% or more.

Currently, pension funds are required to report changes within five days. This will be revised to “within 10 days of the following month of the end of the quarter during which the change occurred”. This is to match similar revisions made recently to the “5% Rule”.

Currently, foreigners that wish to get approval for bank ownership are required to have a local representative appointed by the financial regulator. This will no longer be the case and foreigners will be able to appoint their own local representative.

Future plans

The amendments to the enforcement decrees will be reviewed by the Regulatory Reform Committee and the Ministry of Government Legislation in September 2009 and will be enacted on October 10, 2009.

The proposed amendment to the Enforcement Decrees of the Banking Act and the Financial Holding Companies Act will be available on the FSC website (www.fsc.go.kr/eng) from August 28, 2009.



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