# THE INTERNATIONAL INVESTIGATIONS REVIEW

Twelfth Edition

**Editor**
Nicolas Bourtin

THE LAWREVIEWS

# THE INTERNATIONAL INVESTIGATIONS REVIEW

TWELFTH EDITION

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This article was first published in July 2022
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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk



ISBN 978-1-80449-091-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ANAGNOSTOPOULOS

BAKER MCKENZIE

BDO LLP

CEREBRA CPAS & ADVISORS

DAVIES WARD PHILLIPS & VINEBERG LLP

DEBEVOISE & PLIMPTON LLP

GLOBAL LAW OFFICE

KOLCUOĞLU DEMİRKAN KOÇAKLI

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MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

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WONGPARTNERSHIP LLP

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# PREFACE

In its second year, the Biden administration has made clear its prioritisation of white-collar prosecutions. This includes changes in policy and guidance, such as a renewed focus on individual accountability, an increased concern with corporate recidivism, and greater scrutiny of the use, and repeated use, of deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs). The administration has announced plans not only to redistribute existing resources to prosecutions of corporate crime but to increase resources, particularly through the hiring of more white-collar prosecutors and investigative agents. Although recovery from the covid-19 pandemic and more recently the consequences of the Russia–Ukraine war have slowed the administration's implementation of these corporate enforcement priorities, US and non-US corporations alike will continue to face increasing scrutiny by US authorities.

The trend towards more enforcement and harsher penalties has by no means been limited to the United States; while the US government continues to lead the movement to globalise the prosecution of corporations, a number of non-US authorities appear determined to adopt the US model. Parallel corporate investigations in several countries increasingly compound the problems for companies, as conflicting statutes, regulations, and rules of procedure and evidence make the path to compliance a treacherous one. What is more, government authorities forge their own prosecutorial alliances and share evidence or, conversely, have their own rivalries and block the export of evidence, further complicating a company's defence. These trends show no sign of abating.

As a result, corporate counsel around the world are increasingly called upon to advise their clients on the implications of criminal and regulatory investigations outside their own jurisdictions. This can be a daunting task, as the practice of criminal law – particularly corporate criminal law – is notorious for following unwritten rules and practices that cannot be gleaned from a simple review of a country's criminal code. Of course, nothing can replace the considered advice of an expert local practitioner, but a comprehensive review of corporate investigative practices around the world will find a wide and grateful readership.

The authors who have contributed to this volume are acknowledged experts in the field of corporate investigations and leaders of the Bars of their respective countries. We have attempted to distil their wisdom, experience and insight around the most common questions and concerns that corporate counsel face in guiding their clients through criminal or regulatory investigations. Under what circumstances can the corporate entity itself be charged with a crime? What are the possible penalties? Under what circumstances should a corporation voluntarily self-report potential misconduct on the part of its employees? Is it a realistic option for a corporation to defend itself at trial against a government agency? And how does a corporation manage the delicate interactions with employees whose conduct is

at issue? *The International Investigations Review* answers these questions and many more, and will serve as an indispensable guide when your clients face criminal or regulatory scrutiny in a country other than your own. And while it will not qualify you to practise criminal law in a foreign country, it will highlight the major issues and critical characteristics of a given country's legal system and will serve as an invaluable aid in engaging, advising and directing local counsel in that jurisdiction. We are proud that, in its 12th edition, this publication features two overviews and covers 15 jurisdictions.

This volume is the product of exceptional collaboration. I wish to commend and thank our publisher and all the contributors for their extraordinary gifts of time and thought. The subject matter is broad and the issues raised are deep, and a concise synthesis of a country's legal framework and practice was challenging in each case.

**Nicolas Bourtin**
Sullivan & Cromwell LLP
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July 2022

**Chapter 14**

# SOUTH KOREA

*Seong-Jin Choi, Tak-Kyun Hong and Kyle J Choi*[1]

## I INTRODUCTION

The police have the power to investigate general crimes. The Prosecutors' Office has the power to investigate certain serious crimes and to prosecute individuals or entities (including corporations) for criminal offences. The Corruption Investigation Office for High-Ranking Officials has the power to investigate and prosecute certain high-ranking public officials for certain crimes, such as corruption and crimes related to their office.[2] Specific government agencies are granted the authority to investigate certain crimes: the National Tax Service (NTS) for tax violations, the Korea Fair Trade Commission (KFTC) for competition law violations, the Financial Supervisory Service (FSS) for securities-related crimes, the Ministry of Employment and Labour for labour law violations and the Ministry of the Environment for environmental law violations, among others.

The police and the aforementioned government agencies are permitted to conduct dawn raids with a court-issued warrant. Agencies such as the NTS and KFTC more often conduct on-site investigations and request voluntary production of documents and evidence; failure to cooperate with such a request can result in broader and more stringent investigations. As a practical matter, government investigations can be divided into two major categories: an investigation initiated by the relevant authority is termed a 'special investigation', while an investigation initiated with the filing of a criminal complaint by an aggrieved party is termed a 'routine investigation'. Domestic political concerns often affect the prosecutorial function of special investigations but have less influence over routine investigations. The individual or entity being investigated in a routine investigation may take an adversarial stance; however, such a stance would be difficult to sustain in a special investigation because lack of cooperation frequently triggers investigations that are longer in duration and broader and more stringent in terms of scope.

1 Seong-Jin Choi and Tak-Kyun Hong are partners and Kyle J Choi is a senior foreign attorney at Shin & Kim.

2 The Act on the Establishment and Operation of the Corruption Investigation Office for High-Ranking Officials (effective since 15 July 2020).

## II CONDUCT

### i Self-reporting

In general, there is no obligation for a business to self-report its misconduct. There are also no benefits enumerated in the laws or written policies for a business that self-reports its misconduct.[3] Nonetheless, there may be incentives for a business to self-report. If a business is subjected to a special investigation, the authorities may narrow the scope of the investigation or the number of charges or the entities to be indicted, if the authorities determine that self-reporting has substantially assisted the investigation process. Any benefits are provided or negotiated on a case-by-case basis, rather than being prescribed in accordance with formal procedures. In terms of sentencing, self-reporting is a mitigating factor.[4]

In the KFTC's cartel investigations, there is a written leniency policy for self-reporting;[5] in fact, self-reporting has become a trend.[6] A self-reporter may be eligible for mitigation of or exemption from administrative sanctions. To be eligible for exemption from administrative surcharges and restraining orders, the self-reporter must meet all the following requirements:

*a* the self-reporter must, voluntarily and independently, be the first person to provide evidence necessary to prove the existence of a cartel;

*b* reporting should be made when the KFTC did not have sufficient evidence to prove the cartel or initiated the investigation;

*c* the self-reporter must remain cooperative until the investigation is complete; and

*d* the self-reporter must have suspended its collusive practice.[7]

A similar leniency programme has also been introduced in criminal investigations in cartel cases.[8]

3 However, certain financial institutions have obligations to report wrongdoing upon discovery (Article 12 of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes). The rationale seems to be that certain financial institutions provide public functions.

4 'Circumstances after the commission of the crime', which includes self-reporting, is one of the sentencing factors (Article 51.4 of the Criminal Act). Voluntary confession to the authorities by the representative of a corporation may exempt or mitigate criminal punishment (Article 52 of the Criminal Act, Supreme Court of Korea judgment 95DO391, 25 July 1995). Self-reporting is a mitigating factor in the Sentencing Guidelines (http://sc.scourt.go.kr/sc/engsc/index.jsp).

5 Article 22.2 of the Monopoly Regulation and Fair Trade Act.

6 For the cartel cases in which the KFTC imposed administrative surcharges during 1999 to 2020, 58 per cent involved self-reporting (Fair Trade White Paper 2021, KFTC, p. 161).

7 Regardless of whether the KFTC has initiated its investigation when self-reporting is undertaken, a business that provides the evidence necessary to prove the existence of a cartel voluntarily and independently but second in order (i.e., another business has already self-reported) is eligible for a 50 per cent reduction of the administrative surcharge and mitigation of the restraining order, provided it has suspended its collusive practice and remains cooperative until the investigation is complete. However, there are certain exceptions to the leniencies. See Article 35 of the Enforcement Decree of the Monopoly Regulation and Fair Trade Act; 'Public Notification on Implementation of Leniency Programme, Including Corrective Measures against Voluntary Confessors, etc. of Unfair Cartel Activities' (Korea Fair Trade Commission (KFTC), Public Notification No. 2017-20, 14 November 2017).

8 Guidelines for Reduction of Penalty in Cartel Cases and Investigation Procedures (Supreme Prosecutor's Office, Rule No. 1150, 8 December 2020).

### ii Internal investigations

It is uncommon for an internal investigation to be conducted by external counsel. Generally speaking, businesses have no obligation to share the results of an internal investigation with the government. Interviews with witnesses and examination of emails, documents or financial transactions are the typical means used during an internal investigation. Although there is no established law or practice regarding an employee's retention of legal counsel during an internal investigation, employees tend not to retain their own counsel insofar as they are not in an adversarial position against their employer.

Attorney–client privilege or attorney work-product privilege is not recognised for communications made between an individual and their counsel prior to the commencement of a criminal investigation or criminal proceedings.[9] It is not clear whether privilege is recognised when communications are made after criminal proceedings have commenced.[10] In any case, an attorney has a duty not to disclose confidential information[11] and has the right: to refuse seizure of objects that come under their custody in the course of providing legal services and that are related to another's confidential information;[12] and to remain silent before the court on matters regarding confidential information.[13] The aforementioned duties and rights are only afforded to attorneys when the information or objects are in the custody of the attorneys. The client cannot assert these rights once they have been requested to produce such information. There have been a few incidents in which the Prosecutors' Office has requested external legal counsel to submit materials produced by or exchanged between a client and the external legal counsel upon obtaining a search and seizure warrant from the court. Following these incidents, the South Korean legal industry has been making attempts to formally introduce attorney–client privilege into legislation.

### iii Whistle-blowers

Although whistle-blower reports have always triggered a number of government investigations, they have not been very common to date. However, with an increase in incentive programmes[14] and a shift in public attitude towards whistle-blowers, there has been a rise in the number of reports. The major statutes guaranteeing protection for whistle-blowers are as follows: the Protection of Public Interest Reporters Act (PPA), the Act on Protection of Specific Crime Informants and Article 84-2 of the Framework Act on National Taxes. There are more than 50 guidelines declared by government agencies regarding incentive programmes for whistle-blowers.[15] This legislation provides for prohibition of retaliation against whistle-blowers, provisions of personal security and monetary compensation.

9 Supreme Court of Korea, judgment 2009DO6788, 17 May 2012.

10 id.

11 Article 317 of the Criminal Act.

12 Article 112 of the Criminal Procedure Act.

13 Article 149 of the Criminal Procedure Act.

14 Articles 13, 15 and 26 of the Protection of Public Interest Reporters Act (PPA).

15 e.g., the Guideline for Compensation of Persons Who Report Competition Law Violation (KFTC, Public Guideline No. 2016-21, 21 December 2016).

The major incentive programmes set out in the PPA are as follows:

*a* retaliation against or interference with whistle-blowing is prohibited;[16]

*b* if a whistle-blower is involved in a criminal violation with regard to the subject of reporting, mitigation or exemption of punishment may be provided;[17]

*c* compensation is to be provided where whistle-blowing has led to a direct recovery of or increase in the revenue of the government or public institutions through the imposition of criminal or administrative sanctions on the business;[18]

*d* a whistle-blower's disclosure of confidential business information to the authorities is not deemed a violation of their employment agreement or any other laws or regulations;[19]

*e* a business may not claim damages against a whistle-blower even if it suffers damage as a result of the whistle-blower's reporting, unless the reporting was a false claim, the whistle-blower requested money or undue favour in the workplace in connection with the reporting or the reporting was for other unlawful purposes;[20] and

*f* the personal information of the whistle-blower may be treated on a no-name basis.[21]

## III ENFORCEMENT

### i Corporate liability

Although the Criminal Act, which covers most common types of crimes, does not recognise corporate criminal liability, various other statutes imposing industry-specific or subject-specific regulations (e.g., those on securities, construction, pharmaceuticals, public procurement, taxation, labour, competition, environment) usually recognise corporate criminal liability. The standard wording used in these statutes with respect to corporate criminal liability is that:

> *if a representative, agent, or employee of a corporation ('corporate representative') violates . . . [a provision in an Act] . . . in connection with the business of the corporation, the corporation itself, as well as the corporate representative, may be subject to . . . [a criminal fine] . . . provided that the foregoing shall not apply if the corporation was not neglectful in paying due attention to and supervising the relevant affairs, in order to prevent such violation.*

To assess whether the actions of an employee were committed in connection with the business of the corporation, all the circumstances should be taken into account, including:

*a* the scope of the corporation's business;

*b* the title and position of the employee in question;

*c* the relevance between the illegal act committed by the employee and the business of the corporation;

*d* whether the corporation knew of the commission of the conduct or was involved therein; and

16 Article 15 of the PPA.

17 Article 14 of the PPA.

18 Article 26 of the PPA.

19 Article 14 of the PPA.

20 ibid.

21 Article 12 of the PPA.

*e* the source of the money used in carrying out the conduct and to whom the profit therefrom is attributed.[22]

The 'employee of a corporation' in the above provision shall include not only those who are formally employed by the corporation in question, but also those who directly or indirectly perform the duties for the corporation while under its direct control or supervision.[23]

With respect to civil liability, the principle of *respondeat superior* applies.[24] The burden of proof is on the employer to prove that it has exercised due care in appointing the employee and in supervising the performance of the specific affair, or that the loss would have been inflicted even if the employer had exercised due care.[25]

The Ethical Code of the Korean Bar Association prohibits representation of multiple clients in one case when there is any conflict of interest between them, unless all the clients consent and this representation does not prejudice any of the clients.[26] There is not a significant volume of court precedent on this issue, but it is not uncommon, at least during the investigation phase where the conflict between the corporation and the implicated individuals has not yet materialised, for a corporation and the implicated individuals to be represented by the same counsel.

### ii Penalties

The punishable violations and the corresponding punishments and sanctions are stipulated in the relevant act; the most common punishments imposed on businesses are criminal fines and administrative surcharges. For certain violations, a restraining order or the revocation or suspension of a licence is imposed. In cases involving public procurement contracts, the sanction can be debarment;[27] the ceiling for the debarment period is two years.[28] Among others, violations of competition law usually entail severe monetary consequences, with the administrative surcharge often exceeding millions in US dollar value.[29] Various statutes provide for the revocation of corporate licences as a sanction for severe violations and suspension of licences as a sanction for moderate violations. Generally, the period for licence suspension does not exceed three years and the suspension may be substituted by an administrative surcharge. These criminal or administrative sanctions are, depending on the underlying statutes, either mandatory or discretionary. Criminal sanctions are enforced by the Prosecutors' Office. Administrative sanctions such as surcharge, restraining order, revocation or suspension of corporate licences, or debarment are enforced by the competent administrative agencies. Businesses can challenge these administrative sanctions and file a suit with the court.

22 Supreme Court of Korea, judgment 96DO2699, 14 February 1997.

23 Supreme Court of Korea, judgment 93DO344, 14 May 1993.

24 Article 756 of the Civil Act.

25 Supreme Court of Korea, judgment 97DA58538, 15 May 1998.

26 Article 22 of the Ethical Code of the Korean Bar Association.

27 Article 27 of the Act on Contracts to Which the State Is a Party.

28 Article 27(1) of the Act on Contracts to Which the State Is a Party.

29 In 2020, the number of cases in which the KFTC imposed an administrative surcharge was 110 and the total amount of surcharge was approximately 380 billion won. A simple calculation shows that approximately 3.45 billion won was imposed per case (Statistical Yearbook of 2020, KFTC, p. 34).

### iii Compliance programmes

As referred to above in the standard statutory language for corporate criminal liability (see Section III.i), the law provides a safe harbour if the business in question fully performed its duty to supervise its corporate representative and adopted reasonable and thorough measures to prevent criminal violations by its corporate representative. Full discharge of a corporation's duty can mitigate the criminal penalties or exempt corporations therefrom.

Although courts have yet to establish clear standards on the specific measures and actions that should be taken by corporations to be exempt from criminal punishment, the Supreme Court held, in a case involving an unauthorised building, that the question of whether a corporation fulfilled its obligation to supervise its corporate representative is assessed by taking into account all the circumstances, including:

*a* the intent and purpose of the law;
*b* details of the violation and the degree of damage or consequences thereof;
*c* the size of the corporation and the feasibility of supervising individuals who commit violations; and
*d* the measures or actions taken by the corporation to ensure the prevention of such violations.[30]

It was also held that exercising general supervision by training employees to ensure compliance with the Public Health Control Act and collecting signed pledges of compliance from employees when they joined the company does not automatically qualify a corporation for exemption from liability.[31] In this regard, a corporation should:

*a* periodically update its internal compliance manuals;
*b* provide regular training sessions for employees;
*c* evaluate factors that cause violations and analyse the business activities of each department to understand risks and conduct and tailor proportionate supervision accordingly;
*d* establish an internal control and compliance system;[32] and
*e* conduct a thorough internal investigation and establish a policy of zero tolerance when any violation is detected.

30 Supreme Court of Korea, judgment 2009DO5516, 14 July 2011.

31 Supreme Court of Korea, judgment 92DO1395, 18 August 1992.

32 It is likely that the Supreme Court will take into account the size of the corporation and the nature of the affairs when assessing whether the corporation exercised adequate supervision over potential violation. Therefore, while smaller corporations might qualify for safe harbour through relatively simple measures, such as communicating their compliance policies and manuals, holding regular meetings and having a reporting system in place, larger corporations will have to introduce more sophisticated systems, such as information management programmes for compliance purposes or a comprehensive system linked to an existing accounting, reporting or training system.

With regard to administrative sanctions, the relevant statutes usually do not provide safe harbour for businesses. However, court precedent indicates that 'justifiable cause' for the violation may be accepted as a defence.[33]

### iv Prosecution of individuals

In criminal investigation, because corporate liability is not recognised under the Criminal Act, the investigating authorities generally seek to hold individuals liable first; then, if the relevant body of law contains a corporate criminal liability provision, the investigating authorities hold the corporation liable. When the government investigates individuals, a corporation may coordinate with an individual's counsel as long as the coordination does not amount to improper interference with the government's investigation. Immediate dismissal or disciplining of the responsible employees may prove the company's full commitment to implementing its compliance policy but, in practice, it takes substantial time before a corporation can complete the proper procedures and obtain enough evidence to undertake the disciplinary action required under South Korean labour laws. Therefore, a lack of immediate disciplinary measures against the individuals involved is usually not regarded as lack of commitment or enforcement of a compliance policy within the corporation.

When the individual representative, officer or employee of a corporation becomes a suspect or a defendant in a criminal or civil case, the corporation cannot pay or advance the legal fees. However, if the corporation has a substantial interest in the outcome of the case, the individual's actions were lawful or the action was required by the individual's position and, therefore, the corporation needs to support the case for its own interest, and the amount of legal fees are reasonable, the payment of legal fees by the corporation is allowed.[34] The court will take into account all the circumstances in determining whether the payment of the fees is proper. Although some insurance companies provide directors' and officers' liability compensation policies, they do not usually cover intentional criminal acts.[35]

## IV INTERNATIONAL

### i Extraterritorial jurisdiction

Generally, South Korean authorities have no jurisdiction over conduct that occurs outside the South Korean territory and is committed by a foreign national or a foreign company, unless South Korea or South Korean citizens are affected by the conduct. Likewise, the authorities

33 In a case where a business allowed a minor in its video-watching room (which are adult-only facilities in South Korea), the court accepted its justifiable cause defence that because the relevant law was so complicated and self-contradictory, the business had reason to believe that the minor was legally allowed to enter the facility as a customer (Supreme Court of Korea, judgment 2001DU3952, 24 May 2002). In another case, in which an owner of a building fraudulently used the public water supply, the court accepted the justifiable cause defence because the water supply pipe in question was installed by the previous owner of the building and the current owner had no idea of the problem (Supreme Court of Korea, judgment 98DU5972, 26 May 2000).

34 Supreme Court of Korea, judgment 2007DO9679, 26 June 2008; Supreme Court of Korea, judgment 2005DO9861, 8 September 2006.

35 Insurance Law, Deok-Jo Jang, Bobmun-sa, 2020, p. 390.

do not spend significant resources concerning the conduct of companies outside South Korea, whether foreign or domestic, unless the conduct has a substantial effect on South Korea or its citizens.

### ii International cooperation

The South Korean government cooperates with other countries' law enforcement or prosecutorial functions. Although practical difficulties exist because of the workload created by translation of documents, international cooperation is becoming more common. Traditionally, these cooperative efforts have been treaty-based. However, more authorities are focusing on direct inter-authority cooperation (e.g., cooperation between prosecutorial functions, police departments, tax authorities and financial intelligence units in each country). As of December 2020, South Korea has extradition treaties with 80 countries and mutual legal assistance treaties (MLATs) with 77 countries.[36] In practice though, extradition is permitted in only a small number of major cases. Between 2011 and 2020, South Korea requested the extradition of 31 persons and received extradition requests for seven persons on average each year. For the same period, South Korea requested MLATs for 230 cases and received MLATs for 139 cases annually.[37] The average number of suspects repatriated into South Korea between 2014 and 2020 was 276 annually.[38]

### iii Local law considerations

Because South Korea has strict data privacy laws, companies usually have to receive a very detailed consent letter before gathering information from an employee's digital devices. Although informal dialogue or negotiations with the investigating authority is usually permitted, formal plea bargaining or settlement with authorities is not recognised under the law, which makes it difficult for a corporation to resolve a case at an early stage.[39] Although a suspect or defendant in a criminal investigation can receive assistance from counsel during a government interrogation, it is usually not permitted (without the approval of the investigator) for an attorney to answer the investigator directly instead of the suspect.[40] In principle, brief note-taking by a suspect, defendant or counsel during investigations is permitted.[41] Investigators often keep asking questions even after the defendant opts to remain silent. When authorities interview a person as a witness (i.e., a person who is not a suspect or a defendant), the witness can have their counsel present during the interview.[42] When an

36 White Paper on Crimes 2021, Institute of Justice, pp. 226 and 230.

37 White Paper on Crimes 2021, Institute of Justice, pp. 230 and 231.

38 Statistics, Korean National Police Agency.

39 However, in a KFTC investigation, a negotiated agreement is possible. See Articles 51-2, 51-3, 51-4 and 51-5 of the Monopoly Regulation and Fair Trade Act.

40 Article 243-2(3) of the Criminal Procedure Act. The defence counsel who participates in the interrogation may make a statement of their opinion after interrogation, provided that the counsel may raise an objection to any unfair interrogation manner even in the middle of the interrogation and may also make a statement, with approval by the prosecutor or the police officer.

41 Article 13 of the Rule on the General Investigation and the Cooperation between Prosecution and Police (Presidential Decree No. 31089, 7 October 2020); Article 42 of the Rule on the Human Rights Protection in Investigation (Ministry of Justice Decree, No. 1010, 9 June 2021)

42 Both the Prosecutors' Office and the police have internal rules that, in principle, allow witnesses to have the assistance of counsel during an interview. Article 9-2(8) of the Prosecutor Offices' Rule (Ministry of Justice Order, No. 966, 31 January 2020). Article 11 of the Rules on the Assistance of and Interview with Counsel

investigation is conducted by agencies other than the Prosecutors' Office or the police and the investigation is not aimed at imposing criminal sanctions, the assistance of counsel during government interrogation is sometimes denied.

## V YEAR IN REVIEW

A very stringent and thorough anti-corruption law, the Improper Solicitation and Graft Act (ISGA), was introduced in September 2016. ISGA applies to a wide scope of targets, including not only public officials and employees of state-owned enterprises but also employees of private media companies, teachers and employees of private schools, and private individuals performing public duties (hereinafter referred to as public officials). Specifically, ISGA has two major components: prohibition of the provision of economic benefits to a public official and prohibition of improper solicitation. When the economic benefit is in excess of 1 million won at a time or 3 million won in total in one fiscal year and it does not qualify under any safe harbour clause, provision of the benefit is criminally punishable regardless of its connection with the public official's duties and the motive of the provision. When the economic benefit is less than the above amounts and the benefit is given in relation to the public official's duties, unless it qualifies under any safe harbour clause, this benefit is punished by a fine regardless of whether it is provided to receive an improper advantage.[43]

Although President Moon Jae-in's administration proclaimed stricter punishment against business crimes by large companies, such as the abuse of economic power or breach of trust by controlling shareholders, there has not been a significant increase in the number of major corporate investigations. Under the Moon administration, the investigative power of the Prosecutor's Office has significantly diminished and, in contrast, that of the police has grown substantially.

## VI CONCLUSIONS AND OUTLOOK

From a global perspective, government investigations in South Korea tend to be more focused on holding the individuals liable and, with the exception of violations of competition law, monetary sanctions imposed on corporations have not been particularly harsh. There is room for growth with respect to the protection of the investigation subject's procedural rights during an investigation, especially by broadening the scope of permitted attorney assistance during interrogations and recognising attorney–client privilege and the doctrine of attorney work-product privilege. Although international cooperation is growing, there are still obstacles owing to the burden of document translation.

(National Police Agency Order, No. 702, 19 April 2013).

43 Although there are certain exceptions, the typical exception is: food not exceeding 30,000 won; gifts not exceeding 50,000 won (for gifts of agricultural or fishery products, not exceeding 100,000 won); and cash gifts for congratulatory or condolence purposes not exceeding 50,000 won (for wreathes or floral arrangements provided in lieu of cash gifts for congratulatory or condolence purposes, not exceeding 100,000 won) when these benefits are not provided in return for a favour or to influence the discharge of a public official's duty. See Article 8 of the Improper Solicitation and Graft Act.

**Appendix 1**

# ABOUT THE AUTHORS

**SEONG-JIN CHOI**

*Shin & Kim*

Seong-Jin Choi is a partner at Shin & Kim and his practice areas include corporate crime, high-tech crime, financial crime, money laundering, intellectual property rights and personal information protection. Starting his career as a prosecutor in 1997, Mr Choi has been in charge of many special investigations, including investigations against politicians and large corporations. While working as the digital forensic science officer at the Supreme Prosecutors' Office, he gained vast experience in information technology-related crimes. He also worked as a directing manager at the South Korea financial intelligence unit of the Financial Services Commission.

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Tak-Kyun Hong is a partner at Shin & Kim and his areas of practice include white-collar crime, anti-corruption and competition. Mr Hong has carried out a number of corporate criminal investigations and litigations. Prior to joining Shin & Kim in 2007, Mr Hong spent four years as a public prosecutor in South Korea. He is a *Chambers Asia-Pacific* Band 2 lawyer for dispute resolution: white-collar crime (2015–2021), and also recommended by *The Legal 500* for regulatory compliance and investigations (2019, 2021), and by *Who's Who Legal* both for business crime defence and for investigations (2016–2021).

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Kyle Choi is a senior foreign attorney at Shin & Kim and his major practice areas include cross-border intellectual property litigation including patents, trademarks, trade secrets and product liability. Mr Choi joined Shin & Kim in 2019 having worked in US-based global law firms. Mr Choi obtained his Juris Doctor (*magna cum laude*) at the Catholic University of America Columbus School of Law and is a member of the District of Columbia (Washington, DC) Bar.

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ISBN 978-1-80449-091-4