



Overview of the "Act on Prevention of Conflict of Interest" and Its Impact on Businesses

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The Act on Prevention of Conflict of Interest (the "Act") was passed by the National Assembly on May 18, 2021. The Act will be enforced from May 19, 2022. Below is an overview of key provisions of the Act and its anticipated impact on businesses.

1. Background

At the time of the enactment of the Improper Solicitation and Graft Act in 2015 (the "Improper Solicitation Act"), there were legislative discussions regarding the need to regulate public officials engaging in transactions that involve conflicts of interest. However, the Improper Solicitation Act was enacted without including provisions relating to conflicts of interest.

The discussions regarding managing conflicts of interest in public sector continued since then. It gained momentum with the eruption of the real estate speculation scandal involving LH Korea Land & Housing Corporation employees in early March of 2021, where current and former employees were accused of using insider information to snap up lands near upcoming housing development projects. The Act was subsequently approved during the regular session of the National Assembly on April 29, 2021, and passed on May 18, 2021.

Supplementary provisions such as enforcement decrees and enforcement rules will be enacted prior to the enforcement date of the Act. As the institution in charge of carrying out the law, the Anti-Corruption & Civil Rights Commission issued explanatory materials for the legislation on June, 2021.¹

2. Key Provisions

(a) Scope of Application

Among others, the Act defines “public official(s)”, who are subject to the Act. Such officials include officials of the central and local governments and officers and employees of certain public service-related organizations, certain public institutions, and national/public schools (“public institutions”). Unlike the Improper Solicitation Act, executives and staff members of press companies or private schools are not regarded as public officials.

(b) Obligation to Disclose or Request for Removal When a Public Official Has Private Relationship with Interested Parties

Public officials must voluntarily disclose or remove oneself from a public duty if he/she has a private relationship with someone who has direct interest in his/her duty (“interested party”) (Article 5-1). In such case, other interested parties can also request the head of the relevant public institution to remove the public official from performing his/her duty (Article 5-2). Upon violation of this provision disciplinary action and an administrative fine of up to KRW 20 million (approximately USD 17,446) may be imposed to the public official (Article 28-2).

(c) Duty to Report Private Transactions with Interested Parties

When a public official engages in certain private transactions (lending money or securities, real estate transactions, contracts for goods or services, etc.) with an interested party, he/she must disclose such transaction. The same applies when a public official’s spouse, lineal ascendant/descendant, or certain organization related to the public official (i.e., an organization whose share or equity is owned by the public official or his/her family members in excess of certain percentage) engages in such private transactions with an interested party. (Article 9-1). A public official who violates this provision may be subject to disciplinary action and an administrative fine of up to KRW 20 million (approximately USD 17,446, Article 28-2).

(d) Restrictions on Outside Activities That May Impede The Fair Performance of Duties

Unless allowed by other applicable laws, public officials are prohibited from (i) privately providing service, advice, or consultation to interested parties and receiving compensation therefor, (ii) disclosing information and/or knowledge related to the public official’s duty to another party and receiving compensation therefor, and (iii) representing or providing advice, consultation, or information to a counterparty in a matter where the public institution which the public official belongs to is a party or has direct interest (Article 10). Upon violation, disciplinary action and an administrative fine of up to KRW 20 million (approximately USD 17,446) may be imposed (Article 28-2).

(e) Restrictions on No-Bid Contracts

Unless allowed by other applicable laws, public institutions, their subsidiaries and institutions under the public institutions’ supervision are prohibited from entering into contracts bypassing the standard process of public bidding when the counterparties are: (i) high-ranking public officials and public officials responsible for contracting of the relevant public institutions (in the case of public institutions), (ii) high-ranking public officials of the supervisory institutions and/or the parent companies (in the case of institutions under public institutions’ supervision or public institution’s subsidiaries), (iii) assemblymen of the relevant standing committee of the National Assembly, (iv) local council members with audit/investigatory power, or (v) family members and related corporations/organizations of

above (i) to (iv) (Article 12). A public official who violates this provision will be subject to disciplinary action. A public official who ordered, induced, or condoned such violation will be subject to an administrative fine of up to KRW 30 million (approximately USD 26,173) (Article 28-1).

(f) Prohibition on Divulging Confidential Information Obtained in the Course of Performing Official Duties

A public official should not use confidential or non-public information of his/her public institution learned in the course of performing his/her official duties to acquire property or accrue economic benefits or cause a third party to acquire property or accrue economic benefits (Article 14-1). Upon violation, a public official may be subject to imprisonment for up to seven years or a criminal fine of up to KRW 70 million (approximately USD 61,052) (Article 27-1).

Moreover, an individual should not acquire property or accrue economic benefits by using confidential or non-public information of a public institution which he/she acquired from a public official or otherwise obtained through illegal means (Article 14-2). An individual who acquires property or accrues economic benefits in violation of this provision is subject to imprisonment of up to 5 years or a criminal fine of up to KRW 50 million (approximately USD 43,531).

3. Implications

According to the Anti-Corruption and Civil Rights Commission, the number of public officials subject to the Act is around 2 million. This includes all officials of the central and local governments and officers and employees of around 1,200 public service-related organizations, and around 300 designated public institutions. If their immediate family members are included, more than 5 million people will at least be directly affected by the Act.

Although the Act mainly imposes compliance obligations on public officials and public institutions, certain provisions also apply to individuals and companies that do business with public institutions. These include: (a) criminal punishment against individuals (non-public officials) who accrue economic benefits by using confidential or non-public information of the public institutions; and (b) confiscation of illicit property from third parties obtained through a public official's violation of official duties (such as failure to disclose or request for removal when a private relationship exists between a public official and a party relevant to the duty).

In addition, businesses should take into consideration that anyone can report violations and be notified of the outcomes of subsequent investigations (Article 18, 19), sanctions can be reduced or compensation can be provided to individuals who voluntarily report violations (Article 20), and when a private relationship exists between the public official and an interested party, other interested parties can request to remove the public official from performing his/her public duty. Given the broad sweep of the Act, companies should be mindful of the Act when engaging in a transaction involving a public institution. The companies should also adopt a compliance policy which is designed to ensure compliance with the Act and provide regular training sessions to its employees. Such compliance policy should require the company to check not only its compliance with the Act, but also have a procedure in place to verify that the counterparty is also in compliance with the Act.

Should you have any questions regarding the contents of this newsletter, please do not hesitate to contact us.

¹ Available for view or download in Korean at (last seen on August 9, 2021): <https://bit.ly/3zLVLU>

[\[Korean version\]](#) 이해충돌방지법 개요 및 기업활동에 미치는 영향

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