SHIN&KIM
법무법인(유) 세종

A Paradigm Shift in Korea's Criminal Justice System: Navigating the 2026 Reforms

2026.09.04

1. Separation of Investigative and Prosecutorial Powers

Effective October 2, 2026, the South Korean criminal justice system will undergo a structural reform that restructures the allocation of investigative and prosecutorial functions. Under the new statutory framework, the newly established Public Prosecution Office (PPO) will principally focus on prosecution and judicial-control functions and cannot engage in direct nor supplementary investigation while retaining right to demand supplementary investigation or re-investigation to the relevant investigation bodies. Direct investigative authority will be reallocated among designated law enforcement agencies, prompting companies to adjust their defense strategies and compliance protocols.

2. Jurisdictional Realignment in Corporate Investigations

The separation of investigative authority and prosecutorial authority establishes a modified framework for corporate criminal proceedings. Under the new statutory framework, the PPO will focus on prosecutorial determinations and warrant reviews, while maintaining defined statutory mechanisms to oversee, guide, and demand supplementary investigations.

Frontline investigations will be distributed among specialized agencies based on the nature and scale of the alleged offense. Understanding this new allocation is essential for managing regulatory and criminal exposure.

Authority	Core Jurisdiction / Statutory Function	Direct Investigation Powers	Post-Investigation Disposition & Oversight	Practical Corporate Implications
Serious Crimes Investigation Agency (SCIA)	Major economic and corporate offenses falling within the	Yes	Refers cases to the PPO upon completion; subject	Highly specialized agency with sophisticated forensic capabilities;

	SCIA's statutory jurisdiction.		to PPO demands for supplementary investigation or re-investigation.	holds authority to compel case transfers from the General Police.
Special Judicial Police (SJP)	Regulatory offenses handled by agencies such as the KFTC, Financial Supervisory Service, Ministry of Employment and Labor, and Customs Office.	Yes	Mandatory referral of all cases to the PPO (no unilateral dismissal power).	Initiates investigations independently; early-stage engagement is critical to shape the evidentiary baseline.
General Police	General criminal offenses and non-designated economic crimes.	Yes	Refers cases to the PPO for indictment or issues a decision of non-referral if suspicion is not established.	Retains authority to issue non-referral decisions, acting as the primary investigator for standard corporate fraud or embezzlement that do not fall within the SCIA's statutory jurisdiction.
Public Prosecution Office (PPO)	Indictment decisions, warrant reviews, trial prosecution, and judicial oversight.	Yes	Evaluates forwarded records, issues indictments, and demand supplementary investigations.	Acts as the final gatekeeper and the primary forum to challenge warrant requests or seek case dismissal.

3. Jurisdictional Overlap and Case Transfers

Under this decentralized framework, multinational companies may encounter jurisdictional overlap across agencies. Where investigations overlap, the SCIA may request the transfer of certain serious-crime cases from other investigative agencies, subject to the applicable statutory framework.

Additionally, cases initially handled by the General Police may be transferred to the SCIA if the scope of allegations expands during the investigation to encompass designated serious crimes. Because a change in investigative agency may alter the focus and scope of inquiry, maintaining consistent records and witness accounts from the initial stages remains important. Jurisdictional overlap among agencies may also be subject to coordination under the new statutory framework (such as the Investigative Jurisdiction Coordination Council) as implementing regulations are finalized.

4. Enhanced Search and Seizure Protocols

The statutory amendments introduce updated procedural requirements concerning the execution of search and seizure warrants.

Effective August 5, 2027 (one year following promulgation), investigative agencies will be required to video-record the execution of search and seizure warrants from commencement to conclusion. These video recordings will be incorporated into the investigation record and uploaded to the official electronic management system. Suspects and the parties subject to the search will hold the right to request access to and copies of these video records.

With real-time objections and verbal exchanges permanently captured on video, on-site procedural management by defense counsel will be increasingly important. Such recordings may provide an important basis for identifying and challenging procedural irregularities and, where appropriate, seeking remedies concerning unlawfully seized evidence (such as through quasi-appeals or motions regarding evidentiary admissibility).

5. Strategic Considerations: The Two-Track Defense Model

Given that the PPO will generally no longer conduct direct nor supplementary investigations, the factual and evidentiary record established during the initial investigative agency phase will play a significant role in determining the ultimate trajectory of a case. Companies should therefore adopt a bifurcated, "two-track" defense approach:

1) Phase One (Investigative Agency Stage):

Depending on the circumstances, company counsel should consider whether a carefully controlled presentation of relevant factual context and legal arguments would help correct misunderstandings or avoid an unwarranted referral. Any such presentation should be distinguished from statements by individual employees or potential subjects, who may have separate interests and applicable rights against self-incrimination.

2) Phase Two (Prosecutorial Stage):

Following case referral, a separate advocacy strategy should be directed to the PPO. This involves submitting comprehensive legal briefs to inform the prosecutor’s indictment decision or to seek demands for supplementary investigation, as well as participating in statutory interview procedures. Importantly, statements and materials obtained through the prosecutor's statutory fact-confirmation process are subject to restrictions on their use as evidence, though they may nevertheless inform charging and supplementary-investigation decisions.

In anticipation of the October 2, 2026 effective date, as well as subsequent staggered effective dates for specific provisions, companies operating in South Korea should review and update their internal response manuals. Key priorities include establishing unified protocols for investigations by the various investigative authorities, demand for supplementary investigation and re-investigation and prosecution determination by the PPO and the execution of

search and seizure warrants, utilizing newly codified procedural rights, and monitoring forthcoming subordinate regulations that will further shape day-to-day practice.

Key Contacts

John H. Choi
Senior Foreign Attorney / Chair of Global Cases and Investigations

+82-2-316-4232
jhchoi@shinkim.com

Changhun Lee
Partner

+82-2-316-4645
chlee@shinkim.com

Taihyung Kim
Partner

+82-2-316-7236
thyungkim@shinkim.com

Haesung Lee
Foreign Attorney

+82-2-316-4443
hslee@shinkim.com

Copyright SHIN & KIM LLC. All rights reserved.