The Chun Doo Hwan Act: a harbinger of Korea's renewed effort to trace and confiscate proceeds of crime?

In September 2013, Chun Jae-Kook, the eldest son of former President Chun Doo-Hwan, held a press conference in front of the Seoul Central District Public Prosecutors' Office. He bowed his head twice and read out a list of the Chun family assets to be offered to the state to pay the fines imposed on his father.

This saga dates back to 1997, when the Korean Supreme Court ruled that former President Chun must pay criminal fines of KRW 220.5 billion for corruption, bribery and other crimes. The fines have yet to be paid in full with KRW 167.2 billion (approximately, USD 154 million) still outstanding. With the statute of limitations for asset recovery scheduled to expire in October 2013, and time ticking away, the National Assembly passed the so-called "Chun Doo-Hwan Act" in June 2013 to extend the statute of limitations. The extension made it possible for the prosecution to conduct extensive investigations into the Chun family, which pressured them to capitulate in September 2013.

This article briefly introduces the "Chun Doo-Hwan Act" and other primary Korean laws concerning the recovery and confiscation of proceeds of crime and other assets.

1. "Chun Doo-Hwan Act"

The "Chun Doo-Hwan Act" refers to a set of provisions passed by the National Assembly in June 2013, which amends the Act on Special Cases concerning Forfeiture for Offenses of Public Officials (the "Public Official Crime Confiscation Act") with effect from July 12, 2013. The Public Official Crime Confiscation Act was first enacted in 1995 to enable law enforcement agencies to recover and confiscate criminal proceeds and other assets gained through specific crimes committed by public officials and any secondary proceeds and assets derived from such criminal proceeds and assets.

Even prior to its amendment, the scope of confiscation permitted under the Public Official Crime Confiscation Act was broader than under other Korean laws, such as the Korean Criminal Code. Nevertheless, there were limitations in tracing and confiscating criminal proceeds under the law, as it did not allow the prosecution to conduct investigations into third parties even where there was a reason to suspect that criminal proceeds had been transferred to such parties. The amended Public Official Crime Confiscation Act now allows the prosecution to investigate and interrogate third parties to trace transfers of criminal proceeds and assets. This enabled the prosecution to trace assets of not only the former president but also his family members and associates.

In addition, the amended Public Official Crime Confiscation Act provides the prosecution with additional useful tools and authority, including, among other things, the following:

- Secondary proceeds and assets derived from a relevant crime can be confiscated or forfeited, if the third party knowingly acquired them;
- The prosecution now has the authority to request that (i) concerned parties appear in court for a hearing, (ii) data and information on taxation and transactions be submitted, and (ii) a court issue a search or seizure warrant; and
- The statute of limitations for confiscation and asset recovery from public officials has been extended to ten years.

2. Act on Special Cases of Confiscation and Forfeiture of Assets Acquired through Corrupt Practices

Pursuant to the United Nations Convention against Corruption, Korea enacted the Act on Special Cases of Confiscation and Forfeiture of Assets Acquired through Corrupt Practices in 2008. This law aims to eliminate economic motivation for corruption by clearly providing for recovery and confiscation of assets acquired through corrupt practices.

This law defines various acts of corruption, such as bribery, embezzlement and criminal breach of fiduciary duty, as "corruption crimes". Also, the law defines "proceeds of crime" as proceeds derived from a "corruption crime" or assets acquired in compensation for or as a result of such crime.

Under the law, any and all proceeds of crime may be confiscated, in principle. Further, proceeds of crime transferred to a third party also may be confiscated if the third party knew of the crime at the time of acquisition. Taking one step further, the law broadens the scope of confiscation to cover within its purview secondary proceeds and assets transferred to a third party (e.g., by inheritance or gift) in the absence of a third party's knowledge of the corruption crime committed, provided such

transfer was made without consideration or at a significantly low price.

Moreover, as part of efforts to eradicate corruption worldwide, the law provides for measures to promote mutual legal assistance with foreign countries in relation to returning or receiving proceeds and assets derived from corruption crimes.

3. Act on Regulation and Punishment for Concealment of Criminal Proceeds

The Act on Regulation and Punishment for Concealment of Criminal Proceeds was enacted to target money-laundering activities relating to such crimes as bribery, embezzlement or criminal breach of fiduciary duty.

Under this law, proceeds and assets derived from any crime specified by the law and criminal proceeds and assets resulting from money-laundering activities can be confiscated. Moreover, in case where property subject to confiscation is commingled with other assets, the law allows for confiscation and forfeiture to the extent possible.

The law sets out reporting requirements as well. Among other things, the law requires that any person working for a financial company report to a competent law enforcement authority if he or she becomes aware of a financial transaction involving criminal proceeds or money-laundering. A person violating such requirement may be subject to criminal liability.

4. Implications

To date, the prosecution in Korea has focused more on drawing guilty verdicts against corrupt public officials than on tracing and recovering criminal proceeds and assets. Such imbalance was due primarily to limitations in the execution of asset recovery under the relevant laws and insufficient resources of the relevant law enforcement authorities. As such, it was opportune for the National Assembly to amend the Public Official Crime Confiscation Act, which enabled the prosecution to conduct extensive investigations into the Chun family.

In addition to the amendment of the Public Official Crime Confiscation Act, the Korean Ministry of Justice, citing a dearth of effective enforcement measures, has recently proposed amending the Criminal Procedure Act so as to enhance the prosecution's power of investigation for recovery or confiscation of criminal proceeds and assets and broaden the scope of such proceeds and assets beyond what is granted or permitted under current laws. This proposed amendment would have to pass muster for constitutionality, however, as some argue that it infringes the constitutional right to

property ownership.

The ever growing global economy and increasingly sophisticated attempts to conceal proceeds of crime and launder money on a global scale have led to the realization that it is imperative for government authorities to put practical measures in place to keep offenders from profiting from their crimes and effectively deter criminal activities, and one of the most important ways to achieve this is enhanced enforcement of confiscation based on strong legal regimes. The United Nations Convention against Corruption is a case in point.

Possibly, the Chun Doo-Hwan Act is a harbinger of what is to come in the Korean government's enforcement of anti-corruption laws – particularly, in terms of asset recovery and confiscation.

Should you have any questions regarding any of the foregoing, please feel free to contact us at any time.

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