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South Korea Set to Launch Corruption Investigation Office for High-Ranking Officials & Its Implications

Despite strong protests by the main opposition party and conservative groups, on January 14, 2020, the Korean National Assembly passed a controversial bill setting up an independent investigation agency dedicated to investigating corruption among high-ranking public officials (the "Corruption Investigation Office," or the "CIO"). And on July 15, 2020, the Act on the Establishment and Operation of the Corruption Investigation Office for High-Ranking Officials (the "CIO Act") is set to take effect.

In an effort to reform the country's judicial system and distrust of public prosecutors, President Moon Jae-In's top campaign promise in the 2017 presidential election was the establishment of the CIO.

Existing Criminal Investigation System

In Korea, the prosecutors' office has the power to investigate and to prosecute an individual or an entity (including corporations) for nearly all criminal offenses. In comparison, the police has the power to investigate general crimes, such as fraud, embezzlement, and forgery. Additionally, specific government agencies are granted the authority to investigate certain crimes. [1]

The police and the specific government agencies (e.g., NTS, KFTC, MOEL, and FSS) can conduct dawn raids in cooperation with the prosecutors' office and with a court-issued warrant. Government agencies, such as the NTS and the KFTC, usually conduct on-site investigations and can request voluntary production of documents and evidence. Failure to cooperate with such a request sometimes result in broader and more stringent investigations.

Further, domestic political issues often affect the prosecutorial function of high-profile cases, but have less influence over routine investigations. As such, the individual or entity being investigated in a routine investigation may usually take an adversarial stance. However, such a position would be difficult to sustain in high-profile cases, since lack of cooperation frequently triggers investigations that may be more stringent and broader in scope, and the investigation period may be longer in duration.

What is the CIO?

In effect, the CIO to be established under the CIO Act is different from other existing special investigation agencies (including the NTS) in that it has authority to exclusively investigate and prosecute certain crimes. Once the CIO Act becomes effective in July, even the prosecutors' office – previously, the highest government agency in charge of all types of criminal investigations and prosecutions – can no longer exercise its authority over certain crimes.

Organization

Under the new law, the CIO will have 25 prosecutors, including the head of the agency, and no more than 40 investigators. The head of the CIO will be appointed by the

1. Examples include: the National Tax Service ("NTS") for tax crimes; the Korea Fair Trade Commission ("KFTC") for competition law violations; the Financial Supervisory Service ("FSS") for securities-related crimes; the Ministry of Employment and Labor ("MOEL") for labor law violations; and the Ministry of the Environment for environmental law violations, among others.

President, after confirmation by the National Assembly.

CIO prosecutors must have over ten years of experience as lawyers admitted to the Korean Bar, and they must be appointed by the President.

Scope of Investigation

The CIO's investigations will target high-ranking officials, including the President, members of the National Assembly, public prosecutors, judges, and their respective families. The number of targeted high-ranking officials is expected to be around 7,000.

The scope of investigatory powers of the CIO includes not only crimes related to corruption masterminded by "high-ranking officials and their families," but also corruption crimes where "high-ranking officials and their families" are counterparties, or where "high-ranking officials and their families" are involved as accomplices.

Also, the scope of investigation is not limited to high-ranking officials and their families. For instance, even if an ordinary person, who is not a high-ranking official, bribes a high-ranking official, the CIO will take on the case as a crime related to a high-ranking official. Thus, a private company and its officials or employees may become subject to the CIO's investigation.

Below is a more detailed explanation of the crimes subject to CIO investigations:

- **The "crimes of high-ranking officials" include:** (i) crimes related to the affairs of public officials under the Korean Criminal Code (including bribery, abuse of authority, disclosing official secrets to private companies); (ii) crimes associated with public documents, which are committed in connection with one's public duties; and (iii) embezzlement and breach of trust committed by a high-ranking official (including crimes related to concealment of criminal proceeds regarding such property crimes).

- **Other crimes under specific laws include:** acceptance of a bribe for mediation under the Attorney-at-law Act; acceptance of illegal political funds under the Political Funds Act; or perjury before the National Assembly under the Act on Testimony, Appraisal, etc. Before the National Assembly Committed by a High-Ranking Public Official.

- **Also included are the following crimes related to ordinary persons:** (i) if an ordinary person is an accomplice and is involved in a crime committed by a high-ranking public official; (ii) if an ordinary person grants a bribe to a high-ranking public official or conceals any criminal conduct regarding the "crimes of high-ranking public officials" (e.g., sheltering a criminal, flight, perjury, false confession, and destruction of evidence), or falsely accuses a high-ranking public official in connection therewith.

- Lastly, if the CIO becomes aware of any criminal conduct directly related to a "crime of a high-ranking official" during the course of its investigation, such criminal conduct may also be investigated by the CIO as a "related crime."

Relationship with Other Investigative Agencies

If other investigative agencies detect any alleged "crime of a high-ranking public official" or a "related crime," they are required to immediately notify the CIO of such a crime. Upon notification, the CIO may compel the relevant investigative agency to transfer the case to the CIO.

Also, if public prosecutors, high-ranking police officers, or judges commit a crime subject to the CIO's investigation[2], then the CIO not only has the authority to investigate the case, but also to prosecute it. Thus, for the criminal investigation and prosecution for the above-mentioned crimes, the CIO would likely supersede existing authorities, such as the police and the prosecutors' office.

2. From a pool of approx. 7,000 high-ranking public officials subject to the CIO's investigation, approx. 5,000 are believed to fall into this category.

Potential Implications

Traditionally, the prosecutors' office and the police have been quite active in investigating public corruption or bribery, since corruption has always been a major issue in the Korean society. The opposition party, however, has filed a suit before the Constitutional Court, alleging that the CIO Act is an unconstitutional bypass of the current criminal justice system for the political gains of the ruling party. It remains to be seen how actively and fairly the CIO will cope with the corruption issue involving high-ranking officials.

Since the new CIO's scope of investigation includes corrupt conduct related to high-ranking officials, it would be prudent for both domestic and foreign companies operating in Korea to review and analyze whether there is any related risk concerning high-ranking officials to your existing business practices or exchanges.

Should you have any further questions regarding the investigation of corrupt conduct or the new law, please do not hesitate to contact us.

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