

Business Crime and Investigations in South Korea: Overview

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A Q&A guide to business crime and investigations in South Korea.

The Q&A gives a high-level overview of matters relating to corporate manslaughter, environmental offences, health and safety offences, and modern slavery. The Q&A provides details of the specific offences, regulatory authorities and their investigation and enforcement powers, safeguards, civil suits, reaching settlement with the authorities, and reforms, trends and developments.

Corporate Manslaughter

Regulatory Provisions and Authorities

1. What is the main legislation relevant to corporate manslaughter?

Article 268 (on death and injury by occupational or gross negligence) of the Criminal Act is the main legal provision applicable to manslaughter in a corporate setting. This provision does not apply to institutions. Therefore, a legal entity, corporation or company cannot itself be liable for manslaughter and only natural persons in the company can be punished under this provision. However, certain administrative laws in Korea provide for a "joint penal provision", under which employers face criminal liability for crimes committed by their employees if the employers were negligent in supervising and managing their employees.

Other relevant regulations include the:

- **Occupational Safety and Health Act (OSHA).** The OSHA sets out industrial health and safety standards to prevent industrial accidents and create comfortable working environments for employees. The joint penal provisions provided in the OSHA can hold the relevant managers and companies responsible for any deaths resulting from their employees' failure to follow the relevant standards.
- **Product Liability Act.** The Product Liability Act applies when accidents (including fatal accidents) occur due to a defect in a manufacturer's product. The Product Liability Act sets out several elements where, if proven by the claimant, a legal presumption is made that the product was defective at the time of supply. The claimant is then allowed to claim for civil damages from the manufacturer.

- **Serious Accident Punishment Act.** The Serious Accident Punishment Act aims to prevent serious accidents caused by a company's organisational culture or lack of safety management systems. It ensures accountability by penalising business owners, top management and companies.

Further regulations may also be relevant to corporate manslaughter, depending on the surrounding circumstances.

Offences

2. What is the specific offence that can be used to prosecute corporate manslaughter?

Death and Injury by Occupational or Gross Negligence

Elements. Individuals can be liable if, in the course of performing their job, they cause the death or injury of another through a failure to foresee or avoid this due to occupational or gross negligence in failing to exercise their duty of care in their work (*Article 268, Criminal Act*).

Penalties. An individual can be subject to imprisonment for up to five years or a fine of up to KRW20 million.

Right to bail. Both an incarcerated suspect (before the prosecutor files criminal charges) and an incarcerated defendant (after the prosecutor has filed criminal charges) can request bail (*Articles 94 and 214-2, Criminal Act*). On such a request, the court decides whether to grant bail by taking into consideration the:

- Seriousness of the crime.
- Flight risk.
- Possibility of evidence being destroyed.
- Other relevant matters.

(*Articles 95 to 96, Criminal Act*.)

If the court grants bail, it can set conditions such as down-payment deposits (*Articles 98 and 214-2, Criminal Act*).

In principle, the maximum period for which a defendant can remain incarcerated during the first instance court proceeding is six months. Therefore, if the trial proceeds for more than six months, the defendant must be released while the trial continues (*Article 92, Criminal Act*).

Defences. The following are possible defences:

- The individual met their duty of care.

- The damages were unforeseeable or unavoidable.
- The causal relationship between the damages and the negligence was too remote.

Serious Industrial Accidents

Elements. Under the Serious Accident Punishment Act, "industrial accidents" are accidents that occur at industrial sites (such as factories or construction sites). A "serious industrial accident" is any industrial accident that results in either:

- One or more deaths.
- Two or more injuries that require treatment of six months or more in one accident.
- Three or more patients suffering from occupational diseases arising from the same cause within one year.

(Article 2, Serious Accident Punishment Act; Article 2, Occupational Safety and Health Act.)

Industrial accidents may arise from construction, equipment, raw materials, gas, steam, hazardous dust and other job-related issues.

The regulation applies to companies with five or more employees (*Article 3, Serious Accident Punishment Act*). Persons who can be held responsible include individuals who:

- Represent the business and have the authority and responsibility to manage the business.
- Have equivalent authority for health and safety matters.

These individuals must:

- Establish and implement a safety and health management system (workforce, budget, organisation and so on).
- Take managerial measures to comply with applicable health and safety laws.
- Follow applicable government corrective orders.
- Establish and implement a plan to prevent recurrence of serious accidents.

(Article 4, Serious Accident Punishment Act.)

The Serious Accident Punishment Act also applies to cases where a third-party employee works at the companies' work sites under a contract, including sub-contracts or service agreements.

(Article 5, Serious Accident Punishment Act.)

Penalties. For any serious accident (whether industrial or public) that results in at least one death, the applicable penalties include:

- Imprisonment of one to 30 years and/or a criminal fine of up to KRW1 billion (*Articles 6 and 10, Serious Accident Punishment Act*).
- Joint penal liability for the company of up to KRW5 billion (*Articles 7 and 11, Serious Accident Punishment Act*).

For other serious accidents that result in injury or illness, the applicable penalties include:

- Imprisonment of up to seven years or a criminal fine of up to KRW100 million (*Articles 6, 10, Serious Accident Punishment Act*).
- Joint penal liability for the company of up to KRW5 billion (*Articles 7 and 11, Serious Accident Punishment Act*).

Right to bail. See above, *Death and Injury by Occupational or Gross Negligence: Right to bail*.

Defences. It is possible to argue that all of the measures required under the Serious Accident Punishment Act were implemented.

Joint penal liability will not be imposed if it is established that the company did not fail to exercise due care and supervision to prevent violations (*Articles 7 and 11, Serious Accident Punishment Act*).

Serious Public Accidents

Elements. The Serious Accident Punishment Act defines a "serious public accident" as any defect in design, manufacturing, installation, or management of certain products, product ingredients, public facilities, and/or public transportation that results in:

- One or more deaths.
- Ten or more injuries requiring treatment of two months or more arising from one accident.
- Ten or more patients suffering from disease requiring treatment of three months or more arising from the same cause.

(*Article 2, Serious Accident Punishment Act*.)

To prevent harm to the life and physical safety of others due to serious public accidents, individuals who represent the business and have the authority and responsibility to manage the business, and individuals with equivalent authority for health and safety matters, must:

- Establish and implement a disaster prevention system.
- Take managerial measures to comply with applicable health and safety laws.
- Follow applicable government corrective orders.
- Establish and implement a plan to prevent recurrence of serious accidents.

(*Article 9, Serious Accident Punishment Act*.)

Penalties. See above, *Serious Industrial Accidents: Penalties*.

Right to bail. See above, *Death and Injury by Occupational or Gross Negligence: Right to bail*.

Defences. See above, *Serious Industrial Accidents: Defences*.

Enforcement

3. Which authorities have the powers of prosecution, investigation and enforcement in cases of corporate manslaughter? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

Public Prosecutors' Office (PPO)

Investigation and enforcement powers. Investigative authorities (such as the police) as well as the Ministry for Employment and Labour and other administrative agencies (see below) can initiate investigations into corporate manslaughter, and will transfer the case to the PPO after completing their investigation (*Regulations on General Investigation Rules and Mutual Cooperation between Prosecutors and Judicial Police Officers (General Investigation Rules)*; *Article 51, Presidential Decree 31089*).

On receiving the case, the PPO will conduct a review and will either:

- Instruct the police or other investigative authority to conduct a supplementary investigation.
- Directly conduct its own supplementary investigation.

The PPO has powers to:

- Interview.
- Search.
- Compel disclosure.
- Obtain evidence.
- Arrest.

(*Articles 68, 70, 106, 109, 196, 197-2, 200-2, 201 and 219, Criminal Procedure Act (CPA)*).

The police and prosecution must generally make an application to court to undertake searches and seizures, and arrests and incarceration. The court then either grants or denies the application after a thorough review (*Articles 200-2, 201, 215, CPA*).

Power to charge. The PPO has the sole authority to bring criminal charges. The PPO also manages the overall criminal trial process and executes the court judgment (*Articles 246, 266-8 and 460, CPA*.)

Police

Investigation and enforcement powers. The Korean police can initiate investigations into corporate manslaughter and, on completion of their investigation, will transfer the case to the PPO (*Article 51, General Investigation Rules*).

The police have the same powers of investigation as prosecutors (see above, *Public Prosecutors' Office (PPO): Investigation and enforcement powers*).

Power to charge. The police will decide on whether a criminal prosecution is necessary after their investigation. If the police find that prosecution is necessary, they will forward the case to the PPO. The prosecutors then decide on whether to file charges (*Article 246, CPA*).

Ministry of Employment and Labour

Investigation and enforcement powers. The Ministry of Employment and Labour can initiate investigations into corporate manslaughter caused by occupational accidents. On completion of the investigation, the Ministry can impose administrative sanctions, such as:

- Suspension of use of facilities.
- Suspension of work.
- Orders to make improvements to facilities.

(*Articles 53, 56, 155 and 156, Occupational Safety and Health Act*.)

The Ministry can initiate an investigation if it determines that a case may be subject to criminal punishment due to a violation of the OSHA. As with other investigators/prosecutors, the Ministry's investigative authority includes powers to:

- Interview.
- Search.
- Compel disclosure.
- Obtain evidence.
- Arrest.

(*Article 6-2, Act on Persons to Perform the Duty of Judicial Police Officers and the Scope of Their duties (Judicial Police Act); Rules for the Prosecutors' Investigation Commands on Special Judicial Police Officers and Investigation Rules for Special Judicial Police Officers (Rules on Special Judicial Police); Articles 36, 53 and 70, Ordinance of the Ministry of Justice 1000*).

As with other investigators/prosecutors, the Ministry must generally make an application to court to undertake searches and seizures, and arrests and incarceration. The court then either grants or denies the application after a thorough review (*Articles 200-2, 201 and 215, CPA*).

Power to charge. After the Ministry of Employment and Labour has no powers to bring criminal charges. However, if the Ministry completes its investigation and deems it necessary to prosecute the OSHA violation as a criminal offence, the Ministry transfers the case to the PPO. The prosecutors then decide on whether to file charges (*Article 109, Rules on Special Judicial Police; Article 246, CPA*). The Ministry by itself does not have the authority to file criminal charges (*Article 109, Rules on Special Judicial Police*).

Administrative Agencies

Investigation and enforcement powers. In addition to the Ministry of Employment and Labour, other administrative agencies such as the Ministry of Environment can also impose administrative sanctions in cases involving corporate manslaughter, and can investigate corporate manslaughter cases in a similar manner.

Power to charge. The administrative agencies, including the Ministry of Employment and Labour, have no authority to file criminal charges (*Article 109, Rules on the Special Judicial Police*).

Safeguards

4. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

Abuse of Investigatory Powers

Suspects generally have the following rights:

- A suspect has the right to retain a lawyer during the investigation process. A public defender may be appointed by the state if an individual meets certain criteria (*Article 12, Constitution of the Republic of Korea; Articles 30 and 33, CPA*).
- A suspect has the right to remain silent (*Article 244-3, CPA*).
- Defence counsel can attend the investigation process and raise objections if the investigation is conducted in an unfair manner (*Articles 243-2 and 243-3, CPA*).

If an investigative authority abuses its power when conducting its investigation, a complaint can be filed with the National Human Rights Commission or the human rights protection officer at the PPO for the relevant jurisdiction of Korea (*Article 19, National Human Rights Commission of Korea Act; Investigation Rules for Protection of Human Rights; Article 72, Ordinance of the Ministry of Justice 1010*).

In addition, public officials who abuse their power can be subject to criminal punishment under the Criminal Act for:

- Abuse of authority (*Article 123*).
- Unlawful arrest and unlawful confinement (*Article 124*).

- Violence and cruel acts (*Article 125*).

Civil damages can also be claimed against the state for illegal acts by a public official (*Articles 12 and 29, Constitution of the Republic of Korea; Article 2, State Compensation Act*).

Other relevant provisions include the exclusion of:

- Evidence obtained in violation of the due process (*Article 308-2, CPA*).
- Confessions made involuntarily due to torture, violence or threat (*Article 309, CPA*).
- Evidence that is tainted by illegality (*Supreme Court Decision, 15 Nov. 2007, Case No. 2007Do3061*).

Appeal Process

After the initial trial, the defendant can appeal to the appellate court. If the decision by the appellate court does not satisfy the defendant, the defendant can appeal to the Supreme Court (*Articles 357 and 371, CPA*). However, if the appellate court's decision is a minor punishment, the appeal to the Supreme Court is limited to legal errors only (and therefore findings of fact cannot be appealed) (*Article 383, CPA*).

A suspect can also file a quasi-appeal to the relevant court to take action in relation to any:

- Illegal practice or decision by investigative authorities involving the suspect's detention, search and/or seizure.
- Issue with the defence attorney's attendance during the investigation.

(*Article 417, CPA*.)

Civil Suits and Settlement

5. Can private parties bring civil suits for cases of corporate manslaughter?

If a company's employees commit intentional or negligent corporate manslaughter, the victim can file a civil claim for damages against the company (*Articles 750 and 756, Civil Act*). In such a case, the bereaved family of the deceased can request compensation for emotional distress (*Article 752, Civil Act*). However, the company may be excused from liability if it proves that it exercised due care and full compliance with its duty to manage and supervise (*Article 756, Civil Act*).

Class actions are only allowed in exceptional circumstances. For example, a qualified consumer organisation can file a group lawsuit with the permission of a court to request the suspension of a company's business activity where those activities continue to violate the law and directly threaten the life of consumers (*Articles 70 and 74, Framework Act on Consumers*).

It is also possible for several victims to file a lawsuit by naming each individual as a claimant, or for several victims to file a lawsuit by delegating one individual as the claimant (*Article 53, CPA*).

6. Can individuals and/or legal entities reach a civil settlement with the appropriate authority in cases of corporate manslaughter?

Government agencies cannot use the civil courts to punish or to reach a settlement with a perpetrator, and prosecutors cannot enter into a plea deal or civil settlement in corporate manslaughter cases. However, in deciding on whether to pursue a criminal prosecution, the investigative authority or administrative agency may consider alleviating factors such as a business owner providing compensation and settling the case with the family members of the deceased, or the family members of the deceased not wishing criminal punishment to be pursued (*Article 51, Criminal Act*).

Punitive damages are only allowed in specific circumstances. In the event of an intentional or negligent severe disaster (as defined by the Serious Accident Punishment Act) caused by the business owner or the chief manager, a victim who suffered damages can file a claim for compensation against the company of up to five times the amount of damages suffered (*Article 15, Serious Accident Punishment Act*). This may be considered as a type of punitive damages. However, the company may be excused from civil liability if it proves that it was not negligent in providing due care and supervision (*Article 15, Serious Accident Punishment Act*).

A prosecutor can decide to defer a prosecution by considering various circumstances, including the business owner's efforts to prevent accidents. However, if additional facts are discovered or new circumstances develop, the prosecutor may bring the case at a later time (*Article 51, Criminal Act; Rules Governing the Prosecutor's Case Management; Article 115, Ordinance of the Ministry of Justice 1016*).

Health and Safety Offences

Regulatory Provisions and Authorities

7. What are the main regulatory provisions and legislation relevant to health and safety offences?

The legislation relevant to health and safety offences includes the:

- Food Sanitation Act. This sets out safety regulations for the manufacturing and sale of food.
- Pharmaceutical Affairs Act. This sets out safety regulations for the manufacturing and sale of medicines.

- Chemical Substances Control Act. This sets out safety regulations for the manufacturing, import and handling of chemicals.
- Product Liability Act. This applies when a fatal accident (including death) occurs due to a defect in a manufacturer's product. The Act sets out several elements where, if proven by the claimant, a legal presumption is made that the product was defective at the time of supply. The claimant can then claim for civil damages from the manufacturer (*Article 3, et al, Product Liability Act*).
- Serious Accident Punishment Act. See [Question 1](#).
- Occupational Safety and Health Act. See [Question 1](#).
- Medical Devices Act.
- Cosmetics Act.

Offences

8. What are the specific offences relating to health and safety?

Food Sanitation Act

Elements. A person may be liable for a health and safety offence under the Food Sanitation Act if they:

- Sell or manufacture foods that are likely to harm the human body, or use additives that have not undergone safety examinations.
- Manufacture or sell food without following the standards and specifications set by the laws or regulations.
- Manufacture or sell food without a proper business licence.

Where the offence is committed by the employees of a company, the employer company can also be fined under the Act's joint penal provision (*Article 100, Food Sanitation Act*).

Penalties. A person who sells or manufactures foods likely to harm the human body, or uses additives without carrying out the necessary safety examination will be subject to imprisonment for up to ten years and/or a fine of up to KRW100 million (*Articles 7 and 94, Food Sanitation Act*).

A person who manufactures or sells food without following the standards and specifications set out by the laws or regulations will be subject to imprisonment for up to five years and/or a fine of up to KRW50 million (*Articles 7 and 95, Food Sanitation Act*).

A person who manufactures or sells food without a proper business licence will be subject to imprisonment for up to ten years and/or a fine of up to KRW100 million (*Articles 37, 94, Food Sanitation Act*).

There are also several other penalties for similar violations.

Right to bail. See *Question 2, Death and Injury by Occupational or Gross Negligence: Right to bail*.

Defences. Where employees of a company commit any of the above violations, the company may be excused from criminal liability if it proves that it exercised all necessary due care and supervision to prevent the violation (*Article 100, Food Sanitation Act*).

Pharmaceutical Affairs Act

Elements. A person may be liable for a health and safety offence under the Pharmaceutical Affairs Act if they:

- Manufacture, or intended to manufacture, drugs for business purposes, without obtaining permission under the Pharmaceutical Affairs Act.
- Manufacture or sell drugs whose properties, performance or quality do not meet the relevant mandatory specifications.

Where the offence is committed by the employees of a company, the employer company can also be fined under the Act's joint penal provision (*Article 97, Pharmaceutical Affairs Act*).

Penalties. A person who intends to manufacture drugs for business purposes, but fails to obtain permission under the Pharmaceutical Affairs Act is subject to imprisonment for up to five years or a fine of up to KRW50 million (*Articles 31 and 93, Pharmaceutical Affairs Act*).

A person who manufactures or sells drugs whose properties, performance or quality do not meet the relevant mandatory specifications, is subject to imprisonment for up to three years or a fine of up to KRW30 million (*Article 62 and 94, Pharmaceutical Affairs Act*).

There are also several other penalties for similar violations.

In the event of a violation of the Pharmaceutical Affairs Act, the Ministry of Health and Welfare or the Ministry of Food and Drug Safety has powers to:

- Launch an investigation.
- Order the correction of a violation.
- Seize or order the destruction of the drug.
- Cancel a permission for pharmaceutical manufacturing.

(*Articles 69-4, 71, 75-2, 76, Pharmaceutical Affairs Act*.)

Right to bail. See *Question 2, Death and Injury by Occupational or Gross Negligence: Right to bail*.

Defences. Where employees of a company commit any of the above violations, the company may be excused from criminal liability if it proves that it exercised all necessary due care and supervision to prevent the violation (*Article 97, Pharmaceutical Affairs Act*).

Chemical Substances Control Act

Elements. A person may be liable for a health and safety offence under the Chemical Substances Control Act if they:

- Cause a chemical accident due to professional negligence or by gross negligence that results in human death or injury.
- Fail to observe any of the standards for handling chemical substances.

Where the offence is committed by the employees of a company, the employer company can also be fined under the Act's joint penal provision (*Article 63, Chemical Substances Control Act*).

Penalties. A person who causes a chemical accident due to professional negligence or by gross negligence that results in human death or injury is subject to imprisonment for up to ten years or a fine of up to KRW200 million (*Article 57, Chemical Substances Control Act*).

A person who fails to observe any of the standards for handling chemical substances is subject to imprisonment for up to five years or a fine of up to KRW100 million (*Articles 58 and 59, Chemical Substances Control Act*).

There are also several other penalties for similar violations.

Right to bail. See *Question 2, Death and Injury by Occupational or Gross Negligence*.

Defences. Where employees of a company commit any of the above violations, the company may be excused from criminal liability if it proves that it exercised all necessary due care and supervision to prevent the violation (*Article 63, Chemical Substances Control Act*).

Enforcement

9. Which authorities have the powers of prosecution, investigation and enforcement in cases of health and safety offences? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

PPO

Investigative authorities (such as the police) and administrative agencies (see below, *Administrative Agencies*) can initiate investigations into health and safety offences, and will transfer the case to the PPO after completing their investigation (*Article 51, General Investigation Rules*). The PPO's powers are then the same as for other criminal offences (see *Question 3*).

Police

The police's powers are the same as for other criminal offences (see [Question 3](#)).

Administrative Agencies

Investigation and enforcement powers. Investigations can be begun, and administrative sanctions can be imposed, by:

- The Ministry of Health and Welfare or the Ministry of Food and Drug Safety, for violations of the:
 - Food Sanitation Act;
 - Pharmaceutical Affairs Act;
 - Medical Devices Act; and
 - Cosmetics Act.
- The Ministry of Environment, for violations of the Chemical Substances Control Act.
- The Ministry of Employment, for violations of the Occupational Safety and Health Act.
- Certain public officials from the relevant city, county or district, for violations of health and safety regulations.

These administrative agencies have the same powers of investigation as other prosecutors/investigators, including powers to:

- Interview.
- Search.
- Compel disclosure.
- Obtain evidence.
- Arrest.

(Article 6-2, Judicial Police Act; Articles 36, 53 and 70, Rules on Special Judicial Police.)

Power to charge. These administrative agencies cannot file criminal charges (*Article 109, Rules on Special Judicial Police*). However, if they complete their investigation and determine that criminal prosecution is necessary, they will transfer the case to the PPO. The prosecutors then decide on whether to file charges (*Article 109, Rules on Special Judicial Police; Article 246, CPA*).

See [Question 3](#).

Safeguards

10. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

See [Question 4](#).

Civil Suits and Settlement

11. Can private parties bring civil suits for health and safety violations?

If a company's employees commit intentional or negligent health and safety offences, the victim can file a civil claim for damages against the company (*Article 750 and 756, Civil Act*). In such a case, the bereaved family of the deceased may request compensation for emotional distress (*Article 752, Civil Act*). However, the company may be excused from liability if it proves that it exercised due care and full compliance with its duty to manage and supervise (*Article 756, Civil Act*).

See [Question 5](#).

12. Can individuals and/or legal entities reach a civil settlement with the appropriate authority for health and safety violations?

Government agencies cannot use the civil courts to punish or to reach a settlement with a perpetrator. Prosecutors cannot enter into a plea deal or civil settlement for health and safety offences. See [Question 6](#).

Environmental Offences

Regulatory Provisions and Authorities

13. What are the main regulatory provisions and authorities responsible for investigating environmental offences?

The main environmental regulations include the:

- **Clean Air Conservation Act.** This regulates air pollutants that exceed admissible levels.
- **Soil Environment Conservation Act.** This regulates the emission of unacceptable soil contaminants.
- **Water Environment Conservation Act.** This regulates the emission of water pollutants that exceed admissible levels.
- **Wastes Control Act Regulations.** These regulate the illegal disposal of waste.

A number of other laws also regulate environmental offences.

The Ministry of Environment, and environmental offices from the city, county or district, can initiate investigations for environmental violations.

Offences

14. What are the specific offences relating to the environment?

Clean Air Conservation Act

Elements. A person will commit a pollution offence under the Clean Air Conservation Act if they:

- Install or operate facilities that produce certain levels of air pollutant without making a prior report or gaining prior approval.
- Fail to properly operate a pollution prevention facility and releases air pollutants beyond the legal limit.

There are also several other penalties for similar violations. If employees of a company commit any of the above violations, the company can also be fined (*Article 95, Clean Air Conservation Act*).

Penalties. The penalties are as follows:

- Installing or operating facilities that produce air pollutants without approval: to imprisonment of up to seven years or a fine of up to KRW100 million (*Articles 23, 26 and 89, Clean Air Conservation Act*).
- Failing to operate a pollution prevention facility and releases air pollutants beyond the legal limit: imprisonment of up to seven years or a fine of up to KRW100 million (*Articles 31 and 89, Clean Air Conservation Act*).

Right to bail. See *Question 2, Death and Injury by Occupational or Gross Negligence: Right to bail*.

Defences. Where employees of a company commit any of the above violations, the company may be excused from liability if it proves that it exercised all necessary due care and supervision to prevent the violation (*Article 95, Clean Air Conservation Act*).

Soil Environment Conservation Act

Elements. A person will commit a pollution offence under the Soil Environment Conservation Act if they:

- Discard contaminated soil without following the procedures set out in the Soil Environment Conservation Act.
- Install certain facilities that may contaminate the soil, but fail to install any soil pollution prevention facility as required by the law.
- Fail to report any leakage of soil contaminants.

Penalties. The following penalties apply:

- Discarding contaminated soil without following the procedures set out in the Soil Environment Conservation Act: imprisonment for up to two years or a fine of up to KRW20 million (*Articles 15-4 and 29, Soil Environment Conservation Act*).
- Installing certain facilities that may contaminate the soil, but fails to install any soil pollution prevention facility as required by the law: imprisonment for up to one year or a fine of up to KRW10 million (*Articles 12 and 30, Soil Environment Conservation Act*).
- Fails to report leakage of soil contaminants: imprisonment for up to one year or a fine of up to KRW10 million (*Article 11 and 30, Soil Environment Conservation Act*).

There are also several other penalties for different violations, and if employees of a company commit any of the above violations, the company can also be fined (*Article 31, Soil Environment Conservation Act*).

Right to bail. See *Question 2, Death and Injury by Occupational or Gross Negligence: Right to bail*.

Defences. Where employees of a company commit any of the above violations, the company may be excused from liability if it proves that it exercised all necessary due care and supervision to prevent the violation (*Article 31, Soil Environment Conservation Act*).

Water Environment Conservation Act

Elements. A person will commit a pollution offence under the Water Environment Conservation Act if they:

- Install or operates facilities that discharge wastewater without making a prior report or gaining prior approval.

- Fails to properly operate the wastewater discharge facility and its prevention facilities, which results in the discharge of wastewater beyond the legal limit.

Penalties. The following penalties apply:

- A person who installs or operates facilities that discharge wastewater without prior report or approval: imprisonment for up to seven years or a fine of up to KRW70 million (*Articles 33 and 75, Water Environment Conservation Act*).
- A person who fails to properly operate the wastewater discharge facility and its prevention facilities, which result in the discharge of wastewater beyond the legal limit: imprisonment for up to five years or a fine of up to KRW50 million (*Articles 38, 76, Water Environment Conservation Act*).

There are also several other penalties for different violations, and if employees of a company commit any of the above violations, the company can also be fined (*Article 81, Water Environment Conservation Act*).

Right to bail. See *Question 2, Death and Injury by Occupational or Gross Negligence: Right to bail*.

Defences. Where employees of a company commit any of the above violations, the company may be excused from liability if it proves that it exercised all necessary due care and supervision to prevent the violation (*Article 81, Water Environment Conservation Act*).

Wastes Control Act

Elements. A person will commit a pollution offence under the Wastes Control Act if they:

- Discard, bury, or incinerate waste in any area other than the landfill sites permitted, approved, or reported under the Wastes Control Act.
- Engage in the waste treatment business without proper permission under the Wastes Control Act.

Penalties. The following penalties apply:

- A person who discards, buries, or incinerates wastes in any area other than the landfill sites permitted, approved, or reported under the Wastes Control Act: imprisonment for up to seven years or a fine of up to KRW70 million (*Articles 8 and 63, Wastes Control Act*).
- A person who engages in the waste treatment business without proper permission under the Wastes Control Act: imprisonment for up to five years or a fine of up to KRW50 million (*Articles 25 and 64, Wastes Control Act*).

There are also several other penalties for different violations, and if employees of a company commit any of the above violation, the company can also be fined (*Article 67, Wastes Control Act*).

Right to bail. See *Question 2, Death and Injury by Occupational or Gross Negligence: Right to bail*.

Defences. Where employees of a company commit any of the above violations, the company may be excused from liability if it proves that it exercised all necessary due care and supervision to prevent the violation (*Article 67, Wastes Control Act*).

Enforcement

15. Which authorities have the powers of prosecution, investigation and enforcement in cases of environmental offences? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

PPO

Investigative authorities (such as the police) and administrative authorities can initiate investigations into health and safety offences, and will transfer the case to the PPO after completing their investigation (*Article 51, General Investigation Rules*). The PPO's powers are then the same as for other criminal offences (see *Question 3*).

Police

The police's powers are the same as for other criminal offences (see *Question 3*).

Other Administrative Agencies

Investigation and enforcement powers. The Ministry of Environment, and environmental offices from the city, county or district, can initiate investigations for environmental violations. These administrative agencies have the same powers of investigation as other prosecutors/investigators, including powers to:

- Interview.
- Search.
- Compel disclosure.
- Obtain evidence.
- Arrest.

(*Article 6-2, Judicial Police Act; Articles 36, 53 and 70, Rules on Special Judicial Police.*)

The Ministry of Environment can impose administrative sanctions such as:

- Suspension of work.
- Orders to make improvements.
- Cancellation of a business registration.

(*Articles 82 and 84, Clean Air Conservation Act; Articles 26-2 and 26-4, Soil Environment Conservation Act, Articles 68 and 71 Water Environment Conservation Act; Article 39, Wastes Control Act.*)

Power to charge. These administrative agencies cannot file criminal charges (*Article 109, Rules on Special Judicial Police*). However, if they complete their investigation and determine that criminal prosecution is necessary, they will transfer the case to the PPO. The prosecutors then decide on whether to file charges (*Article 109, Rules on Special Judicial Police; Article 246, CPA*).

Safeguards

16. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

See [Question 4](#).

Civil Suits and Settlement

17. Can private parties bring civil suits for environmental offences?

If a company's employees commit an intentional or negligent environmental offence, victims can file a civil claim against the company if they can show that they have suffered economic damages as a result (*Articles 750 and 756, Civil Act*). The Act on Liability for Environmental Damage and Relief Thereof imposes strict liability on business operators for environmental damages caused by installing or operating emission facilities. Therefore, the victims are more likely to receive compensation (*Article 6, Act on Liability for Environmental Damage and Relief Thereof*). However, the company may be excused from liability if it proves that it exercised due care and full compliance with its duty to manage and supervise (*Article 756, Civil Act*).

See [Question 5](#).

18. Can individuals and/or legal entities reach a civil settlement with the appropriate authority for environmental offences?

Prosecutors are not allowed to enter into a plea deal or civil settlement for environmental offences. See [Question 6](#).

Modern Slavery

19. What are the general concerns regarding modern slavery in your jurisdiction?

In Korea, slavery has not been a major issue in modern society. According to the 2018 Global Slavery Index, South Korea ranked 137th. However, one major report was made in 2015 regarding the abuse and exploitation of people with disabilities on rural island salt farms.

In general, various forms of slavery are prohibited under the following provisions:

- A person who obtains and maintains a minor under their control or that of a third person by means of threat, use of force or other forms of coercion, or by means of fraud, deception or enticement, is subject to imprisonment for up to ten years (*Article 287, Criminal Act*).
- A person who buys or sells another person is subject to imprisonment for up to seven years (*Article 289, Criminal Act*).
- A person who obstructs another from exercising their rights by violence or intimidation, or who coerces someone to do something, is subject to imprisonment for up to five years (*Article 324, Criminal Act*).
- A person who buys or sells another person for the purpose of labour exploitation, sex trafficking, sexual exploitation or the acquisition of organs is subject to imprisonment for at least two years and up to 15 years (*Article 289, Criminal Act*).

The Labour Standards Act also prohibits an employer from forcing an employee to work against their will through the use of violence, intimidation, confinement or any other means by which the mental or physical freedom of the employee might be unduly restricted (*Article 7, Labour Standards Act*). In such a case, the employer can be subject to imprisonment of up to five years.

There are no clear legal requirements for companies to monitor and report on modern slavery, or to publish an annual statement setting out steps taken to address modern slavery in their supply chain.

Reform, Trends and Developments

20. Are there any impending developments or proposals for reform?

The implementation date for the Serious Accident Punishment Act was 27 January 2022. Occupational accidents had received great social attention after a number of accidents led to the death of employees. The Serious Accident Punishment Act was enacted to minimise this risk. As such, the possibility of directly imposing criminal punishment against top management of companies has increased. It currently remains to be seen how enforcement will be executed in practice.

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- *Korea Chapter in the International Investigations Review, The Law Review, 2017-2020 (co-authored).*
- *Review of Legal Issues re KFTC's Authority in the Criminal Prosecution of Competition Law Violation, The Journal of Comparative Private Law, August 2018 (in Korean language).*
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