Amendment of the Improper Solicitation and Graft Act: Changes in the Allowable Amounts of Gifts and Wedding/Funeral Cash Gifts

The Enforcement Decree (the "Enforcement Decree") of the Improper Solicitation and Graft Act (a.k.a Kim Young-Ran Act, the "Anti-Graft Act") went into effect starting from January 17, 2018. The Enforcement Decree contains amendments concerning the cap amounts that apply to food, gifts, and cash gifts provided to public officials as well as lecture fees paid to public officials[1]. The table below provides an overview of the key amendments to the Anti-Graft Act pursuant to the Enforcement Decree.

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1. The term "public official" in the Anti-Graft Act means any of the following persons:

(1) civil servants under the State Public Officials Act or Local Public Officials Act, and persons deemed by other Acts as civil servants in terms of their qualification, appointment, educational training, service, remuneration, guarantee of tenure, etc.;
(2) heads and employees of public service-related organizations and public institutions prescribed in Article 3-2 of the Public Service Ethics Act, or Article 4 of the Act on the Management of Public Institutions;
(3) heads and employees of schools of various levels and educational corporations prescribed in the Elementary and Secondary Education Act, Higher Education Act, Early Childhood Education Act, and other Acts and subordinate statutes; and
(4) representatives and employees of media companies as prescribed in the subparagraph 12 of Article 2 of the Act on Arbitration and Remedies, etc., for Damage Caused by Press Reports. (Article 2 of the Anti-Graft Act).

The term "private person performing public duties" in the Anti-Graft Act includes any of the following entities or persons:
(1) a member of a committee established under the Act on the Establishment and Management of Councils, Commissions and Committees under Administrative Agencies, or any other Acts and subordinate statutes, who is not a public official;
(2) an individual, entity, or an organ belonging thereto, that has authority delegated from a public institution under Acts and subordinate statutes;
(3) an individual on assignment from the private sector to a public institution in order to perform public duties; and
(4) an individual or entity that conducts deliberation or assessment in relation to public duties in accordance with Acts and subordinate statutes. (Article 11(1) of the Anti-Graft Act).

For purposes of this article, we will simply refer to the aforementioned entities and persons as "public officials".

	Pre-Amendment	Post-Amendment
Food	KRW 30,000 or less	Same as before
Gifts	KRW 50,000 or less	KRW 50,000 or less
		KRW 100,000 or less with respect to agricultural and fishery goods and processed agricultural and fishery goods
	Gift certificates and other securities were considered to fall under gifts (and therefore were permitted to be provided)	Gift certificates and other securities are now excluded from the definition of "gifts" (and therefore are not permitted to be provided)
Cash gifts for congratulatory or condolence purposes	KRW 100,000 or less	KRW 50,000 or less with respect to cash gifts for congratulatory or condolence purposes
		KRW 100,000 or less with respect to a wreathes or floral arrangements provided in lieu of cash gifts for congratulatory or condolence purposes

For purposes of the above, the term 'agricultural and fishery goods' refers to goods that are produced from the growing of agricultural crops, livestock industry, forestry, and fishery activities, and appears to exclude salt pursuant to subparagraph 1, Article 2, of the Salt Industry Promotion Act (subparagraph 3 of Annex Table 1 of the Enforcement Decree of the Anti-Graft Act; Article 2(1)1(a) of the Agricultural and Marine Products Quality Control Act; subparagraph 6 of Article 3 of the Framework Act on Agriculture, Rural Community and Food Industry; Articles 2 and 5 of the Enforcement Decree thereof; and subparagraph 1, item (a), of Article 3 of the Framework Act on Development of Fishery and Fishing Villages), and the term 'processed agricultural and fishery goods' refers to goods which have been processed wherein more than 50% of source or raw materials used are agricultural and fishery goods (subparagraph 3 of Annex Table 1 of the Enforcement Decree of the Anti-Graft Act, and Article 2(1)13 of the Agricultural and Marine Products Quality Control Act). If two or more items of food, gifts, and cash gifts are provided in combination with each other (this includes circumstances wherein regular gifts are provided alongside agricultural or fishery goods/processed agricultural or fishery goods) or different types of cash gifts are combined with each other (e.g., cash gift + wreathes/floral arrangements), the total value of whatever is provided may not exceed the cap amount applicable to whichever category has the highest cap amount. Furthermore, the value of each category may also not exceed its individual cap amount. (Please refer to the remarks section of Annex Table 1 of the Enforcement Decree).

For example, if food is provided together with agricultural and fishery goods, the total amount thereof must not exceed KRW 100,000, the cap amount applicable to agricultural and fishery goods,

which is the category with the higher cap amount, and the value of the food that was provided must also not exceed its own cap amount of KRW 30,000. As another example, if a funeral cash gift is provided together with a wreath for a condolence purposes, the total value of the combined two categories must not exceed KRW 100,000, the cap amount applicable to a wreath, which is the category with the higher cap amount, and the value of the cash gift must not exceed its own cap amount of KRW 50,000. (Please refer to the press release dated January 16, 2018 published by the Anti-Corruption & Civil Rights Commission).

To summarize the amendments, (i) agricultural and fishery goods or processed agricultural and fishery goods with value up to KRW 100,000 can now be provided as a gifts, (ii) gift certificates are now prohibited as gifts, and (iii) the cap amount on cash gifts, excluding wreathes or floral arrangements, has now been decreased to KRW 50,000. The original provisions in effect used to be abbreviated as 3/ 5/ 10 (referring to KRW 30,000, 50,000 and 100,000, respectively, as the applicable cap amounts). The applicable provisions as amended may be abbreviated as 3/5 (or 10 for agricultural and fishery goods)/5 (or 10 for wreathes and floral arrangements).

In addition, under the Enforcement Decree in effect prior to the amendments, civil servants or public officials who work for public service-related organizations or public institutions, who were allowed to give lectures outside of their organizations, were subject to different cap amounts for the fees they were entitled to receive based on their positions. However, the Enforcement Decree as amended eliminated different cap amounts depending on position and applies the uniform cap amount of KRW 400,000 per hour or per case, irrespective of the position of the person giving the lecture. Also, in the past, public officials belonging to national or public schools/public-service media companies and public officials belonging to private schools/private media companies were subject to different lecture fee cap amounts. However, the amended Enforcement Decree now applies the uniform cap amount of KRW 1,000,000 per hour (subparagraph 1, item (b), Annex Table 2 of the Enforcement Decree as amended).

If you have any other questions regarding the Anti-Graft Act or the amended Enforcement Decree, please do not hesitate to contact us for more details.

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