



Key Amendments to the Criminal Procedure Act & the Prosecutors' Office Act

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Since the 1954 enactment of the Criminal Procedure Act, the Prosecutors' Office has played a central role in prosecuting crimes and imposing criminal sanctions. The prosecutors were vested with the power to file charges (e.g., indictments) as well as the power to conduct investigations. The recent amendments to the Criminal Procedure Act and the Prosecutors' Office Act have brought about profound changes to the prosecutorial landscape by essentially separating prosecutors' investigative authority and indictment powers.

The first of these changes came with the amendments to the Criminal Procedure Act and the Prosecutors' Office Act in 2020, which limited the prosecutors' investigative power to six major crimes (effective as of January 1st, 2021). On May 3rd of this year, the Prosecutors' Office Act and the Criminal Procedure Act were further amended. Under these amendments (effective as of September 1st, 2022), the power to investigate crimes essentially rests with the police, and the prosecutors' power to undertake direct investigations has been further narrowed.

The following is a summary of the major changes brought on by these amendments.

[Overview]

1. Key Amendments

Amendments to the Prosecutors' Office Act:

- ① Reduction of the scope of crimes that are subject to the prosecutors' authority to initiate direct investigations (i.e., reduced to two crimes from six crimes)
- ② Prohibition of filing of charges or indictment by the prosecutor who initiates the investigation.

Amendments to the Criminal Procedure Act:

- ③ For general cases referred for prosecution by the judicial police, the prosecutors' authority to conduct supplementary investigation remains unchanged. For other cases that are referred for prosecution, supplementary investigation by a prosecutor is only allowed to the extent that it does not deviate from the essence of the case.

2. Other Amendments

Amendments to the Prosecutors' Office Act:

① Inclusion of “special judicial police officers” within the definition of “police officers,” and the addition of public officials from the Corruption Investigation Office for High-ranking Officials (“CIO”) as falling under the category of public officials who may become subject of the prosecution’s direct investigation.

Amendments to the Criminal Procedure Act:

② Exclusion of the “third-party accuser (i.e., non-complainant witness)” from persons who can file an objection to the judicial police officer’s decision of non-prosecution.

③ Prohibition of undertaking investigation of a different case for the purpose of revealing criminal charges in a pending investigation, and prohibition of coerced confession or statement in a pending case by using, among others, evidence from a different case.

Amendments to the Prosecutors’ Office Act:

④ The Prosecutor General shall report to the National Assembly on a quarterly basis the current status of the divisions and assigned prosecutors who have the authority to undertake direct investigations under current law.

1. Limitations to the scope of crimes that the prosecutors can initiate investigations

The amended Prosecutors’ Office Act reduces the scope of direct investigations by prosecutors from the previous six major crimes (i.e., corruption crimes, economic crimes, crimes by public officials, election crimes, defense procurement crimes, and crimes involving major disasters) to two major crimes (i.e., corruption crimes and economic crimes). In consideration of the 8th Local Election on June 1st, 2022, the authority to investigate election crimes will temporarily remain with the prosecutors until December 31st, 2022.

The table below shows the specific scope of corruption crimes and economic crimes for which the prosecutors can initiate investigations.

Major Crime	Specifics
Corruption Crimes	Bribery of “high-ranking public officials,” bribes/acts of favor under the Aggravated Punishment, etc. of Specific Crimes; rebates related to medical and pharmaceuticals; bribes to foreign public officials; illegal receipt of political funds; violation of the Attorney-At-Law Act; and breach of trust by executives of financial institutions/auditors/accountants/ founders of companies.
Economic Crimes	Fraud/embezzlement/breach of trust involving KRW 500 million or more; smuggling goods of value of KRW 30 million or more; violation of the Customs Act including customs evasion of KRW 50 million or more; violation of the Punishment of Tax Offenses Act involving tax refund of KRW 500 million or more; financial securities crimes such as market price manipulation; leakage of industrial technology and trade secrets to foreign countries/entities; unfair joint practices; unfair trade practices; coerced payment of unfair

subcontracts; false/exaggerated/slandering advertisements; act of offshore hiding of assets; violation of the Foreign Trade Act; import and export of narcotics, etc.

Further, the amendments to the Prosecutors’ Office Act added the crimes committed by public officials of the CIO as a type of a crime which can be investigated directly by prosecutors. In addition, the definition of “police officers” has been clarified to include any person who has been vested with the authority to act as a police officer under another statute (a crime committed by a police officer is subject to prosecutors’ power of direct investigation). These provisions appear to be measures to counter negative consequences that may result from prosecutors no longer having the authority to initiate investigations into “crimes by public officials” under the amended Prosecutors’ Office Act.

Prior to the Amendments	After the Amendments
<p>Article 4 (Duties of Prosecutors)</p> <p>(1) Each prosecutor shall have the duties and authority falling under any of the following subparagraphs as a representative of public interests:</p> <p>1. Investigation of crimes, filing of prosecutions and matters necessary for the maintenance thereof, and given that the prosecution’s authority to initiate investigations into crimes shall be the following:</p> <p>A. Major crimes such as corruption crimes, economic crimes, crimes by public officials, election crimes, defense procurement crimes, crimes involving major disasters, etc., as prescribed by the Presidential Decree (i.e., Regulations on the Scope of Crimes that the Prosecutors can Initiate Investigations);</p> <p>B. Crimes committed by judicial police officers;</p> <p>C. Other identified crimes that are each directly related to the crimes in the above A., B., or crimes transferred by the judicial police officers.</p>	<p>Article 4 (Duties of Prosecutors)</p> <p>(1) Each prosecutor shall have the duties and authority falling under any of the following subparagraphs as a representative of public interests:</p> <p>1. Investigation of crimes, filing of prosecutions and matters necessary for the maintenance thereof, and given that the prosecution’s authority to initiate investigations into crimes shall be the following:</p> <p>A. <u>Major crimes such as corruption crimes and economic crimes, etc., as prescribed by the Presidential Decree</u> (i.e., Regulations on the Scope of Crimes that the Prosecutors can Initiate Investigations);</p> <p>B. Crimes committed by judicial police officers <u>(including individuals with the authority to act as special judicial police officers pursuant to other statutes)</u>, and public officials from the Corruption Investigation Office for High-ranking Officials <u>(including dispatched public officials defined by the Act on The Establishment and Operation of The Corruption Investigation Office for High-ranking Officials)</u>.</p>

2. Prohibition of filing charges or indictment by the prosecutor who initiated the investigation

Prior to the recent amendments, there were no restrictions on the prosecution’s authority to file charges and/or indictment. The amended Prosecutors’ Office Act, however, prohibits the prosecutor who initiated the investigation of a case from filing charges and/or indictment for the same case. Such prohibition seems to be intended to block prejudiced prosecution, as there is a possibility that the prosecution may conduct the investigation with the aim to file criminal charges and/or the indictment rather than maintaining neutrality.

Prior to the Amendments	After the Amendments
[Newly Established]	<p>Article 4 (Duties of Prosecutors) (2) <u>Prosecutors shall not file charges or indictments against crimes for which they have initiated investigations</u>; Provided that, the foregoing shall not apply to crimes transferred to prosecution by judicial police officers.</p>

3. Restrictions on the scope of supplementary investigations for certain crimes transferred to the Prosecutors’ Office

In the past, there were no special restrictions on the scope of supplementary investigations that a prosecutor could carry out with regard to cases transferred to the Prosecutors’ Office from judicial police officers. However, under the amended Criminal Procedure Act, supplementary investigation by prosecution is allowed only in the following cases and on the condition that the supplementary investigations do not deviate from the essence of the case: (1) where the prosecutor requests a transfer of a case after determining that the judicial police officer in charge of the case has failed to take corrective measures requested by the prosecutor (*Id.*, Article 197(3)(6)); (2) where an order to transfer the case to the Prosecutors’ Office is issued during the prosecution’s inspection of the arrest and detention location of the investigative agency under its jurisdiction (*Id.*, Article 198(2)(2)) (3) where a case is transferred to prosecution due to objections filed by the complainant (*Id.*, Article 245(7)(2)).

In the original bill to the amendments, supplementary investigations of general cases transferred to prosecution by the judicial police officers were possible “only within the scope of identical facts.” However, such restriction was deleted during the final revisions to the bill due to concerns that it would make it difficult for prosecutors to effectively manage cases in certain situations such as when an accomplice to the crime or perpetration of additional harms are uncovered during the investigation, and such difficulty may result in insufficient protection of people’s lives and properties.

Prior to the Amendments	After the Amendments
<p>Article 196 (Investigation by Public Prosecutor) A public prosecutor shall, where there is a suspicion</p>	<p>Article 196 (Investigation by Public Prosecutor) (1) A public prosecutor shall, where there is a suspicion</p>

that an offense has been committed, investigate the offender, the facts of the offense, and the evidence. [Newly Established]	that an offense has been committed, investigate the offender, the facts of the offense, and the evidence. (2) Pursuant to Article 197(3), Article 198(2)(2), and Article 245(7)(2), a public prosecutor may investigate a case transferred by a judicial police officer to the extent that it does not deviate from the essence of the case.
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4. Exclusion of “third-party accusers” as persons who can file objections

In the previous Criminal Procedure Act, if a case were not referred to the prosecution by judicial police, the complainant and individuals relevant to the case were to be notified of the “intent and reason for not forwarding the case to the Prosecutors’ Office” (*Id.*, Article 245(6)). If the complainant and other relevant persons disagreed with such notice, any one of them were allowed to file an objection to the head of the agency to which the assigned judicial police belonged to (*Id.*, Article 245(7)(1)), and the case had to be transferred to the Prosecutors’ Office (*Id.*, Article 245(7)(2)).

However, the amended Criminal Procedure Act excludes third-party accusers (i.e., non-complainant witness) from the list of individuals who are deemed to be relevant to the case and has the right to file the above objection. As such, when the judicial police officer in charge of the investigation decides not to recommend filing charges, a third-party accuser who reported the case can no longer file an objection against such decision.

Prior to the Amendments	After the Amendments
<p>Article 245(7) (Objection by the Accuser etc.) (1) An individual who receives the notice under Article 245(6) may file an objection to the head of the public office to which the assigned judicial police officer belongs to.</p>	<p>Article 245(7) (Objection by the Accuser etc.) (1) An individual (excluding third-party accusers) who receives the notice under Article 245(6) may file an objection to the head of the public office to which the assigned judicial police officer belongs to.</p>

5. Other Amendments

The amended Criminal Procedure Act prohibits conducting investigations into different cases, without proper grounds, for the purpose of revealing criminal charges in a pending investigation. It also prohibits obtaining coerced confession or statement in a pending case by using, among others, evidence obtained from an investigation of a different case.

Prior to the Amendments	After the Amendments
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<p>Article 198 (Matters to be Observed) (omitted subparagraph (1) to (3)) [Newly Established]</p>	<p>Article 198 (Matters to be Observed) (no changes to subparagraph (1) to (3)) (4) <u>An investigatory agency shall not conduct investigations into different cases, without proper grounds, for the purpose of revealing criminal charges in a pending investigation, and shall not coerce confession or statement in a pending case by using, among others, evidence obtained from an investigation of a different case.</u></p>
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Moreover, the amended Prosecutors’ Office Act mandates the Prosecutor General to report to the National Assembly on a quarterly basis with regard to the current status of the divisions and assigned prosecutors who have the authority to undertake direct investigations under the current law.

Prior to the Amendments	After the Amendments
<p>Article 24 (Departmental Chief Prosecutors) (omitted subparagraph (1) to (3)) [Newly Established]</p>	<p>Article 24 (Departmental Chief Prosecutors) (no changes to subparagraph (1) to (3)) (4) The Prosecutor General shall report to the National Assembly on a quarterly basis the organization of the divisions capable of initiating investigations into crimes pursuant to Article (4)(1)(1), and the status of prosecutors and public officials working in the relevant division, as well as details of any dispatch</p>

6. Implications

Criminal sanctions in Korea apply in a wide array of situations, which are put in place by government bodies with the goal of influencing the behavior of individuals and groups. Companies in Korea face the task of ensuring that they are adequately protected from the risk of criminal sanctions in all aspects of their business, including, but not limited to, labor, environment, fair trade, tax, finance, and technology. With the emergence of new industries and growing sophistication of existing industries, the sanctions regime in Korea is also continuously expanding.¹ As a result, for companies in Korea, it has become more critical than ever to understand the developments in the criminal system and the ramifications of such developments in doing business.

¹ For example, the Serious Accidents Punishment Act, which was promulgated in 2021, essentially imposes criminal liability on individuals (e.g., CEO) and entities responsible for serious workplace accidents.

[Korean version] 형사소송법·검찰청법 개정안 주요 내용

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