



# **KOREA: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS**

**May 2014**

This report, submitted by Korea, provides information on the progress made by Korea in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 8 May 2014.

The Phase 3 report evaluated Korea's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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## SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

1. In March 2014, Korea presented its written follow-up report to the Working Group on Bribery (the Working Group), outlining its responses to the recommendations and follow-up issues identified by the Working Group at the time of Korea's Phase 3 evaluation in October 2011. Korea has taken steps to implement a number of recommendations, with 10 out of 16 recommendations fully implemented, 4 partially implemented and 2 not implemented.

2. With regard to enforcement since October 2011, the *Chinese Airline Case*, under prosecution at the time of Phase 3, was ultimately not considered a foreign bribery case by the Court because the company was not deemed to be state-owned. Regarding the three cases at the pre-investigation stage in 2011, the Korean Prosecution Service decided not to initiate formal investigations because the cases were being investigated as domestic bribery by foreign law enforcement authorities. Korea did however respond to requests for mutual legal assistance regarding those cases. Upon referral from foreign authorities, the Korean Maritime Police detected 16 other cases of foreign bribery. In 11 of the 16 cases, the prosecution was suspended because they concerned small facilitation payments. In the remaining 5 cases, 4 natural persons and 1 legal person were convicted, receiving fines between KRW 500 000 (approximately USD 467) and 1 million (approximately USD 933). An additional foreign bribery case is currently at the prosecutorial investigation stage. The Working Group thus found *recommendation 4c* partially implemented, noting that Korea should continue to increase the use of proactive steps to gather information from diverse sources at the pre-investigation stage both to increase sources of allegations and enhance investigations.

3. Korea has taken steps to improve enforcement of the foreign bribery offence. A new consultative body, including the Ministry of Justice, the Ministry of Foreign Affairs and Trade, the Supreme Prosecutor's Office, the Korean Financial Supervisory Commission and the National Tax Service, was established to strengthen Korea's information and intelligence gathering capacity (*recommendation 4b*). Measures were also undertaken to ensure that foreign bribery case records are no longer destroyed within 3 years, and are now kept for up to 70 years with the possibility of further extension (*recommendation 4a*).

4. Korea has not addressed the Working Group's recommendation on its foreign bribery offence that steps be taken within its legal framework to ensure that the bribery of persons performing public functions for the North Korean Regime, or the Kaesong Industrial Zone, are covered by the Foreign Bribery Prevention Act (FBPA) as the bribery of a foreign public official, or by the Korean Penal Code as the bribery of a domestic public official (*recommendation 1*). The Working Group heard reassurances made by Korea that such acts would most likely be covered under different provisions governing relations with the North Korean Regime or the Korean Penal Code, and acknowledged that the issue was marginal to foreign bribery enforcement. However, it noted that the situation remains unchanged since Phase 3. With regard to small facilitation payments, Korea introduced a Bill to Parliament in March 2014 that abolishes the defence and criminalises the making of such payments. The Working Group thus found *recommendations 1b and 1c* fully implemented, but advised Korea to keep it informed of developments regarding the passing of the legislation and efforts to raise awareness among companies of the change in the law.

5. Regarding sanctions and confiscation, the Working Group found that the penalties imposed in practice continue to be insufficiently effective, proportionate and dissuasive. The five foreign bribery convictions since Phase 3 resulted in no prison sentences and relatively small fines. In the absence of further case law both on the application of sanctions and confiscation in practice, the Working Group found that *recommendation 3* remains unimplemented.

6. On prevention, detection and awareness-raising, Korea has taken significant measures in collaboration with Korean business and industry associations to raise awareness among the private sector, including SMEs, of the FBPA and on the adoption of internal controls, ethics and compliance measures (*recommendation 7*). This includes the dissemination of various publications, as well as the revision of the Commercial Act introducing a new compliance officer system. The Anti-Corruption and Civil Rights Commission (ACRC) has also been active in raising awareness of Korea's whistleblower protection law, including by clarifying that it covers those who report suspicions of foreign bribery (*recommendation 10*). The ACRC also adopted a "Guideline for Referral of Reported Cases" requiring it to transfer reports of FBPA violations to law enforcement authorities (*recommendation 4d*). The Working Group found, however, that further awareness-raising needs to be undertaken specifically on the liability of legal persons for foreign bribery violations, especially among law enforcement authorities and therefore found *recommendation 2* only partially implemented.

7. The Working Group further found recommendations issued to Korea on its anti-money laundering system partially implemented (*recommendation 5*). There remain a lack of relevant case studies focusing on foreign bribery as the predicate offence to money laundering, which would help raise awareness among institutions and individuals responsible for making suspicious transaction reports. The Working Group also decided to continue monitoring the corporate structures that characterise certain large Korean conglomerates to ensure that they do not prevent the effective detection of foreign bribery through money laundering obligations.

8. With respect to enhancing detection through accounting and auditing as well as tax measures, Korea has now clarified that external auditors are required to report suspicions of illegal acts, including foreign bribery, to law enforcement authorities, and that due protection is afforded to those making such reports (*recommendation 6*). The Working Group noted, however, that while some training has been provided to the profession, Korea should provide more specific training on the detection of foreign bribery and corresponding reporting obligations. With regard to tax auditors, Korea adopted Guidelines in April 2013 requiring foreign bribery cases detected through tax audits to be made to National Tax Service Headquarters, which would in turn share non-tax related information to other law enforcement agencies through the new consultative body (discussed above). However, as it is not clear whether the transfer of this information from the National Tax Service to other law enforcement authorities is undertaken on a systematic basis, and as there is no systematic sharing of information by law enforcement authorities with the National Tax Service on FBPA violations, *recommendation 8* was deemed only partially implemented.

9. Finally, Korea has taken positive steps with regard to its disbursement of public advantages. Korea's two export credit agencies, Korea Eximbank and K-Sure, have applied a more harmonised approach to more closely align their anti-bribery policies (*recommendation 9a*). Steps have also been taken to strengthen the exchange of information between the two agencies. Korea further confirmed that it does have a database in place which allows public contracting agencies to access information on companies convicted of corruption offences, in order to facilitate the application of debarment policies (*recommendation 9b*).

### **Conclusions of the Working Group on Bribery**

10. Based on these findings, the Working Group concludes that Korea has fully implemented recommendations 1b, 1c, 4a, 4b, 4d, 6, 7, 9a, 9b and 10; recommendations 2, 4c, 5 and 8 are partially implemented; and recommendations 1a and 3 are not implemented. The Working Group will follow up on the recommendations that remain only partially or not implemented in the context of future monitoring, as well as on follow-up issues 11a to f.

## WRITTEN FOLLOW UP TO PHASE 3 REPORT – KOREA

**Name of country:** Korea  
**Date of approval of Phase 3 evaluation report:** 14 October 2011  
**Date of information:** 31 January 2014

### PART I: RECOMMENDATIONS FOR ACTION

#### *Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery*

##### **Text of recommendation 1(a):**

1. Concerning the offence of bribing a foreign public official in the FBPA, the Working Group recommends that Korea:

- a. Take appropriate steps within its legal framework to ensure that the bribery of persons performing public functions for the North Korean Regime, or the Kaesong Industrial Zone, are covered by the FBPA as the bribery of a foreign public official, or by the Korean Penal Code as the bribery of a domestic public official (Convention, Article 1, Commentary 18);

##### **Action taken as of the date of the follow-up report to implement this recommendation:**

The Constitution of the Republic of Korea does not recognize North Korea as a country, and thus North Korean persons performing public functions for the North Korean regime or the Kaesong Industrial Zone shall not be regarded as foreign public officials which are subject to the FBPA. Furthermore, a North Korean public official shall not be regarded as a ‘public official’ de jure in the Republic of Korea because he/she is not appointed in accordance with the State Public Officials Act or the Local Public Officials Act of the Republic of Korea.

Setting aside the fact that North Korean public officials are not recognized as ‘foreign public officials’, it is practically impossible for people of the Republic of Korea to offer a bribe to North Korean public officials. Even if they do so, they are still subject to punishment under the current legal framework.

Any person of the Republic of Korea who gives a bribe to North Korean people performing public functions for the North Korean regime, or the Kaesong Industrial Zone, may be punished in accordance with Article 357(2) of the Criminal Act (Giving Bribe by Breach of Trust<sup>1</sup>), Article 8 of the National

<sup>1</sup> The revised Act on Regulation of Punishment of Criminal Proceeds Concealment has designated the offence of giving bribe by breach of trust as a predicate offence (May 2013), making it possible to confiscate the bribes given to a public official of the DPRK and the property derived from such bribes or collect the equivalent value thereof, and to punish the act of laundering relevant money.

Security Act (Meeting, Correspondence, etc.), and Article 27 of the Inter-Korean Exchange and Cooperation Act, etc.

Cases in which people of the Republic of Korea bribe citizens/public officials of the Republic of Korea performing public functions for the Kaesong Industrial Zone are also regulated by the Criminal Act of the Republic of Korea.

**Text of recommendation 1(b):**

1. Concerning the offence of bribing a foreign public official in the FBPA, the Working Group recommends that Korea:

- b. Continue to periodically review its policies and approach on facilitation payments pursuant to the 2009 Anti-Bribery Recommendation, and consider in its review: i) whether guidelines on the defence would be beneficial, and ii) the practical value of maintaining the defence in Korea (2009 Recommendation VI i)); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

Article 3(2)2 of the FBPA is the exemption provision of facilitation payment. However, the Ministry of Justice (MOJ) is cooperating with the legislative branch to abolish the above provision, having judged that the provision has become invalid on the grounds that (a) the definition of ‘facilitation payment’ is unclear, (b) the exemption is in discord with the criminal law system of Korea, and (c) no person has claimed and used the defence.

As a result, the revision bill of the FBPA was proposed by a member of the National Assembly on March 4, 2014.

If the legislative procedures for abolishing the above provision are completed, the act of giving a small amount of money as facilitation payment will be punished pursuant to the FBPA. Then, it is expected that the 2009 recommendation will be implemented completely.

**Text of recommendation 1(c):**

1. Concerning the offence of bribing a foreign public official in the FBPA, the Working Group recommends that Korea:

- c. Encourage companies to prohibit or discourage the use of small facilitation payments in internal company controls, ethics and compliance programmes or measures (2009 Recommendations, para. VI ii)).

**Action taken as of the date of the follow-up report to implement this recommendation:**

As mentioned above in 1(b), the MOJ is taking steps to abolish the exemption provision of facilitation payments. Through pre-announcement of legislation this year, the MOJ is planning to notify corporations of the fact that making a small amount of facilitation payment will be banned.

In addition, the MOJ is playing an active role in encouraging companies to prohibit or discourage the use of small facilitation payments in close cooperation with the Federation of the Korean Industries (FKI), the Korea Federation of SMEs, etc. as follows;

- Published the “OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions and Corporate Compliance” (2011)
- Conducted an educational session by a prosecutor on combating corruption including the offence of bribing a foreign public official to the FKI Committee on Corporate Ethics (November 28, 2013)
- Planning to hold an educational session by a prosecutor at Information Session for Trading Companies hosted by the Korea Federation of SMEs for education (February 2014)

Furthermore, the Korean government endeavors to raise awareness of facilitation payment through promotion activities such as distributing booklets containing the 2009 Recommendation by the OECD via overseas diplomatic offices, trade associations, and the FKI.

**News Article : "Combating Bribery is the Key to Ethical Management Next Year" said the FKI**  
*reported by Newspim on November 28, 2013*

*The Federation of the Korean Industries (FKI) announced that the business community agreed to come up with the guidelines on procedures for enactment and revision of the Charter of Business Ethics and reaffirmed its will to combat bribery benchmarking global standards such as OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions and Foreign Corrupt Practices Act of the US during the 4th Committee on Corporate Ethics Meeting held on November 28, 2013 at Conference Center of FKI Tower.*

*Prosecutor JO Joo-yeon from the International Criminal Affairs Division of the Ministry of Justice was invited to this meeting as a keynote speaker and presented the “Global Trend in Ethical Management Standards and Implications”*

*During his presentation, Prosecutor JO pointed out that “as the anti-bribery standards are strengthened throughout the world, the level of investigation and punishment for the offence of bribery and corruption are enhanced accordingly,” and added that “the strengthening of these global standards is all the more meaningful in that it creates a level playing field for competition and prevention of corruption.”*

*He also emphasized that “Korean companies are required to understand global anti-corruption standards such as OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions, Foreign Corrupt Practice Act of the US, Bribery Act of the United Kingdom, etc.”*

*After the keynote speech, the members of the Committee discussed how the business community will practice ethical management in 2014.*

*PARK Chan-ho, an executive director of the FKI, said that “in 2014, we will make efforts to establish infrastructures by coming up with the guidelines on procedures for enactment and revision of the Charter*



*of Business Ethics and keep up with the global trend in the enhancement of anti-corruption standards so as to put autonomous ethical management in place."*

*Recently, the FKI released the "Guidelines on Implementation of the Charter of Business Management" urging its members to adopt and utilize the Charter. In line with the effort, the FKI plans to set up the guidelines on procedures for enactment and revision of the Charter to enable companies introducing a new Charter of Business Ethics or revising the existing Charter to use the guidelines. In addition, the FKI will hold seminars on global trends for its members so as to keep up with the global trend.*

**Text of recommendation 2:**

2. Regarding the liability of legal persons for the bribery of foreign public officials, the Working Group recommends that Korea raise awareness among law enforcement authorities and the private sector on the liability of legal persons for violations of the FBPA (Convention, Article 2).

**Action taken as of the date of the follow-up report to implement this recommendation:**

The Korean government encourages competent authorities to actively participate in meetings of the OECD Working Group on Bribery and FATF and take active measures to raise awareness among law enforcement authorities on the liability of legal persons.

In April 2012, the MOJ introduced the Compliance Officer System in the Commercial Act so as to raise awareness in the private sector, and hosted seminars and conferences with the FKI (November 2013) and the Korea Federation of SMEs (February 2014) to provide education on the FBPA.

The MOJ also provides training on the FBPA to prosecutors, investigators and prospective lawyers at the Legal Research and Training Institute and the Judicial Research and Training Institute (training about international criminal law on August 28, 2013 and October 7, 2013).

The ACRC published the 「Best Practice Casebook on Ethical Management」 in November 2013. It has also consistently distributed the 「OECD Anti-Bribery Convention Guidebook」 to the participants of the ethical management program\*since 2011. Also, in order to raise awareness of the liability of legal persons for violations of the OECD Anti-Bribery Convention, the ACRC provides detailed explanation on this issue to the companies, thereby urging businesses to abide by the convention.

- 5 sessions in 2011(246 participants), 6 sessions in 2012 (335 participants), 10 sessions in 2013 (511 participants)
- Program details included below

In addition, the ACRC signed MOUs with the Korea Chamber of Commerce and Industry regarding the support programs for ethical management in April 2012 and with the Federation of Korean Industries on the cooperative activities to encourage the voluntary efforts of businesses for ethical management in July 2013, respectively.

The FKI has contributed to the promotion of corporate ethics by operating the Academy for Better Company (ABC), holding regular meetings of the Committee on Corporate Ethics (from 2001 to the

present), releasing the Charter of Business Management (February 2013), preparing the guidelines on practicing professional ethics for executives and staff of companies (November 2013), and publishing a compilation of best practices in ethical management (December 2013).

### Ethical Management Program (2011-2013)

Date		Program	Participants	No. of participants
Year	Date			
2011	28 March	Group program (1st)	Executives and staff from 31 private and public enterprises	38
	16 May	Group program (2nd)	Executives and staff from 30 private and public enterprises	43
	26-27 Sep.	Group program (3rd)	Executives and staff from 56 private and public enterprises	56
	31 Oct-1 Nov.	Group program (4th)	Executives and staff from 34 private and public enterprises	47
	28-29 November	Group program (5th)	Executives and staff from 31 private and public enterprises	62
2012	20 March	Group program (1st)	Ethical management officers and staff from 55 public enterprises	55
	30 April	Group program (2nd)	Ethical management officers and staff from 56 public enterprises	59
	22 May	Group program (3rd)	Executives and staff from 37 private enterprises and organizations	59
	30 May	Tailored program (1st)	Executives and staff of Mine Reclamation Corp.	59
	28 August	Tailored program (2nd)	Executives and staff of Korea Teachers Pension	59
	27-28 November	Group program (4th)	Executives and staff from 33 private enterprises and organizations	44
2013	4 April	Anti-corruption experts program (1st)	Director-level officials for ethical management of private enterprises	13
	28 May	Tailored program (1st)	Executives and staff of POSCO AST (private enterprise)	60
	4 June	Tailored program (2nd)	Executives and staff of Hanjin Shipping (private enterprise)	126
	13 June	Anti-corruption experts program (2nd)	Ethical management officers and staff of private enterprises	27
	20 June	Tailored program (3rd)	Compliance officer and staff of Korean Air (private enterprise)	40
	25 September	Tailored program (4th)	Executives and staff of Pan-Pacific (private enterprise)	134
	28 October	Anti-corruption experts program (3rd)	Ethical management officers and staff of private enterprises	15
	24 October	Tailored program (5th)	Compliance officer and staff of Hana SK Card (private enterprise)	39
	22 November	Tailored program (6th)	Ethics and compliance officials of Hyundai Mobis (private enterprise)	38
	26 November	Anti-corruption experts program (4th)	Ethical management officers and staff of public and private enterprises	19
<b>Total</b>		-		<b>1,092</b>

**Text of recommendation 3:**

3. Regarding sanctions for the offence of bribing a foreign public official, the Working Group recommends that Korea: i) take appropriate steps according to its legal system to ensure that sanctions imposed in practice on natural and legal persons are effective, proportionate and dissuasive; and ii) make full use of the authority to confiscate the bribe and proceeds where appropriate, and consider whether the complicated nature of the legislation on confiscation has been a hindrance to the effective imposition of confiscation as

**Action taken as of the date of the follow-up report to implement this recommendation:**

Regarding i), the detailed guidelines on the sentencing of the offence of bribery are applicable to the foreign bribery cases involving foreign public officials.

In an effort to clarify the scope of punishment for bribery, the National Assembly has proposed a revision bill<sup>2</sup> (November 2013) to punish a person who offers valuables to a third person or receives such valuables knowing that the valuables are bribes. The revision bill is highly likely to pass the National Assembly. Therefore, it is expected that various types of foreign bribery cases will be penalized upon revision.

**[Sentencing Guidelines by the Supreme Court]**

Type	Classification	Mitigated Punishment	Basic Punishment	Aggravated Punishment
1	Less than KRW 30 million	- 6 months	4 - 10 months	6 months - 1 yr. 6 months
2	more than KRW 30 million, Less than KRW 50 million	6 months - 1 yr.	10 months - 1 yr. 6 months	1 - 3 yrs.
3	more than KRW 50 million, Less than KRW 100 million	1 - 2 yrs.	1yr 6 months - 2 yrs. 6 months	2 - 4 yrs.
4	more than KRW 100 million	2 - 3 yrs.	2 yrs. 6 months - 3 yrs. 6 months	3 - 5 yrs.

Category		Elements of Mitigation	Elements of Aggravation
Special Sentencing Factors	Offence	<ul style="list-style-type: none"> <li>bribe-offering to persons about to become a public servant or arbitrator</li> <li>passive response to the solicitation made by the bribers</li> <li>only request or promise but not put into action</li> </ul>	<ul style="list-style-type: none"> <li>active bribe-offering</li> <li>solicitation involving illegal or unjust work</li> <li>instigation</li> </ul>
	Offender / Others	<ul style="list-style-type: none"> <li>deaf-mutes</li> <li>feeble-minded persons</li> <li>surrender to the police or report of inner corruption</li> </ul>	<ul style="list-style-type: none"> <li>repeated offenders</li> </ul>

a sanction (Convention, Article 3.1, 3.3).

<b>General Sentencing Factors</b>	<b>Offence</b>	<ul style="list-style-type: none"> <li>• passive participation</li> <li>• delivery of bribes</li> <li>• bribe-offering to quasi-public servants pursuant to Article 4 of the Act on the Aggravated Punishment, Etc. of Specific Crimes</li> </ul>	<ul style="list-style-type: none"> <li>• high level of work relevance</li> </ul>
	<b>Offender / Others</b>	<ul style="list-style-type: none"> <li>• serious repentance</li> <li>• no previous criminal convictions</li> </ul>	<ul style="list-style-type: none"> <li>• repeated crimes on two different offenses, previous convictions on the same offenses but not repeated</li> </ul>

Regarding ii) : making full use of the authority to confiscate the bribe and proceeds

In Korea, various legal authorities for the confiscation of bribes and proceeds are granted to investigative agencies to ensure they are making full use of the authorities when they confiscate the bribe and proceeds or collect the equivalent value thereof in practice.

General authority for executing penalty concerning property: according to Article 477 of the Criminal Procedure Act, a public prosecutor may conduct such investigation as may be necessary for executing penalty concerning property, and search and seizure may be conducted in accordance with the practices of the disposition of default on national tax under the National Tax Collection Act.

Use of order of preservation for confiscation/order of preservation for the collection of equivalent value: the procedures for preservation for confiscation or collection of equivalent value specified in the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, Etc. apply *mutatis mutandis* to the Act on Regulation of Punishment of Criminal Proceeds Concealment. These procedures restrict the disposition of property subject to confiscation or collection of equivalent value, thereby making it effective to impose sanctions for the offence of bribing a foreign public official.

In May 2013, a new clause was introduced to the Act so as to pay a reward to a person who reported to competent law enforcement authorities or who is meritorious for confiscation or collection, when the property subject to confiscation or collection belongs to the National Treasury after being confiscated and collected.

In addition, according to the Act on Regulation of Punishment of Criminal Proceeds Concealment, financial companies are obliged to report to competent law enforcement authorities without delay when they become aware of the fact that the properties they accept with respect to the financial transactions are criminal proceeds, etc. or that the concerned counter-party of the said transaction commits an act of concealment and disguise of criminal proceeds.

Regarding ii): whether the complicated nature of the legislation on confiscation has been a hindrance to the effective imposition of confiscation as a sanction

<sup>2 2</sup> The amendment bill has the following clause included in Article 3:

“Any person who has promised, given, or expressed his/her intent to give a bribe to a foreign public official in relation to any international business transaction with intent to obtain any improper advantage for such transaction, who has given money and valuables to a third party to express his/her intent to give a bribe, or who has taken the money and valuables with knowledge thereof shall be punished by imprisonment with prison labor for not more than five years, or by a fine not exceeding twenty million won. In such cases, if the pecuniary advantage obtained by such offence exceeds ten million won, the offender shall be punished by imprisonment for not more than 5 years or by a fine not exceeding an amount equivalent to double the pecuniary advantage.”

In Korea, the Criminal Act contains general clauses on confiscation and collection of equivalent value, while special laws including the Act on Regulation of Punishment of Criminal Proceeds Concealment, the Act on Special Cases Concerning Forfeiture for Offences by Public Officials, and the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, Etc. have strengthened the imposition of confiscation and collection of equivalent value. Korean prosecutors are updated with such legislation through constant and systematic training, so they have proper expertise about legislation concerning confiscation and collection of equivalent value. Therefore, there is little chance that an incumbent prosecutor who has been formally trained may overlook such legislation during the course of the imposition of confiscation and collection as sanctions.

Especially for foreign bribery crimes, the legal system has been revised to conduct confiscation, levy, and international mutual assistance pursuant to the Act on Special Cases Concerning the Confiscation and Return of Property Acquired Through Corrupt Practices (legislated in March 2013) without having to apply the clauses from the Act on Regulation of Punishment of Criminal Proceeds Concealment or the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc.

Previously, the 「Act on Regulation of Punishment of Criminal Proceeds Concealment」 was applied mutatis mutandis to confiscate or collect equal amount from those who have bribed foreign public officials; and the 「Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.」 was applied mutatis mutandis to preserve for confiscation or collection of equivalent value and to internationally cooperate with the requests by foreign countries. However, there were no special acts and procedures for the return of property to the victim and the recovery of property acquired through corrupt practices.

The confiscation or collection of equivalent value from the offenders of foreign bribery, the return of property to the victim, and the recovery of property acquired through corrupt practices have been all regulated by the 「Act on Special Cases Concerning the Confiscation and Return of Property Acquired through Corrupt Practices」 since its enactment in 2008. (For preservation for confiscation or collection of equivalent value, the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc. is still applicable mutatis mutandis.)

There were no issues regarding the enforcement of the law. However, the 「Act on Special Cases Concerning the Confiscation and Return of Property Acquired through Corrupt Practices」 allows better enforcement of the law by granting various authorities in relation to confiscation and collection of equivalent value.

As such, the confiscation related clauses for foreign bribery cannot be considered too complicated, and they do not hinder the effective confiscation of bribes and proceeds resulting from such bribes.

**<Yearly Amount of Collection>**

(Unit : million won)

<b>Year</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Amount of Collection</b>	38,423	54,956	92,112	145,394

**<Yearly Amount of Collection (for crimes involving public officials)>**

(Unit : million won)

<b>Year</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013. 8.</b>
<b>Amount of Collection (public officials)</b>	2,855	2,663	3,349	3,778	4,239

**Text of recommendation 4(a):**

4. Regarding the investigation and prosecution of cases of foreign bribery, the Working Group recommends that Korea:

- a. Ensure that the investigation records of foreign bribery cases are not destroyed before Korea has had an opportunity to provide a full report on those cases to the Working Group, and that case records are kept for a reasonable period to provide prompt and effective mutual legal assistance to other Parties for proceedings under the scope of the Anti-Bribery Convention (Convention, Articles 9.1, 12);

**Action taken as of the date of the follow-up report to implement this recommendation:**

In an effort to keep a close watch on bribery case records and extend the preservation period of investigation records for bribery cases in violation of the FBPA, the MOJ revised the Regulation on Preservation of Prosecution Records in December 2013 so as to ensure that investigation records for bribery cases in violation of the FBPA are preserved permanently or semi-permanently. As such, the MOJ has taken action to implement this recommendation.

- Article 8(3) of the Regulation on Preservation of Prosecution Records : Investigation records for any crime that falls under Part 2 Chapter 1 and 2, Article 129 through Article 133 of the Criminal Act; any violation of the National Security Act; any crime that falls under Article 2 and 3 of the Act on the Aggravated Punishment, Etc. of Specific Crimes; and any crime that falls under Article 3 Paragraph 1 of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions shall be preserved as follows:
  1. Investigation records for serious crimes subject to death penalty, imprisonment for life with or without labor shall be preserved permanently. (A)
  2. Investigation records for crimes subject to imprisonment for a limited term of not less than 10 years with or without labor shall be preserved permanently. (B)
  3. Investigation records for crimes subject to imprisonment for a limited term of less than 10 years with or without labor shall be preserved semi-permanently.
    - ❖ Permanent preservation (A): The original and the microfilm shall be preserved permanently after the original is microfilmed.
    - ❖ Permanent preservation (B): The microfilm shall be preserved permanently after the original is microfilmed (the original may be destroyed).

- ❖ Semi-permanent preservation : The period of preservation shall be reevaluated after 70 years have passed from the starting date of preservation (permanently preserved/on hold/destroyed)

**Text of recommendation 4(b):**

4. Regarding the investigation and prosecution of cases of foreign bribery, the Working Group recommends that Korea:

- b. Strengthen the new information and intelligence gathering capacity coordinated by the Ministry of Justice, which involves the Ministry of Foreign Affairs and Trade and the Supreme Prosecutors' Office (SPO), by making the Korean Financial Supervisory Commission and the National Tax Service (NTS) part of the new system (Convention, Article 5, Commentary 27, 2009 Recommendation Annex I, para. D);

**Action taken as of the date of the follow-up report to implement this recommendation:**

In May 2013, competent authorities including the MOJ, the National Tax Service (NTS), the Korea Customs Service (KCS), the Financial Supervisory Service (FSS), and the Financial Intelligence Unit (KoFIU) created a consultative body and held meetings whenever necessary. Through the consultative body, the competent authorities will share information actively and launch a joint investigation, if necessary.

The above-mentioned consultative body is a new task force consisting of the Ministry of Justice, National Tax Service, Korea Customs Service, Financial Supervisory Service and KoFIU. It is different from the initiative that is led by the MOJ and participated by the Supreme Prosecutors' Office and the Ministry of Foreign Affairs.

This task force deals with offshore tax evasion, flight of assets abroad, etc. and is expected to effectively address foreign bribery cases. It has been less than a year since the task force was launched. So far, we have neither obtained new intelligence about foreign bribery nor started investigation through this task force. However, participating authorities will work closely to investigate once they obtain intelligence about foreign bribery.

The Korean Prosecutors' Office has strengthened the capacity for gathering the intelligence of foreign criminal cases through the exchange of human resources with the NTS and the Financial Services Commission (FSC). The Ministry of Foreign Affairs has also played an active role in sharing information collected by diplomatic missions overseas with competent authorities. Prosecutors and officials from competent authorities including the NTS and the KCS have closely cooperated in the cases of tax crime and financial crime. For example, some prosecutors and officials from the NTS and the KCS have been dispatched to the KoFIU under the FSC so as to collect and analyze the information on suspicious transactions, while some officials from the NTS are working at the Special Investigation Department, the Financial & Tax Crime Investigation Department, etc. of the Prosecutors' Offices to back up their investigation.

In January 2014, the Prosecutors' Office, through a joint investigation with the NTS, arrested a suspect who falsified tax returns worth about KRW 600 billion thereby fraudulently obtaining tax refunds.

**News Article : Tax Refund Schemers Issuing Fake Tax Returns**  
**Worth About KRW 600 billion Caught**

*reported by Yonhap News on January 8, 2014*

*Tax refund schemers were caught issuing fake tax returns and fraudulently obtaining tax refunds in conspiracy with metal refiners.*

*On January 8, 2014, the Seoul Western District Prosecutors' Office ('Seoul Western DPO') announced that it exposed 4 criminal rings of tax refund schemers and 18 metal refiners and others on charges of exchanging bogus tax returns worth about KRW 600 billion and collecting tens of billions of won in refunds (violation of the Act on the Aggravated Punishment, Etc. of Specific Crimes), and brought 11 out of them including Jung (age 43) to court.*

*The criminal rings established a paper company and filed fake tax returns as if the company had supplied goods or services to other businesses, and they got paid in return.*

*According to the Seoul Western DPO, from September 2011 to July 2013, the schemers allegedly conspired with metal refiners selling smuggled gold bars, alloys, etc. to file bogus tax returns so as to obtain value added tax refunds amounting to tens of billions of won.*

*Seven people including Jung falsified documents as if the smuggled gold bars had been made of gold scraps (an alloy containing gold) in order to sell undocumented bars. They actually sold the gold bars and submitted the falsified tax returns to the tax office, thereby collecting KRW 32 billion in VAT refunds.*

*In addition, the investigation revealed that the suspects always had a certificate of measurement and online banking records ready not to be caught during the tax audit, and did business having a third person as a president in name only not to be punished even if they were caught.*

*The Seoul Western DPO requested the court to issue an order of preservation of the suspects' apartments, bank deposits, securities, etc. for collection of KRW 32 billion of tax refunds.*

*Furthermore, the Seoul Western DPO exposed two people including KIM (age 39) who is a tax accountant and former tax official taking KRW 400 million from metal refiners by promising that they would solicit the Tax Tribunal for favorable disposition (violation of the Attorney-at-law Act) during the investigation, and arrested one of them.*

**Text of recommendation 4(c):**

4. Regarding the investigation and prosecution of cases of foreign bribery, the Working Group recommends that Korea:

- c. Increase the use of proactive steps to gather information from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations (Convention, Article 5, Commentary 27, 2009 Recommendation, IX. i), Annex I, para. D); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

As an effort to promote information sharing between countries and competent authorities and to build their capacity, the MOJ signed the Treaty on Mutual Legal Assistance in Criminal Matters with 73 countries (treaties taking effect in 70 countries); the Supreme Prosecutors' Office (SPO) and the World Bank signed an MOU to share information and establish a cooperative system for transnational bribery



cases in February 2011; and the KoFIU has signed MOUs for the exchange of financial intelligence with FIUs in 56 countries, including the U.S., U.K., Japan and China, by end-2013 and has exchanged 163 cases of information on average each year.

The KoFIU has exchanged relevant information through the Egmont Group of FIUs spread around the world. It is confirmed that on one occasion, the KoFIU had offered information concerning foreign bribery to the US FIU (FinCEN). The KoFIU now plans to investigate cases in a close cooperation with relevant government agencies upon attainment of information concerning foreign bribery in the future.

Foreign law enforcement authorities with an MOU with the SPO (16 countries) : Supreme People's Procuratorate and Ministry of Public Security of the People's Republic of China, the State General Prosecutor's Office of Mongolia, the Supreme People's Procuracy of Vietnam, the General Public Prosecutor's Office of the Republic of Uzbekistan, the General Prosecutor's Office of the Republic of Kazakhstan, the Prosecutor General's Office of the Russian Federation, Dubai Public Prosecution, the Bureau of Investigation and Public Prosecution of Saudi Arabia, the U.S. Department of Homeland Security, the Prosecutor's General Office of Moldova, the State Attorney's Office of the Republic of Croatia, the Prosecutor General's Office of Spain, the Office of the Attorney General of Thailand, the Attorney General's Office of Indonesia, the Attorney General's Department of Australia

In May 2013, competent authorities including the MOJ, NTS, KCS, FSS and KoFIU established a consultative body to enhance the capacity of collecting information through cooperation among local authorities. In addition, the Board of Audit and Inspection of Korea created a consultative body with the SPO and the Korea National Police Agency in the same month, and the NTS and the KCS signed an MOU to share information on offshore tax evasion in September 2013.

**Text of recommendation 4(d):**

4. Regarding the investigation and prosecution of cases of foreign bribery, the Working Group recommends that Korea:

- d. Establish clear criteria for requiring the Anti-Corruption and Civil Rights Commission (ACRC) to transfer reports of FBPA violations to the law enforcement authorities, and that such criteria are established as a matter of priority given that a statutory amendment extending whistleblower protections to persons who report FBPA violations came into force on 30 September 2011 (Convention, Article 5, Commentary 27, 2009 Recommendation Annex I, para. D).

**Action taken as of the date of the follow-up report to implement this recommendation:**

In order to put in place clearer referral standards for whistleblowing cases reported to the ACRC, the ACRC established the "Guideline for referral of reported cases" on September 27, 2012.

Under the guideline, if a public interest violation is subject to an administrative disposition, the case should be referred to an examination agency (administrative or supervisory agency) that has the authority of guidance, supervision, regulation or examination of the case. If the case is subject to a penal provision, the case should be referred to an investigative agency that has the authority of investigation over the case. However, if an examination agency has the exclusive authority for bringing a criminal charge (e.g., Korea Fair Trade Commission), the case should be referred to the examination agency even if the violation is subject to a penal provision.

According to the Guideline for referral, when the case is referred to an investigative agency, it should be referred to the Prosecutor's Office if a public interest violation is subject to "imprisonment of more than 5 years, or a fine of KRW 50 million or more". And if a public interest violation is subject to imprisonment of less than 5 years, or a fine not exceeding KRW 50 million, the case should be referred to the police agency.

To implement the Guideline, the ACRC provided the training program for ACRC investigators and circulated the Guideline (Sep. 27, 2012, and Jan. 11, 2013). In addition, the mentor system for newly hired investigators was launched for education on the application of referral standards on a continuous basis.

The ACRC has referred 1,704 whistleblowing cases to examination/investigative agencies out of 4,158 cases reported to the ACRC since the Public Interest Whistleblower Protection Act took effect on September 30, 2011. Among them, 60 cases which were subject to a penal provision were referred to an investigative agency under the "Guideline for referral of reported cases".

### *Recommendations for ensuring effective prevention and detection of foreign bribery*

#### **Text of recommendation 5:**

5. The Working Group recommends that Korea take the following steps to improve the prevention and detection of the foreign bribery offence through its anti-money laundering system: i) increase awareness amongst institutions and individuals responsible for making Suspicious Transaction Reports (STRs) of the risk of laundering the proceeds of foreign bribery, including by publishing relevant case studies; ii) take appropriate steps according to its legal system to ensure that financial institutions responsible for making STRs understand the total ownership structure of their corporate customers; and iii) address the potential conflicts of interest between financial institutions regarding their STR obligations, and their customer corporations that belong to the same enterprise groups as themselves (Convention, Article 7).

#### **Action taken as of the date of the follow-up report to implement this recommendation:**

Regarding i), the Financial Services Commission is making efforts to raise awareness of anti-money laundering among financial institutions in various ways. The FSC publishes "AML Annual Report" and "Review & Analysis Casebook" every year, and conducts nationwide itinerant training services and online tutorials for local offices and branches of financial institutions; upon request by financial institutions and relevant training institutes, the KoFIU staff pay visits to these branches to provide education to and check the awareness of anti-money laundering system of the front-line staff.

In February 2013, the MOJ translated, published and distributed the "Asset Recovery Handbook" published by the World Bank. In January 2011, the MOJ and the KoFIU jointly published and distributed a booklet titled "Money Laundering Crime Commentaries and Case Law."

Regarding ii), in Korea, the Enforcement Decree of the Act on Reporting and Use of Certain Financial Transaction Information provides the basis for a financial institution in charge of STRs to understand the overall governance structure of a client company. The MOJ and the KoFIU included 181 money laundering cases in the "Money Laundering Crime Commentaries and Case Law" publication and analyzed and methodically organized the cases into different money laundering types and legal reasoning, thereby making them more readily available for law enforcement officers.

Under Article 10-2(3) of the above Enforcement Decree, the financial institution may verify, where there is any doubt about the authenticity of the elements of CDD (customer due diligence), by relying on documents, information or other materials from trustworthy sources. The aforementioned clause also requires financial institutions to reflect the materials related to such verification and methods thereof in their business guidelines.

Disclosure of the ownership structure of listed companies is governed by the Financial Investment Services and Capital Markets Act, while unlisted companies shall disclose the information about shareholders based on the audit conducted in accordance with the Act on External Audit of Stock Companies. All companies are required to report information about controlling shareholders and their shares to the tax authorities pursuant to the Corporate Tax Act.

Details of disclosing a company's ownership structure are as follows:

1. Listed companies : The Financial Investment Services and Capital Markets Act requires listed companies to report information of those that hold more than 5/100 of the total number of stocks, etc. and his/her specially concerned persons to the FSC and the Korea Exchange which then will review the reported information and list them on their internet website, etc. (Article 147 and 149 of the Financial Investment Services and Capital Markets Act)
2. Unlisted companies : Any company limited by shares with the total asset of no less than KRW 10 billion must receive an accounting audit by an auditor who is independent from the company, and must submit financial statements approved at an ordinary general meeting to the Securities and Futures Commission, as prescribed by the Presidential Decree (Article 2, 8 and 14 of the Act on External Audit of Stock Companies). After the external audit, the company must keep and publicly announce its financial statements, usually specifying the number and the share of stocks held by major shareholders at the footnote of the financial statements. As such, the information is used to check the current status of major shareholders of the company subject to an external audit.
3. For all companies : All companies are required to submit a detailed statement of changes in stocks, etc. to the tax authorities that contains information including stocks owned by a controlling stockholder and his/her specially concerned persons. Through this, the tax authorities can obtain information about a controlling shareholder (Article 119 of the Corporate Tax Act).

In addition, as seen in the implementation status of FATF recommendation 5 ii), the stock-listed corporations report major stockholders to the Financial Services Commission and also publish them on the internet, making them readily accessible to the public.

Moreover, as for unlisted corporations, those with assets no less than 10 billion won must go through financial audit and submit their financial statements to the Securities and Futures Commission. This makes us possible to understand their corporate governance structure, and identify which corporations may be vulnerable to money laundering crimes.

Furthermore, the Financial Services Commission tabled a motion for the amendment of 「Act on Prohibition Against the Financing of Terrorism」 on January 28, 2014, in an effort to faithfully implement the FATF recommendations concerning legal persons. The amendment is intended to incorporate general regulations to punish the financing of legal persons or groups in their association with terrorism by expanding the scope of the previous Act, which was used to punish the financing of only those already specified to be subject to restrictions on financial transactions on the grounds of their association with terrorism, thereby improving transparency of legal persons. The bill is currently under review at the

National Assembly of the Republic of Korea.

Regarding iii), Korea has a strict policy for the separation of banking and commerce in order to prevent industrial capital from dominating the financial sector. In Korea, 1) general holding companies and financial holding companies are dealt with separately (Article 8-2 of the Monopoly Regulation and Fair Trade Act), 2) industrial capital is restricted from being used for financial capital (Article 16-2 of the Banking Act, Article 8-2 of the Financial Holding Companies Act), and 3) financial capital is restricted from being used for industrial capital (Article 37 of the Banking Act, Article 109 of the Insurance Business Act, Article 44 of the Financial Holding Companies Act, Article 8-2 of the Monopoly Regulation and Fair Trade Act).

Therefore, it is practically impossible for a financial institution to be under the same mother company as its client company. For this reason, conflicts of interest as mentioned in the recommendation hardly occur in Korea.

Furthermore, Korea has established pre-control and post-control systems so as to respond to various conflicts of interest that a financial institution may face.

As a pre-control system to prevent conflicts of interest, 1) banks are required to create an audit committee under the board of directors (Article 23-2 of the Banking Act) and have a compliance officer and internal control standards (Article 23-3 of the Banking Act), 2) financial investment business entities are required to comply with the laws by establishing internal control standards, and to set up proper standards and procedures for their staff and executives to prevent conflicts of interest and protect investors. In addition, legal measures such as prohibition of concurrent businesses are established to prevent conflicts of interest that may occur when a bank or an insurance company is engaged in other businesses (Article 250 and 251 of the Financial Investment Services and Capital Markets Act).

As a post-control system for the prevention of conflict of interests, Article 11-4(3) of the Act on Reporting and Use of Certain Financial Transaction Information and Article 15(1) of its Enforcement Decree allow for measures against financial institutions in breach of STR obligations by stating that financial institutions etc. may be ordered to suspend their business in its entirety or partially if such institutions do not report or falsely report in conspiracy with a counterparty in a financial transaction or persons related and thereby undermine economic order or give rise to reasonable grounds that they will undermine economic order.

In addition, in April 2012, the MOJ introduced the Compliance Officer System in the Commercial Act in order to abide by Acts and subordinate statutes and to allow appropriate internal controls to be implemented in companies. The adoption of this Compliance Officer System also helps legal persons to improve transparency of its management structure.

#### **Text of recommendation 6:**

6. The Working Group recommends that Korea take the following steps to improve the prevention and detection of foreign bribery through its accounting and auditing framework: i) consider amending the Board of Audit and Inspection Act to require external auditors to report suspected acts of foreign bribery to competent and independent authorities, such as law enforcement or regulatory authorities; ii) ensure that auditors making such reports reasonably and in good faith are protected from legal action; and iii) encourage awareness-raising and training on the FBPA in the accounting and auditing profession (2009 Recommendation X.B.).

**Action taken as of the date of the follow-up report to implement this recommendation:**

Regarding i), the accounting and auditing by external auditors are covered by the Act on External Audit of Stock Companies, not by the Board of Audit and Inspection Act. The Act requires for companies to be audited by Certified Public Accountants (CPAs) in accordance with the Korean Standards on Auditing approved by the FSC. The Standards clarifies that external auditors are required to report possible illegal acts including foreign bribery to those in charge of corporate governance and transparency such as an auditing committee, a board of directors, etc., and report to competent authorities pursuant to external auditors' legal responsibilities. (KSA 240 Par. 46).

Regarding ii), the revised Act on External Audit of Stock Companies as of the 30<sup>th</sup> of December, 2013 states that auditors making such reports reasonably and in good faith are protected from legal action against the liability for damages from auditing. The FSC is considering taking further steps that provide broader protection for external auditors from potential risks of litigations in auditing.

Regarding iii), practicing Korean CPAs shall complete a total of 40 hours of training program per year. This compulsory professional development program covers professional ethics issues, including the prevention of bribery of foreign public officials. The program provides Korean accounting professionals with information on legal responsibilities of external auditors as well as how to deal with possible illegal acts that they discover in the process of auditing.

**Text of recommendation 7:**

7. Regarding measures in the private sector for preventing and detecting foreign bribery in the private sector, the Working Group recommends that Korea: i) encourage all companies, including SMEs, to adopt adequate internal controls, ethics and compliance programmes and measures, taking into account the Good Practice Guidance in Annex II of the 2009 Anti-Bribery Recommendations; and iii) pursue additional opportunities to raise awareness of the FBPA among SMEs (2009 Recommendation X.C., and Annex II).

**Action taken as of the date of the follow-up report to implement this recommendation:**

Regarding i), the MOJ, ACRC, FKI, etc. have encouraged companies to develop and adopt adequate internal controls, ethics and compliance programs and measures in multiple ways to prevent and detect bribery cases in the private sector.

In April 2012, the MOJ revised the Commercial Act to introduce the Compliance Officer System (Article 542-13 of the Commercial Act). The system requires listed companies or any companies with total assets not less than KRW 500 billion to maintain a compliance officer and compliance control standards. In 2011, the MOJ published a booklet titled "OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions and Corporate Compliance" and on November 28, 2013, a prosecutor of the International Criminal Affairs Division was invited to the FKI Committee on Corporate Ethics for education.

The ACRC carried out projects to support ethical management of businesses, published "Best Practice Casebook on Ethical Management" (November 2013), and signed MOUs with the Korea Chamber of Commerce and Industry (KORCHAM) regarding the support programs for ethical management in April 2012 and with the Federation of Korean Industries on the cooperative activities to encourage voluntary efforts of businesses for ethical management in July 2013, respectively.

The FKI has contributed to the promotion of corporate ethics by operating the Academy for Better Company (ABC), holding regular meetings of the Committee on Corporate Ethics (from 2001 to the present), releasing the Charter of Business Management (February 2013), preparing the guidelines on practicing professional ethics for executives and staff of companies (November 2013), and publishing a compilation of best practices in ethical management (December 2013).

Regarding ii), In February 2014, the MOJ provided a training session on compliance to the Korea Federation of Small and Medium Business.

With the acceptance of the request of the ACRC, the Korea Federation of Small and Medium Business posted the 「OECD Anti-Bribery Guidebook」 along with explanation on its website on August 30, 2012. In cooperation with the ACRC, the Small and Medium Business Administration (SMBA) posted the OECD Anti-Bribery Guidebook as a banner on its website (February 20, 2013) to increase accessibility of SMEs to the OECD Anti-Bribery Convention.

**Text of recommendation 8:**

8. Concerning tax measures for preventing and detecting foreign bribery, the Working Group recommends that Korea: i) take appropriate steps to facilitate reporting by tax authorities of suspicions of foreign bribery arising out of the performance of their duties; ii) encourage the SPO to systematically share information with the NTS about convictions under the FBPA, so that the NTS can review the information for evidence of related tax crimes; iii) provide tax examiners with specific training on detecting FBPA violations; and iv) include bribery in the risk assessment and audit processes of the NTS (2009 Recommendation VIII (i); and 2009 Tax Recommendation).

**Action taken as of the date of the follow-up report to implement this recommendation:**

Regarding i), the Tax Investigation Management Guidelines that sets forth tax investigation procedures was revised in April 2013. Under the guidelines, a foreign bribery case that is detected in the course of tax investigation by local offices and branches of the NTS should be reported to the headquarters.

Regarding ii), the Prosecutors' Office notifies the NTS of criminal charges of tax evasion, etc., if found during the investigation of property related crimes such as embezzlement, breach of trust, etc. and provides relevant tax data (written indictment, etc.) in accordance with the "Tax Data Notification" system.

The Prosecutors' Office is actively using the Tax Data Notification System as follows: (1) the Prosecutors' Office notified the NTS of an offense of tax evasion committed by a local watch exporter which had requested excessive advertising expenses, etc. to its advertising agency or foreign clients and had the difference paid back from them, thereby embezzling the money, and (2) the Prosecutors' Office notified the NTS of an offense of tax evasion committed by a major adult entertainment establishment which evaded paying VAT, special excise tax and education tax.

Few foreign bribery cases have occurred to date and none of the cases required notification to the NTS. However, the SPO will continue its close cooperation with the NTS by providing relevant tax data to the NTS, if necessary, when the office discovers any suspicion of tax crimes.

In addition, in May 2013, a consultative body including the MOJ, NTS, KCS, FSS and KoFIU was

created to cope with offshore tax evasion, so it is expected that the investigation agencies and the NTS will be able to share information about tax crimes systematically.

For close cooperation between the investigation agencies and the NTS, public officials from the NTS are dispatched to the Prosecutors' Offices so as to support investigation. In particular, public officials from the NTS working at the Anti-Corruption Department of SPO, the Special Investigation Department and the Financial and Tax Crime Department of Seoul Central DPO play significant roles in the investigation of foreign financial crimes and offshore tax evasion, as mentioned in section 4(b). Prosecutors are also dispatched to the NTS to collect and analyze information about sources of tax revenue and conduct inspections. As such, the Prosecutors' Office and the NTS have systematically shared information about tax crimes through close exchanges of human resources.

Regarding iii), the OECD Anti-Bribery Convention Guidebook was posted on the NTS intranet in 2012 to raise awareness among tax examiners for foreign bribery cases. The NTS has provided occupational work training to 4,000 employees in charge of investigation. Training sessions by the National Tax Officials Training Institute were offered twice in 2012 to 250 employees, 6 times in 2013 to 327 employees. The sessions are scheduled to be offered 6 times in 2014 to about 600 employees.

Regarding iv), pursuant to paragraph 2 of Article 27 of the Corporate Tax Act, paragraph 1(4) of Article 50 of the Enforcement Decree of the Corporate Tax Act, paragraph 1(13) of Article 33 of the Income Tax Act, and paragraph 4(2) of Article 78 of the Enforcement Decree of the Income Tax Act, the bribery under the criminal law and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is not regarded as deductible expenses. The Tax Investigation Management Guidelines was revised in April 2013 to make sure that a foreign bribery case which is detected in the course of tax investigation by local offices and branches of the NTS should be reported separately to the headquarters.

**Text of recommendation 9(a):**

9. Regarding the prevention, detection and reporting of suspicions of foreign bribery by Korea's two public agencies that provide contracting opportunities, the Working Group recommends that Korea:

- a. Consider applying a more harmonised approach to the anti-bribery guidelines of Korea's officially supported export credit agencies -- Korea Eximbank and K-Sure -- to more effectively implement the 2006 Recommendation on Bribery and Officially Supported Export Credits (2009 Recommendation XI (i) and XII); and

**Action taken as of the date of the follow-up report to implement this recommendation:**

For a more harmonised approach to the anti-bribery guidelines of Korea's two public agencies, Korea Eximbank amended its Anti-Bribery Guidelines for officially supported export credits in December, 2013 as follows.

*If the enhanced due diligence concludes that bribery was involved in the transaction, Korea Eximbank shall share information related with Korea Trade Insurance Corporation.*

K-sure also revised its Guidelines on Processing Export Credit Applications to Combat Bribery in which upon confirming that bribery had been provided to foreign officials for the applicable international business transaction, K-sure shall share the related information with Korea Eximbank, thereby

strengthening the exchange of information related to anti-bribery activities between the two institutions.

*Refusal on approving export credit support: If credible evidence is confirmed upon investigation that bribery had been provided to foreign public officials related to the applicable transaction, the application review process shall be suspended and the related evidence shall be provided to law\_enforcement authorities and the related institution (Korea Eximbank).*

*Policy cancellation: If credible evidence is confirmed that bribery had been provided to foreign public officials related to the applicable transaction after issuing the policy certificate, the insurance contract shall be cancelled and the related evidence shall be provided to law enforcement authorities and the related institution (Korea Eximbank).*

In conclusion, the Korean government has completed the implementation of the article 9(a) of the Recommendation in which the two agencies have amended their anti-bribery related guidelines.

**Text of recommendation 9(b):**

9. Regarding the prevention, detection and reporting of suspicions of foreign bribery by Korea's two public agencies that provide contracting opportunities, the Working Group recommends that Korea:

- b. Consider adopting a systematic approach to providing access to information on companies convicted of corruption, such as through a national debarment register, to facilitate debarment by public contracting agencies of companies convicted of foreign bribery (Convention, Article 3.4, Commentary 24, 2009 Recommendation XI (i)).

**Action taken as of the date of the follow-up report to implement this recommendation:**

The current "Enforcement Decree of the Act on Contracts to Which the State is a Party" and the "Enforcement Decree of the Act on Contracts to Which a Local Government is a Party" designate companies offering bribes to relevant public officials for the purpose of bidding, winning a bid, and signing and implementing a contract as unfair contract partners so as to debar those companies from bidding.

In accordance with the above laws, the Electronic Disclosure System is operated to ensure that the names, addresses, representatives, corporate registration numbers, and reasons for debarment, etc. of unfair contract partners are disclosed through the e-procurement system.

Currently, there are on-going discussions between the competent authorities on ways to facilitate debarment of companies that violated the *Act on Combating Bribery of Foreign Public Officials in International Business Transactions* from participation in public contracts.

For domestic bribery cases, the prosecution notifies the relevant agencies such as the Public Procurement Services of the companies that bribe public officials whenever discovering such acts so as to impose proper sanctions on these companies.

In many cases, the notification of criminal facts by the Prosecutors' Office led to the designation of unfair contract partners as shown below. The Prosecutors' Office will ensure that companies violating the FBPA are subject to notification to the Public Procurement Service so as to debar the companies from



bidding.

① In 2010, the Prosecutors' Office caught 4 companies offering bribes to relevant public officials to win contracts for supplying fences and street lights, and decided a summary indictment for two companies and suspended indictment for another two companies. Upon notification of the Prosecutors' Office, the Public Procurement Service designated the companies as unfair contract partners debarred from bidding.

② The Prosecutors' Office caught a company offering a bribe worth KRW 3 million to a relevant public official in order to win a contract for MAS (anti-corrosion equipment) upon expiration of the previous contract. In May 2011, the Prosecutors' Office notified the case to the Public Procurement Service. As a result, the company has been debarred from bidding.

**Text of recommendation 10:**

10. Regarding the protection of whistleblowers, the Working Group encourages Korea to consider further clarifying that the Act on Protection of Public Interest Whistleblowers now provides protections for those who report suspicions of foreign bribery in any official guidance on the Act, and continue its awareness-raising activities on the Act (2009 Recommendation IX (iii)).

**Action taken as of the date of the follow-up report to implement this recommendation:**

The ACRC clarified that protection is provided to reporters of suspected foreign bribery, and conducted a variety of promotion campaigns to raise awareness of the Whistleblower Protection Act.

The ACRC provided tailored official guidance for examination agencies (administrative or supervisory agencies), investigative agencies, the National Assembly, and other concerned public organizations on the procedures and matters of attention when receiving public interest violation and FBPA violation reports. (May 2012)

It also held the "ACRC Policy Briefing for Foreign Business"(December 2011) and a workshop (Sept. 2012) to strengthen the whistleblower protection system of businesses and distributed an official guideline for businesses (August 2012) and educational material for businesses in PPT format (October 2013) to suggest the establishment of the system for businesses to handle public interest violation reports and to voluntarily protect whistleblowers.

In addition, nationwide lecturing tours for public organizations, businesses, and the general public to raise awareness across society (3,500 participants, Nov. 2011 - Mar. 2012), and various promotion activities were carried out to establish a positive image and raise awareness of whistleblowing in society, including TV advertisement (April and May 2013), and distribution of leaflets (June 2013, 65,000 copies) and a casebook of best practices (October 2013).

As a result, the awareness level of whistleblower protection system has drastically increased from 16% in 2011 when the Act first took effect to 23.6% in 2012 at the annual survey of public awareness on major ACRC activities.

The Korean government has been committed to making strenuous efforts to increase the effectiveness of the whistleblower protection system including foreign bribery whistleblowers by expanding the implementation of the whistleblower protection system and public participation with through continuous

promotion activities.

**If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:**

## **PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP**

### **Text of issue for follow-up:**

11. The Working Group will follow-up the issues below as FBPA case law and practice develop:

- a. Application of the FBPA to cases where the bribe is transmitted directly to a third party, and the application of the law on co-principals and accessories to intermediaries (Convention, Article 1);

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

- Application of the FBPA to cases where the bribe is directly transmitted to a third party

In cases where a foreign public official does not directly take the bribe but has the briber offer it to a third party, the briber may be punishable pursuant to the FBPA only when the bribe taken by the third party is regarded, in accordance with social norms, as the same as it was taken by the public official, provided that there were circumstances in which the third party received the bribe as a representative or agent of the public official, or the public official usually took responsibility for the living expenses of the third party, or the public official owed debt to the third party, thereby having the third party take the bribe and offsetting the expenses borne by the public official.

On November 25, 2013, the FBPA revision bill was tabled and is currently under discussion in the National Assembly in order to punish persons who offer a bribe to a third party or take the bribe even with knowledge thereof. When the said bill passes into law, it is assumed that diverse forms of bribery to a foreign public official through a third party may be punishable.

- Application of the said law to co-principals and accessories in cases where the bribe is given to intermediaries

When two or more persons have conspired to commit a crime but not all actually commit the crime, all of them shall be liable for their criminal act and the same punishment shall be applied to a person who instigates another to commit a crime (instigator) as the one who actually commits the crime. (Article 30 and Article 31 of the Criminal Act)

Moreover, the Korean Criminal Act also punishes a person who aids and abets the commission of a crime as an accessory even though the person has not conspired to commit the crime, actually committed the crime or instigated another to do so. (Article 32 of the Criminal Act)

Meanwhile, in cases where a person consents to or acquiesces to bribery to a foreign public official, it

is likely that the person may be punishable as a co-principal, instigator or accessory for the violation of the FBPA, taking into account the person's post, his relationship with the briber, details of his consent or acquiescence, circumstances and all others. The act of acquiescence is not necessarily punished, but when it comes to acquiescence of a person with authority and responsibility to some extent in the decision-making process of bribery (such as CEO, Director, etc.), the person could be regarded as a co-principal, instigator or accessory.

As shown in the legal interpretation in Korea as set forth above, even in cases where the bribe is given to a foreign public official through intermediaries, it is highly likely that those who conspire to offer the bribe including the intermediaries may be punishable as co-principals for the violation of the FBPA.

**Text of issue for follow-up:**

11. The Working Group will follow-up the issues below as FBPA case law and practice develop:

- b. How "international business" is interpreted in practice, including whether it covers employment with a foreign government (Convention, Article 1);

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

- Interpretation of "international business"

"International business" refers to any commercial transaction which involves a non-resident party/parties or that of foreign corporations such as sales and rent of movable or non-movable properties, supply of service, lending/borrowing, and all other commercial transactions involving assets of parties or related to their gains and losses. Here, "international" does not mean "between nations" but "transnational" (Practice in International Business and Commercial Cases, Seoul District Court, P. 1), and "business" refers to all trading and profit-seeking activities involving gains/losses and assets.

Therefore, employment in a foreign government is an "international business" within the meaning of the term in the FBPA. An employment contract refers to the contract in which a party agrees to provide service and the other party agrees to pay wages in return. When a Korean citizen signs an employment contract with a foreign government, the person agrees to provide service to the foreign government and to receive wages, therefore, the activity concerns "supply of service related to gains/losses and assets," a type of international business transaction, thereby within the meaning of the term in the FBPA.

**Text of issue for follow-up:**

11. The Working Group will follow-up the issues below as FBPA case law and practice develop:

- c. Regarding sanctions i) application of the provision in the FBPA that results in no sanctions for a legal person that "has paid due attention or exercised proper supervision to prevent" foreign bribery; ii) application of the revised sentencing guidelines for bribery, including how the profit is determined when calculating fines to be imposed for foreign bribery; and iii) impact on confiscation in foreign bribery cases of the newly established specialised confiscation units in prosecutors' offices (Convention, Articles 1, 2, 3.1, 3.3);

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

- i) Application of the FBPA to legal persons which have exercised "due diligence or proper supervision" in order to prevent foreign bribery so as not to result in sanctions

The FBPA stipulates that legal persons are exempt from criminal responsibility when they have exercised due diligence or proper supervision in order to prevent the commission of crime (proviso to Article 4).

It shall be judged with all circumstances taken into consideration: background and motive of the legal person for bribing, involvement of corporate executives, and whether corporate executives were aware of such acts and corporate efforts made to prevent bribery.

In particular, when it comes to judgement on whether due diligence or proper supervision was exercised, one of the important factors is what specific measures legal persons have taken in order to prevent foreign bribery: whether corporate regulations or codes of conduct for employees stipulating the prohibition of bribery are posted on the internet website of the company, whether an employment contract or a collective agreement contains a provision banning bribery, whether employees have signed a letter of commitment banning bribery, etc.

- ii) Application of the revised sentencing guidelines for foreign bribery cases
  - Including how the profit is determined when calculating fines to be imposed for foreign bribery

It is possible to refer to the sentencing guidelines for domestic bribery cases when dealing with foreign bribery cases.

**[Sentencing Guidelines by the Supreme Court]**

Type	Classification	Mitigated Punishment	Basic Punishment	Aggravated Punishment
1	Less than KRW 30 million	- 6 months	4 - 10 months	6 months - 1 yr. 6 months
2	more than KRW 30 million, Less than KRW 50 million	6 months - 1 yr.	10 months - 1 yr. 6 months	1 - 3 yrs.
3	more than KRW 50 million, Less than KRW 100 million	1 - 2 yrs.	1yr. 6 months - 2 yrs. 6 months	2 - 4 yrs.
4	more than KRW 100 million	2 - 3 yrs.	2 yrs. 6 months - 3 yrs. 6 months	3 - 5 yrs.

Category		Elements of Mitigation	Elements of Aggravation
<b>Special Sentencing Factors</b>	<b>Offence</b>	<ul style="list-style-type: none"> <li>• bribe-offering to persons about to become a public servant or arbitrator</li> <li>• passive response to the solicitation made by the bribers only request or promise but not put into action</li> </ul>	<ul style="list-style-type: none"> <li>• active bribe-offering</li> <li>• solicitation involving illegal or unjust work</li> <li>• instigation</li> </ul>
	<b>Offender / Others</b>	<ul style="list-style-type: none"> <li>• deaf-mutes</li> <li>• feeble-minded persons</li> <li>• surrender to the police or report of inner corruption</li> </ul>	<ul style="list-style-type: none"> <li>• repeated offenders</li> </ul>
<b>General Sentencing Factors</b>	<b>Offence</b>	<ul style="list-style-type: none"> <li>• passive participation</li> <li>• delivery of bribes</li> <li>• bribe-offering to quasi-public servants pursuant to Article 4 of the Act on the Aggravated Punishment, Etc. of Specific Crimes</li> </ul>	<ul style="list-style-type: none"> <li>• high level of work relevance</li> </ul>
	<b>Offender / Others</b>	<ul style="list-style-type: none"> <li>• serious repentance</li> <li>• no previous criminal convictions</li> </ul>	<ul style="list-style-type: none"> <li>• repeated crimes on two different offenses, previous convictions on the same offenses but not repeated</li> </ul>

In Korea, the "profit" is interpreted as illegal proceeds that the bribe offerer or related legal persons obtained through a transaction involving bribery, or illegal proceeds acquired/obtained through an act of offering bribes. In other words, the profit is regarded as having a causal relationship with the act of offering bribes. Therefore, sentences are determined after calculating the amount of proceeds based on its causal relationship with the act of offering bribes.

iii) Impact on confiscation in foreign bribery cases of the newly established specialized confiscation units in prosecutors' offices (Article 1, 2, 3.1, and 3.3 of the OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions)

In May 2006, the Specialized Criminal Proceeds Confiscation Unit was established under the Supreme Prosecutors' Office (SPO), and the unit was also established under 57 prosecutors' offices across the country by September 2010. The unit under the SPO is comprised of 1 prosecutor and 25 prosecution investigators and dispatched public officials, while each unit of the 57 Prosecutors' Offices are comprised of 1 prosecutor and 2 investigators specializing in the confiscation of criminal proceeds. The Specialized Criminal Proceeds Confiscation Unit traces concealed criminal proceeds and assets, conducts investigations into money laundering, requests a preservation order for the collection of equivalent value, etc. The unit is also managing the progress of asset recovery and its statistics as the Criminal Proceeds Recovery Information System was established in September 2010.

**[Increase in the amount of preserved criminal proceeds since the establishment of Specialized Criminal Proceeds Confiscation Unit]**

<b>Year</b>	<b>No. of indictment for money laundering</b>	<b>No. of preservation order for confiscation/ collection of equivalent value</b>	<b>Amount of preservation (KRW)</b>
<b>2006</b>	47	472	238,368,429,784
<b>2007</b>	60	507	54,110,581,230
<b>2008</b>	86	654	134,144,353,513
<b>2009</b>	83	605	139,825,082,866
<b>2010</b>	80	741	216,165,772,310
<b>2011</b>	130	1,344	253,689,825,009
<b>2012</b>	161	1,129	279,614,613,123
<b>2013</b>	278	1,313	739,846,312,856

Furthermore, the SPO established a cooperative system with foreign investigation agencies to effectively respond to transnational crimes, such as international money laundering, outflow of criminal proceeds to foreign countries, criminals fleeing overseas, etc. In January 2010, the SPO launched the International Cooperation Center so as to enable prompt and direct cooperation among different investigation agencies. As a result of such efforts, the International Cooperation Center of the SPO, jointly with the State General Prosecutor's Office of Mongolia, traced criminal proceeds of approximately KRW 1,700,000,000 that the owner of an illegal gaming house who was sentenced to an imprisonment had transferred to Mongolia; found out that the criminal proceeds were used to construct R Hotel in Ulaanbaatar, Mongolia; and confiscated and sold the hotel so as to successfully recover the criminal proceeds on December 13, 2012. This is the first case of recovering criminal proceeds from a foreign country in Korea.

The SPO also took the lead in creating the 'Asset Recovery Interagency Network – Asia Pacific (ARIN-AP)' since 2012, resulting in its establishment in November 2013. The SPO is serving as the secretariat of the above network, and will take charge of strengthening international cooperation among law enforcement agencies within Asia-Pacific region to further the recovery of criminal proceeds transferred to foreign countries.

**Text of issue for follow-up:**

11. The Working Group will follow-up the issues below as FBPA case law and practice develop:

- d. Whether natural and legal persons are subject to effective, proportionate and dissuasive penalties when cases of foreign bribery are prosecuted under other penal provisions (Convention, Article 3.1);

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

The Korean Supreme Court is making every effort to ensure effective, proportionate and dissuasive penalties for those who have offered bribes by adopting sentencing guidelines for the offense of bribery.

**[Sentencing Guidelines by the Supreme Court]**

Type	Classification	Mitigated Punishment	Basic Punishment	Aggravated Punishment
1	Less than KRW 30 million	- 6 months	4 - 10 months	6 months - 1 yr. 6 months
2	more than KRW 30 million, Less than KRW 50 million	6 months - 1 yr.	10 months - 1 yr. 6 months	1 - 3 yrs.
3	more than KRW 50 million, Less than KRW 100 million	1 - 2 yrs.	1yr. 6 months - 2 yrs. 6 months	2 - 4 yrs.
4	more than KRW 100 million	2 - 3 yrs.	2 yrs. 6 months - 3 yrs. 6 months	3 - 5 yrs.

Category		Elements of Mitigation	Elements of Aggravation
Special Sentencing Factors	Offence	<ul style="list-style-type: none"> <li>• bribe-offering to persons about to become a public servant or arbitrator</li> <li>• passive response to the solicitation made by the bribers</li> <li>• only request or promise but not put into action</li> </ul>	<ul style="list-style-type: none"> <li>• active bribe-offering</li> <li>• solicitation involving illegal or unjust work</li> <li>• instigation</li> </ul>
	Offender / Others	<ul style="list-style-type: none"> <li>• deaf-mutes</li> <li>• feeble-minded persons</li> <li>• surrender to the police or report of inner corruption</li> </ul>	<ul style="list-style-type: none"> <li>• repeated offenders</li> </ul>
General Sentencing Factors	Offence	<ul style="list-style-type: none"> <li>• passive participation</li> <li>• delivery of bribes</li> <li>• bribe-offering to quasi-public servants pursuant to Article 4 of the Act on the Aggravated Punishment, Etc. of Specific Crimes</li> </ul>	<ul style="list-style-type: none"> <li>• high level of work relevance</li> </ul>
	Offender / Others	<ul style="list-style-type: none"> <li>• serious repentance</li> <li>• no previous criminal convictions</li> </ul>	<ul style="list-style-type: none"> <li>• repeated crimes on two different offenses, previous convictions on the same offenses but not repeated</li> </ul>

Moreover, a bribee faces harsher punishment than a briber (see the sentencing guidelines below).

According to Article 2 of the Act on the Aggravated Punishment, Etc. of Specific Crimes, punishment against a bribee may be aggravated up to imprisonment for life, depending on the amount of bribes.

**[Sentencing Guidelines by the Supreme Court - Acceptance of Bribe]**

Type	Classification	Mitigated Punishment	Basic Punishment	Aggravated Punishment
1	Less than KRW 10 million	- 6 months	4 months - 1 yr.	8 months - 2 yrs.
2	No less than KRW 10 million Less than KRW 30 million	8 months - 2 yrs.	1 yr. - 3 yrs.	2 - 4 yrs.
3	No less than KRW 30 million Less than KRW 50 million	2 yrs. 6 months - 4 yrs.	3 - 5 yrs.	4 - 6 yrs.
4	No less than KRW 50 million Less than KRW 100 million	3 yrs. 6 months - 6 yrs.	5 - 7 yrs.	6 - 8 yrs.
5	No less than KRW 100 million Less than KRW 500 million	5 - 8 yrs.	7 - 10 yrs.	9 - 12 yrs.
6	No less than KRW 500 million	7 - 10 yrs.	9 - 12 yrs.	No less than 11 yrs., life imprisonment

Furthermore, Korea is strengthening and expanding special acts such as the Act on Regulation of Punishment of Criminal Proceeds Concealment, the Act on Special Cases Concerning Forfeiture for Offenses by Public Officials, and the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, Etc. so as to ensure enhanced confiscation of bribes or proceeds originating from such bribes and collection of equivalent value thereof.

**Text of issue for follow-up:**

11. The Working Group will follow-up the issues below as FBPA case law and practice develop:

- e. Provision of MLA by Korea to other Parties to the Anti-Bribery Convention (Convention, Article 9.1); and

**With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

Regarding foreign bribery cases, Korea provided MLA to 3 countries Party to the Convention in 4 cases.

**Country 1 (2 cases)**

- ① A foreign public official allegedly provided contract-related information to a Korean sub-contractor and received bribes in return from the company. The Korean competent authority executed



a search and seizure warrant, provided the foreign authorities with bank statements of the Korean sub-contractor and related documents obtained from the company's office and the residence of the company's CEO.

② A foreign public official allegedly took bribes worth about KRW 300 million from a Korean businessman in return for giving advantages for business. The Korean competent authority provided bank statements of the suspect and a relative.

#### **Country 2 (1 case)**

The suspect was investigated on charges of money laundering and bribery. Thus, Korea obtained statements from concerned persons as to how the Korean company happened to wire several million USD to the suspect and provided the statements and the documents of remittance.

#### **Country 3 (1 case)**

While serving as an agent for the sales of Korean-made defense supplies, the suspect bribed a person working at the Korean Embassy in the foreign country. With regard to this case, the Korean competent authority provided personal information of the person working at the embassy.

Furthermore, regarding foreign bribery cases, Korea provided MLA to a non-member to the OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions, based on the principle of reciprocity.

#### **Country not Party to the Convention**

The Korean competent authority received an MLA request from a country not Party to the Convention indicating that a senior official of a Korean company had allegedly offered bribes to the president of a state-run company of the foreign country. The foreign country's authorities requested Korea to investigate how the company wired the money via a bank account in a third country. The Korean competent authority investigated the case and provided the results of MLA to the foreign country.

#### **Text of issue for follow-up:**

11. The Working Group will follow-up the issues below as FBPA case law and practice develop:

- f. Implementation of an amendment to the Commercial Act, due to come into force in April 2012, requiring listed companies to establish "compliance guidelines", and appoint a "compliance officer" to carry out compliance duties in the guidelines, monitor compliance with the guidelines, and report the results to the board of directors (2009 Recommendation C, and Annex II).

#### **With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:**

According to the revised Commercial Act which took effect in April 2012, any company with over KRW 500 billion in total assets as of the end of the latest business year and any listed company such as financial institutions which must have inner guidelines and compliance officers pursuant to other Acts shall come up with compliance guidelines containing standards and procedures that must be observed. In addition, the above companies shall have one or more compliance officers who are legal experts including attorneys, law school professors, etc. The compliance guidelines and the compliance officer system came

into force in April 2012 at companies subject to the regulations.

Article 542-13 of the Commercial Act (Compliance Guidelines and Compliance Officers)

- ① A listed company determined by Presidential Decree in light of the scale of assets, etc. shall establish guidelines and procedures that their employees and directors must observe in order to abide by Acts and subordinate statutes and make their management appropriate when the employees and directors perform their duties (hereinafter referred to as “compliance guidelines”).
- ② A listed company under paragraph (1) shall have one or more persons responsible for the work on abiding by the compliance guideline (hereinafter referred to as “compliance officer”).
- ③ A compliance officer shall check whether the compliance guidelines are complied with and shall report the outcomes thereof to the board of directors.
- ④ In order to appoint and remove a compliance officer, a listed company under paragraph (1) shall obtain a resolution of the board of directors.
- ⑤ A compliance officer shall be appointed from among the following persons:
  1. A person qualified as an attorney at law;
  2. A person who is or was in a position of an assistant professor or higher position teaching law at a school as provided for in Article 2 of the Higher Education Act;
  3. Other persons with considerable knowledge and experience in law, who are determined by Presidential Decree.
- ⑥ The term of a compliance officer shall be three years, and he/she shall work full time.
- ⑦ A compliance officer shall perform his/her duties with the due care of a good manager.
- ⑧ No compliance officer shall divulge any business secret of the company, which has come to his/her knowledge in the course of performing his/her duty, not only while in office but also after retirement.
- ⑨ A listed company under paragraph (1) shall have its compliance officers independently perform their duties and, if a compliance officer requests submission of data or information in the course of performing his/her duties, the employees and directors of the company mentioned in paragraph (1) shall sincerely comply therewith.
- ⑩ No listed company under paragraph (1) shall unfairly disadvantage a person who was a compliance officer in personnel matters for reasons related to his/her performance of duties.