



## **KOREA: PHASE 2**

### **FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS**

**APPLICATION OF THE CONVENTION ON COMBATING  
BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL  
BUSINESS TRANSACTIONS AND THE 1997 REVISED  
RECOMMENDATION ON COMBATING BRIBERY IN  
INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 2 March 2007.

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## **SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY**

### **Summary and Conclusions by the Working Group on Bribery**

#### **a) Summary of Findings**

1. Korea has taken additional steps to implement the OECD Convention since its Phase 2 examination in June 2004. The Working Group also notes favourably that there have been six convictions for foreign bribery in Korea since that time.

2. To promote awareness of the Convention and foreign bribery, Korea's National Police Agency offered courses on the Foreign Bribery Prevention Act (FBPA) and the Convention for 320 "intellectual crime investigators" in 2005 and 2006. The lectures in the courses were given by a Korean Supreme Prosecutor and the resident professor on civil service crime at the Board of Audit and Inspection. New judges, prosecutors and lawyers must take the International Criminal Act Course at the Judicial Research and Training Institute which covers the Convention and the FBPA. New prosecutors take additional courses on the same subjects at the Legal Research and Training Institute. In 2004, the Korea Independent Commission Against Corruption (KICAC) published the OECD Anti-Bribery Convention Guidebook as a tool to raise awareness. The Guidebook was revised in 2006. KICAC has distributed the Guidebook to public organisations, organisations related to public service, and business councils. KICAC has also provided copies of the Guidebook to the Korea Trade-Investment Promotion Agency and has lectured on the Convention at the Agency's annual meeting. To raise awareness among small and medium-sized enterprises (SMEs), the Small and Medium Business Administration advertised the Convention in major newspapers and on a government Web site for SMEs. It has also distributed the Guidebook to its regional offices for use when advising SME clients on entry into foreign markets. Finally, KICAC's Business Ethics Centre has disseminated the OECD 2006 Action Statement on Bribery and Officially Supported Export Credits through its Web site, newsletters and emails.

3. The Working Group notes, however, that Korea should do more to raise awareness within two bodies that were specifically mentioned in the Phase 2 report. Little has been done to raise the awareness of the Korea International Cooperation Agency (KOICA), apart from providing the Agency with an electronic copy of KICAC's Guidebook. There was no information on activities to raise awareness within the Korea Board of Audit and Inspection. Hence, Recommendation 1 has only been partially implemented.

4. As for prevention and detection of foreign bribery through accounting and auditing, the Korea Export Insurance Corporation and the Korea Export-Import Bank now have the power to demand documents and information from their clients. This power is similar to an audit. In 2007, KOICA expects to begin requiring contractors to sign a "letter of no-bribery commitment or Integrity Pact". The document will allow KOICA to audit contractors who are suspected or convicted of bribery. Concerns remain, however, over the duty of Korean external auditors to report wrongdoing to competent authorities. External auditors are obliged to report wrongdoing by a company's director to the statutory auditor, an audit committee and the general meeting of shareholders. The situation has not changed since the Phase 2 examination. The Working Group therefore remains of the view that Korea could enhance its ability to detect foreign bribery by requiring auditors to report wrongdoing by anyone, not just directors, to competent authorities. Korea should therefore further consider Recommendation 2(a).

5. Regarding other measures to prevent and detect foreign bribery, a 2006 decision of the Korean Supreme Court clarified that the defence of social customs under article 20 of the Criminal Act does not apply to foreign bribery. This development alleviated the earlier concerns of the Working Group. Korea has also enhanced the ability of its overseas representations to detect and report foreign bribery. Korean embassies now refer to KICAC's Guidebook when they advise Korean companies overseas. Embassies have been directed to report allegations of foreign bribery committed by a Korean company or individual to the Ministry of Foreign Affairs and Trade in Seoul. The report is then forwarded to the Ministry of Finance and Economy, KICAC, law enforcement, and prosecutorial bodies. There are no evidentiary thresholds for triggering the reporting mechanism.

6. Other recommendations concerning prevention and detection remain unimplemented, however. Korea has extended whistleblower protection under the Anti-Corruption Act (ACA) to whistleblowers who report to any government agency, not just KICAC. Nevertheless, concerns remain that whistleblower protection under the ACA continues to apply only to domestic and not foreign bribery. The Phase 2 report noted that the ACA applied only to whistleblowers who report "acts of corruption", which is defined as acts of employees of Korean public organisations, or acts which damage the financial interests of Korean public organisations. The ACA has not been amended in this regard since the Phase 2 examination. Recommendation 3(a) is accordingly only partially implemented, and Korea should consider the issue further. Likewise, Korea has not implemented Recommendation 3(b). There remains no procedure for KOICA to report suspected violations of the FBPA to competent authorities, although Korea expects to pass new legislation to rectify this situation in the first half of 2007.

7. Korea has taken significant steps in the area of tax to implement the Convention. The National Tax Service provided tax examiners with the OECD Bribery Awareness Handbook and has used the Handbook in training courses for tax examiners. On 17 January 2007, the Ministry of Finance and Economy issued an advance notice of a Presidential Decree. If passed, the decree would expressly deny tax deduction of bribes under the Income Tax and Corporate Tax Acts. The decree is expected to be adopted by Cabinet on 13 February 2007 and then come into force on 20 February 2007. The Working Group therefore found that Korea has implemented Recommendation 4, though Korea was invited to report on the status of the decree once the legislative process has been completed.

8. Concerning the prosecution of foreign bribery offences, the Working Group had expressed concerns in the Phase 2 report over the Explanatory Manual published by the Ministry of Justice. KICAC's Guidebook that was published in 2004 has since replaced the Manual and eliminated those concerns. Recommendation 5(a) remains unimplemented, however, since article 3.1 of the FBPA still does not expressly cover a bribe that is transmitted directly to a third party. Korea expects the issue to be studied in 2007 by a Special Subcommittee on International Criminal Affairs under the Ministry of Justice and by an Anti-corruption Norms Review Task Force at the government level.

9. Regarding sanctions, Korea provided statistics on the sanctions that have been imposed for violations of the FBPA. During Phase 2, the Working Group had noted that the sanctions that had been imposed in Korea's two foreign bribery cases at that time were not effective, proportionate and dissuasive. Since then, there have been six more convictions for foreign bribery in Korea, all of which resulted in even smaller fines and no jail sentences. Korea also has not considered increasing the penalties for false accounting and fraudulent auditing. Korea expects to enact the Special Act on Confiscation and Recovery of Assets Resulting from Corruption in 2007, which would allow the confiscation of assets derived from proceeds of foreign bribery. This is a positive step, but Recommendation 6(a) remains unimplemented.

10. As for administrative sanctions, the Korean authorities responsible for official development assistance have introduced such sanctions. KOICA now bans a person or company that has been convicted of foreign bribery from bidding for further contracts for 6-24 months. Existing contracts may be cancelled.

After the ban expires, the company or individual must obtain a bond for all bids in the following two years. In addition, the Economic Development Cooperation Fund (Korea's bilateral development assistance fund) has introduced the "Guideline for Anti-Corruption" which imposes non-criminal sanctions for foreign bribery. However, there remain no administrative sanctions in the privatisation process, largely because the Korean government has not privatised any assets since the Phase 2 examination. Nevertheless, the Working Group considered it prudent to further monitor this area since future Korean governments may revive the privatisation process. Recommendation 6(c) is therefore only partially implemented.

11. Finally, regarding the issues that the Working Group had identified for follow-up, there have not been legislative developments or sufficient practice on these matters since the Phase 2 examination. The Working Group will therefore continue to monitor these issues.

**b) Conclusions**

12. Based on these findings, the Working Group concluded that Korea has not implemented Recommendations 2(a), 3(b), 5(a) and 6(a), and has partially implemented Recommendations 1, 3(a) and 6(c). The Working Group invites Korea to report orally on the implementation of these Recommendations and on any developments concerning the follow-up issues within one year, *i.e.* by 18 January 2008. The remaining Recommendations have been implemented or dealt with in a satisfactory manner.

## WRITTEN FOLLOW-UP TO PHASE 2 REPORTS

**Name of country: Korea**

**Date of approval of Phase 2 Report: 5 November 2004**

**Date of information: 22 December 2006**

### Part I: Recommendations for Action

#### Text of recommendation:

1. With respect to promoting awareness of the Convention and the Act on Preventing Bribery of Foreign Public Officials in International Business Transactions (FBPA), the Working Group recommends that Korea takes steps to increase awareness of the investigative, prosecutorial and judicial authorities, including the provision of training programmes on the Convention and the FBPA for current and future members of these bodies; agencies indirectly involved in implementing the Convention; and SMEs, particularly through agencies that advise and support them (Revised Recommendation, Paragraph I).

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

The prosecutor in charge of the OECD Anti-bribery Convention under the Korean Ministry of Justice teaches the OECD Anti-bribery Convention and the FBPA through the course of “International Criminal Act” at the Judicial Research and Training Institute, where he/she obtains qualifications to work as a judge, a prosecutor, or a lawyer. Also, when the person who completed the required courses at the Judicial Research and Training Institute is appointed as a prosecutor, he/she should take the courses for the newly-appointed prosecutors at the Legal Research and Training Institute. At the Legal Research and Training Institute, the prosecutors of the International Criminal Affairs Division under the Korean Ministry of Justice, who oversee the matters related to the OECD Anti-bribery Convention, teach the newly-appointed prosecutors the OECD Anti-bribery Convention and the FBPA.

The National Police Agency established the Foreign Official Bribery Prevention Act training course as part of the “Specialised Public Intellectual Crime Investigation Program” held in 2005 at the Criminal Investigation Training Institute of Korea National Police. One session was for intellectual crime investigators with at least 3 years experience, a total of 4 separate sessions held for 80 persons each (320 persons, 3 hours of training per person). Training was held for a total of 320 persons in 2006 over 4 separate sessions in March, July, September, and November. Special lectures were given by a prosecutor from the Supreme Prosecutors’ Office in July and September, and by the resident professor on civil service crime at the Board of Audit and Inspection in November. Courses included the following content: The origin and progress of the OECD Convention on Combating Bribery, the enactment background and timing of the Foreign Official Bribery Prevention Act, the qualification of foreign officials and crimes under the Foreign Official Bribery Prevention Act, the criminal liability and penalties for bribing parties under the

Foreign Official Bribery Prevention Act, and the criminal jurisdiction of Korea regarding domestic nationals who face bribery charges overseas under the Foreign Official Bribery Prevention Act.

Following the enactment of the OECD Convention on Combating Bribery on February 15, 1999, there are now approximately 5,000 intellectual crime investigative police detectives working on investigations into financial and counter public good crimes. Activities are guided by the OECD Convention on Combating Bribery and the Foreign Official Bribery Prevention Act that governs international transactions.

The case investigator who applied the Foreign Official Bribery Prevention Act will be invited to give a lecture on the investigation techniques and intelligence gathering methods used. To expand awareness of the Foreign Official Bribery Prevention Act, the key portions of the OECD Convention on Combating Bribery guide and commentary will be compiled and distributed to all investigators in the field. The monitoring and crackdown of bribery involving foreign officials will continue, and all issues encountered will be analysed and evaluated to prepare a plan for system improvement.

The Small and Medium Business Administration (SMBA) of the Republic of Korea, in particular, has worked hard to enhance awareness of the convention towards SMEs and SME support agencies so that SMEs can be clearly aware of the Convention, thus appropriately responding to global anti-corruption efforts. First, SMBA drew attention of SMEs about the Convention by announcing its contents in major dailies. Second, SMBA publicised the Convention on an Internet site that promotes government policy, thus enabling SMEs to have an easy access to the Convention at any time. Third, SMBA distributed the OECD Anti-Bribery Convention Guide Book produced by the Korea Independent Commission Against Corruption to regional offices. They are using the guidebook to explain the Convention and relevant anti-corruption laws for SMEs when they provide SMEs with counselling and advice on entry into foreign markets. SMBA of the Republic of Korea, along with relevant institutions, will continuously strive to raise awareness of the Convention among SMEs and SME support agencies.

Korea Independent Commission against Corruption (KICAC) has published an OECD Anti-bribery Guidebook and continuously distributed it among public organisations, organisations related to public service, and business councils. In September 2006, it has been revised and distributed among the foreign diplomatic representatives with the help of the Ministry of Foreign Affairs and Trade (MOFAT) to better inform Korean businesses abroad about foreign bribery. In addition, KICAC also posted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and domestic legislation on its homepage.

Further to improve the awareness of foreign bribery offences, the Business Ethics Center within KICAC has put on its Web site the Korean version of 2006 Action Statement on Bribery and Officially Supported Export Credits, which was just agreed in May 2006. This document has been distributed among the 342 recipients of the Business Ethics Brief Newsletter, a regular e-mail communication that goes to CEOs, managers, and staff in charge of business ethics in public as well as private sectors.

For the effective implementation of the Convention, in June 2006, KICAC also published the article in "Business Ethics Brief" related to the Convention and the domestic legislation for the companies operating abroad.

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

2. With respect to the prevention and detection of foreign bribery through accounting requirements, external audit and internal company controls, the Working Group recommends that Korea:
- (a) Considers requiring the reporting of indications of bribery to the competent authorities by external auditors or management committees (Revised Recommendation, Paragraphs V.B.iii and iv);

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

Not applicable.

**If no action has been taken to implement this recommendation, 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:**

There was no action taken on the reporting requirement of external auditors or management committee on bribery indications of foreign public officials. Imposition of the reporting duties on the external audit may not be desirable for the following reasons:

- 1) According to Article 9 of the Act on External Audit of Stock Companies, and Article 20 of the Certified Public Account Act, external audits and certified public accountants with regard to auditing affairs shall not disclose secrets which have come to their knowledge in the course of performing their duties. Provided that this shall not apply where it is in conflict with special provisions contained in other Acts.
- 2) According to Article 10-1 of the Act on External Audit of Stock Companies, any person may charge the related parties to the legal authorities when he notices their violation. Also, if an auditor finds, while performing his duties, any unfair act or any grave fact in violation of the acts and subordinate statutes or the articles of incorporation, which has been committed by any director in connection with the corporate business, he shall inform the statutory auditor or the audit committee and report it at the general meeting of shareholders.

**Text of recommendation:**

2. With respect to the prevention and detection of foreign bribery through accounting requirements, external audit and internal company controls, the Working Group recommends that Korea:
- (b) Considers ensuring that government and government-funded agencies that provide contracting opportunities to Korean companies, such as the Korea Export Insurance Corporation (KEIC), the Export-Import Bank and the Korea International Cooperation Agency (KOICA), have the authority to audit companies suspected or convicted of bribing foreign public officials to determine whether funds obtained from the agency have been used as part or all of the bribe (Revised Recommendation, Paragraph V.B.i).

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

Korea Export Insurance Corporation (KEIC) has a provision in general terms and conditions of insurance contracts which authorises KEIC to require the insured to submit all documents related to the insurance contracts. By executing the right stipulated in the provision, KEIC is able to implement a measure which is comparable to the effect of an audit.

The related provision in general terms and conditions of the insurance contracts are as follows:

“If KEIC requests an investigation, report or submission of materials related to any matters pertaining to the insurance as well as the Loan Agreement, or if KEIC intends to investigate relevant business records, documents, or other materials, the Policyholder shall cooperate with KEIC.”

- General Terms and Conditions of Medium and Long Term Export Insurance(Supply Credit) Article 14.2
- General Terms and Conditions of Medium and Long Term Export Insurance(Buyer Credit) Article 13.2
- General Terms and Conditions of Short Term Export Insurance(Post-shipment) Article 13.1
- General Terms and Conditions of Short Term Export Insurance(Buyer Credit) Article 16.2

When extending the loan to the borrowers, the Export-Import Bank of Korea (KEXIM) requires the borrower to use the received loan solely for the purpose of implementing the project under the loan agreement. KEXIM also has the right to request and acquire relevant information and inspect the use of the given loan. With any proof to the contrary on the use of the loan, including bribing foreign officials, KEXIM can cancel and/or recover the loan. In this regard, KEXIM has the function that serves the purpose of auditing.

Korea International Cooperation Agency (KOICA) is also working to meet the recommendation, but, taking into consideration the existing legal system in the Republic of Korea as well as the nature and work of KOICA, fundamental difficulties remain when auditing companies suspected or convicted of bribing officials outside the jurisdiction of the National Tax Service and the Board of Audit and Inspection. Nevertheless, KOICA shall require a “letter of no-bribery commitment or Integrity Pact” from contracting parties. The content of the Pact will include the following provision: “If the contractor is suspected or convicted of bribery, the contractor shall allow an external audit by either government authority or KOICA.”

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

3. With respect to other measures for preventing and detecting foreign bribery, the Working Group recommends that Korea:

- (a) Considers extending the whistleblower protection provided by the Anti-Corruption Act to those who report foreign bribery to KICAC, and to those who report suspicions of foreign bribery to government agencies other than KICAC (Revised Recommendation, Paragraph I);

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

Actions to extend whistleblower protection has been taken by the Korea Independent Commission against Corruption (KICAC), on July 21, 2005, as the Anti-Corruption Act was amended to provide greater protection to a whistleblower who reports corruption to his/her organization or its supervisor authorities, not to mention KICAC. In general, whistleblower protection is provided in relation to the reporting of corruption offences committed by a person in the public sector, as well as corruption offences committed by a person in the private sector when such acts cause financial damage to a public organization. In addition, protection of whistleblowers has been bolstered by providing guarantee of public positions to whom has been put at financial or administrative disadvantages, such as the cancellation of permit or license and the revocation of a contract, may request the Commission to take necessary steps. Furthermore, if a person reports corrupt acts according to the Anti-corruption Act, s/he shall be deemed not to violate the obligation of confidentiality in the performance of his/her duty.

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

3. With respect to other measures for preventing and detecting foreign bribery, the Working Group recommends that Korea:
  - (b) Reviews the disclosure policies and procedures of the Korea International Cooperation Agency to ensure that there is disclosure to the competent authorities where, in the course of transacting business with a company, credible evidence arises that a violation of the FBPA has occurred (Revised Recommendation, Paragraph I);<sup>1</sup>

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

As a preventative measure against corruption, the Korea International Cooperation Agency (KOICA) has institutionalised rules and regulations which clarify the procedures and actions to be taken. KOICA shall inform interested companies or persons in advance of the factual statements to maintain the highest degree of integrity in the following order:

- i) Pre-Bidding: Before bidding, KOICA informs the bidders of the requirements for the “Integrity Pact” including the “Special Instructions for Bidders for the Integrity Pact”.
- ii) Bidding: KOICA shall secure the “Memorandum of Understanding for the Implementation of the Integrity Pact” from the bidders.
- iii) Contracting: “Special Conditions for the Integrity Pact” is attached as a component of the legal contractual documents to maintain the highest degree of integrity between the contracted parties.
- iv) Post-Contract: Any violation of the contract related to bribery or corruption will be monitored, and appropriate action including cancellation, termination of contract, no exemption of bid bond requirements, and public notice shall be taken to suppress incidences of corruption and bribery.

1. The Working Group notes that this is an issue for many Parties. The recommendation shall not be interpreted as a suggestion that the policies of the Korea International Cooperation Agency do not meet the standards set out in the Recommendations of the Development Co-operation Directorate.

The “Special Conditions for the Integrity Pact”, “Special Instructions for Bidders” and “Memorandum of Understanding for the Implementation of the Integrity Pact” ensure that companies or persons that participate in the bidding process for KOICA-funded goods, services, and construction, will not entertain or commit any acts of bribery in the course of, relating to, or as a result of bidding, contracting, or implementing a project. If a violation is verified, sanctions shall be imposed against the guilty party as stipulated, and the company shall not be entitled to raise any objection against sanctions.

In cases where a company is determined to have been engaged in bribery and has been restricted from participating in bids, KOICA shall notify the restricted company and shall publicly announce the following information on its homepage:

- Specific period of time the company has been restricted from participating in bids,
- Detailed reasons to explain why the company has been restricted,
- Information about the company (name, address, and representative etc.)

In addition, KOICA plans to establish the following provision: “KOICA shall inform both the Supply Administration and company in question of the restrictions.”

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

3. With respect to other measures for preventing and detecting foreign bribery, the Working Group recommends that Korea:

- (c) Ensures Korean overseas representations are more pro-active in making Korean companies doing business in foreign markets aware of the Convention and the FBPA, and advises Korean overseas representations on the steps that should be taken (including reporting the matter to competent authorities) when there are credible allegations that a Korean company or individual has bribed or taken steps to bribe a foreign public official (Revised Recommendation, Paragraph I);

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

In October 2006, the Ministry of Foreign Affairs and Trade distributed the revised edition of the “OECD Anti-bribery Guidebook” published by the Korea Independent Commission against Corruption (KICAC) among all embassies, and required the adequate usage of the guidebook in the process of exchange through consultation with representatives of Korean companies overseas. Also, reports to headquarters in the case of a similar case to those in the guidebook are required. Many embassies including those in the Philippines and Bulgaria have reported actions taken such as introducing the guidance material during regular meetings with executives of Korean companies, distributing and educating it through recording the material on CD.

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

3. With respect to other measures for preventing and detecting foreign bribery, the Working Group recommends that Korea:

- (d) Ensures that the defence of social customs under article 20 of the Criminal Act is not applicable to the offence of foreign bribery under the FBPA (Convention, Article 3.1).

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

Not applicable.

**If no action has been taken to implement this recommendation, 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:**

In Korea, the following consistent rulings have been made: Whether a benefit which a public official obtains is an illegal benefit related to the performance of his public duties and thus constitutes a bribery, or whether the benefit is provided according to social customs or it was given because it was necessary to maintain close individual relationship and thus is not related to the public duties of a public official, shall be determined given the contents of public duties of a public official concerned, the relationship between the public duties and a person who provided the benefit, background and timing of giving and taking the benefit, and the type and amount of the benefit. (The ruling was rendered by the Supreme Court on February 24, 2006, 2005Do4737, giving and taking bribery. There are many other similar rulings.)

In other words, the exemption is not made on the ground of social customs although the benefit constitutes bribery, but the determination on whether the benefit constitutes bribery or not is made given various factors.

As for foreign public officials, when it is admitted that the benefit constitutes bribery, the exemption based on social customs should not be made in any case.

**Text of recommendation:**

4. With respect to measures to disallow the deductibility of bribe payments to foreign public officials, the Working Group recommends that Korea:

- (a) Amends its tax legislation to clarify that bribes to foreign public officials in violation of the FBPA are not tax-deductible (Revised Recommendation, Paragraph IV);

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

National Tax Service's Corporate Tax Act Article 19 (Scope of Deductible Expenses) plainly specify that "the losses shall be losses or expenses generated or spent in connection with the business of the corporation

which are generally accepted as normal or directly related to profit, except as otherwise prescribed by this Act and other Acts and subordinate statutes.” It implies that bribes to foreign public officials in violation of the FBPA are not deductible on tax purpose.

Although there is no case law, The National Tax Service of Korea issued an administrative rule on Feb.15, 1996 pertinent to the issue of deductibility of bribe payments. It provides that where a Korean resident provides foreign public officials with money or valuables and when such an act constitutes an act of bribery, the bribe payments will not be deducted as expenses. The NTS has been keeping the authoritative interpretation of the tax law consistently and performing its duties according to the interpretation.

As mentioned above, the Korean government already introduced provisions designed to deny deductibility of bribes as expenses in its tax code and the revenue authorities are implementing the relevant provisions as such.

If the OECD insists that the Korean government include explicit provisions denying such deductibility in its tax law for the sake of clarification, we will review the precedents in other countries to determine whether we should follow suit.

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

4. With respect to measures to disallow the deductibility of bribe payments to foreign public officials, the Working Group recommends that Korea:

- (b) Communicates effectively to tax examiners (through training programmes, guidelines or manuals, and distribution of the OECD Bribery Awareness Handbook for Tax Examiners) the non-deductibility of bribes and the need to be attentive to any outflows of money from a taxpayer that could represent bribes to foreign public officials (Revised Recommendation, Paragraphs I and IV).

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

The National Tax Service has already provided tax examiners with the OECD Bribery Awareness Handbook and it keeps instructing the content of OECD Bribery Awareness Handbook for tax examiners as a training course.

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

5. With respect to measures for ensuring the effective prosecution of foreign bribery offences, the Working Group recommends that Korea:

- (a) Clarifies that article 3.1 of the FBPA covers the situation where a bribe is transmitted directly to a third party, consistent with the offence of bribing a domestic public official under the Criminal Act (Convention, Article 1.1);

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

Not applicable.

**If no action has been taken to implement this recommendation, 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:**

In the case that a bribery is directly transmitted to a third person based on the “concurrence in intention” between a public official and a bribe giver, even though there is no expression that “to make a third person to give a bribery” in Article 3.1 of the FBPA unlike in the Article 130 of the Criminal Act, the above-mentioned action can be interpreted as the expression of intention to give a bribe or as the actual provision of a bribe.

Even in the case that a bribe-giver did not provide a bribe although the concurrent in intention between a public official and the bribe-giver had been made to transmit the bribe directly to a third person, the above-mentioned action can be interpreted as the expression of intention to give a bribe according to the Bribery Prevention Act.

As explained above, there is not much necessity to amend the related laws of the Republic of Korea in accordance with the recommendation. However, as part of the efforts to match the Korean legal system to the international norms related to anti-corruption, Korea established the Special Subcommittee on the International Criminal Affairs under the Korean Ministry of Justice and the Anti-corruption Norms Review Task Force at the government level in order to prepare the sweeping revision and legislation of laws related to corruption crimes including the FBPA.

**Text of recommendation:**

5. With respect to measures for ensuring the effective prosecution of foreign bribery offences, the Working Group recommends that Korea:

- (b) Reviews the Explanatory Manual published by the Ministry of Justice to ensure that the guidelines contained therein are consistent with the Convention and the FBPA (Convention, Article 1.1).

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

The Ministry of Justice published a book entitled “The Explanation on the Act on Combating Bribery in

International Commercial Transactions” in February 1999 around when Korea joined the OECD Anti-bribery Convention. Then, the Korea Independent Commission Against Corruption which oversees the national anti-corruption policies was established. In May 2004, the commission published the “Guidebook on OECD Anti-Bribery Convention” by collecting related domestic and overseas cases after the OECD Anti-Bribery Convention came into effect. The revised edition based on updated data until this year was also published by the commission. The 1999 publication of the Ministry of Justice was made at the early stage of implementing the OECD Anti-bribery Convention. The publication of the Korean Ministry of Justice in Korean language did not have any problem, but the explanations on the OECD Anti-bribery Convention and the FBPA were not sufficient when the contents were translated in English. However, the recent book published by the KICAC does not have such problem.

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

6. With respect to measures for ensuring effective sanctioning of foreign bribery offences and accounting and auditing offences (where relevant), the Working Group recommends that Korea:

- (a) Takes steps to ensure that the actual fines for foreign bribery are effective, proportionate and dissuasive, especially in light of the absence of the confiscation of the proceeds of bribery, and considers increasing the penalties for false accounting and fraudulent auditing (Convention, Articles 3.1 and 8.2; Revised Recommendation, Paragraph V.A.iii);

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

In the process of the ratification of the UN Convention Against Corruption, the Korean Ministry of Justice is enacting the Special Act on the Confiscation and Recovery of Asset Resulting from Corruption which is the implementing legislation related to asset recovery. According to the Act which is expected to pass the National Assembly next year, not only criminal proceeds resulting from a corruption crime but also gains resulting from the criminal proceeds, assets obtained in return for the criminal proceeds, assets obtained in return for such assets, and assets resulting from the possession or disposal of the criminal proceeds can be the subject of confiscation.

Current Acts, including the Securities and Exchange Act, Act on External Audit of Stock Companies, Certified Public Account Act, and Regulation of External Audit of Corporation, have already set a legal basis for strict punishments on false statements and action of making false auditing report (refer to Annex 1). Provision of the Securities Futures Commission provides an example for regulations on false accounting and fraudulent auditing:

1) The SFC (Securities Futures Commission) may aggravate the penalties when a company violates the relating acts, committing the accounting crimes such as creation of a slush fund, misappropriation by the executives, and laundering money to bribe foreign officials.

2) The SFC, especially, shall publicise the results of surveillance and the follow-up measures through the FSS Internet Home Page ([www.fss.or.kr](http://www.fss.or.kr)) and notify the following institutions of these facts: Financial

institutions, Korea Stock Exchange and KOSDAQ, Korea Federation of Banks, National Tax Office and so on.

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

6. With respect to measures for ensuring effective sanctioning of foreign bribery offences and accounting and auditing offences (where relevant), the Working Group recommends that Korea:

- (b) Compiles statistical information on the sanctions imposed for violations of the FBPA, including confiscation of bribes and suspensions of sentences (Convention, Articles 3.1 and 3.3);

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

The number of persons who have been punished so far according to the FBPA is 12, and two persons among them are under the trial currently. (statistics in Annex 2)

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

**Text of recommendation:**

6. With respect to measures for ensuring effective sanctioning of foreign bribery offences and accounting and auditing offences (where relevant), the Working Group recommends that Korea:

- (c) Ensures that the authorities responsible for development aid and privatisation can take appropriate actions, such as considering informing the competent authorities and the possible addition of non-criminal sanctions, where persons and companies are determined to have bribed foreign public officials (Convention, Article 3.4; Revised Recommendation, Paragraph VI.ii).

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

In the case that a Korean company or person is convicted of foreign bribery, immediate measures to restrict participation in bidding shall be imposed on the Korean company or person for between six months and two years depending on the seriousness of the bribery. The penalty shall be recorded in the procurement registration book handled by the Korea International Cooperation Agency (KOICA). Even after the restriction period, the company shall not be exempt from bid bond requirements for two years.

Except for unavoidable instances requiring the continuation of the contract, the company or individual

convicted of bribing officials shall, with regard to bidding, contract, and implementation of the contract, be restricted through measures such as disqualification as a bidder, cancellation, or termination of part of or the entire contract.

According to KOICA regulations, the restricted company cannot lodge civil or criminal complaints or request compensation due to loss.

In January 2005, the Economic Development Cooperation Fund (EDCF), which is Korea's bilateral ODA fund, introduced the "Guideline for Anti-corruption" into its internal regulation. The Guideline imposes non-criminal sanctions on the persons or companies which are determined to have bribed foreign public officials, in addition to informing the relevant authorities of the bribery.

The Guideline for Anti-corruption (EDCF Regulation Article 3-1) requires the Export-Import Bank of Korea (KEXIM) to:

1. When the debtor applies for a loan approval, ask the contractors to pledge that they have not and will not engage in bribery.
2. Refuse the approval of loans where persons or companies are determined to have bribed foreign public officials.
3. Restrict the contractor from bidding on any future EDCF projects for a period of three years from the date of conviction for bribery to foreign public officials.
4. Inform law enforcement authorities of the bribery where persons and companies are determined to have bribed foreign public officials.

**If no action has been taken to implement this recommendation, 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:**

Not applicable.

## **Part II: Issues for Follow-up by the Working Group**

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

- (a) With respect to the offence of bribing a foreign public official under the FBPA, application of the following:
  - (i) The exception for "small pecuniary or other advantages" (Convention, Article 1.1; Commentary 9 on the Convention);

**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:**

Under the Korean law, a person can not be exempt from liability as for the crime of bribery on the ground of the small amount of the bribe. Article 4 Paragraph 2(2) of the FBPA stipulates that a person who

promises, gives or expresses the intention to give a small amount of pecuniary or other gains to a foreign public official who is engaged in a habitual and repeated business affairs, for the purpose of facilitating the legal performance of the work of the foreign public official, is not punished. However, after the enactment of the FBPA, the case of exemption based on the above-mentioned provision has not been made at all.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

- (a) With respect to the offence of bribing a foreign public official under the FBPA, application of the following:
  - (ii) Jurisprudence that provides an exception to bribery where a payment or gift is offered as a social courtesy (Convention, Article 1.1);

**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:**

As for the crime of bribing a foreign public official, the ruling which did not admit the crime of bribery because of social customs has not been made.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

- (a) With respect to the offence of bribing a foreign public official under the FBPA, application of the following:
  - (iii) Non-applicability of the law on attempts to foreign bribery, including attempts through intermediaries (Convention, Article 1.2);

**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:**

As for the crime of bribery, the attempt to bribe is punished through the punishment of the expression of the intent or the promise to give a bribe, without the provision on the punishment of the attempt to bribe. As for the crime of bribing a foreign public servant, the punishment of the promise or the expression of the intention to give a bribe or other acts conducted before giving a bribe can be regarded as the punishment of the attempted crime.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

- (a) With respect to the offence of bribing a foreign public official under the FBPA, application of the following:
  - (iv) The definition of “foreign public official” to persons performing public functions for foreign public enterprises, in particular the interpretation of “de facto or effective control” by a foreign government(s), and the non-application of the definition to the bribery of North Korean public officials (Convention, Article 1.4; Commentary 14 on the Convention);

**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:**

Until now, the legislation of the related law has not been made. However, Article 357 of the Criminal Act of the Republic of Korea stipulates that “if a person handling business affairs of other person obtains property or other pecuniary gain after receiving a illegal request related to the above-mentioned business affairs, or gives such property or other pecuniary gain”, the person shall be punished. Therefore, there is no fault of law regarding the crime of bribery as for a person who performs a public function for a foreign public enterprise or a North Korean public servant.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

- (a) With respect to the offence of bribing a foreign public official under the FBPA, application of the following:
  - (v) The adequacy of the statute of limitations for the foreign bribery offence (Convention, Article 6).

**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 same provision on the statute of limitations is applied to the crime of bribing a foreign public official, which is the same as the domestic law and is appropriate. In addition, the statute of limitations is suspended for a person who fled to a foreign country for the purpose of avoiding the punishment under the Criminal Procedure Act of the Republic of Korea.

Besides, the revised bill of the Criminal Act which is now pending at the National Assembly stipulates that “the time prescription of sentence shall be suspended for a person who fled to a foreign country for the purpose of avoiding the punishment.”

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

(b) With respect to the liability of legal persons for the offences of bribing a foreign public official pursuant to article 4 of the FBPA and fraudulent accounting pursuant to article 21 of the Act on External Audit of Stock Companies, the application of these provisions (where appropriate) to the following situations:

(i) A bribe is given by a representative, agent, employee, etc. of a legal person in relation to the business of another legal person in the same enterprise group (chaebol) (Convention, Article 2);

**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:**

As for applying joint penal provisions, the Supreme Court made the following ruling on the extent of an employee of a legal person. "Not only a person who works under the proper employment contract with a legal person but also a person who performs a business of the legal person, directly or indirectly, and is under the control or supervision of the legal person shall be included." (This ruling was made on February 24, 2006, 2003Do4966, the violation of the Act on Visiting Sales, etc. and there are many other similar rulings) Therefore, on a case-by-case basis, if a person is an employee described above, the person can be punished.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

(b) With respect to the liability of legal persons for the offences of bribing a foreign public official pursuant to article 4 of the FBPA and fraudulent accounting pursuant to article 21 of the Act on External Audit of Stock Companies, the application of these provisions (where appropriate) to the following situations:

(ii) A legal person pays due attention or exercises proper supervision to prevent foreign bribery (Convention, Article 2);

**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:**

There is no comment on this issue.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

(b) With respect to the liability of legal persons for the offences of bribing a foreign public official pursuant to article 4 of the FBPA and fraudulent accounting pursuant to article 21 of the Act on External Audit of Stock Companies, the application of these provisions (where appropriate) to the following situations:

(iii) A conviction/sanction has not been imposed on the natural person responsible for the offences of foreign bribery and fraudulent accounting (Convention, Articles 2 and 8.2);

**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:**

If it is proved that a natural person committed a crime, it is possible to impose the criminal punishment on a legal person without finding the natural person guilty or punishing the natural person. However, as for the crime of bribing a foreign public official, there has been no case of seeking criminal punishment of only the legal person without punishing the person who actually committed the crime.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

(b) With respect to the liability of legal persons for the offences of bribing a foreign public official pursuant to article 4 of the FBPA and fraudulent accounting pursuant to article 21 of the Act on External Audit of Stock Companies, the application of these provisions (where appropriate) to the following situations:

(iv) Foreign bribery that is committed abroad, including bribery by a natural person who is not a Korean national where the legal person has been complicit in the bribery offence (Convention, Articles 2 and 4.1).

**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:**

According to a common theory and rulings, the criminal capability of a legal person is not admitted. As a foreigner who committed a crime overseas can not be punished, a legal person can not be held criminally accountable.

However, when a foreigner conspired with a domestic person or an employee of a domestic office of a legal person, the domestic person, etc. can be criminally punished. Thus, the legal person can be punished as well.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

- (c) Sanctions under the FBPA, particularly regarding (1) the determination of profit in calculating the fine, where the profit exceeds the prescribed thresholds; and (2) the impact of the absence of authority to confiscate the proceeds of bribery (Convention, Articles 3.1 and 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:**

Unlike the ordinary provision on the punishment of fine, Article 3.1 of the FBPA stipulates that if the criminal proceeds exceed KRW 10 million, the fine of the amount equivalent to twice or less of the criminal proceeds shall be imposed.

Compared to the ordinary system of fine focusing on the punitive effect of the punishment, the system of fine under the above-mentioned act promotes the collective effect as well as the punitive effect of the punishment.

Under the Proceeds of Crime Act, the subjects of confiscation are not only the criminal proceeds but also the asset resulting from the criminal proceeds and mixed asset. However, under BUPA's system of fine focusing on collective effect, the subject of confiscation is limited to "proceeds obtained from a criminal act," which means criminal proceeds.

Once the proceeds are obtained from a criminal act, the amount of fine is determined based on all proceeds regardless of whether a person who committed the crime currently possesses the proceeds or not.

In addition, as mentioned above, the Korean Ministry of Justice is in the process of enacting the Special Act which allows the confiscation of not only criminal proceeds resulting from a corruption crime but also gain of the criminal proceeds, asset obtained in return for the criminal proceeds, asset obtained in return for such asset, and asset resulting from the possession or disposal of the criminal proceeds. The Ministry of Justice strives to make the bill pass at the National Assembly next year.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

- (d) The application of the money laundering offence to the laundering of funds and property related to violations of the FBPA, including the laundering of proceeds of foreign bribery obtained by the briber and laundering in relation to violations of the FBPA perpetrated by legal persons (Convention, Article 7; Revised Recommendation, Paragraphs II.i and III);

**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 Proceeds of Crime Act, it is possible to impose the punishment to money laundering acts such as concealment or disguise of criminal proceeds, etc. in the case of bribing a foreign public officer.

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

- (e) The effectiveness of Korea's money laundering reporting system, particularly in view of (i) the monetary thresholds for reporting suspicious transactions; (ii) the absence of coverage of non-financial businesses and professions; (iii) the information in guidelines and typologies concerning foreign bribery; (iv) the level of resources of KoFIU; and (v) the exclusion of proceeds of foreign bribery from the notion of "criminal proceeds" (Revised Recommendation, Paragraph I);

**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:**

Korea has effectively improved its reporting of money laundering in the following areas:

(i) *Monetary thresholds for reporting suspicious transactions*: According to the fourth section of the Financial Transaction Reports Act, one of Korea's Anti-Money Laundering (AML) laws, financial institutions are required to report suspicious transactions, exceeding KRW 20 million or USD 10,000 to the Korea Financial Intelligence Unit (KoFIU). They are also capable of reporting transactions that are suspected of involving money laundering activities, even though the amount of transactions is below the reporting threshold.

(ii) *Absence of coverage of non-financial businesses and professions*: Now, Korea is not imposing AML obligations on non-financial businesses and professions that are designated in the FATF Recommendations. The FATF recommends that the customer due diligence and suspicious transaction report requirements apply to not only financial institutions but also designated non-financial businesses and professions (DNFBPs), such as casinos, real estate agents, dealers in precious metals and stones, lawyers, and accountants. In particular, Korea is currently in the process of revising the AML law in order to impose STR and CDD requirements on casinos that are at the greatest risk of being exploited for money laundering among other DNFBPs. The implementation procedures are at the final phase in the government, and the revised bill will be submitted to the National Assembly in December 2006. As for other non-financial businesses and professions, KoFIU has planned to carefully come up with policies to improve the AML system after collecting opinions and considering the domestic situation.

(iii) *Information in guidelines and typologies concerning foreign bribery*: Under the Proceeds of Crime Act, offering bribes to foreign officials or promising to give them is defined as one of the predicate offences related with money laundering. If suspicious transactions, reported by financial institutions, are determined to have been engaged in money laundering activities after analysis, KoFIU provides the information on the transactions to relevant law enforcement agencies, such as the Public Prosecutor's Office and National Police Agency.

(iv) *Level of resources of KoFIU*: To effectively carry out AML tasks, the Korea Financial Intelligence Unit, an independent agency under the Ministry of Finance and Economy (MOFE), consists of experts from not only MOFE but also seven AML-related organisations, including the Ministry of Justice, National Police Agency, Korea Customs Service, National Tax Service, Federal Supervisory Committee, and Bank of Korea. The total number of its employees is 63, and 31 of them are from the seven related organisations.

(v) *Exclusion of proceeds of foreign bribery from the notion of “criminal proceeds”*: Refer to answers in 6 (a) and 7 (c).

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

7. The Working Group will follow-up the following issues once there has been sufficient practice under the FBPA:

- (f) The application of the Framework Act on National Taxes and the Criminal Procedure Act to disclosure by the National Tax Service to the competent authorities of evidence of foreign bribery detected during tax audits spontaneously without any requests (Revised Recommendation, Paragraph I).

**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 Framework Act on National Taxes of Korea stipulates that a tax official shall not disclose to others taxation information which a taxpayer has submitted or which the tax official has obtained for the purpose of taxation. However, the Framework Act on National Taxes is not an Act that regulates the obligation of officials who obtained the taxation information during tax audits to disclose to the competent authorities.

Also, section 234 of the Criminal Procedure Act states that officials who discover a crime while performing his tasks must disclose the crime to the competent authorities. So it is not necessary to regulate the above issue in Framework Act on National Taxes.

**ANNEX 1**

**PUNISHMENTS FOR FALSE STATEMENTS AND MAKING FALSE AUDITING REPORT**

<b>Act</b>	<b>Subject</b>	<b>False Statement</b>	<b>Improper Audit</b>
Securities and Exchange	Listed corporation and so on	<ul style="list-style-type: none"> <li>- penalties up to two billion won (article 206-11)</li> <li>- imprisonment for not more than five years or a fine not exceeding thirty million won (article 207-3)</li> </ul>	<ul style="list-style-type: none"> <li>- penalties up to two billion won (article 206-11)</li> <li>- imprisonment for not more than five years or a fine not exceeding thirty million won (article 207-3)</li> </ul>
Certified Public Accountant	Certified Public Accountant	-	<ul style="list-style-type: none"> <li>- punishments like cancellation of a registration of certified public accountant (article 48)</li> <li>- penalties up to 100 million won (article 52-2)</li> </ul>
	Accounting Firm	-	<ul style="list-style-type: none"> <li>- provision for a claim for damages (article 28)</li> <li>- penalties up to 500million won (article 52-2)</li> <li>- cancellation of a registration of auditor (article 39)</li> </ul>
External Audit of Stock Companies	Any stock company whose total assets are equal to or more than seven billion won at the end of the immediately preceding business year	<ul style="list-style-type: none"> <li>- imprisonment for not more than three years or a fine not exceeding thirty million won (article 20)</li> </ul>	<ul style="list-style-type: none"> <li>- -imprisonment for not more than three years or a fine not exceeding thirty million won (article 20)</li> </ul>
Regulation on External Audit of Stock Companies	Any stock company whose total assets are equal to or more than seven billion won at the end of the immediately preceding business year	<ul style="list-style-type: none"> <li>- restriction of issuance of securities up to one year (article 55)</li> <li>- auditor designation or request for auditor change up to three years (article 55)</li> <li>- recommendation of dismissal of officers (article 55)</li> <li>- charge (article 56)</li> </ul>	<ul style="list-style-type: none"> <li>- restriction of audit service for specific companies up to five years (article 54)</li> <li>- warning, correction order (article 54)</li> <li>- charge (article 56)</li> </ul>

ANNEX 2

STATISTICS ON PUNISHMENT UNDER THE FBPA

Suspect	Disposition Date	Details of Disposition	Sentencing Date	Date of Finalised Judgment	Details of Sentencing
CHUNG, Kyu Joon	2 Aug 2002	Seeking trial under confinement	16 Oct 2002	24 Oct 2002	One year and six months of imprisonment with prison labour, three years of suspension of execution, fine of KRW 10 million
Olson and Sky, Co., Ltd.	2 Aug 2002	Seeking trial without confinement	20 Aug 2002	24 Oct 2002	Fine of KRW 100 million
SEO, Hyo Seok	26 Nov 2003	Seeking trial under confinement	2 April 2004	2 April 2004	Ten months of imprisonment with prison labour, fine of KRW 10 million
JI, Han Il	27 Jan 2004	Seeking summary proceedings KRW 7 million	21 Feb 2004	7 Mar 2004	Fine of KRW 7 million
NOH, Jae Yong	27 Jan 2004	Seeking summary proceedings KRW 5 million	18 Feb 2004	21 May 2004	Fine of KRW 5 million
J. Bros Co., Ltd.	27 Jan 2004	Seeking summary proceedings KRW 5 million	18 Feb 2004	21 May 2004	Fine of KRW 5 million
AHN, Byung Chol	27 Jan 2004	Seeking summary proceedings KRW 1.5 million	21 Feb 2004	7 Mar 2004	Fine of KRW 1.5 million
KOH, Hack Chol	21 Oct 2004	Seeking summary proceedings KRW 7 million	28 Oct 2004	7 Nov 2004	Fine of KRW 7 million
YOON, Young Hwan	21 Oct 2004	Seeking summary proceedings KRW 3 million	28 Oct 2004	9 Nov 2004	Fine of KRW 3 million