

[TRANSLATION]

Republic of Korea

Act on Preventing Bribery of Foreign Public Officials in International Business Transactions

Article 1

Purpose

This Act is aimed at contributing to the establishment of sound practice in international business transactions and at providing for the details necessary for the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development, by means of criminalising the act of bribery of foreign public officials in international business transactions.

Article 2

Scope of Foreign Public Official

The term "foreign public official" refers to any person who falls within one of the followings:

1. any person, whether appointed or elected, holding a legislative, administrative or judicial office of a foreign government (here and after, including all levels of government from national to local);
2. any person who falls within one of the followings and exercises public function for a foreign government:
 - a. any person conducting a business, in the public interest, delegated by a foreign government;
 - b. any person working for a public organization or agency established by law to carry out specific business in the public interest;
 - c. an executive or employee of any enterprise over which a foreign government holds over 50 percent of its subscribed capital or exercises substantial controlling power over its overall management including the decision of major business and the appointment or dismissal of its executives. This sub-paragraph shall not be applicable to an executive or employee of those enterprises operating on a competitive basis equivalent to entities of ordinary private economy, without preferential subsidies or other privileges;
3. any person working for a public international organization.

Article 3

Criminal Responsibility of Briber

1. Any person, promising, giving or offering bribe to a foreign public official in relation to his/her official business in order to obtain improper advantage in the conduct of international business transactions, shall be subject to a maximum of 5 years' imprisonment or a fine up to 20,000,000 won. In the event that the profit obtained through the offence exceeds a total of 10,000,000 won, the person shall be subject to a maximum of 5 years' imprisonment or a fine up to twice the amount of the profit.
2. Those persons shall not be subject to paragraph 1 above if:
 - a. such payment is permitted
 - b. small pecuniary or other advantage is promised, given or offered to a foreign public official engaged in ordinary and routine work, in order to facilitate the legitimate performance of the official's business.
3. The prescribed amount of fine shall be concurrently imposed on the person when sentenced to imprisonment for the offence prescribed in paragraph 1.

Article 4

Responsibility of Legal Persons

In the event that a representative, agent, employee or other individual working for legal person has committed the offence as set out in Article 3(1) in relation to its business, the legal person shall also be subject to a fine up to 1,000,000,000 won in addition to the imposition of sanctions on the actual performer. In case that the profit obtained through the offence exceeds a total of 500,000,000 won, it shall be subject to a fine up to twice the amount of the profit. If the legal person has paid due attention or exercised proper supervision to prevent the offence against this Act, it shall not be subject to the above sanctions.

Article 5

Confiscation

In case that the offender under this Act (including legal persons punishable pursuant to Article 4) is in possession of the bribe given in the commission of offence as prescribed in this Act or that the bribe is obtained by a person other than the offender, with knowledge, after the offence has been committed, the bribe shall be confiscated.

Addendum

This Act shall enter into force on the date upon which the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development enters into force for the Republic of Korea.