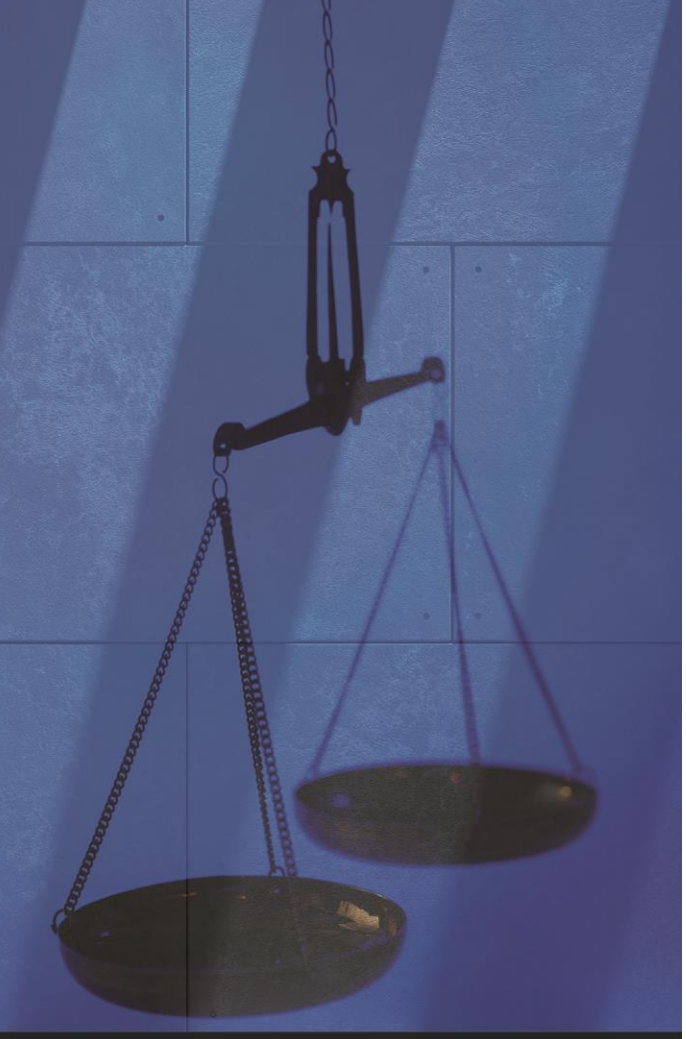
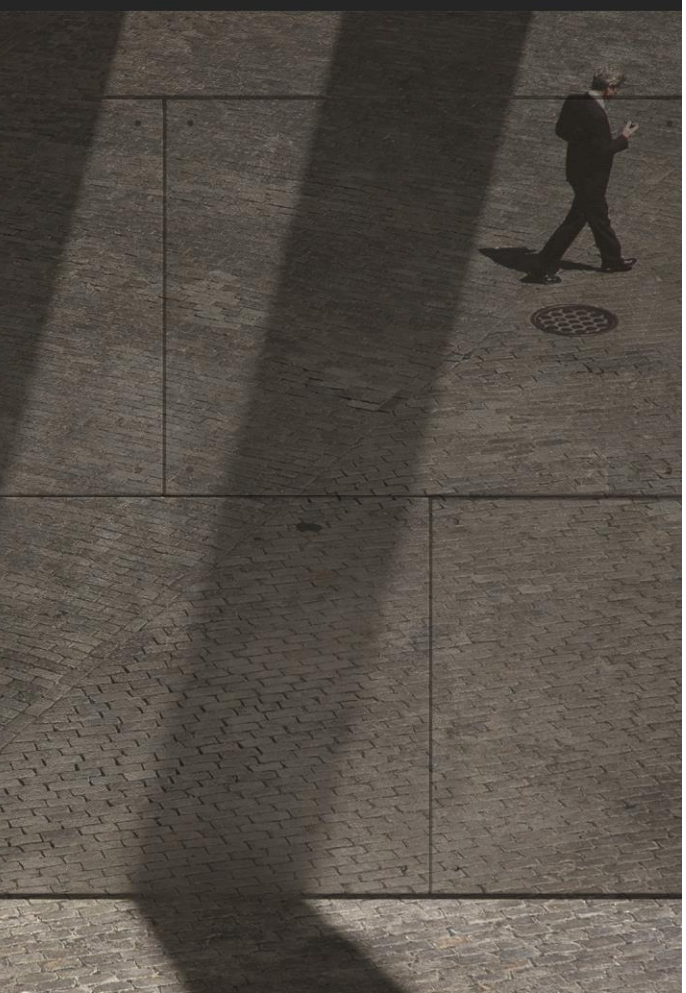


OECD



Implementing the OECD Anti-Bribery Convention

Phase 4 Two-Year Follow-Up Report: Korea

Korea – Phase 4
Two-Year Follow-Up Report

This report, submitted by Korea, provides information on the progress made by Korea in implementing the recommendations of its Phase 4 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 18 June 2021.

The Phase 4 report evaluated and made recommendations on 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. It was adopted by the 44 members of the OECD Working Group on Bribery on 13 December 2018.

Table of Contents

Korea Phase 4 – Two Year Written Follow-Up Report Summary and Conclusions

Summary of main findings[1]

1. In June 2021, Korea presented its two-year written follow-up report to the OECD Working Group on Bribery ("Working Group" or "WGB"), outlining the steps taken to implement the 36 recommendations and to address the follow-up issues contained in its December 2018 Phase 4 evaluation. Based on Korea's two-year written follow-up report, the Working Group concludes that Korea has fully implemented 10 recommendations, partially implemented 12 recommendations and not implemented 14 recommendations.

2. The Working Group welcomes efforts by Korea to reinforce its framework for investigating and prosecuting foreign bribery, including by clarifying interpretation of certain elements of the foreign bribery offence in accordance with Article 1 of the Convention, taking steps to address cooperation between the Supreme Prosecutor's Office (SPO) and National Police Agency (NPA), and allowing for interception of telecommunications and enhancing the use of mutual legal assistance (MLA) in foreign bribery investigations. In addition, several Korean agencies, including the Ministry of Foreign Affairs (MOFA), Ministry of Justice (MOJ), the Korean Trade-Investment Promotion Agency (KOTRA), Eximbank, KOICA, and the National Taxation Service (NTS), have provided their staff with guidance and training on foreign bribery red flags with a view to reporting suspected foreign bribery to law enforcement. These steps are encouraging and the Working Group hopes these will lead to enhanced foreign bribery detection and enforcement.

3. The Working Group is however concerned about the high number of recommendations that are only partially, or that remain to be, implemented. In particular, Korea should increase efforts to provide adequate guidance and training to law enforcement officials on foreign bribery investigations to ensure proactive gathering of information from diverse sources at the pre-investigative stage, that cases proceed to formal investigation, and that they result in effective, proportionate and dissuasive sanctions, including confiscation of the proceeds of foreign bribery. Korea also needs to address key unimplemented

[1] The evaluation team for this Phase 4 two-year written follow-up evaluation of Korea was composed of lead examiners from Finland (***Mr. Juuso Oilinki***, Senior Specialist, Department for Criminal Justice and Criminal Law, Ministry of Justice, and ***Ms. Katja Jokela***, Senior Specialised Prosecutor, National Prosecution Authority, Prosecution District of Southern Finland) and Italy (***Mr. Giovanni Tartaglia Polcini***, Magistrate, Legal Advisor to the Ministry of Foreign Affairs and International Cooperation, and ***Colonel Alessandro Nencini***, Guardia di Finanza, Attaché to the Italian Embassy in Beijing and accredited to Korea) as well as members of the OECD AntiCorruption Division (***Ms. France Chain***, Coordinator of the Phase 4 Evaluation of Korea and Senior Legal Analyst, ***Ms. Elsa Gopala Krishnan***, Senior Legal Analyst and ***Ms. Maria Xernou***, Legal Analyst). See Phase 4 Procedures, paras 54 et seq. on the role of Lead Examiners and the Secretariat in the context of two-year written follow-up reports.

recommendations, in particular concerning the statute of limitations applicable to legal persons, legislation on and enforcement of the false accounting offence, and its anti-money laundering reporting framework.

4. The Working Group further considers that Korea needs to step up promptly and significantly its level of foreign bribery enforcement. At the time of Phase 4, the Working Group had noted with concern that Korea's foreign bribery enforcement record had declined since its Phase 3 evaluation, with only two foreign bribery investigations and one trial ongoing at the time. Two and a half years later, the Working Group notes limited progress in Korea's enforcement efforts. In terms of positive developments, Korea has opened five new foreign bribery investigations since Phase 4. One case under investigation at the time of Phase 4 moved to trial stage [*Ghana Tax Case*]. One case [*FELDA*] was concluded in October 2019; however, the resulting low fines and suspended imprisonment for the three individuals reinforce the concerns raised by the Working Group in Phase 4 that sanctions in practice are insufficiently effective, proportionate and dissuasive. Korea still needs to increase its level of enforcement of foreign bribery by proactively gathering information from diverse sources at the pre-investigative stage, ensuring that cases proceed to formal investigation, and that they result in effective, proportionate and dissuasive sanctions. In summary, based on Korea's report, since Phase 4 in 2018:

- 1 foreign bribery case has been concluded at the Supreme Court level *[FELDA]*, resulting in the conviction of 3 natural persons to:
  - 3 years' suspended imprisonment against one individual,
  - KRW 2 million fine (USD 1 662) against the second individual, and
  - 1 year suspended imprisonment and a USD 2 000 fine (following rejection of appeal) against the third individual.
- 1 case moved from investigation at the time of Phase 4 to trial and is currently pending before the Supreme Court. The second instance court acquitted the 2 natural persons involved [*US Relocation and Construction case*]
- 1 case moved from investigation at the time of Phase 4 to trial against 5 natural persons *[Ghana* Tax case*]*
- 6 investigations are underway for foreign bribery, of which 5 opened since Phase 4 [*Indonesia Engineering and Construction case*, *Brazil Heavy Industries case*, *Qatar Construction company case*, *Vietnam Tax case*, and *Nicaragua Engineering case*] including
  - 3 cases at formal investigation stage involving 3 natural persons and 3 legal persons in total [*Indonesia Engineering and Construction case*, *Vietnam Tax case*, and *Nicaragua Engineering case*]
  - 3 cases at pre-investigation stage involving 4 natural persons and 3 legal persons in total, which Korea indicates will likely result in non-prosecution decisions due notably to insufficient evidence [*Vietnam Tax case*, *Yemen Power case*, and *Brazil Heavy Industries c*ase].
- In addition:
  - 2 investigations regarding allegations in the Matrix are ongoing for other offences, *i.e.* not foreign bribery *[Telecommunications and Internet Provider case, Water Provider case]*
  - 3 foreign bribery investigations regarding allegations in the Matrix[2] have been closed:
    - 1 due to expiry of the statute of limitations for the bribe taker [*Oil Company case*],
    - 1 on the grounds that the Korean company's involvement in bribery was not evidenced, as confirmed by another WGB country's law enforcement authorities, as well as due to the imminent expiry of the statute of limitations [*KSA Metro case*]

[2] The Matrix is a collection of foreign bribery allegations using public sources, such as the media. The inclusion of allegations in the Matrix does not prejudge the issue of whether the allegations are, in fact, an offence under any applicable law.

- 1 based on the *non bis in idem* principle following conviction of the bribe-payer (natural person) abroad [*Vietnam Investment case*].

5. The Working Group's summary and conclusions with respect to specific Phase 4 recommendations are presented below. The summary and conclusions should be read in conjunction with the report prepared by Korea, annexed to the present document.

Regarding the detection of foreign bribery

- *Recommendation 1.a. – Not implemented:* The Working Group regrets that Korea has not adopted legislation to extend reporting requirements of suspected money laundering transactions related to foreign bribery to appropriate nonfinancial entities including lawyers, accountants and auditors. It is disappointing that the relevant bill, which was pending at the time of the adoption of the Phase 4 report, lapsed before it reached the National Assembly and has not been reintroduced since.
- *Recommendation 1.b. – Fully implemented:* The Working Group welcomes efforts by the Korean Financial Intelligence Unit (KoFIU) to raise awareness among financial institutions and professions on foreign bribery, through meetings with representatives and dissemination of foreign bribery case studies. The Working Group encourages the KoFIU to continue engaging with relevant financial and non-financial reporting entities in awareness-raising and training efforts to address in particular the risks of laundering foreign bribery proceeds and foreign bribery risks for Korean companies operating abroad.
- *Recommendation 1.c. – Not implemented:* Although the KoFIU's internal manual has been reviewed since Phase 4, Korea reports no changes in the KoFIU's methodology for analysing and transmitting suspicious transaction reports. Moreover, Korea reports no increase in the KoFIU's resources since Phase 4.
- R*ecommendation 2 – Fully implemented:* The Working Group welcomes Korea's efforts since Phase 4 to provide guidance and training to relevant government officials on foreign bribery, including the detection of foreign bribery red flags, and on reporting processes, in particular for Korean diplomatic missions through joint efforts by the MOFA and MOJ, KOTRA, Eximbank, K-Sure and KOICA. including the FBPA.
- R*ecommendation 3.a. – Partially implemented:* While the MOJ's efforts to transmit information to the SPO on foreign bribery allegations included in the Matrix are welcome, the Working Group remains concerned about the lack of initiative by Korean law enforcement authorities to detect foreign bribery by routinely and systematically assessing credible allegations. Korea reports no developments since Phase 4 regarding domestic and foreign media monitoring directly by the SPO and the NPA.
- R*ecommendation 3.b – Not implemented:* In Phase 4, the Working Group recommended that Korea ensure that adequate resources are allocated to law enforcement authorities to monitor and act upon media reports in Korea and abroad. Korea reports that the SPO's Investigatory Information Office regularly scans domestic and foreign media for foreign bribery allegations that it receives from the MOJ and assesses the veracity of the information. Despite these operational needs, the SPO's resources have not changed since 2018. Moreover, this recommendation was made in Phase 4 considering the fact that none of the cases being investigated at the time, although reported in the media, had been detected by law enforcement, which is still the case to date. The Working Group's concerns hence remain.
- R*ecommendation 3.c. – Not implemented:* The Working Group remains concerned regarding the application in practice of Korean laws relating to freedom of the press and equal access to information in respect of foreign bribery reporting. Korea reports that both the MOJ and the SPO publish and make easily accessibly press releases and that direct communication channels are established with their

staff, including senior officials. Nevertheless, there appears to be no change since Phase 4 regarding journalists' access to information in practice.

- *Recommendation 4 – Partially implemented*: Korea has provided only very limited awareness-raising and training to accountants and auditors on the Act on Preventing Bribery of Foreign Public Officials in International Transactions (FBPA). The only progress of note since Phase 4 concerns the Korean Institute of Certified Public Accountants (KICPA), which has developed an online video lecture specifically addressing the OECD Anti-Bribery Convention, the FBPA as well as other foreign legislation on foreign bribery; this lecture has been completed by approximately 1500 accountants. While this is a welcome first step, more proactive awareness-raising needs to be carried out to ensure Korean auditors are in a capacity to detect foreign bribery red flags and are aware of their reporting obligations.

Regarding the enforcement of the foreign bribery and related offences

- *Recommendation 5 – Not implemented:* The Working Group regrets that Korea has taken no steps within its legal framework to ensure that the bribery of persons performing public functions for the North Korean Regime is covered, despite this issue being pending since Phase2. Korean authorities point out that, as per its Constitution, Korea does not recognise the North Korean regime neither as a "government" nor as a "nation". While the Working Group acknowledges that the relations between South and North Korea represent a sensitive political issue, it remains that North Korean officials are not considered domestic nor foreign public officials under Korean law and that foreign bribery risks involving North Korean officials exist given the business transactions taking place, including in special economic zones., The situation therefore continues to constitute a loophole in Korea's foreign bribery legislation.
- *Recommendations 6.a., b. and .c. – Fully implemented:* In Phase 4, the Working Group recommended that Korea clarify by any appropriate means that its foreign bribery offence should be interpreted consistent with Article 1 of the Convention, including at a minimum by providing information to law enforcement and the judiciary (a) that the threshold for establishing that a transaction constitutes 'international business' is not unduly high (r*ec. 6.a*), (b) that perceptions of local custom do not constitute defences or exceptions to prosecutions or sanctioning (*rec. 6.b.*) and (c) that the foreign bribery offence applies autonomously, without requiring proof of the law of the foreign public official's country (*rec. 6.c*). The Working Group welcomes the publication and dissemination of "Interpretive Notes on the FBPA" by the MOJ to prosecutors, police officers and judges, which include specific reference to the Working Group's concerns and relevant foreign bribery cases. The Working Group encourages Korea to continue its training and awareness raising efforts, and to disseminate the Notes to law enforcement and judicial authorities.
- *Recommendation 7.a. – Not implemented:* Korea has not amended its legislation to ensure that all legal persons can be held liable for the range of false accounting conduct described under Article 8 of the Convention. The false accounting offence in the Act on External Audit of Stock Companies only applies to companies with audit obligations, and the false accounting offence in the Commercial Act covers some false accounting but not the full range of conduct prohibited under Article 8. Korea further indicates that any false accounting conduct not covered under the above would be covered under general articles on embezzlement and breach of trust in their Criminal Act, but these provisions are not applicable to legal persons.
- *Recommendation 7.b. – Partially implemented:* Korea has not demonstrated efforts to vigorously investigate and prosecute the false accounting offence since Phase 3. However, the MOJ and SPO have developed some initial training for prosecutors, which it is hoped could help address the Working Group's concerns on lack of enforcement of the false accounting offence.
- *Recommendation 8 – Partially implemented:* Korea reports awareness raising activities conducted by the SPO on asset recovery and training sessions provided by the Institute of Justice to prosecutors,

investigators and other concerned public officials on anti-money laundering systems and money laundering investigations. The Working Group encourages Korean authorities, including the Institute of Justice in the context of future training sessions such as the one scheduled in 2021, to include a specific focus on foreign bribery as the predicate offence to money laundering. These efforts further remain to be translated into concrete enforcement of the money laundering offence predicated on foreign bribery.

- *Recommendation 9.a. – Partially implemented:* The Phase 4 report noted the lack of clarity in the allocation and coordination of foreign bribery cases between the SPO and NPA. The Working Group welcomes amendments to the Criminal Procedure Act and Prosecution Service Act which took into effect on 1 January 2021, and which clarify the powers and seek to establish a cooperative relationship between the SPO and NPA. Korea further reports on various forms of cooperation in practice. While these represent useful steps, they are of a general nature and do not specifically address cooperation in the context of foreign bribery investigations. The Working Group considers that continued efforts are necessary to ensure there is a clear and consistent approach to the allocation of foreign bribery cases, and regarding which authority can resolve any conflicts of competence, should these occur. In addition to clarification of the institutional framework, this issue could be included in awareness-raising and training initiatives specifically focusing on foreign bribery.
- *Recommendation 9.b. – Not implemented:* Korea has not demonstrated sufficient efforts to increase the use of proactive steps to gather information from diverse sources: of the five investigations opened since Phase 4, four came from the WGB Matrix and one was reported by a foreign authority. Steps taken by the MOJ and SPO to monitor foreign media in respect of potential foreign bribery cases are welcome, but have not yielded concrete results so far. The Foreign Illicit Asset Recovery Task Force, established in June 2018 and bringing together officers from the Prosecution, Customs, and National Tax Services, as well as from the Financial Supervisory Service, and the Korea Deposit Insurance Corporation could play a useful role in this regard. The Working Group encourages Korea to explicitly include foreign bribery as part of the Taskforce's mandate, to ensure that Korean law enforcement authorities are proactive in detecting and investing foreign bribery.
- *Recommendation 9.c. – Fully implemented:* The Working Group welcomes amendments to the Protection of Communications Secrets Act in December 2019, which have extended the availability of wiretapping to foreign bribery. This could potentially be a useful tool in the context of foreign bribery investigations.
- *Recommendation 9.d. – Fully implemented*: At the time of Phase 4, the Working Group was concerned that the three-month investigation time limit – although not prescriptive and only provided as guidance – was reportedly a factor in prosecutors' reluctance to solicit MLA, due to concerns that this would take too much time. In its two-year follow-up report, Korea reiterated that the three-month investigation time limit only serves as guidance, and cited several foreign bribery investigations that went beyond the time limit. The Working Group welcomes the additional information provided by Korea demonstrating that investigators and prosecutors have made use of investigative measures, including MLA, without being inhibited by the time limit.
- *Recommendation 9.e. – Not implemented:* In Korea, the statute of limitations for foreign bribery is different for natural persons (seven years) and legal persons (five years). This led to at least one foreign bribery investigation into a legal person being abandoned due to expiry of the statute of limitations. A 2019 bill had been prepared to address this issue but lapsed before being discussed in the National Assembly. The Working Group is encouraged with Korea's report that a similar bill was introduced in April 2021 and invites Korea to promptly proceed with its adoption and to keep the Working Group updated on developments in this regard.
- *Recommendation 9.f. – Not implemented:* In Phase 4, the WGB noted that several non-prosecution decisions were made taking into account factors contrary to Article 1 of the Convention. Of particular concern were decisions not to prosecute bribe payers on the basis that the bribe recipients had been prosecuted and sanctioned, or where the offence ended only with a promise or expression of intent to

offer the bribe. Korea refers to the Interpretive Notes to the FBPA (see recommendations 6a.-c. above), but, on the basis of the information made available by Korea, the WGB's concerns do not appear to have been adequately addressed in the Interpretive Notes on this specific point.

- *Recommendation 9.g. – Not implemented*: The Working Group expressed concern in Phase 4 regarding possible influence on foreign bribery investigations and prosecutions due to the power of the Minister of Justice and Prosecutor General to direct and supervise prosecutors, and to issue specific instructions in cases, respectively. In its two-year follow-up report, Korea refers to the "Guidelines on the Process of Raising Objections by Prosecutors, etc.", which set out a formal process for prosecutors to object to the direction or supervision of a specific case, and to the "Guidelines for Documentation of Directions, Instructions etc. during Decision-Making by the Prosecution", which provide that opinions, directions or instructions are to be recorded on the Korea Information system of Criminal-justice services. These Guidelines had already been considered by the WGB at the time of Phase 4, and the Working Group did not consider them sufficient to address its concerns. Furthermore, Korea reports on three instances where this power of intervention has been used between 2017 and 2021 (none relating to a foreign bribery case).

- *Recommendation 10.a. – Partially implemented:* A long-standing recommendation by the Working Group was to increase the level of sanctions applicable to natural persons for foreign bribery, which, at the time of Phase 4, were a maximum of 5 years imprisonment or KRW 20 million (USD 18 000), or up to twice the profit obtained if such profit exceeds KRW 10m (USD 9000). In February 2020, the FBPA was amended, allowing for the following sanctions:
    - a maximum of 5 years imprisonment or a fine of up to KRW 50 million (USD 45 000) if the pecuniary advantage obtained or the amount of the bribe is below KRW 10 million (USD 9 000), or
    - if the pecuniary advantage exceeds KRW 10 million (USD 9 000), a maximum of 5 years imprisonment or a fine of at least twice and up to five times the amount of the pecuniary advantage obtained (or the amount of the bribe in cases where the pecuniary advantage is less than the amount of the bribe or the nature of the pecuniary advantage cannot be quantified).

  The maximum pecuniary fine is still considered insufficient to amount to effective, proportionate and dissuasive sanctions. The alternate possible sanction of two to five times the profits of bribery does not fully resolve. As noted in the Phase 4 report, given the demonstrated difficulties in Korea in calculating the amount of the profits derived from foreign bribery it remains doubtful whether calculating the sanction on this basis would result in effective, proportionate and dissuasive sanctions. The ability to consider the amount of the bribe for calculating the fine addresses, to some extent, the WGB's concerns regarding the link between the amount of the fine and the profit obtained. However, it remains doubtful whether, in the context of an active foreign bribery offence, calculating the sanction based on the amount of the bribe would result in effective, proportionate and dissuasive sanctions. (See also recommendation 12.a. below.)

- *Recommendation 10.b. – Partially implemented:* The adequacy of sanctions and confiscation measures applied in practice raised the Working Group's concern in Phase 4: the level of fines imposed in the four foreign bribery cases at that time were generally lower than the amount of the bribes offered and confiscation of the proceeds of foreign bribery had never occurred. The Working Group welcomes the translation by Korea of the WGB's publication on Identification and Quantification of Bribery[3] as well as some of the training developed, which it hopes will yield concrete results in terms of increasing confiscation of the bribe and proceeds of foreign bribery. The Working Group encourages Korea to pursue awareness-raising and training including to address the level of

[3] OECD (2012), Identification and Quantification of the Proceeds of Bribery.

sanctions to ensure they are effective, proportionate and dissuasive in practice. Ongoing work by the 8th Sentencing Commission could be a useful contribution in this respect.

- *Recommendation 11.a. – Fully implemented:* The Working Group welcomes awareness raising and training initiatives for prosecutors and investigators on outgoing MLA requests organised since Phase 4. These efforts include publication of a handbook by the MOJ, online information for practitioners and training sessions by the Institute of Justice on MLA requests. Korea also reports a rise of the total number of outgoing MLA requests in the past two years. Recent participation of Korean representatives in the WGB's Law Enforcement Officials (LEO) meetings is a further positive development.
- *Recommendation 11.b. – Not implemented:* Korea reports no new extradition requests in foreign bribery cases since Phase 4. Developments provided by Korea on bilateral meetings with other countries on extradition do not relate to foreign bribery cases.

Regarding the liability of, and engagement with, legal persons

- *Recommendation 12.a. – Partially implemented*: A long-standing recommendation by the Working Group was to increase the level of sanctions applicable to legal persons for foreign bribery, which were a maximum fine of KRW 1bn (USD 900 000) or twice the amount of the pecuniary advantage if the advantage is superior to KRW 500 m (USD 450 000) at the time of Phase 4. In February 2020, the FBPA was amended, providing for the following sanctions:
  - a maximum fine of KRW 1bn (USD 900 000) if the pecuniary advantage obtained or the amount of the bribe is below KRW 500 m. (USD 450 000); or
  - if the pecuniary advantage obtained exceeds KRW 500 m , a fine of at least twice, and up to five times, the amount of the pecuniary advantage (or the amount of the bribe if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated).

  For the same reasons highlighted under recommendation 10.a. above, the Working Group considers that this only partially addresses its concerns, and that sanctions may still be insufficiently effective, proportionate and dissuasive under the amended provisions.
- *Recommendation 12.b. – Partially implemented:* As noted under recommendation 10.b. above, the Working Group expressed concern in Phase 4 over the level of sanctions in practice and the fact that prosecutors were facing difficulties in identifying and quantifying the proceeds of active (foreign) bribery, particularly where these proceeds are in the hands of legal persons. As noted above, the translation into Korean and the circulation of the WGB's study on the Identification and Quantification of the Proceeds of Bribery is a welcome step, but further efforts are necessary to draw the attention of law enforcement to the need to seek routinely effective, proportionate and dissuasive sanctions, including confiscation, in foreign bribery cases.
- *Recommendation 13 – Partially implemented*: The Working Group welcomes the initiatives by Korea's MOFA to actively raise awareness on foreign bribery risks, the FBPA and the Anti-Bribery Convention, with over 40 of its missions actively engaging with Korean companies abroad. Efforts by the Ministry of SMEs and Start-Ups, together with business associations, to promote anti-corruption compliance, including on foreign bribery, among SMEs are also welcome. The WGB encourages other government agencies and networks that engage regularly with Korean companies operating abroad to also take steps to raise awareness on foreign bribery risks and Korea's foreign bribery legislation.

Regarding other measures affecting implementation of the Convention

- *Recommendation 14.a. – Partially implemented*: In Phase 4, the Working Group expressed concern about the effective enforcement of the non-tax deductibility of bribes in Korea, given that the NTS had not received any information regarding concluded foreign bribery cases and none of the individuals or companies convicted of foreign bribery had had their tax returns re-examined. Korea refers, in its two-year follow-up report to one case where a tax return regarding a foreign bribery case was re-examined. While this is an encouraging sign, it is, at this stage, the only case, and the Working Group considers that this does not constitute concrete evidence that the NTS has changed its methods of operation. Further efforts are therefore necessary to ensure a more systematic method of operation to enforce the non-tax deductibility of bribes.
- *Recommendation 14.b. – Not implemented*: In Phase 4, the Working Group considered that, while the Korean legislation on sharing of tax information was not, in itself, problematic, its restrictive interpretation by the NTS regarding the prohibition on abuse of tax investigations could constitute an obstacle to the detection of foreign bribery through tax audits. Korea has not provided any clarification to the NTS regarding this reporting obligation. Furthermore, at the time of Phase 4 and in the years since, no foreign bribery cases have been brought to the attention of law enforcement authorities by the tax administration.
- *Recommendation 14.c. – Fully implemented*: The Working Group welcomes the annual training delivered by the NTS to its tax officials since 2019 on the detection of FBPA violations through tax audit processes.
- *Recommendation 14.d. – Not implemented*: The occasional, ad hoc meetings mentioned by Korea do not amount to a systematic process for sharing of information on foreign bribery cases by the SPO with the NTS, which is what this recommendation aimed to address. The WGB welcomes the planned "united system" in the planning stage at the SPO, and encourages Korea to proceed promptly with its implementation.
- *Recommendation 15.a. – Not implemented:* Korea confirms the lack of legal basis for the Public Procurement Service (PPS) to check the debarment lists of multilateral financial institutions in the context of public procurement contracting.
- *Recommendation 15.b. – Partially implemented:* The Working Group welcomes KOICA's new practice of requiring bidders to declare whether they have in place anti-corruption internal controls, ethics and compliance programmes. Further efforts are however necessary regarding the PPS.
- *Recommendation 15.c. – Fully implemented:* The Working Group welcomes awareness-raising activities organised by Eximbank and KOICA referring specifically to foreign bribery risks, as well as KOICA's new practice of requiring bidders to declare that they have not been convicted of foreign bribery.

Conclusions of the Working Group on Bribery

6. Based on these findings, the Working Group concludes that recommendations 1.b., 2, 6.a.-c., 9.c. and d., 11.a., 14.c. and 15.c. have been fully implemented; recommendations 3.a., 4., 7.b., 8, 9.a.., 10.a.-b., 12.a.-b., 13., 14.a. and 15.b. have been partially implemented; and recommendations 1.a. and c., 3.b.-c., 5, 7.a., 9.b., e.-g., 11.b., 14.b. and d. and 15.a. have not been implemented. The Working Group invites Korea to report back in writing within one year (i.e. by June 2022) on outstanding recommendations 9.a.-b., e. and g., 10.b. and 12.b., as well as on the status of foreign bribery enforcement. Korea will also report back in one year on recommendation 5 with a view to seeking an effective way to resolve this issue with

the WGB. As per the Phase 4 procedures (para. 60), Korea may ask for additional recommendations to be re-assessed at that time. The Working Group will continue to monitor follow-up issues as case law and practice develop. Korea will also report to the Working Group on its foreign bribery enforcement actions in the context of its annual update.

Annex I - Phase 4 Evaluation of Korea: Written Follow-Up Report by Korea

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the Phase 4 Evaluation Procedure (paragraphs 55-67).

Name of country: **KOREA**

Date of approval of Phase 4 evaluation report: **13 December 2018**

Date of information: **2 April 2021 with additional information on 13 and 17 May 2021**

PART I: RECOMMENDATIONS FOR ACTION

Regarding Part I, responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Text of recommendation 1(a): 1. Regarding anti-money laundering (AML) measures to enhance detection of foreign bribery, the Working Group recommends that Korea: a) Proceed promptly with adoption of legislation that would further enhance its AML reporting framework by extending reporting requirements to appropriate nonfinancial entities including lawyers, accountants and auditors to report suspected money laundering transactions related to foreign bribery [Convention, Article 7; 2009 Recommendation III.i. and IX.i.; Phase 3 recommendation 5].
Action taken as of the date of the follow-up report to implement this recommendation: **[Financial Service Commission (Korea Financial Intelligence Unit)]** Korea is working on revising Financial Transactions Reporting Act, which imposes STR requirements on DNFBPs. The bill that was proposed in 2019 was abandoned due to the termination of a session of the National Assembly.

Text of recommendation 1(b):
1. Regarding anti-money laundering (AML) measures to enhance detection of foreign bribery, the Working Group recommends that Korea:
b) Raise awareness among relevant professions of the risk of laundering foreign bribery proceeds and of foreign bribery red flags, including by publishing relevant case studies [Convention, Article 7; 2009 Recommendation III.i. and IX.i.; Phase 3 recommendation 5].

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

[Financial Service Commission (Korea Financial Intelligence Unit)]
Korea FIU hosts meetings with persons in charge of AML/CFT matters from FIs and DNFBPs to transmit relevant patterns/case studies of foreign bribery offence and require them to fully implement STR obligations in their work process.

There are training materials to transmit relevant practices/case studies of foreign bribery offence through professional training institutes of finance such as Korea Banking Institute and Insurance Institute, which are, in practice, used for trainings.

These trainings cover foreign bribery red flags. Please refer to the Annex 1 in PPT format. Plus, trainings are provided only to financial institutions, not to DNFBPs.

On October 22, 2019, training sessions were provided to around 100 working-level staff (including Head of Division/Office position) who are subject to STR obligations in the entire financial sector. These sessions address how to enhance STR quality. Please refer to the Annex 1 in PPT format for training materials.

Text of recommendation 1(c):
1. Regarding anti-money laundering (AML) measures to enhance detection of foreign bribery, the Working Group recommends that Korea:

c) Ensure KoFIU undertakes a review of its methodology and resources for analysing and transmitting STRs to ensure its staff is adequately resourced and trained to detect STRs that may be indicative of money laundering predicated on foreign bribery [Convention, Article 7; 2009 Recommendation III.i. and IX.i.; Phase 3 recommendation 5].

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

[Financial Intelligence Unit]
'Foreign bribery' is added into the inside training materials for FIU staff.

Text of recommendation 2:
2. Regarding detection of foreign bribery by Korean public agencies, the Working Group recommends that Korea provide clear and regular guidance and training on foreign bribery red flags and on the processes for reporting these to Korean law enforcement authorities to relevant officials in agencies with particular potential for detecting foreign bribery, including diplomatic missions, trade promotion agencies, export credit agencies and official development aid agencies, as well as other public bodies that interact with Korean companies operating abroad [2009 Recommendation IX.ii.].

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

The Ministry of Foreign Affairs distributed a manual on the anti-bribery act for international transactions published by the Ministry of Justice to all Korean diplomatic missions in February 2019 and explained to them the recommendations of Phase 4 in February and July 2019**.**

The Ministry conducts mandatory training programs for diplomats and attachés to be posted abroad as well as diplomat trainees. These programs include introductory courses on overall anti-corruption and anti-bribery laws and practices. The Ministry also provides annual education sessions (2-3hours) about anti-corruption and anti-bribery law and practices to all officials in its headquarters and diplomatic missions.

KOTRA (Korea Trade-Investment Promotion Agency) inserts an additional clause (on compliance to international business standards) into KOTRA Employees' Code of Conduct (a measure already taken in 2013).
Clause 16 (Compliance to international business standards) refers to "In regard to international business transactions, all executives and employees must comply to the Anti-Bribery Convention on International Business Transactions, every country's related regulations, international conventions on investment and business transactions, as well as follow regulations on anti-corruption, labour and tax in the country of sojourn.".
It also circulate the information on OECD's recommendations to KOTRA's overseas offices (10 regional headquarters, 127 overseas trade centers in 84 countries) in 2019.

(1) OECD Anti-Bribery Convention Guidebook (published by the Anti-Corruption & Civil Rights Commission)
(2) Information on international bribery crime red flags (provided by the Ministry of Justice)
(3) Reporting procedures of bribery crimes abroad (to Korean Embassies, Consulates abroad)

Training sessions for KOTRA's overseas offices

Date	Agenda	Participants	Duration
2020.1.7	Integrity & Anticorruption	Staffs of overseas offices	2H
2020.7.16		Staffs of overseas offices	3H
2020.8.11		Staffs of overseas offices	2H

Korea Eximbank implemented semi-annual training for loan officers of Korea Eximbank on foreign bribery red flags and on the processes for reporting these to Korean law enforcement authorities.
Training dates are as followed: 2019. 7. 22. / 2020. 2. 4. / 2020. 7. 22. / 2021. 2. 3.

And it also implemented annual training for all employees of Korea Eximbank on general introduction to OECD Anti Bribery Convention and relevant Korean law.
Training dates are as followed: 2020. 9. 16. ~ 9. 23.

Implemented semi-annual training for loan officers of Korea Eximbank on foreign bribery red flags and on the processes for reporting these to Korean law enforcement authorities.

- Purpose: Regular training for relocated employees
- Outline and recent updates of credit programme and policy including OECD Arrangement and Recommendations

Training date, duration and the number of participants:
- 2019. 7. 22. , 80 minutes, 24 participants
- 2020. 2. 4., 100 minutes, 37 participants
- 2020. 7. 22., 100 minutes, 30 participants
- 2021. 2. 3., 100 minutes, 43 participants
- Training material attached separately

Implemented annual training for all employees of Korea Eximbank on general introduction to OECD Anti Bribery Convention and relevant Korean law.

Training date, duration and the number of participants :
- 2020. 9. 16. ~ 9. 23., 60 minutes, 99% of all employees of Eximbank (except for dispatched employees, employees on long-term leave and employees who were unavailable to attend the training for unavoidable reasons)
- Training material attached separately

KOICA (Korea International Cooperation Agency) has provided anti-corruption training on Anti-Bribery Convention and reporting procedure for 2,681 employees since 2019.
Agenda: Anti-corruption training on Anti-Bribery Convention and reporting procedure
- Date: 21 times (2019) / 14 times (2020)
- Duration: 30 minutes each

K-SURE (Korea Trade Insurance Corporation) confirms having provided to its employees training that addresses foreign bribery. The training contents included foreign bribery red flags, proactive due diligence, and reporting processes to law enforcement authorities. In 2019, the training sessions were provided to new recruits (on 28th June) and employees working in relevant departments (on 8th August). In 2020, K-SURE expanded its training, targeting for general employees (on 3rd November), newly promoted employees (on 8th October and 29th October), new recruits (on 3rd July and 4th December) and employees working in relevant departments (on 3rd August).

Anti-Corruption and Civil Rights Commission: Please find the attached “Guidebook on the Anti-Bribery Convention” of the Anti-Corruption and Civil Rights Commission.

Ministry of Justice: Please find the attached translated excerpts of the “Interpretive Notes on the FBPA” of the MOJ.

Text of recommendation 3(a):
3. Regarding detection of foreign bribery by the media, the Working Group recommends that Korea:

a) Ensure that law enforcement authorities routinely and systematically assess credible foreign bribery allegations that are reported in domestic and foreign media, including the information referred to Korea by the Working Group [Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D.].

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

Aside from the **Ministry of Justice**’s efforts to collect and follow up with information regarding foreign bribery cases it receives from the WGB, **the Supreme Prosecutors’ Office (SPO)** also

makes their own intelligence efforts to obtain more details and assesses the investigatory value of the information.

Based on a comprehensive review of the information collected, the SPO assigns cases to competent prosecutors' offices, if needed, to launch investigations.

The MOJ keeps up to date with any progresses in the foreign bribery cases that are already registered with the matrix. For the discovery of new foreign bribery cases, the MOJ regularly checks press releases from justice ministries in major trade partners with Korean businesses, and they also conduct keyword searches online so as to monitor and collect any clues concerning bribery overseas.

KNPA: The Spokesperson's Department of the Korean National Police Agency (the "KNPA") constantly monitors all domestic news reports covering the police and communicates the results to the relevant departments.

Text of recommendation 3(b):
3. Regarding detection of foreign bribery by the media, the Working Group recommends that Korea:

b) Ensure that adequate resources are allocated to law enforcement authorities to monitor and act upon media reports in Korea and abroad [Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D.].

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

The Ministry of Justice tasks its staff officers in the International Criminal Affairs Division - who are qualified to practice law - with operational monitoring of foreign media regarding foreign bribery cases. It also has its own system in place for when any useful information arises regarding foreign bribery cases. Under the system, the prosecutors in the same division, each of whom has more than 10 years of investigation experience, take part in and systematically review the details, *e.g.*, of the business project involved, and the necessity of whether or not to launch an investigation.

In fact, potential foreign bribery, accounting fraud/overseas evasion, ML and other relevant cases have been searched and shared through media report monitoring. Below are some recent examples that have been shared from the monitoring process.

- "Airbus Investigations May Unveil Korean Air Dirt" by Sisa Journal (February 4, 2021): The article says that a special audit is taking place by the Korean National Tax Service (NTS) into Korean Air, and that the NTS and the prosecution are conducting investigations regarding a rebate of about USD
- 15 million that was allegedly offered to Korean Air by Airbus, according to a document that is about the Airbus investigations by the French Parque National Financier in 2016.
- "Court Convicted 'Lime' Scandal Fraudsters While Key Suspects Missing" by Yonhap News (February 14, 2021): Regarding the "Lime Asset Management" investment scam, the CEO who embezzled the Lime funds has fled abroad, and the whereabouts of the other key suspect, who was involved in market manipulation with Lime's investment funds, is unknown.

The Supreme Prosecutors' Office (SPO) collects/manages/verifies a range of public information and data in both domestic and foreign media, broadcasting, publications and communications networks, through its Investigatory Information Office. The SPO also has an internal system in place that can transfer any foreign bribery or other corruption case, if discovered through the monitoring process, to relevant investigation divisions so as to launch an investigation as needed.

Based on the new criminal justice system enforced on January 1, 2021, the Police have the authority to launch and close investigations for all criminal cases, including foreign bribery. The Police may autonomously open investigations without the directions from the Prosecution (Article 197(1) of the *Criminal Procedure Act*) and where it is deemed that there is suspicion of an offense, a senior judicial police officer shall without delay transfer the case to the prosecutor (Article 245-5(1) of the *Criminal Procedure Act*).

Meanwhile, where necessary in order to determine whether to prosecute a transferred case or to maintain the prosecution, a prosecutor may demand a senior judicial police officer to conduct further investigation (Article 197-2(1) of the *Criminal Procedure Act*) and, when it is unlawful or unjust for the senior judicial police officer not to transfer the case, the prosecutor may request the senior judicial police officer to re-investigate the case (Article 245-8 of the *Criminal Procedure Act*).

NPA:
The police have had the authority to investigate foreign bribery cases on their own even before the adjustment of investigative authority between the police and prosecution. The police now have the authority and capacity to investigate foreign bribery cases on their own within the territory of the Republic of Korea and concerning citizens of Korea.

The adjustment of investigative authority between the police and prosecution in 2021 only resulted in adjustment of certain authority, including abolishment of the prosecution's authority to command judicial police officers' investigations, but did not expand or reduce the scope of the investigative authority of the police itself.

Text of recommendation 3(c):
3. Regarding detection of foreign bribery by the media, the Working Group recommends that Korea:

c) Ensure that laws relating to freedom of the press and equal access to information are fully applied in practice in respect of foreign bribery reporting [Convention, Article 5 and Commentary 27; 2009 Recommendation Annex I.D.].

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

It is certainly ensured that freedom of the press and equal access to information are fully applied in practice in respect of foreign bribery reports in the media.

The Ministry of Justice and **the Supreme Prosecutors' Office** make all of their press releases public on each of their website, ensuring that there are no limitations for any media platforms and they have equal access to relevant information. The ministry also has one spokesperson and one deputy spokesperson in place in order to readily respond to any media requests for

information. Reporters also have the contact numbers of all higher-rank MOJ and SPO officials (director-level). They can contact the officials directly for further information via their office numbers on press releases if needed.

The Ministry of Foreign Affairs also continuously provides diplomatic missions with guidance and instructions to promptly report acquired information to the authorities if they detect the signs of foreign bribery (July 2019). In addition, the Ministry of Foreign Affairs operates a system for disclosing confidential documents containing national security information after lapse of 30-year storage period.

Text of recommendation 4:

4. Regarding detection of foreign bribery by accountants and auditors, the Working Group recommends that Korea develop awareness-raising and training on the FBPA in the accounting and auditing profession to ensure auditors are in a capacity to detect foreign bribery red flags and are aware of their reporting obligations [Convention, Article 8; 2009 Recommendation X.B.; Phase 2 recommendation 2(a)].

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

[Financial Service Commission]

The big four accounting firms in Korea, which are responsible for most of accounting and auditing for international transactions, have provided training on Anti-Bribery, including foreign bribery, to their employees since 2012 (or 2016). The training includes (1) Korean Act on Preventing Bribery of Foreign Public Officials in International Transactions, (2) international Anti-Bribery/ Anti-Corruption laws, including U.S FCPA, as well as related cases, and (3) guidelines on how to respond in case of recognizing/identifying bribery or corruption on the ground, including reporting process. Moreover, the big four accounting firms have been strengthening awareness-raising and training in accordance with the recommendations of 2019 Anti-Bribery Convention.

The Korean Institute of Certified Public Accountants (KICPA) has offered an online video lecture on Anti-Bribery, which includes OECD Anti-Bribery Convention, U.S FCPA, and the UK Bribery Act, to its members— accountants and accounting firms — in order to give them an opportunity to understand and learn more about the international laws/standards and related cases. The lecture is part of the required course, Professional Ethics, and about 1500 accountants have completed the lecture since November 2019.

The details/updates of anti-bribery training carried out by the big four accounting firms are as follows:

(1) Samil PricewaterhouseCoopers (PWC): all employees are required to complete annual mandatory training on Anti-Corruption, Anti-Trust & Anti-Corruption, and Anti-Money Laundering (1 hour) in accordance with its internal rules;
(2) Samjong KPMG: all employees are required to complete annual mandatory training, 'We Do What is right: Integrity at KPMG' (1.5 hours), which includes awareness-raising and training on anti-bribery, anti-corruption and compliance with laws/regulations in accordance with the international quality management regulations;
(3) Deloitte Anjin: all employees are required to complete the mandatory 'Anti-Corruption Training' (1 hour) annually according to the international and internal rules/regulations;
(4) EY Han Young: all employees, especially new employees, are required to complete annual mandatory training, 'Anti-Bribery & You!' (1 hour), and training, 'Major Laws and Regulations& EY Policy', which includes training on the FCPA and anti-bribery & anti-

corruption, is provided by the legal department every year.

The Korean Institute of Certified Public Accountants (KICPA) offers an online video lecture on the International Anti-Bribery and Fair Competition Act (2 hours) to all accountants via Cyber KICPA website.

The Korean government will continuously make efforts to increase the hours of training and improve the quality of training program provided by the KICPA and the big four accounting firms as a way to offer more effective training on international anti-bribery to accountants.

Text of recommendation 5:

5. Regarding the foreign bribery offence, the Working Group recommends that Korea take appropriate steps within its legal framework to ensure that the bribery of persons performing public functions for the North Korean Regime are covered [Convention, Article 1; Phase 3 recommendation 1(a)].

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

If no action has been taken to implement recommendation 1 (b), 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:

Considering the unique circumstance between two Koreas as a divided countries, 'foreign bribery offense' cannot be applied to inter-Korean exchange and cooperation projects (including Gaeseong Industrial Complex and others). As bribery and other illegal activities that take place during inter-Korean exchange and cooperation projects can be regulated through 「Inter-Korean Exchange and Cooperation Act」·「National Security Act」 and other domestic laws, they are not under blind spot for punishment.

As two Koreas are under special relationship as two Koreas strive to accomplish common goal of unification, North Korea is not considered as a foreign country based on the Constitution of the Republic of Korea, and thus does not consider 'persons performing public functions for the North Korean regime' as a 'government official.'

※ (Reference) (Constitution) Article 4 The Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on the basic free and democratic order.

※ (Reference) (Development of Inter-Korean Relations Act) Article 3(1) Inter-Korean relations are not relations between nations, but special relations established temporarily in the course of pursuing unification.

Thus, there are limitations to apply 「Act on Combating Bribery of Foreign Public Officials in International Business Transactions」 and 「Civil Act」 to regulate 'bribery to persons performing public functions for the North Korean regime(North Korean officials or staffs working at the Joint Commission for Gaeseong Industrial Complex)' as recommended by the OECD

Also, with realistic and institutional limitations, providing bribery to North Korean person (official) is impossible during the process of inter-Korean exchange and cooperation.

- Inter-Korean Exchange and Cooperation Act strictly regulates and manages South Korean

persons' contact with North Korean persons, travel to North Korea and North Korean persons' visit to South Korea.

- The law restricts our citizens to visit Gaeseong Industrial Complex and pay bribery to North Korean persons (official)
  ※ Article 9 of「Inter-Korean Exchange and Cooperation Act」states that purpose, area, period and other issues should be approved by the Minister of Unification for contact North Korean person or visit North Korea
- Operation of the Gaeseong Industrial Complex was done by joint commission and government of two Koreas, not by an individual company, providing bribery for specific companies within the Gaeseong Industrial Complex is impossible.
  ※ The fact that there were no cases of bribery since the 2004 OECD Anti-Bribery Convention's Phase 2 report proves the South Korean government's strict management of inter-Korean contacts.

Also, bribery and other illegal activities can be punished and regulated by「Inter-Korean Exchange and Cooperation Act」and other laws to prevent blind spots.

- As bribery is subject to 'actions that may infringe upon national security, maintenance of order or public welfare' under the「Inter-Korean Exchange and Cooperation Act」, actions can be taken based on provisions, prohibit actions(Article 17), cancel approval for taking out or bringing in(Article 13), penalty·fine(Article 27·28) and others.
- Based on circumstance, Criminal Act, Improper Solicitation and Graft Act, Foreign Exchange Transactions Act, National Security Act and other laws can be applied for penalty.

Lastly, there are claims that bribery in inter-Korean exchange and cooperation may not be regulated with existing laws due to active exchange and cooperation projects between two Koreas,

- But under the status quo, inter-Korean exchange and cooperation has stopped including the Gaeseong Industrial Complex (stopped February 2016). The ROK government will review potential improvement for related laws based on improvement of the inter-Korean relations, inter-Korean exchange and cooperation.

[Additional Information]

ROK considers DPRK as an ①anti-governmental organization(belligerent) that is illegally occupying the northern part of the Korean peninsula and a ②partner in seeking a peaceful unification. This kind of special relationship does not solely come from the fact that it is a 'politically sensitive problem' as stated in the Phase 4 follow-up Draft Summary and Conclusions by the lead examiners of the OECD WGB.

Members of DPRK is a national of ROK and partners in seeking unification under Korea's Constitution, reality, and the sentiment of the Korean people. No legislative amendment can allow to view a public official of the DPRK as a foreign public official under FBPA.

Unlike standard business projects facilitated by autonomous business activities, Inter-Korean Exchanges & Cooperation Projects can only move forward under strict government oversight and regulations as an economic partnership under exception geopolitical conditions of separated Koreas.

The Article 3 of the Constitution of the Republic of Korea provides, "The territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands." As such, the Republic of Korea is the only legitimate government on the Korean peninsula and the Constitution does

not recognize the North Korean regime neither as a “government” nor as a “nation.”

However, Article 4 of the Constitution of also states, “The Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on the basic free and democratic order.” As, the Republic of Korea also is in a partnership with the North Korea to strive for unification together, there is an aspect of the Constitution which de facto recognizes the governmental status of North Korea with respect to economic cooperation, etc.

Therefore, the Inter-Korean Exchange and Cooperation Act reflects this “dual status of North Korea” in the Constitution and explicitly states, in Article 12, “Transactions between South Korea and North Korea shall be deemed internal transactions between the same people, not those between nations.”

In consideration of these aspects, North Korean officials do not hold the status of “foreign public official” from the Act on Combating Bribery of Foreign Public Officials in International Business Transactions.
Meanwhile, under the Inter-Korean Exchange and Cooperation Act, the inter-Korean projects are run on ROK approval basis from business consultations (i.e. contacting North Korean residents, visiting North Korea, etc.) to specific details and methods (i.e. types, items, quantity of transactions, payments, etc.), and the progress made are re-assessed through follow-up reports. Subsequently, there is essentially no room or opportunity for a ROK business entity to pay bribes to a North Korean official.

In order for a ROK business entity to move forward with an Inter-Korean exchange & cooperation project, it must be examined and approved by the ROK government. As such, there are neither benefits nor incentives for a ROK business entity to pay bribes to a North Korean official in order to carry out an Inter-Korean project.

In particular, as for the Kaesong Industrial Complex, since the ROK managerial personnel (from the government and relevant institutions) reside in the North and manage general business activities such as negotiations with the North Korean officials, it is essentially impossible for businesses within the Complex to pay bribes to North Korean officials.

Further, due to increased levels of international sanctions imposed against North Korea due to nuclear issues, Inter-Korean Exchange & Cooperation Projects throughout the international community, including with the ROK, has completely halted. Therefore, the fact that the very act of paying bribes to North Korean officials has been completely blocked must also be taken into consideration.

Text of recommendation 6(a):
6. Regarding the evidentiary threshold for the foreign bribery offence, the Working Group recommends that Korea clarify by any appropriate means that its foreign bribery offence should be interpreted consistently with Article 1 of the Convention, including by providing written information to investigators, prosecutors, and judges (whether separately or collectively) on the requirements of the foreign bribery offence under the Convention. This information should at a minimum ensure that:

a) The threshold for establishing that a transaction constitutes ‘international business’ is not unduly high [Convention, Article 1 and Commentaries 3 and 7].

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

[MOJ]
In January 2019, the Ministry of Justice published its "Interpretive Notes to Foreign Bribery Prevention Act" (FBPA). The interpretive notes include recommendations 6(a) to (c), as well as the OECD Anti-Bribery Convention, so as to provide guidance for domestic investigative and judicial authorities to accurately apply and interpret the FBPA in light of the Convention. The interpretive notes were distributed in February 2019, a total of 1,500 copies of the Note have been physically distributed to relevant agencies, including 64 prosecutorial agencies nation-wide (Supreme Prosecutors' Office, High Prosecutors' Offices, District Prosecutors' Offices and their branches), the Institute of Justice, the Courts, the National Archive, the Police, Ministry of Foreign Affairs, Anti-Corruption & Civil Rights Commission, etc. Electronic copies have also been distributed upon request.

The Note provides comprehensive explanations on the major contents of the OECD Anti-bribery Convention, major Recommendations made by the OECD WGB, Korea's implementation of those Recommendations, major investigations and issues, and is being used as a reference for investigations and trials, etc.; the legal nature of the Notes is not binding.

Especially regarding the text of recommendation 6(a), the above interpretive notes include the WGB's Phase 3 & 4 assessments of Korea's implementation along with domestic court precedents, providing guidance to relevant authorities to actively interpret "international business" e.g. acknowledging employment contracts with foreign governments, overseas business transactions (such as business permission, licenses and bidding wins), and contracts with the U.S. Forces in Korea as "international business". (p. 25 – 27, Interpretive Notes to Foreign Bribery Prevention Act)

The Institute of Justice also provides training programs concerning foreign bribery investigations.

- The Institute of Justice provides educational programs, such as "Request for MLA & Extradition: Operations", "Understanding International Joint Investigations", "Understanding International Cartel Cases & Case Studies" and "Anti-Corruption & Integrity". The target audience for these programs ranges from new prosecutors, as well as experienced prosecutors, to prosecutorial investigators, immigration officers, and correctional officers.
- In 2019, 60 such program sessions were run; in 2020, 40 sessions were run. In 2021, there have been four sessions so far, and there will be an additional 38 sessions throughout the year. (Both classroom-based and online-based lectures will take place during the COVID-19 epidemic.)

The training programmes organised by the Institute of Justice referring to recommendations 6(a) to (c) are as follows:

- "Request for MLA & Extradition: Operations": 94 prosecutors and investigators (2019. 2. 1. ~ 12. 31.), 67 prosecutors and investigators (2020. 2. 1. ~ 12. 31.), 11 prosecutors and investigators (2021. 2. 1. ~ 3. 31.)
- "Understanding International Joint Investigations": 118 new prosecutors, (2021. 1. 12.) 132 new prosecutors (2019. 7. 10.)
- "Understanding International Cartel Cases & Case Studies": 14 experienced prosecutors (2019. 3. 14. ~ 15.)
- "Anti-Corruption & Integrity" program is also provided to prosecutorial, immigration, and correctional officers on a regular basis. Korea is strengthening training programs on anti-

corruption not only to prevent Korean firms from taking bribes from foreign public officials, but also to prohibit Korean public officials from taking bribes from foreign companies.

[SPO]
The prosecution service, when investigating foreign bribery cases, reviews and references various sources, including similar U.S. Courts of Appeals cases, the Commentaries on the OECD Anti-Bribery Convention, the U.N. Convention on Contracts for the International Sale of Goods, and the UNICITRAL Model Law, and establishes a threshold for a transaction constituting "international business" at a rational level, e.g. charging bribery for tax evasion in a foreign country as foreign bribery.

Text of recommendation 6(b):
6. Regarding the evidentiary threshold for the foreign bribery offence, the Working Group recommends that Korea clarify by any appropriate means that its foreign bribery offence should be interpreted consistently with Article 1 of the Convention, including by providing written information to investigators, prosecutors, and judges (whether separately or collectively) on the requirements of the foreign bribery offence under the Convention. This information should at a minimum ensure that:

b) Perceptions of local custom, the tolerance of such payments by local authorities or the alleged necessity of the payment do not constitute defences or exceptions to prosecution or sanctioning [Convention, Article 1 and Commentaries 3 and 7].

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

[MOJ]
In January 2019, **the Ministry of Justice** published its "Interpretive Notes to Foreign Bribery Prevention Act" (FBPA). The interpretive notes include recommendations 6(a) to (c), as well as the OECD Anti-Bribery Convention, so as to provide guidance for domestic investigative and judicial authorities to accurately apply and interpret the FBPA in light of the Convention. The interpretive notes were distributed in February 2019, and shared among authorities such as the prosecution, police, courts, Ministry of Foreign Affairs, Anti-Corruption and Civil Rights Commission, the National Archives of Korea, and other relevant agencies for their operational uses in investigations and trials, as well as for training purposes.

- Particularly regarding the text of recommendation 6(b), the interpretive notes highlight that "local customs" or other practices as mentioned in the recommendation are not taken into account as defences or exceptions in the investigatory context in Korea.
- The notes also describe that the provision giving an exclusion to "a small amount of pecuniary advantage offered to foreign public officials, whose duties are on a day-to-day basis and repetitive, in the aim of speeding up the business process (*i.e.,* facilitation fees)", has now been deleted by the amendment to the FBPA dated October 15, 2014, so that investigators consider it during their investigations. (p. 28 – 29, Interpretive Notes to Foreign Bribery Prevention Act)

Text of recommendation 6(c):
6. Regarding the evidentiary threshold for the foreign bribery offence, the Working Group recommends that Korea clarify by any appropriate means that its foreign bribery offence should

be interpreted consistently with Article 1 of the Convention, including by providing written information to investigators, prosecutors, and judges (whether separately or collectively) on the requirements of the foreign bribery offence under the Convention. This information should at a minimum ensure that:

c) The foreign bribery offence under the FBPA applies autonomously, without requiring proof of the law of the foreign public official's country [Convention, Article 1 and Commentaries 3 and 7].

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

[MOJ]

In January 2019, **the Ministry of Justice** published its "Interpretive Notes to Foreign Bribery Prevention Act" (FBPA). The interpretive notes include recommendations 6(a) to (c), as well as the OECD Anti-Bribery Convention, so as to provide guidance for domestic investigative and judicial authorities to accurately apply and interpret the FBPA in light of the Convention. The interpretive notes were distributed in February 2019, and shared among authorities such as the prosecution, police, courts, Ministry of Foreign Affairs, Anti-Corruption and Civil Rights Commission, the National Archives of Korea, and other relevant agencies for their operational uses in investigations and trials, as well as for training purposes.

- Especially regarding the text of recommendation 6(c), the interpretive notes state that, in determining whether or not bribes are offered for the purpose of having improper advantage, such a purpose is sufficiently proven by the fact that a bribe was given with the aim of winning a bid or signing a contract. (p. 27 – 28, Interpretive Notes to Foreign Bribery Prevention Act)
- Therefore, there is no additional burden of proof regarding any improper advantage, aside from winning a bid or signing a contract itself.
- This means that the above interpretive notes highlight the text of paragraph of the Commentaries 4 to Article 1(1) of the OECD Anti-Bribery Convention, in which it states that, "[it] is an offense within the meaning of paragraph 1 to bribe to obtain or retain business or other improper advantage whether or not the company concerned was the best qualified bidder or was otherwise a company which could properly have been awarded the business." (p. 28, Interpretive Notes to Foreign Bribery Prevention Act)
- The interpretive notes also provide easy guidance for the investigation of foreign bribery cases by sharing a series of cases studies, both domestic and foreign, regarding the investigation and trials of foreign bribery cases. (p. 43 – 50, Interpretive Notes to Foreign Bribery Prevention Act)

Text of recommendation 7(a):

7. Regarding the false accounting offence, the Working Group recommends that Korea:

a) Ensure that all legal persons can be held liable for false accounting offences committed for the purpose of bribing foreign public officials or of hiding such bribery [Convention, Article 8; 2009 Recommendation X.A.].

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

[MOJ]
In accordance with the *Commercial Act*, the framework act that covers business relations, all legal persons which are required to prepare account books may be punished for their illicit conduct, such as false accounting and reporting failures or concealment of facts. (Articles 625, 626 and 627 of the *Commercial Act*). The *Act on External Audit of Stock Companies*, in particular, has a provision on a stricter audit process: mandatory accounting audit requirements by (an) independent, external auditor(s) for, among all legal persons obliged to prepare account books, stock companies and limited companies above certain sizes, whose total assets exceed 12 billion won or whose total debts exceed 7 billion won. (Article 4(1) of the *Act on External Audit of Stock Companies*).

- Under the above Act on External Audit of Stock Companies, stock companies and limited companies, of certain sizes and/or with many interested persons involved, are required to comply with the International Financial Reporting Standards of the International Accounting Standards Board (Article 5 of the Act on External Audit of Stock Companies);
- Violation of such requirements may lead to a more aggravated punishment compared to the one under the Criminal Act – "imprisonment with labour for not more than 10 years or by a fine not exceeding two to five times the amount of gains acquired or losses evaded" (Articles 401-2(1) and 635(1) of the Commercial Act and Article 39(1) of the Act on External *Audit of Stock Companies*).

As for legal persons who are not required to prepare account books (partnership company and limited partnership company), they may be punished for embezzlement, breach of trust, etc. under the *Criminal Act* if they misappropriate funds for bribery or creation of slush funds, hence there are no concerns for a loophole for punishment.

The amendment to the *Commercial Act*, dated December 9, 2020, stipulates a separate appointment procedure for at least one audit committee member so as to better and more effectively manage and supervise false accounting that is designed to bribe foreign public officials or to create slush funds in order to hide such bribery. (Article 542-12 of the *Commercial Act*)

- Such a change is to ensure the independence of (an) auditing committee member(s) from major shareholders by appointing the member(s) separately from other board members at the stage of board member appointment.

The amendment also provides a 3% limit on the voting stock of the largest shareholder and their specially related persons. This change ensures that the auditing committee member(s) independently conduct(s) audits into false accounting or other criminal conduct without any pressure from the largest shareholder or their specially related persons, and that the largest shareholders and the specially related persons are held accountable for any illicit acts. (Article 409 the *Commercial Act*)

Text of recommendation 7(b):
7. Regarding the false accounting offence, the Working Group recommends that Korea:

b) Vigorously investigate and prosecute this offence where appropriate, and, to this end, raise awareness and provide training to law enforcement authorities [Convention, Article 8; 2009 Recommendation X.A.].

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

[MOJ]
The Ministry of Justice and **the Supreme Prosecutors' Office** provide training programs, through the Institute of Justice, regarding the investigations of false accounting in the context of foreign bribery cases.

- Programs provided by the Institute of Justice include "Corporate Accounting Crimes", "Account Tracing & Accounting Analysis: Operations", "Tax Offense and Off-shore Tax Evasion" and "Recovery of Overseas Illicit Property". The target audience is new and experienced prosecutors, prosecutorial investigators and other relevant officers.

In 2019, six sessions of the above programs were run; in 2020, seven sessions were run. In 2021, there has been one session so far, and three more sessions are scheduled to take place additionally throughout the year, including "Investigation of Financial & Securities Offenses". (Both classroom-based and online-based lectures will take place during the COVID-19 epidemic.)

The training programmes organised by the Institute of Justice referring to recommendation 7(b) are as follows:

- "Principles of Accounting for new prosecutors": 118 new prosecutors (2019. 7. 5. ~ 7. 16.)
- "Corporate Accounting Crimes": 118 new prosecutors (2019. 8. 14.)
- "Principles of Accounting for new prosecutors (Corporate Accounting Crimes)": 132 new prosecutors (2020. 8. 18. ~ 8. 21.)
- "Tax Offense and Off-shore Tax Evasion": 18 experienced prosecutors (2019. 3. 4. ~ 3. 6.), 19 experienced prosecutors (2020. 5. 18. ~ 5. 20.), 48 experienced prosecutors (2020. 10. 19. ~ 10. 21.), 23 experienced prosecutors (2021. 3. 15. ~ 3. 18.)
- "Recovery of Overseas Illicit Property": 18 experienced prosecutors (2020. 11. 6.)
- "Account Tracing & Accounting Analysis: Operations," "Investigation of Financial & Securities Offenses": scheduled for new prosecutors in 2021
- Meanwhile, "Corporate Accounting: Operations," "Accounting Frauds," "Overseas Tax Evasion," "Violations of the *Financial Services and Capital Markets Act*," online-based lectures, are being offered since 2019.
- Please find the attached dates, duration, list of courses and participants, agendas of the training sessions, etc.

The bribery provision under the Criminal Act punishes when a bribe is provided for a Korean public official, whereas the bribery provision under the FBPA punishes when a bribe is provided to a foreign public official with regard to international transactions.

Thus, although the two provisions may differ in the status of the respective bribe-takers, both fall within the wider scope of "bribery" cases as bribes are being paid; often times, foreign bribery cases intertwine with other forms of property crimes, i.e. embezzlement, breach of trust, or fraud, etc. In addition, as money-laundering and illegal property concealment in foreign jurisdictions are commonly used schemes to prepare bribes, including foreign bribery, investigative techniques used to uncover above-mentioned offenses are identically applied to such cases.

Therefore, training programmes mentioned above all concern foreign bribery as they are designed to provide tools required to investigate and prosecute all forms of bribery cases, i.e.

account tracing, accounting analysis, digital forensics, money-laundering, recovery of illicit assets, legal analysis, and case analysis, etc. The programme is provided on a regular basis in order to train not just for the new prosecutors, but also for the experienced prosecutors to better investigate and prosecute cases.

[NPA]
In January of 2019, the KNPA formed a "Criminal Proceeds Tracking and Investment Team" in each of the Sophisticated Crime Investigation Units (formerly, the direct investigation departments of Metropolitan(si)- and Provincial(do)-level police agencies) at 17 regional police agencies including the KNPA, to more actively respond to accounting fraud and concealment of criminal proceeds.

Since May 21, 2019, the KNPA has been conducting training sessions for police officers, mainly for the team heads of investigation and criminal departments of police agencies and offices, on accounting fraud, on topics such as △ accounting analysis techniques and investigation cases △ preservation of confiscated property before prosecution.

The KNPA has also published a few training manuals on accounting fraud, namely, "Cases of Criminal Proceeds Tracking in 2019," "Stepping Stone for Accounting and Tax Analysis," and "Stepping Stone for Preservation of Confiscated and Collected Property before Prosecution."

Text of recommendation 8:
8. Regarding enforcement of money laundering predicated on foreign bribery, the Working Group recommends that Korea take measures to enforce the money laundering offence more effectively, including by providing training to investigative authorities [Convention, Article 7].

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

[MOJ]
In January 2019, **the Ministry of Justice** published its "Interpretive Notes to Foreign Bribery Prevention Act" (FBPA). The interpretive notes include recommendations 6(a) to (c), as well as the OECD Anti-Bribery Convention, so as to provide guidance for domestic investigative and judicial authorities to accurately apply and interpret the FBPA in light of the Convention. The interpretive notes were distributed in February 2019, and shared among authorities such as the prosecution, police, courts, Ministry of Foreign Affairs, Anti-Corruption and Civil Rights Commission, the National Archives of Korea, and other relevant agencies for their operational uses in investigations and trials, as well as for training purposes.

The MOJ and the SPO provide programs, via the Institute of Justice, on the investigation of money-laundering crimes in the context of foreign bribery cases.

- Programs provided by the Institute of Justice include "Case Studies: ML Crime Investigations" and "AML Systems". The target audience is new and experienced prosecutors, prosecutorial investigators, and other relevant officers.

The training programmes organised by the Institute of Justice referring to recommendation 8 are as follows:

- "Recovery of Illicit Assets & Cases of ML Offense Investigations": 13 experienced prosecutors (2020. 10. 5. ~ 10. 7.), 36 experienced prosecutors (2020. 10. 12. ~ 10. 16.), 23 experienced prosecutors (2021. 3. 15. ~ 3. 18.)

- "Recovery of proceeds of economic crimes & cases of ML Offense Investigations": 15 experienced prosecutors (2020. 11. 18. ~ 11. 20.), 20 experienced prosecutors (2021. 4. 6. ~ 4. 9.)
- Meanwhile, "AML Systems," an online-based lecture, is being offered since 2019.

In 2019, two sessions of the above programs took place; in 2020, four sessions took place. In 2021, two sessions have taken place so far, and one additional session is scheduled. (Both classroom-based and online-based lectures will take place during the COVID-19 epidemic.)

Every six months, the prosecution organizes "Recovery of Illicit Assets & Cases of ML Offense Investigations" and other relevant training programs for prosecutors and investigators in charge of asset recovery at district offices.

- In July 2019, the prosecution published its "Manual for Illicit Asset Recovery" and distributed it to district offices so as to provide assistance in investigations of money laundering offences including the one predicated on foreign bribery.

The bribery provision under the Criminal Act punishes when a bribe is provided to a Korean public official, whereas the bribery provision under the FBPA punishes when a bribe is provided to a foreign public official with regard to international transactions.

Thus, although the two provisions may differ in the status of the respective bribe-takers, both fall within the wider scope of "bribery" cases as bribes are being paid; often times, foreign bribery cases intertwine with other forms of property crimes, i.e. embezzlement, breach of trust, or fraud, etc. In addition, as money-laundering and illegal property concealment in foreign jurisdictions are commonly used schemes to prepare bribes, including foreign bribery, investigative techniques used to uncover above-mentioned offenses are identically applied to such cases.

Therefore, training programmes mentioned above all concern foreign bribery as they are designed to provide tools required to investigate and prosecute all forms of bribery cases, i.e. account tracing, accounting analysis, digital forensics, money-laundering, recovery of illicit assets, legal analysis, and case analysis, etc. The programme is provided on a regular basis in order to train not just for the new prosecutors, but also for the experienced prosecutors to better investigate and prosecute cases.

It has been confirmed that no money laundering predicated on foreign bribery has been investigated and prosecuted since Phase 4.

Text of recommendation 9(a):
9. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Korea:

a) Ensure, for instance by establishing clear and specific procedures, appropriate coordination, sharing of information and resolution of conflicts of competence in foreign bribery investigations, within and between DPOs and NPA agencies [Convention, Articles 1, 2, 5 and 6; 2009 Recommendation III.i. and Annex I.D.; Phase 3 recommendation 4(c)].

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

[MOJ]
As the amended *Criminal Procedure Act* and *Prosecution Service Act* took into effect on January 1, 2021, the powers between the Prosecution and the Police have been reallocated, establishing a cooperative relationship between the two organizations (Article 195(1) of the *Criminal Procedure Act*).

- Subsequently, the Police now can autonomously open investigations for all criminal cases and transfer them if charges have been substantiated or independently close them if otherwise.
- The Prosecution, on the other hand, may request further investigation for cases transferred by the Police if needed; may request corrective measures to be taken if a human rights violation or a clear abuse of investigative power is suspected; and may also request re-opening of an investigation if Police decision to close the case was unlawful or illegitimate.

Prosecutors may directly open investigations for the so-called "6 major crimes (corruption crimes, economic crimes, crimes committed by public officials, election crimes, crimes related to defence programmes, and large scale catastrophes, Article 4 of the *Prosecution Service Act*); if a police investigation is ongoing for a same case, they may request the Police to transfer the case (Article 197-4 of the *Criminal Procedure Act*).

In addition, if there is a need for cooperation or coordination with regard to the investigation and/or transfer of a criminal case, a prosecutor or a judicial police officer may request for consultations (Article 6(1) of the *Regulation on the Mutual Cooperation and General Investigative Rules between the Prosecutors and Judicial Police Officers*).

In practice, various forms of cooperation take place through phone calls, in-person meetings, and consultations in order to discuss information-sharing, investigative direction, and evidence collection, as well as to resolve potential conflicts of jurisdictions.

[Major coordination events]

(1) On March 15, 2021, Seoul Southern District Prosecutors' Office and 5 Police Stations within its jurisdiction held a consultative meeting and discussed measures to, a. enhance investigative cooperation by establishing a cooperative system following the amendment of the Criminal Procedure Act, b. install designated offices for investigative cooperation on major criminal cases, and c. readily respond to crimes of real estate speculations.
(2) On March 30, 2021, Gwangju District Prosecutors' Office held a consultative meeting with the Gwangju and Jeonnam District Police Agencies and discussed cooperative measures for effective investigations on real estate speculations.

[KNPA]
New regulations and rules have been introduced this year in accordance with the adjustment of investigative authority among investigative agencies.

In particular, Article 6(1) of the Regulation on Mutual Cooperation between Prosecutors and Judicial Police Officers and on General Investigation Principles (Presidential Decree) provides for mutual respect and cooperation in investigation, prosecution and maintenance of prosecution, between the prosecutors and judicial police.

Article 8 of the above Regulation prescribes the consultation procedures between prosecutors

and judicial police.

Article 9 of the above Regulation sets forth the manner of formation and operation of the Council of Investigative Agencies to ensure and enhance cooperation among the KNPA, Prosecutors' Office, Korea Coast Guard, and other investigative agencies, which will serve as the institutional mechanism for mediation of any conflict of authority between them.

More updates and improvements will be made from time to time upon identification of any new conflict of authority between investigative agencies that may result from the newly introduced regulations and rules.

Text of recommendation 9(b):
9. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Korea:

b) 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, Articles 1, 2, 5 and 6; 2009 Recommendation III.i. and Annex I.D.; Phase 3 recommendation 4(c)].

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

[MOJ]
The Ministry of Justice tasks its staff officers in the International Criminal Affairs Division - who are qualified to practice law - with operational monitoring of foreign media regarding foreign bribery cases. It also has its own system in place for when any useful information arises regarding foreign bribery cases. Under the system, the prosecutors in the same division, each of whom has more than 10 years of investigation experience, take part in and systematically review the details, *e.g.*, of the business project involved, and the necessity of whether or not to launch an investigation.

Moreover, in June, 2018, the MOJ has established the "Foreign Illicit Asset Recovery Task Force," composed of 17 officers respectively seconded from the Prosecution, the Customs, and the National Tax Services, as well as from the Financial Supervisory Service, and the Korea Deposit Insurance Corporation. Upon WGB's recommendations on media analysis and coordination with the foreign counterparts, the TF now operates with 19 members. The TF,

- mainly investigates creation and concealment of offshore slush funds resulting from manipulation of import-export prices and sham transactions overseas, as well as relevant criminal activities such as embezzlement, breach of trust, tax evasion, and concealment of domestic assets abroad.
- conducts in-depth and extensive analyses on intelligences gathered domestically through participating agencies or media reports; conducts research based on the intelligences provided by participating agencies; or analyses financial disclosures and forex transactions records through the network of participating agencies and foreign judicial authorities, which consequently serves as a system for detecting false accounting, etc. targeting bribery.

The Ministry of Justice and the Supreme Prosecutors' Office have a media monitoring system that collects and identifies/verifies information regarding foreign bribery cases.

There have been cases where the MOJ and the SPO initiated investigations based on information obtained via various channels, including intelligence from the Ministry of Foreign Affairs or other relevant organizations, or information obtained by informant reports. As a specialized body, the Foreign Illicit Asset Recovery Task Force, as well, conducts intelligence efforts in the above manner and is authorized to conduct actual investigations.

In June, 2019, **Ministry of Foreign Affairs** had received intelligence from a high-ranking Nicaraguan official visiting Korea, concerning a Korean corporation expressing interest in providing bribes to the official. Having acquired this intelligence from the MOFA, **the SPO** undertook a verification and supplementation process and transferred the case to the Seoul Central DPO in November 2019. In May, 2020, the Seoul Central DPO submitted an MLA request for Nicaragua to the MOJ and the investigation is currently ongoing.

As delineated above, Korea collects and verifies various information and intelligences from multi-faceted, intra-governmental channels and actively pursues cases requiring criminal investigations.

[NPA]
The KNPA's Transnational Crime Investigation Section uses a variety of methods to collect information, including contact with members of the foreign community and analysis of various data on trends in overseas crime, with a focus on reinforcing its response system to organized crimes as well as individual crimes.

Text of recommendation 9(c):
9. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Korea:

c) Extend the availability of wiretapping to foreign bribery investigations, in line with investigative tools available for domestic bribery investigations [Convention, Articles 1, 2, 5 and 6; 2009 Recommendation III.i. and Annex I.D.; Phase 3 recommendation 4(c)].

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

[MOJ]
In the past, while bribery under the *Criminal Act* may be subject to communication-restriction measures such as wiretapping under the *Protection of Communications Secrets Act*, the violation of the FBPA was not.

As the OECD Recommendations were implemented, Korea amended the *Protection of Communications Secrets Act* on December 31, 2019, in order to extend the availability of wiretapping to foreign bribery. The availability of one of the most powerful investigative tools to clandestine acts of foreign bribery made possible far more effective response to international bribery cases. (Article 5(1)12 of the *Protection of Communications Secrets Act)*

Text of recommendation 9(d):
9. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Korea:

d) Ensure that the investigation time limit is sufficient to conduct a thorough foreign bribery investigation in all cases [Convention, Articles 1, 2, 5 and 6; 2009 Recommendation III.i. and Annex I.D.; Phase 3 recommendation 4(c)].

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

[MOJ]
Article 257 of the *Criminal Procedure Act* ("3 months investigation time limit for criminal complaints and accusations," does not apply to detection cases) is a directory provision which was intended for the investigations to be carried without delays. In practice, however, investigations of cases may take well over 3 months, depending on the complexity of cases and the numbers of individuals involved.

- For instance, when a direct investigation was launched on August 4, 2017 prompted by whistle-blower complaint filed with the ACRC, the Prosecution Service investigated the case for 3 years and 3 months, in order to substantiate the charges by searching the KEPCO Headquarters, conducting forensic analyses on the mobile phones, account tracing, and 2 separate MLAs with the Ghanaian authorities, subsequently prosecuting 5 KEPCO employees on November 18, 2020 for respective violations of the FBPA (first instance trials currently ongoing).
- As such, despite the above-mentioned 3 months investigation time limit, investigation practices ensure investigation to continue sufficiently, well over 3 months (same applies to police investigations).

[Additional Information]
The three-month investigation time limit only applies to cases initiated by the filing of accusations or complaints. It does not apply to cases where relevant authorities detect alleged illicit activities. The time limit was designed to encourage swift investigations, so as to protect in a timely manner the applicant's rights in those cases as a legal maxim: "Justice delayed is justice denied". It is not designed to force the completion of any investigation after three months, particularly not when investigators have not reached any conclusion.

Commentary on the Korean Criminal Procedure Act states that "since character of the duration in this article is instructional rather than compulsory, deciding to indict or non-indict after the period of time that is stipulated in this article has passed is legitimate." Thus, deciding to indict suspects after more than 3 months of investigations is absolutely lawful. Therefore this article does not hinder Korean authorities' capacity to investigate and request MLA in complex cases that involve potential FCPA violations.

In other words, Prosecutors' offices make a conscious effort to speed up their investigations in accusation and complaint cases to meet the time limit, and if necessary they can take as much time as they require concerning the investigation, for conducting, e.g., account tracing, searches and seizures, witness inquiry, MLA, and so on. The time limit does not function as an obstruction in any way for the use of investigative measures.

The KEPCO case is a good example. The investigation into the KEPCO case was initiated after an informant's report filed with the SPO on August 4, 2017. As the investigation moved forward, the prosecutors made the MLA requests to the Republic of Ghana, first on September 3, 2018, and second on April 15, 2019. Additional measures, including account tracing and digital forensics, took place between July 2020 and October 2020, before finally prosecuting five natural persons for FBPA violations on November 18, 2020.

Likewise, all cases including foreign bribery cases are investigated until reaching the proper conclusions over 3 months. There is no disadvantage or restriction when prosecutors and police conduct to use of all investigative measures including MLA after 3 months period. They feel free to investigate as long as they want thereby.

The assessments by the evaluators concerning Recommendation 9.d. seems to have been derived from a lack of understanding of different legal systems and operations. Korea already does ensure that its investigators have sufficient time for their investigations.

Text of recommendation 9(e):
9. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Korea:

e) Extend the statute of limitation applicable to legal persons such that it is aligned with that applicable to natural persons [Convention, Articles 1, 2, 5 and 6; 2009 Recommendation III.i. and Annex I.D.; Phase 3 recommendation 4(c)].

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

If no action has been taken to implement recommendation 1 (b), 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:

[MOJ]
MOJ has taken the initiative for the FBPA amendment, which extends the statute of limitations applicable to legal persons to 7 years (currently 5 years), so that it is aligned with that applicable to natural persons (7 years).

- Specifically, a bill was proposed in August 2019 by a then member of the ruling party to amend the FBPA as above. However, the bill was automatically repealed as the term of the National Assembly members expired.
- In April 2021, another member of the current ruling party is scheduled to propose a bill with its content same as above. The MOJ will continue to monitor the deliberation and amendment procedures that will follow and report the progress to the WGB.
- Amendment to the FBPA has been presented by the Legislation and Judiciary Committee on June 18, 2021. The bill is expected to pass the plenary session of the National Assembly within this June and we will keep you updated on the results at the next year's June report.

Text of recommendation 9(f):
9. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Korea:

f) Ensure that decisions not to prosecute or decisions to terminate foreign bribery prosecutions are not taken on the basis of factors contrary to Article 1 of the Convention [Convention, Articles 1, 2, 5 and 6; 2009 Recommendation III.i. and Annex I.D.; Phase 3 recommendation 4(c)].

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

[MOJ]
In January 2019, **the Ministry of Justice** published its "Interpretive Notes to Foreign Bribery Prevention Act" (FBPA). The interpretive notes include recommendations 6(a) to (c), as well as the OECD Anti-Bribery Convention, so as to provide guidance for domestic investigative and judicial authorities to accurately apply and interpret the FBPA in light of the Convention. The interpretive notes were distributed in February 2019, and shared among authorities such as the prosecution, police, courts, Ministry of Foreign Affairs, Anti-Corruption and Civil Rights Commission, the National Archives of Korea, and other relevant agencies for their operational uses in investigations and trials, as well as for training purposes.

The Institute of Justice also provides training programs concerning foreign bribery investigations.

- The Institute of Justice provides educational programs, such as "Request for MLA & Extradition: Operations", "Understanding International Joint Investigations", "Understanding International Cartel Cases & Case Studies" and "Anti-Corruption & Integrity". The target audience for these programs ranges from new prosecutors, as well as experienced prosecutors, to prosecutorial investigators, immigration officers, and correctional officers.
- In 2019, 60 such program sessions were run; in 2020, 40 sessions were run. In 2021, there have been four sessions so far, and there will be an additional 38 sessions throughout the year. (Both classroom-based and online-based lectures will take place during the COVID-19 epidemic.)
- The training allows public officials to be well-acquainted with the constituent elements of foreign bribery and encourages them to actively investigate and prosecute cases, while concurrently raising awareness of criminal activities where foreign natural and legal persons provide bribes to Korean public officials to acquire unjust profits.

Text of recommendation 9(g):
9. Regarding investigation and prosecution of foreign bribery, the Working Group recommends that Korea:

g) Ensure prosecutors who conduct foreign bribery cases are not subjected to political or other undue interference, including through the Minister of Justice or Prosecutor General's power of instruction in specific cases [Convention, Articles 1, 2, 5 and 6; 2009 Recommendation III.i. and Annex I.D.; Phase 3 recommendation 4(c)].

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

The Supreme Prosecutors' Office has implemented the *Guideline of Prosecutors' Objection Filing Procedure, etc.*, established in December 2017, to protect prosecutors' right to file an objection in relation with performance of their duties such that they can independently perform their duties without being influenced by any inappropriate external pressures.

- The Guideline prescribes that, if a prosecutor dissents from his/her superior in relation with legitimacy or justification of the superior's direction or supervision on a specific case, the prosecutor may file a written objection with the superior (Article 3(1) of the Guideline), the superior then should add his/her opinion on the above written opinion and submit it to the head of the agency to which he/she belongs (Article 3(2) of the Guideline), and then the head of the agency should report about the objection to the head of a superior prosecutors'

office and take necessary measures for the prosecutor and the superior (Article 4(1) and (2) of the Guideline).

- The Guideline further provides that no disadvantage should be given, on the ground of filing of objection, to a prosecutor who has filed such objection (Article 5(2) of the Guideline), and that the written objection should be archived for 10 years from the date when the written objection was filed (Article 6(1) of the Guideline). These provisions were set with intent to prevent and detect any illegitimate and inappropriate direction or supervision.

In addition, the Supreme Prosecutors' Office has implemented the *Guideline on Records of Directions and Instructions etc. During Prosecution Service's Decision-Making Process*, established in December 2017, to enhance transparency of the internal decision-making process and clarify responsibility for a decision.

- According to the Guideline, when there is disagreement regarding a specific case between the prosecutor in charge of the case and his/her superior or between a prosecutors' office and the Supreme Prosecutors' Office, opinions of each party and directions and instructions made regarding the case should be recorded (Article 2(1) of the Guideline); further, the reason why and the process how they reached such decision may be recorded as well (Article 2(2) of the Guideline).

It is also prescribed that such records should be registered to the Korea Information System of Criminal-Justice Services (KICS) (Article 3 of the Guideline) and the registered records should be preserved in the server for a preservation period of the relevant case records (Article 5 of the Guideline). By recording and preserving all dissenting opinions raised in relation with a specific case, the provisions are expected to improve transparency of the decision making process.

Text of recommendation 10(a):

10. Regarding sanctions applicable to natural persons for foreign bribery, the Working Group recommends that Korea:

a) Urgently amend its legislation to increase financial sanctions applicable to natural persons for foreign bribery [Convention, Articles 3 and 5; 2009 Recommendation IV and V; Phase 3 recommendation 3].

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

[MOJ]

The previous FBPA prescribes that a natural person which committed foreign bribery shall be punished by a fine not exceeding 20 million won and that, if the pecuniary advantage obtained by such bribery exceeds 10 million won, the natural person shall be punished by a fine not exceeding an amount equivalent to double the pecuniary advantage.

However, the above provision had issues as follows.

(1) Since it does not provide with a lower limit of the fine, an offender may be imposed a minor penalty under the provision.
(2) It was necessary to increase the upper limit of the fine so as to impose heavier punishment.
(3) Although the Act has an aggravated punishment provision – which prescribes to impose a fine equivalent to double the pecuniary advantage to a natural person who

obtained the pecuniary advantage of exceeding 10 million won via such offence and to a legal person which obtained such advantage of exceeding 500 million won, the provision could not easily be applied in practice since it is difficult to calculate the precise amount of the "pecuniary advantage obtained via the offence."

In order to overcome such limitations, the FBPA was amended on February 4, 2020. (Article 3(1) of FBPA)

- If the pecuniary advantage that a natural person obtained by the offence or the amount of the bribe does not exceed 10 million won, the natural person is punished by a fine not less than 50 million won (20 million won prior to the amendment).
- If the pecuniary advantage that a natural person obtained by the offence or the amount of the bribe exceeds 10 million won, the natural person is punished by imprisonment for not more than five years or by a fine not less than double and not more than five times the pecuniary advantage or the amount of bribe.

In the amendment, the upper limit of the fine was increased to "five times the pecuniary advantage," and the pervious upper limit (double the pecuniary advantage) became the lower limit of the fine.

Furthermore, the amendment is expected to facilitate actual imposition of fines because, according to the amendment, the amount of fine can be determined not only based on the pecuniary advantage obtained by bribery but also based on the amount of the bribe.

In addition, the amendment places priority to "the pecuniary advantage obtained via the offence" over "the amount of bribe" by prescribing that the amount of fine is determined based on the amount of bribe only when the pecuniary advantage obtained by the offence is less than the amount of bribe or cannot be calculated. It is because, if it is allowed to exercise discretion in determining the basis for fining, either "the pecuniary advantage obtained via such offences" or "the amount of bribe," the judicial authorities are likely to opt for "the amount of the bribe," which is comparatively easier to be proven or calculated.

[Additional Information]
OECD WGB's factual analysis of the amended FBPA is only partially correct; the analysis stating "a maximum of 5 years imprisonment or a fine of up to KRW 50 million (USD 45 000) if the pecuniary advantage obtained or the amount of bribe is below KRW 10 million (USD 9000)" is correct but the analysis stating "a maximum of 5 years imprisonment or a fine of at least twice and up to five times the amount of the pecuniary advantage or of the amount of the bribe if the pecuniary advantage obtained or the amount of the bribe exceeds KRW 10 million (USD 9000)" is incorrect.

To help with your understanding, two versions of the amended provision is provided as below.
※Version A: Provided in Korea's reply to the Request for additional information.

In such cases, if the pecuniary advantage obtained by such offense (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated) exceeds ten million won, the offender shall be punished by imprisonment with labor for not more than five years or by a fine of two to five times the amount of the pecuniary advantage (or the bribe provided, if the amount of the pecuniary advantage is less than the bribe provided or cannot be calculated).
※Version B: A more clarified and direct translation of the provision.

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 shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding fifty million won. In such cases, if the pecuniary advantage obtained by such offense exceeds ten million won, the offender shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding an amount equivalent to not less than double and not more than five times the pecuniary advantage (the amount of bribe in cases where the pecuniary advantage is less than the amount of bribe or the nature of the pecuniary advantage cannot be quantified).

It seems that the OECD WGB understands the options given as a parallel and equal option. Meaning that the prosecutor or the court can choose between the pecuniary advantage and the bribe amount with discretion. Thus, resulting in the conclusion "the judiciary authorities are likely to opt for "the amount of the bribe [as a basis for determining the sanctions', which is comparatively easier to be proven or calculated."

Korea would like to help the OECD WGB that the options given in the provisions are not actually 'options' and that those so called options are not parallel and equal.

Firstly, in cases where the pecuniary advantage is less than the amount of bribe, it is clear that the person to be indicted and sentenced by the above provision faces a harsher monetary punishment if the fine is based on the amount of bribe.

Secondly, it seems that the OECD WGB believes that the Korean prosecutors will seek the easy way (proving the amount of bribe rather than the pecuniary advantage) because of the phrase in the added parenthesis. The OECD WGB seems to believe this because it is easier to prove the amount of bribe rather than the pecuniary advantage arising from the crimes.

However, if you carefully read the wording in the parenthesis "the nature of the pecuniary advantage cannot be quantified," this is not true. Basing the fine on the amount of bribe is strictly restricted only in cases where the pecuniary advantage cannot be quantified. Thus, simply put, basing the fine on the pecuniary advantage is the primary principle and only in circumstances when the pecuniary advantage cannot be quantified, basing the fine on the bribe amount is applied as an exception.

Also, every prosecutor in every country bears the burden of proof. They have to prove beyond reasonable doubt that the defendant has indeed committed the crime. This is no different in proving the amount of pecuniary advantage. If the prosecutor cannot prove beyond reasonable doubt the amount of pecuniary advantage, regardless of the defendant being found guilty, the court cannot sentence any fine because there is no basis to impose the fine on. Likewise, if the amount of pecuniary advantage cannot be quantified because of the nature of the pecuniary advantage, it make is much more difficult to prove it in court. The added phrase in the parenthesis is a way to prevent the defendant walking away without being fined.

So, to uphold criminal justice and to take a firm ground on foreign bribery crimes, the Korean authorities sought a way to impose a heavy fine even in situations where the amount of pecuniary advantage could not be quantified due to its nature. During this process, the amount of bribe was thought as a reasonable standard to base the fine on. Thus, contrary to the OECD WGB belief, the phrase in the parenthesis is a legislative device to cover the void in punishment and not a detour in seeking the easier way out.
In conclusion, Korea is of the opinion that Korea has completely implemented Recommendations 10(a) and 12(a).

Text of recommendation 10(b):
10. Regarding sanctions applicable to natural persons for foreign bribery, the Working Group recommends that Korea:

b) Take all necessary steps (including through guidance and training to law enforcement and the judiciary) to ensure (i) that sanctions imposed in practice against natural persons in foreign bribery cases are effective, proportionate and dissuasive; and (ii) that confiscation of the bribe and proceeds of bribery from natural persons is routinely sought and imposed in foreign bribery cases where appropriate [Convention, Articles 3 and 5; 2009 Recommendation IV and V; Phase 3 recommendation 3].

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

The Ministry of Justice amended the FBPA as mentioned above so that effective, proportionate and dissuasive sanctions are surely imposed on natural persons. Through the amendment, the criminal penalty on a natural person was increased: the upper limit of a fine imposed on a natural person was increased from the previous "20 million won" to "50 million won" and, if the pecuniary advantage obtained by the offence exceeds 10 million won, the offender would be imposed a fine not less than double and not more than five times the pecuniary advantage (amended on February 4, 2020). (Article 3(1) of FBPA)

- The amended FBPA (amended on December 18, 2018) requires imposing fines in parallel when a natural person is sentenced to imprisonment for the offence (Article 3(4) of FBPA), which ultimately eradicates the motivations for foreign bribery.

The Ministry of Justice translated *Identification and Quantification of the Proceeds of Bribery: Revised edition* (February 2012, OECD Publishing), published and distributed the Korean version to the prosecution, police, and courts, and instructed the Institute of Justice to provide with training on the basis of it, so as to nurture investigative and judicial institutes' capacity to identify and quantify criminal proceeds from bribery in a foreign bribery case.

- Programs provided by the Institute of Justice include "Corporate Accounting Crimes", "Account Tracing & Accounting Analysis: Operations", "Tax Offense and Off-shore Tax Evasion" and "Recovery of Overseas Illicit Property". The target audience is new and experienced prosecutors, prosecutorial investigators and other relevant officers.
- In 2019, six sessions of the above programs were run; in 2020, seven sessions were run. In 2021, there has been one session so far, and three more sessions are scheduled to take place additionally throughout the year, including "Investigation of Financial & Securities Offenses".(Both classroom-based and online-based lectures will take place during the COVID-19 epidemic.)
- Programs for money laundering investigation include "Case Studies: ML Crime Investigations" and "AML Systems". In 2019, two sessions of the above programs took place; in 2020, four sessions took place. In 2021, two sessions have taken place so far, and one additional session is scheduled.

In the Malaysia Land Case (Matrix "12C: Hassed" Case) where the defendants were convicted of violation of the FBPA and sentenced to both imprisonment and fine in November 2018, the amount of fine imposed on natural and legal persons was KRW 2 million.

After the case, however, the FBPA was amended in February 2020 so as to impose "a fine of at

least twice and up to five times the amount of the pecuniary advantage obtained" by the crime if the obtained pecuniary advantage "exceeds KRW 10 million." Therefore, it is expected that fines exceeding the pecuniary advantage obtained by bribery would be sentenced in future cases, on the basis of the improved legal framework.

The Supreme Prosecutors' Office provides training programs about asset recovery and ML crime investigation techniques and relevant cases every six months, targeting prosecutors and investigators in charge of asset recovery. Further, it published a manual for asset recovery and distributed it to prosecution agencies in July 2019, such that criminal proceeds generated by a foreign bribery crime can be promptly confiscated.

The Chief Prosecutor of the Seoul High Prosecutors' Office and the Director of the Criminal Trial & Civil Litigation Division of SPO participate, on behalf of the prosecution service, in the Sentencing Commission (consisting of in total 13 members) under the Supreme Court to discuss and determine sentencing guidelines for all types of crimes every year.

- The Chief Prosecutor and the Director are planning to add bribery crimes, including foreign bribery, on the agenda in the 8th Sentencing Commission scheduled to be held in May to June 2021, so that effective and dissuasive punishment can be imposed on foreign bribery crimes.

Text of recommendation 11(a):

11. Regarding international cooperation, the Working Group recommends that Korea:

a) Take a more proactive stance in sending mutual legal assistance (MLA) requests in foreign bribery cases, including by raising awareness and providing training to Korean investigative authorities to identify foreign bribery cases requiring MLA. Korea is encouraged to use all available means to secure MLA, including through contacts with foreign authorities via informal channels and through the Working Group [Convention, Articles 5, 9 and10].

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

[MOJ]

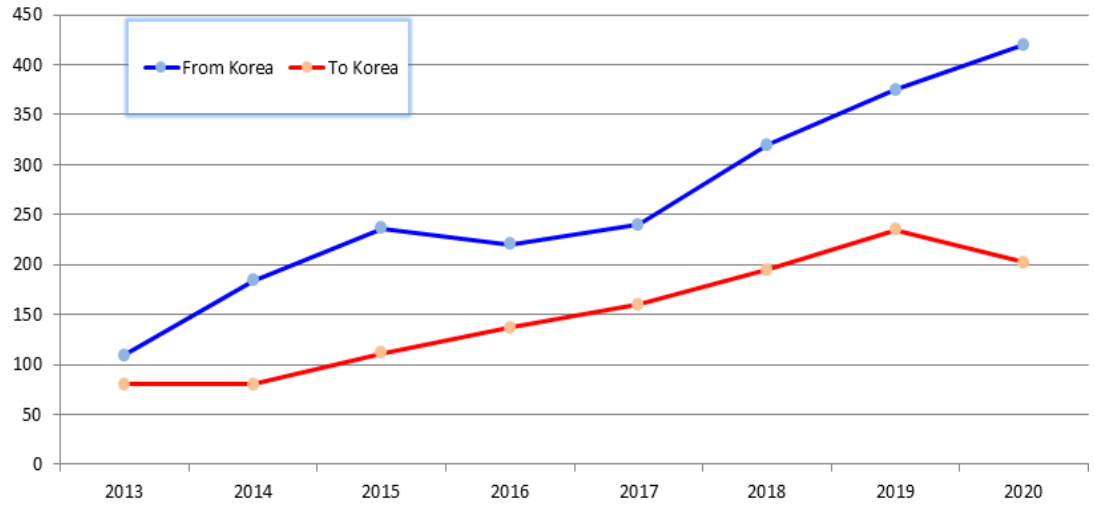
In January 2019, the Ministry of Justice published its "Interpretive Notes to Foreign Bribery Prevention Act" (FBPA). The interpretive notes include recommendations 6(a) to (c), as well as Article 1 of the OECD Anti-Bribery Convention, so as to provide guidance for domestic investigative and judicial authorities to accurately apply and interpret the FBPA in light of the Convention. The interpretive notes were distributed in February 2019, and shared among authorities such as the prosecution, police, courts, Ministry of Foreign Affairs, Anti-Corruption and Civil Rights Commission, the National Archives of Korea, and other relevant agencies for their operational uses in investigations and trials, as well as for training purposes.

In addition, the Ministry of Justice published a handbook titled "MLA Practices and Cases" in October 2020, and uploaded a post introducing tasks of the International Criminal Affairs Division of the Ministry of Justice on e-Pros (operational system for the Prosecution) in February 2020 and documents on MLA practices and MLA request samples in February 2021.

- As such, the Ministry of Justice has provided MLA cases and MLA request samples, made to/from Korea, to encourage filing MLA requests regarding foreign bribery cases.

Such efforts resulted in clear increase in the number of MLA cases. The number of MLA requests from Korea sharply rose from 320 (2018) to 420 (2020), and the number of those to Korea increased from 195 (2018) to 202 (2020).

To/From	2013	2014	2015	2016	2017	2018	2019	2020
From Korea	109	184	236	220	240	320	375	420
To Korea	80	80	111	137	160	195	235	202



In addition, the Institute of Justice also provides training programs concerning foreign bribery investigations.

- The Institute of Justice provides educational programs, such as “Request for MLA & Extradition: Operations”, “Understanding International Joint Investigations”, “Understanding International Cartel Cases & Case Studies” and “Anti-Corruption & Integrity”. The target audience for these programs ranges from new prosecutors, as well as experienced prosecutors, to prosecutorial investigators, immigration officers, and correctional officers.
- In 2019, 60 such program sessions were run; in 2020, 40 sessions were run. In 2021, there have been four sessions so far, and there will be an additional 38 sessions throughout the year. (Both classroom-based and online-based lectures will take place during the COVID-19 epidemic.)

The Ministry of Justice has actively participated in major international conferences such as FATF ACT-NET, G20, ASEAN+3, and UN CCPCJ and continuously held bilateral meetings, ARIN-AP, etc. with central authorities of MLA of the U.S., China, Japan, etc. to facilitate MLA via informal channels.

- In particular, it is continuing its participation in international conferences via video conference despite the current COVID-19 pandemic. Through such efforts, it continues and further reinforces information-sharing and mutual assistance with foreign law enforcement and authorities in charge.
- In November 2019, the Ministry of Justice newly organized an ASEAN plus Korea ministerial meeting, establishing a network for strengthening the capacity to jointly counter

transnational crimes including foreign bribery.

- In December 2019, the Ministry of Justice secured a 6 billion won budget (2 billion per year; for three years) for UNODC's ODA (official development assistance) designed to strengthen the investigation capacity of ASEAN Member States. Through this ODA project that has been already initiated in 2020, training programs on extradition, MLA and asset recovery between Korean and ASEAN will be provided with a stronger network between the two by the year of 2023.

Text of recommendation 11(b):

11. Regarding international cooperation, the Working Group recommends that Korea:

b) Ensure that extradition requests in foreign bribery cases are responded to in a timely manner [Convention, Articles 5, 9 and10].

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

[MOJ]

For timely cooperation with other countries, **the Ministry of Justice** has held bilateral meetings with central authorities of major partners including the U.S., Japan, and China every year, so that important extradition cases are discussed and processed in a swift manner.

The Ministry of Justice is making its best efforts to make sure that all extradition requests – including those involving foreign bribery – can be processed in a swift and timely manner.

Korea is actively investigating and prosecuting foreign bribery cases including the case involving KEPCO. Further, Korea has sent several MLA requests and been waiting for the responses thereto; it simply has not sent an extradition request because none of such foreign bribery cases have developed into a stage requiring extradition yet.

Recommendation 11.b. required to "ensure that extradition requests in foreign bribery cases are responded to in a timely manner." With regard to the recommendation, Korea is operating a system for promptly sending and implementing extradition requests to and from foreign countries.

There has been no case where Korea requested extradition of a criminal involved in a foreign bribery case to a foreign country. It received one extradition request from the U.S., but the criminal in the case is currently under trials in Korea and thus cannot be immediately extradited to the U.S.

Recommendation 11.b. is intended to assure that extradition requests are responded in a timely manner; it does not mean that the number of extradition requests should be increased compared to that at the time of the Phase 4 Evaluation. Thus, the above evaluation does not meet the purpose of Recommendation 11.b.

For the above reasons, it should be evaluated that Recommendation 11.b. has been completely implemented by Korea.

Text of recommendation 12(a):
12. Regarding sanctions applicable to legal persons for foreign bribery, the Working Group recommends that Korea:

a) Promptly amend its legislation to increase sanctions applicable to legal persons for foreign bribery [Convention, Articles 2, 3 and 5; 2009 Recommendation IV and V; Phase 3 recommendation 3].

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

[MOJ]
The previous FBPA prescribes that a legal person which committed foreign bribery shall be punished by a fine not exceeding 1 billion won and that, if the pecuniary advantage obtained by such bribery exceeds 500 million won, the legal person shall be punished by a fine not exceeding an amount equivalent to double the pecuniary advantage.

However, the above provision had issues as follows.

(1) Since it does not provide with a lower limit of the fine, an offender may be imposed a minor penalty under the provision.
(2) It was necessary to increase the upper limit of the fine so as to impose heavier punishment.
(3) Although the Act has an aggravated punishment provision – which prescribes to impose a fine equivalent to double the pecuniary advantage to a natural person who obtained the pecuniary advantage of exceeding 10 million won via such offence and to a legal person which obtained such advantage of exceeding 500 million won, the provision could not easily be applied in practice since it is difficult to calculate the precise amount of the "pecuniary advantage obtained via the offence."

In order to overcome such limitations, the FBPA was amended on February 4, 2020.
According to the amended Act (Article 4 of FBPA), if the pecuniary advantage that a legal person obtained by the offence or the amount of the bribe exceeds 500 million won, the legal person is punished by a fine not less than double and not more than five times the pecuniary advantage or the amount of bribe.

In the amendment, the upper limit of the fine was increased to "five times the pecuniary advantage," and the pervious upper limit (double the pecuniary advantage) became the lower limit of the fine.
Furthermore, the amendment is expected to facilitate actual imposition of fines because, according to the amendment, the amount of fine can be determined not only based on the pecuniary advantage obtained by bribery but also based on the amount of the bribe.

In addition, the amendment places priority to "the pecuniary advantage obtained via the offence" over "the amount of bribe" by prescribing that the amount of fine is determined based on the amount of bribe only when the pecuniary advantage obtained by the offence is less than the amount of bribe or cannot be calculated. It is because, if it is allowed to exercise discretion in determining the basis for fining, either "the pecuniary advantage obtained via such offences" or "the amount of bribe," the judicial authorities are likely to opt for "the amount of the bribe," which is comparatively easier to be proven or calculated.

[Additional Information]
As previously mentioned in recommendation 10.a., When determining sanctions, "the amount of

pecuniary advantage" strictly takes precedence over "the amount of the bribe." It is clearly not something that is at the discretion of the judiciary. This stems from a misunderstanding as does not accurately reflect the intent behind the amendment of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions.

Article 4 of the amended Act clearly states "the amount of pecuniary advantage" as the basis for determining the sanctions.

Moreover, the provision additionally states in a parenthesis, "the amount of bribe, if the amount of pecuniary advantage is less than the amount of bribe or cannot be determined," which allows fines to be calculated even when the amount of pecuniary advantage cannot be calculated or determined. This was implemented to prevent a possible gap in cases where criminal proceeds cannot be calculated or determined and the additional statement is a legal apparatus to be used as a supplementary guide for determining fines.

Essentially, this is a provision to impose law offenders the most amount of fines as possible and to close any possible gaps in imposing fines, by allowing the amount of bribe to be used as the basis only when the amount of pecuniary advantage cannot be determined.

Therefore, in cases where "the amount of pecuniary advantage" can be determined, judiciary authorities cannot opt for "the amount of the bribe" as a basis for determining the sanctions; if they do, the decision would be an unlawful ruling that breaches the scope of interpretation for the aforesaid provision.
As such, recommendation 12.a. must be evaluated as fully implemented.

Text of recommendation 12(b):
12. Regarding sanctions applicable to legal persons for foreign bribery, the Working Group recommends that Korea:

b) Take all necessary steps (including through guidance and training to law enforcement and the judiciary) to ensure that (i) sanctions imposed in practice against legal persons in foreign bribery cases are effective, proportionate and dissuasive; and (ii) confiscation of the bribe and proceeds of foreign bribery from legal persons – or property of equivalent value – is routinely sought in foreign bribery cases where appropriate, and, to this end, provide training on the use of confiscation and the identification and quantification of proceeds of foreign bribery [Convention, Articles 2, 3 and 5; 2009 Recommendation IV and V; Phase 3 recommendation 3].

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

[MOJ]
The amended Act prescribes that, if the pecuniary advantage that a legal person obtained by the offence or the amount of the bribe exceeds 500 million won, the legal person is punished by a fine not less than double and not more than five times the pecuniary advantage or the amount of bribe (amended on February 4, 2020). As such, the Ministry of Justice made effort to impose effective, proportionate and dissuasive sanctions on legal persons and thereby eradicate their motivations for committing foreign bribery. (Article 4 of FBPA)

The Ministry of Justice translated *Identification and Quantification of the Proceeds of Bribery: Revised edition* (February 2012, OECD Publishing), published and distributed the Korean version to the prosecution, police, and courts, and instructed the Institute of Justice to provide

with training on the basis of it, so as to nurture investigative and judicial institutes' capacity to identify and quantify criminal proceeds from bribery in a foreign bribery case. (Refer to "Interpretive Notes to Identification and Quantification of the Proceeds of Bribery of FBPA")

Text of recommendation 13:
13. Regarding engagement with legal persons, the Working Group recommends that Korea review, in coordination with all relevant government bodies that interact with Korean companies operating abroad, its processes and initiatives for engaging the private sector with a view to developing awareness on foreign bribery risks specifically, and more efficiently incentivising Korean companies, including SMEs, to respect Korea's foreign bribery legislation [Convention Articles 2 and 5; 2009 Recommendation X.C. and Annex II].

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

The Ministry of Foreign Affairs instructs all Korean diplomatic missions to educate Korean companies operating abroad on the OECD Anti-Bribery Convention and related domestic laws on the occasion of workshops, seminars and meetings for supporting corporate activities (July 2019). As of the date of the follow-up, more than 40 missions in countries where Korean companies actively conduct business reported holding such events to raise public awareness on foreign bribery risks and related legislation

[MSS]
The Ministry of SMEs and Start-ups (MSS) has signed an integrity practice agreement with 38 organizations - 33 affiliated agencies including Korea Federation of SMEs (K-BIZ) and 5 organizations related to SMEs such as Korea Venture Business Association (KOVA) in order to spread the culture of integrity not only to the public service community but also to SMEs in the private sector (Sep. 2018).

And follow-up measures were introduced:
(1) The person in charge of integrity practice by each institution was designated and operated,
(2) The system was improved to eradicate improper overseas business trip,
(3) 'One Strike Out' system was applied - in which officials who received money&goods(over KRW 1 million) are dismissed according to the principle of zero tolerance
The Ministry of SMEs and Start-ups (MSS) regularly provides integrity education to SMEs through 13 regional offices and 35 affiliated agencies.

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The Ministry of SMEs and Startups (MSS) regularly provides integrity education to SMEs through

13 regional offices and 35 affiliated agencies.

Text of recommendation 14(a):
14. Regarding tax measures to combat foreign bribery, the Working Group recommends that Korea:

a) Engage as a matter of priority, through its National Taxation Service (NTS), in a more proactive approach in enforcing the non-tax deductibility of bribe payments against the defendants in past and future foreign bribery enforcement actions, including by systematically re-examining defendants' tax returns for the relevant years to verify whether bribes have been deducted [2009 Recommendation VIII.i.; 2009 Tax Recommendation; Phase 3 recommendation 8].

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

[NTS]
The National Tax Service (NTS) has tried its best efforts to prioritize proactive measures for preventing bribe being deducted. When it identifies any expense with unclear usage in its mandatory review procedure, such expense would be considered as not deductible. In particular, if a company with international transaction records shows any sign of bribe payment, the NTS would take responsive measures to verify bribe payment and review the tax return of the company immediately in order to render the bribe as non-deductible.

[Additional Information]
You mentioned that none of the individuals or companies convicted of foreign bribery had had their tax returns re-examined, but it is different from the fact. The NTS had long been committed to prevent the case of bribery being deducted in Korea, and also paid more attention to this issue after the Working Group expressed concern about the issue. In particular, when a taxpayer uses any expense for unclear purpose (bribery, for instance) in other country, the NTS considers such expenses as non-tax deductible.

For example, there was a relevant case of a Korean construction company. The company allocated funds for operation expenses to its personnel dispatched to other country for obtaining a contract, but officials from the NTS identified that some parts of such expenses were likely to be used for the bribery. In this regard, the NTS decided not to allow non-tax deduction of such expenses.

In addition, there is another point to clarify about the notification of information regarding concluded foreign bribery cases. The NTS has enhanced cooperation with relevant agencies since 2018 when the Working Group expressed concerns about the issue. As a part of such cooperation, the NTS re-examined tax returns on the concluded foreign bribery case. In this case, tax investigators imposed tax on unreported amounts of foreign income, which was the source of the foreign bribery.

Text of recommendation 14(b):
14. Regarding tax measures to combat foreign bribery, the Working Group recommends that Korea:

b) Take appropriate measures to clarify the interpretation of the Framework Act on National Taxes such that it does not operate to prevent the NTS from reporting information regarding suspected foreign bribery uncovered in the course of tax investigations to Korean law enforcement authorities [2009 Recommendation VIII.i.; 2009 Tax Recommendation; Phase 3 recommendation 8].

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

If no action has been taken to implement recommendation 1 (b), 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:

[NTS]
Although there is no explicit reference about foreign bribe payment cases, the Framework Act on National Taxes prescribes qualifying cases where taxation information is allowed to be provided to other agencies through its Confidentiality provision. In this regard, the NTS would provide relevant taxation information to other national agencies, if such other agencies request the information for proceedings like prosecution of tax criminal or issue any warrant, otherwise if the information is required under other legal Acts.

For instance, if a taxpayer creates secret fund for illegal uses like foreign bribe payment and is alleged to evade tax pursuant to the Law of Punishment on Tax Criminal, the NTS accuses such subject and report the information immediately to law enforcement agencies.

[Additional Information]
We only interpret the provision regarding the prohibition on abuse of tax investigations as its original intention to prevent tax investigation executed for other than taxation purpose. It is not deemed to contain any intention to prevent the sharing of information related to foreign bribery cases.

In other words, the provision does not permit the NTS to conduct any tax investigation intended to prove criminal acts. The NTS, however, accuses tax evasion cases to criminal investigation authorities when its investigation team reveals the fact that the alleged person has created secret funds via procedural costs for illegal uses like foreign bribery during the tax investigation and such case is considered to be tax evasion under the Punishment of Tax Offenses Act. But when it comes to proving and judging whether such secret funds were actually used for illegal uses like foreign bribery, only authorities responsible for criminal investigation have legitimate powers to proceed such procedures.

Text of recommendation 14(c):
14. Regarding tax measures to combat foreign bribery, the Working Group recommends that Korea:

c) Ensure NTS officials have specific training on detecting FBPA violations, including through tax audit processes [2009 Recommendation VIII.i.; 2009 Tax Recommendation; Phase 3 recommendation 8].

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

[NTS]

Content related to the OECD Anti-Bribery Convention and Foreign Bribery Prevention Act (FBPA) is included in the regular training course for tax investigation professional operated by the NTS. Since 2019, we have ensured to contain the Anti-Bribery Convention and FBPA session in the *International Tax Investigator Training Course* and *Financial Investigator Training Course*, which are operated annually.

The NTS operates 'OECD Anti-Bribery Convention and Tax Investigation Guidelines' session as a part of its International Taxation Professional Training Course. The main theme of the session is 'Act on Combating Bribery of Foreign Public officials in International Business Transaction', and specific content is described in the attached file. The target trainees are officials in the NTS who take in charge of the international investigation, and about 100 trainees take the session.

Text of recommendation 14(d):

14. Regarding tax measures to combat foreign bribery, the Working Group recommends that Korea:

d) Ensure the prosecuting authorities systematically share information with the NTS in relation to foreign bribery convictions, so that the NTS can enforce nondeductibility of bribes [2009 Recommendation VIII.i.; 2009 Tax Recommendation; Phase 3 recommendation 8].

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

[SPO]

The prosecution service has shared information with the National Tax Service on the basis of close relationship built through a meeting that was held with the National Tax Service on February 27, 2019 for cooperation in crackdown of tax evaders and tax evasion-assisting shell companies.

Sharing of information on tax evasion, including those involving foreign bribery, is currently performed at the level of each branch office of the prosecution service: when a prosecutors' office obtains such information during its investigation process, it individually informs the National Tax Service of the information.

With regard to this, the Supreme Prosecutors' Office is planning to establish a united system to share tax evasion information at the level of the Supreme Prosecutors' Office.

- The SPO has not shared any foreign bribery-related information with the NTS.
- The SPO is preparing to establish a united system to share information – including that on tax evasions detected through foreign bribery investigations – with the NTS.
- It is planned to hold a meeting with the NTS in the second half of 2021 to discuss about the subject, process, and methods of the information sharing required for the system's establishment.

Text of recommendation 15(a):

15. Regarding public advantages, the Working Group recommends that Korea:

a) Encourage its Public Procurement Service (PPS) to routinely check the debarment lists of multilateral financial institutions in the context of public procurement contracting [2009

Recommendation XI; 2006 Export Credit Recommendation; 2016 ODA Recommendation].

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

[Public Procurement Service]
Contracts undertaken by the Public Procurement Service (PPS) attributes to public contracts with the Republic of Korea as a party in accordance with ACT ON CONTRACTS TO WHICH THE STATE IS A PARTY, and restrictions on the participation in tender of the companies sanctioned by Multilateral Development Banks (MDBs) are not applicable because there is no legal basis.

Text of recommendation 15(b):
15. Regarding public advantages, the Working Group recommends that Korea:

b) Encourage public contracting authorities, including the PPS and KOICA, to consider, as appropriate, the existence of anti-corruption internal controls, ethics and compliance programmes of companies seeking public advantages [2009 Recommendation XI; 2006 Export Credit Recommendation; 2016 ODA Recommendation].

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

[Public Procurement Service]
The Public Procurement Training Institute ran the integrity training in the Multiple Award Schedule(MAS) working–level courses 4 times in 2019 and 7 times in 2020 both physically and virtually(due to COVID-19).
In 2021, practical courses on MAS contracts and cost estimation in construction are scheduled to be made 5 times and once respectively both on and offline.)

PPS operates measures to improve integrity and anti-corruption for internal controls. Under the terms of the contract, the bidder receives the pledge of integrity and when the integrity contract is violated on the charges of bribery, unfair subcontracting transactions, etc. the bidder cannot participate in the bidding process and PPS applies penalties for bidders who have been debarred in public procurement at various bidding evaluations to gives disadvantages to those bidders. For the implementation of the OECD recommendation, PPS Training Institute ran the integrity trainings from 2019 and expanding the opportunities for public procurement suppliers.

[KOICA-Korea International Cooperation Agency]
To prevent corruption in public procurement, KOICA, in 2019, made it mandatory for bidders to proclaim their willingness to have their internal controls, code of ethics, and oversight system in place and submit an anti-corruption declaration to the contracting authority. Furthermore, the expanded efforts, already underway, include establishing an anti-corruption control system even in Calls for Proposals.

Most of the performers participating in the KOICA project are SMEs or other institutions, and there are limitations in all areas - including governance and capacity - for them to immediately establish internal controls, ethical regulations, and CP. Therefore, KOICA is playing the role of a partner for the implementation of a sustainable anti-corruption policy.

In addition, as a method of implementing a sustainable anti-corruption policy, the contractor not only declares his or her efforts to practice it, but also KOICA encourages the declarer to self-

confirm it.

Text of recommendation 15(c):
15. Regarding public advantages, the Working Group recommends that Korea:

c) With respect to official development assistance (ODA), (i) KOICA align with the EDCF and require persons applying for ODA contracts to declare that they have not been convicted of foreign bribery, in any jurisdiction; and (ii) take into consideration foreign bribery risks specifically in awareness-raising and training activities courses for employees of KOICA and EDCF agencies as well as contractors [2009 Recommendation XI; 2006 Export Credit Recommendation; 2016 ODA Recommendation].

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

[Korea Eximbank]
Implemented semi-annual training for employees of Korea Eximbank's EDCF sector on foreign bribery risks and awareness-raising including an overview of OECD Anti Bribery Convention, provisions and recommendations applied to EDCF, and the relevant internal regulations.
Training dates are as followed: 2019. 8. 6, 2020. 2. 20, 2020. 7. 23, 2021. 2.18.

- Training date and duration:
  2019. 8. 6, 2020. 2. 20, 2020. 7. 23, 2021. 2.18 (semi-annual basis, one-hour each)
  Participants : EDCF (ODA) Loan Officers (30~40 participants each)

[KOICA-Korea International Cooperation Agency]

(i) KOICA has required bidders to confirm the absence of conviction of foreign bribery over the last five years. According to the revised enforcement regulation, companies convicted of bribery are certainly excluded from access to public tenders issued by KOICA.
(ii) KOICA has provided anti-corruption training on foreign bribery for employees and contractors who are in partnership with KOICA since 2019.

KOICA asks all companies participating in KOICA's bidding process to comply with the anti-corruption policy for overseas projects and provides them with individual guidance on declaration procedure of anti-corruption. KOICA also provides the companies with clear information related to anti-corruption and anti-foreign bribery policy at the beginning of bidding and contract, therefore they are required to declare themselves that they have no connection with any corruption and foreign bribery cases, and to submit the 'declaration letter of anti-corruption' to KOICA as an evidence. The KOICA's officials in charge of each contract must make pledge of the fair contract while sharing 'fair contract pledge letter' with the participating companies. In addition, KOICA also made an effort to legalize this procedure in cooperation with the Ministry of Foreign Affairs so that no corrupt companies can apply in any bidding processes of KOICA

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

Regarding Part II, countries are invited to provide information with regard to any follow-up issue identified below where there have been relevant developments since Phase 4. Please describe/include any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate.

16. The Working Group will follow up on the issues below as case-law, practice and legislation develop:

Text of issue for follow-up 16(a):
a) The efficiency of whistleblower reporting as concerns specifically foreign bribery suspicions, including the ACRC's referral of such reports to the SPO.

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:

[Anti-Corruption & Civil Rights Commission]

Follow-up measures	Follow-up implemented
Distributing 'Guidelines on Decision on Referral'(Sept. 27, 2012) within the ACRC enhancing compliance of the guideline	• 'Guidelines on Decision on referral'(Sept. 27, 2012) was distributed to ACRC report-handling division (Aug, 2019)
Conducting education for officials in charge of handling report on what should be taken care when protecting reporters while receiving and handling reports	• Public organizations in Seoul/ Incheon (Feb, 2019) • Public organizations in Daejeon/ Sejong/Chungcheong province (Mar, 2019) • Public organizations in Gwangju/ Geolla province (Mar, 2019) • Public organizations in Gyeonggi Province (Apr, 2019) • Public organizations in Gangwon Province (Apr, 2019) • Public organizations in Daegu/ North Gyeonsang Province (May, 2019) • Public organizations in Busan/Ulsan/Gyeongnam Province(May, 2019)
Making and broadcasting a documentary on public interest whistleblower to enhance positive image of whistleblowers and promote whistle-blowing	• Public interest whistle-blowing documentary was made and broadcasted on Education Broadcasting System (EBS) (Jun, 2019) • Proxy Reporting system introduction video was made and posted on ACRC homepage and YouTube (Jul, 2019) • Public interest whistle-blowing radio campaign was made and aired on CBS (Aug, 2019) • Public Interest Whistle-blowing animation film was made and broadcasted on TBS (Aug, 2019)

Text of issue for follow-up 16(b):
b) The sanctions imposed for false accounting committed for the purpose of bribing a foreign public official or hiding such bribery, to ensure they are effective, proportionate and dissuasive.

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:

[MOJ]
The Ministry of Justice amended the FBPA as mentioned above so that effective, proportionate and dissuasive sanctions are surely imposed on natural persons and legal persons, thereby eradicating their motivations for committing foreign bribery.

Through the amendment, the criminal penalty on a natural person was increased: the upper limit of a fine imposed on a natural person was increased from the previous “20 million won” to “50 million won” and, if the pecuniary advantage obtained by the offence exceeds 10 million won, the offender would be imposed a fine not less than double and not more than five times the pecuniary advantage (amended on February 4, 2020). (Article 3(1) of FBPA)

- The amended FBPA requires imposing fines in parallel when a natural person is sentenced to imprisonment for the offence (amended on December 18, 2018). (Article 3(4) of FBPA)

The criminal penalty on a legal person was increased as well: it prescribes that, if the pecuniary advantage that a legal person obtained by the offence or the amount of the bribe exceeds 500 million won, the legal person is punished by a fine not less than double and not more than five times the pecuniary advantage or the amount of bribe (amended on February 4, 2020). (Article 4 of FBPA)

Text of issue for follow-up 16(c):
c) The use of suspended prosecutions in foreign bribery cases to examine the circumstances under which such prosecutions might be reinstated.

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:

[MOJ]
Suspension of prosecution is determined in comprehensive consideration of seriousness of the case, the age, circumstances, occupation, and family relation of the suspect, and his/her cooperation in the investigation.

A case in which prosecution is suspended is generally not further investigated or indicted unless (i) a more significant sentencing factor is newly discovered after the decision of suspension or (ii) the offender commits the offence of the same kind after the decision of suspension.

The same principle applies to foreign bribery cases. Thus, once it is determined to suspend the prosecution in a foreign bribery case, the prosecution will not be filed again except for the aforementioned reasons.
However, there have been no foreign bribery cases in which the prosecution is suspended for the last five years (2015-2020).

Text of issue for follow-up 16(d):
d) That time limits to notify account holders can be sufficiently extended to allow for effective

foreign bribery investigations and provision of information to foreign authorities.

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:

[MOJ]
The *Act on Reporting and Using Specified Financial Transaction Information* prescribes that, in all cases, including foreign bribery cases, where the FIU provides transaction information of an account holder in response to the provision requests from the investigative authorities (the prosecution service, police, etc.), the FIU should notify the account holder of such provision of transaction history within 10 days from the date of information provision (Article 10-2(1) of the *Act on Reporting and Using Specified Financial Transaction Information*).

However, if such notification is likely to pose a threat to human lives or physical safety, obstruct, pervert or defeat the course of justice in a judicial proceeding, or obstruct or excessively delay the progress of administrative procedures, and where a request of postponement from the investigative authorities is received, the notification should be postponed for a period not exceeding 6 months, or be postponed, at most twice, for a period not exceeding three months each time (a total extension of one year). (Articles 10-2(2) and 10-2(3) of the *Act on Reporting and Using Specified Financial Transaction Information)*

The provision applies not only to foreign bribery cases but also to all the criminal cases, thereby enabling the investigative authorities to investigate such cases for one year without disclosing their tracking of suspicious accounts.

Text of issue for follow-up 16(e):
e) The provision by Korea of prompt and efficient responses to international requests for banking information in foreign bribery cases.

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:

[MOJ]
The Ministry of Justice is responding to all MLA requests, including those for banking information in foreign bribery cases, in a swift and effective manner so as to provide the competent foreign authorities with relevant information as soon as possible.

Text of issue for follow-up 16(f):
f) Application in practice of the liability of legal persons for the foreign bribery offence in the absence of prosecution or conviction of a natural persons.

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:

[MOJ]

The Korean FBPA arranged to implement the OECD Convention includes a joint penalty provision – Article 4 of the FBPA prescribes that, if the representative of a corporation, or an agent or employee of, or any other person employed by a corporation promises or gives a bribe or expresses the intent to do so in connection with the business affairs of the corporation, not only such offender but also the corporation should be punished.

Therefore, even if an employee of a corporation gave a bribe to a foreign public official while the representative or the superior of the employee did not notice it, if the bribery was in connection with the corporation's business, the legal person should be criminally liable.

There may be cases where it is difficult to prosecute and punish a natural person who committed such offense (for the reasons that 1. the natural person is not identifiable, 2. the natural person has fled and cannot be arrested, or 3. a Korean court does not have the jurisdiction over the natural person because he/she is a foreign national employee who committed bribery in a foreign country).

Nonetheless, punishment of the legal person under the above joint penalty provision can be imposed independently from the prosecution and punishment of such natural person. The provision is to charge the legal person's criminal liability on the grounds that it did not exercise sufficient supervision.

Therefore, if it is acknowledged that an employee of a corporation committed bribery and that the corporation did not diligently supervise its employees to prevent such act, punishment on the legal person can be imposed independently from that on the employee. (p. 30 – 33, Interpretive Notes to Foreign Bribery Prevention Act)

Text of issue for follow-up 16(g):

g) Nationality jurisdiction over legal persons, where the natural persons involved are not Korean nationals.

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:

[MOJ]

Korea's criminal justice system adopts both the nationality principle (punishing for a crime committed by a Korean national) and the territorial principle (punishing an offender who committed a crime in the Korean territories).

Therefore, even if a natural person, who is not a Korean national, has promised, given, or expressed his/her intent to give a bribe to a foreign official in Korea, a legal person should take criminal liability in accordance with Joint Penal Provisions when the natural person is a representative, agent, employee or employer of the legal person.

Text of issue for follow-up 16(h):

h) Liability of legal persons for bribery committed by related legal persons.

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:

[MOJ]
Each legal person is recognized as an independent legal entity same as the cases of natural persons. Even if a certain legal person is legally liable for foreign bribery, it is not that other related legal persons also take legal liability.

However, in some circumstances – the responsible legal person and its related legal persons are, in effect, considered to be the same corporation given their parent-subsidiary relations, cross ownership, etc. or one is in complete control of the other or complicity is recognized between those legal persons –, the related legal persons can be held liable for the foreign bribery.

If a legal person no longer exists due to acquisition while fines, penalties, (value) confiscation, etc. were previously imposed, all the fines, penalties, (value) confiscation, etc. are passed onto the legal person that acquired the previous one. Therefore, previously imposed sentences are enforceable against a legal person which has been established or operated in the wake of acquisition.

Text of issue for follow-up 16(i):
i) The level of enforcement of foreign bribery against legal persons.

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:

[MOJ]
The previous FBPA prescribes that a legal person which committed foreign bribery shall be punished by a fine not exceeding 1 billion won and that, if the pecuniary advantage obtained by such bribery exceeds 500 million won, the legal person shall be punished by a fine not exceeding an amount equivalent to double the pecuniary advantage.

However, the above provision had issues as follows.

(1) Since it does not provide with a lower limit of the fine, an offender may be imposed a minor penalty under the provision.
(2) It was necessary to increase the upper limit of the fine so as to impose heavier punishment.
(3) Although the Act has an aggravated punishment provision – which prescribes to impose a fine equivalent to double the pecuniary advantage to a natural person who obtained the pecuniary advantage of exceeding 10 million won via such offence and to a legal person which obtained such advantage of exceeding 500 million won, the provision could not easily be applied in practice since it is difficult to calculate the precise amount of the "pecuniary advantage obtained via the offence."

In order to overcome such limitations, the FBPA was amended on February 4, 2020.
According to the amended Act, if the pecuniary advantage that a legal person obtained by the offence or the amount of the bribe exceeds 500 million won, the legal person is punished by a fine not less than double and not more than five times the pecuniary advantage or the amount of bribe. (Article 4 of FBPA)

In the amendment, the upper limit of the fine was increased to "five times the pecuniary advantage," and the pervious upper limit (double the pecuniary advantage) became the lower limit of the fine.

Furthermore, the amendment is expected to facilitate actual imposition of fines because, according to the amendment, the amount of fine can be determined not only based on the pecuniary advantage obtained by bribery but also based on the amount of the bribe.

In addition, the amendment places priority to "the pecuniary advantage obtained via the offence" over "the amount of bribe" by prescribing that the amount of fine is determined based on the amount of bribe only when the pecuniary advantage obtained by the offence is less than the amount of bribe or cannot be calculated. It is because, if it is allowed to exercise discretion in determining the basis for fining, either "the pecuniary advantage obtained via such offences" or "the amount of bribe," the judicial authorities are likely to opt for "the amount of the bribe," which is comparatively easier to be proven or calculated.

Text of issue for follow-up 16(j): j) Application of the FBPA provision that absolves from liability a legal person that "has paid due attention or exercised proper supervision to prevent" foreign bribery.
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: **[MOJ]** When a legal person has paid due attention or exercised proper supervision to prevent foreign bribery, it is exempted from criminal liability. In order to determine whether there was due attention or proper supervision, all factors are comprehensively considered: backgrounds and motives of bribery; whether a supervisor of a legal person joined or was aware of the bribery scheme in advance; whether a legal person has a compliance system in place; and whether a legal person has made anti-bribery efforts such as dissemination of a code of ethics or anti-corruption training programs. (p. 31, Interpretive Notes to Foreign Bribery Prevention Act)

PART III: ADDITIONAL ISSUES FOR INFORMATION

Efforts made to publicise and disseminate the Korea Phase 4 report, for example, through public announcements, press events, sharing with relevant stakeholders, particularly those involved in the on-site visit *[Phase 4 Evaluation Procedures, para. 50]*
Action taken as of the date of the follow-up report: The Phase 4 Report was published by Ministry of Foreign Affairs (MOFA), Ministry of Justice (MOJ), Supreme Prosecutors' Office and Anti-Corruption & Civil Rights Commission, along with a Korean translation of the recommendations, press release and, executive summary and original publication of the Phase 4 evaluation, in December 2018.[4] Korea does not report sharing the Phase 4 Report directly with relevant stakeholders, in particular those involved in the Phase 4 on-site visit.

4 https://www.mofa.go.kr/www/brd/m_4080/view.do?seq=368893&srchFr=&srchTo=&srchWord=oecd&srchTp=0&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=1, https://www.mofa.go.kr/www/brd/m_3889/view.do?seq=366186&srchFr=&amp%3bsrchTo=&amp%3bsrchWord=&amp%3bsrchTp=&amp%3bmulti_itm_seq=0&amp%3bitm_seq_1=0&amp%3bitm_seq_2=0&amp%3bcompany_cd=&amp%3bcompany_nm=&page=1

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