Handbook of the Improper Solicitation and Graft Act

2016

Anti-Corruption &
Civil Rights Commission

Preface

The Improper Solicitation and Graft Act ("the Anti-Solicitation Act" or "the Act") was enacted in March, 2015 with the aim of eradicating improper entertainment offering and solicitation culture of the Korean society and bringing greater fairness and transparency to the society, and it will come into effect on September 28, 2016.

Now that the aspiration of the people to make this country a truly advanced one by rooting out corruption came into fruition, it is highly important to lay the institutional foundation to ensure the Act is implemented in the right manner that upholds the original intent of the Act.

In order to enhance the binding force of the Act which came into effect for the first time, it is essential to provide clear interpretation of prohibited activities and rules of punishment under the Act to ensure that the persons or entities who are affected by the Act have a sufficient understanding of the Act.

To this end, the Anti-Corruption and Civil Rights Commission (ACRC) appointed an advisory council that consisted of professors and lawyers to review and consult on interpretation of each provision of the Act and related issues. The result of the review and consultation is this Handbook of the Improper Solicitation and Graft Act.

We hope this Handbook will serve as useful guidelines not only for public officials but also for the general public to ensure public officials will perform their duties properly and to enhance the people's trust in public institutions.

July 2016

Chairman of the Anti-Corruption and Civil Rights Commission

Sung Yung-hoon

Contents

Ⅰ. Background & Progress

Ⅱ. Scope of Application

Ⅲ. Duties of the State and Public Institutions & Duties of Public Officials and Relevant Persons

Ⅳ. Prohibition of Improper Solicitations, etc.

1. Prohibition Of Improper Solicitations
2. Duties Subject to Improper Solicitation
3. Causes For Exception to Improper Solicitations
4. Prohibition of Performing Duties Due To Improper Solicitations
5. Procedures for Handling Improper Solicitations
6. Violation Penalties

Ⅴ. Prohibition of Acceptance of Financial or Other Advantages

1. Unacceptable Financial or Other Advantages
2. Exceptions for Unacceptable Financial or Other Advantages
3. Reporting and Disposal of an Unacceptable Financial or Other Advantage
4. Restriction on an Honorarium for an Outside Lecture
5. Disciplinary Action and Punishments on Violation

Contents

Ⅵ. Overall Management of Duties Pertaining to Prevention of Improper Solicitations and Acceptance of Financial or other Advantages ----------

1. Institution for the Overall Management of Duties Pertaining to Prevention of Improper Solicitations, etc. ----------
2. Reporting and Handling of Violations ----------
3. Protection of and Rewards to Reporting Persons, etc. ----------
4. Measures for Dealing with Unlawful Performance of Duties, etc. ----------

Ⅶ. Disciplinary Action and Punishments ----------

1. Disciplinary Action ----------
2. Punishments ----------
3. Notification of Fines for Negligence ----------
4. Revocation of Imposition of Fines for Negligence ----------
5. Responsibility of Legal Persons ----------

Appendix ----------

Ⅰ. Background & Progress

Ⅰ Background & Progress

Article 1 (Purpose)

The purpose of this Act is to ensure that public officials and relevant persons fulfill their duties uprightly and to secure public confidence in public institutions by forbidding improper solicitations to public officials and relevant persons and by prohibiting them from accepting financial or other advantages.

1 Background

A. Realization of constitutional values

The Preamble of the Constitution of the Republic of Korea expresses commitment to building a transparent, corruption-free and righteous society, stipulating, "We, the people of Korea, proud of a resplendent history and traditions dating from time immemorial... destroy all social vices and injustice..."

Since the Anti-Corruption Act entered into force in 2002, the Anti-Corruption and Civil Rights Commission (formerly, Korea Independent Commission Against Corruption) has engaged in anti-corruption activities in many different sectors in order to uphold such constitutional values. As a dedicated organization to corruption prevention under the UN Convention Against Corruption (UNCAC), the Commission assumes full responsibility for implementation of the anti-corruption policies specified in the Convention and expansion and distribution of knowledge on corruption prevention.

The Improper Solicitation and Graft Act was also intended as part the anti-corruption policies to bring an end to improper solicitation and bribery which are malicious customs of our society.

B. Enhancing public confidence in public officials

Despite the government and the ACRC's efforts to prevent corruption, instances of corruption and irregularities involving public officials have never ceased to occur. Public trust in the Korean society as a whole is very low. The ACRC's Corruption Perceptions Survey 2015 showed that 59.2% of the general public responded that our society is corrupt.

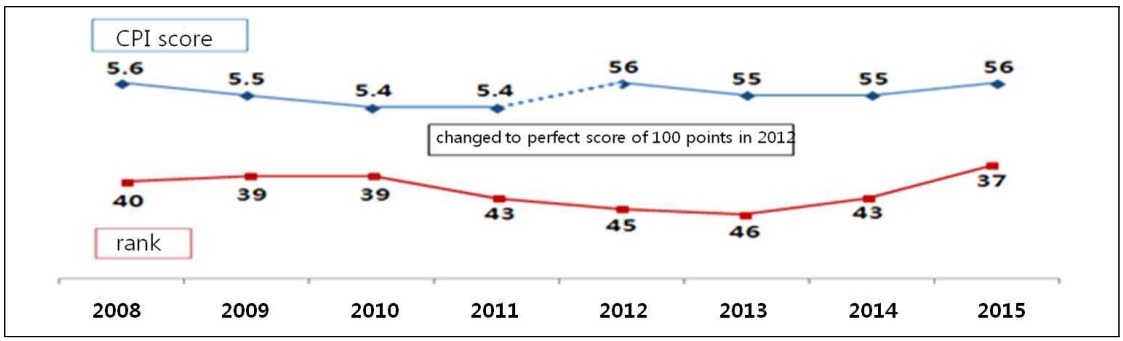
As for perception of the public sector's level of corruption, there is a considerable gap between the general public and public officials. In the ACRC's Corruption Perceptions Survey 2015, only 3.4% of public officials responded that the public sector was corrupt

while 57.8% of the general public viewed the public sector as corrupt. This means that the level of integrity that the people expect from public officials is much higher than the level public officials themselves assume. It also indicates that there is widespread suspicion and distrust in public officials.

C. Enhancing international anti-corruption rating and national competitiveness

Korea scored 56 out of 100 in the 2015 Corruption Perceptions Index (CPI) of Transparency International, ranking 37th among 168 countries. Among the 37 OECD member countries, Korea has remained in the 27th place for the past 5 years. Given that the CPI is an index measuring perceptions of corruption, the low score is a reflection that the business people and experts who work in Korea - both expatriates and local residents - have negative perceptions of the corruption level in our society.

Changes in CPI score of Korea



According to the 2016 Asia Corruption Index of the Hong Kong Political and Economic Risk Consultancy (PERC), Korea's corruption score slightly improved from the previous year but is still lower than other advanced economies in Asia.

Changes in PERC Corruption Score of Korea

Classification	2009	2010	2011	2012	2013	2014	2015	2016
Score	4.97	4.88	5.90	6.90	6.98	7.05	**6.28**	**6.17**
Rank/No. of countries	7/16	6/16	9/16	11/16	10/17	9/16	**9/16**	**8/16**

* Scaled from 0 to 10: zero being the best grade possible and 10 the worst

The international community's perception of corruption in Korea is more negative than the level expected for a country of this economic size and competitiveness.

This leads to reduced investment by foreign companies, hindering the country's economic growth. According to the Putting An End to Corruption report published by the OECD Secretariat in May, 2016, a research result showed that the probability of foreign direct investment (FDI) is 15% lower in countries with a strong presence of corruption than in countries relatively free of corruption.

D. Narrowing the scope of “unethical but legal corruption”

The Improper Solicitation and Graft Act is a product of the policy efforts to build the institutional foundation commensurate with the people's expectation by narrowing the scope of "unethical but legal corruption."

The concept of corruption has been understood differently depending on the cultural background of a given society and when and where it is applied. The United Nations Convention Against Corruption (UNCAC), a multi-national convention with 175 states parties did not define corruption for the reason that providing a definition of corruption could lead to narrowing of the scope of corruption given that the concept of corruption varies depending on social and cultural contexts and new types of corruption continue to surface over time.

Traditional concept of corruption points to activities that are unethical and at the same time defined as illegal such as bribery and embezzlement of public funds. On the other hand, **Recent concept of corruption** includes not only corruption in its traditional sense but also activities that are legal but unethical.

E. Addressing the blind spot of the existing corruption control system

The general public has higher expectations for the integrity of public officials and there have been changes in the criteria that determine corrupt activities. Activities that used to be regarded as generally accepted practices such as sponsoring, rice cake payments, farewell gifts, and activities whose purposes do not have to do with earning any kind of favor are also perceived as the beginning of corruption.

In addition, there arose a need for addressing the blind spot of the existing anti-corruption laws and regulations in order to respond to new types of corruption that are increasingly diversified, clandestine and sophisticated. So, it is not enough to rely on individuals' self-regulation based on their own conscience, which gives rise to the need for additional legislation that provides clearer boundaries of ethics and morality.

F. Addressing the "social and cultural factors that induce corruption"

Effective resolution of corruption issues requires identification of their root causes taking into account the changing nature of corruption and the expectations of the general public. Corruption in Korean society is largely attributable to its social culture that induces corruption such as deep-rooted practices of solicitation and entertainment offering culture. In the ACRC's Corruption Perceptions Survey 2015, the general public (36.3%), public officials (46.1%), business leaders (42.3%) and expatriates (33.8%) all pointed out the "social culture that induces corruption" as the main cause of corruption in our society.

In Korea, people are strongly connected with each other not only through blood ties, school relations and regionalism but also other connections built through all sorts of social activities. **Widespread practices of solicitation based on such connections** is a chronic ill that must be eradicated especially in the public sector where officials are supposed to make decisions in a fair and transparent manner. In a society where improper solicitation is prevalent, people tend to attempt resolving issues through unofficial routes and personal connections, and this eventually leads to mutual distrust.

Financial advantages or entertainment are offered to a public official with the expectation of support in one form or another though it is neither intended for an immediate favor nor directly related to the duties of the public official. In the ACRC's Corruption Perceptions Survey 2015, 40.2% of the general public, 62.9% of business leaders and 50.0% of expatriates cited "maintenance of smooth relationships and common practices" as their motive to offer public officials financial advantages and entertainment. The entertainment offering culture not only stands in the way of fair competition and hinders public officials' fair performance of duties but it also gives rise to suspicion about and distrust in the public sector.

2 History

A. From development of government bill on Improper Solicitation and Graft Act to Submission to National Assembly (Jun. 2011～ Aug. 2013)

The Cabinet Council on June 14, 2011 began to discuss enactment of a law tentatively named the Anti-Solicitation and Pursuit of Personal Interests Act as part of its effort to make Korean society fairer and more transparent.

The ACRC proposed a bill on Prevention of Unjust Solicitations and Conflicts of Interest. On October 18, 2011, the first public forum was held to discuss the necessity and direction of the legislation and to review similar laws in Korea and abroad. On February 21, 2012, the second public forum was held to disclose the bill and discuss each provision and collect opinions from the legal community, the media, academia and civic groups. From April through May, 2012, there were briefing sessions in each region (Honam, Chungchung and Kyungsang region) to publicize the law and to collect opinions from local government officials and citizens. From April through July, 2012, the Korea Legislation Research Institute conducted the Analytical Research on "Legislative Analysis on the Bill on Prevention of Unjust Solicitations and Conflicts of Interest, a Comprehensive Response to Public Corruption."

The government legislative procedure started and from May through August, 2012, relevant

ministries were consulted for their opinions on the bill. From August 22 through October 2, 2012, preliminary announcement was made on the legislation. In February, 2013, enactment of the legislation was selected as a national agenda of the then incoming administration (No. 137 Innovative public sector and clean government). On July 30, 2013, the government bill developed through close cooperation with relevant ministries was passed at the Cabinet Council. On August 5, 2013, the finalized government bill was submitted to the National Assembly.

B. From submission to National Assembly to enactment and promulgation of the Act (August 2013～ March 2015)

The parliamentary discussion on the submitted government bill was accelerated after the Sewol ferry accident in April, 2014 which triggered passage of a package of bills aimed at preventing repetition of such a disaster. The legislative review subcommittee of the National Policy Committee met six times on Apr. 25, May 23, May 27, Dec. 2, and 3, 2014, and Jan. 8, 2015 to review the bill. On January 12, 2015, the bill was passed at the general meeting of the National Policy Committee. It was agreed at the general meeting to leave out the provision on conflict of interest of public officials and include private schools and media companies in the scope of application. On March 3, 2015, the bill also passed the general meeting of the Legislation and Judiciary Committee and the Plenary Session of the National Assembly. On March 27, 2015, the Improper Solicitation and Graft Act was enacted and promulgated. The Act is slated to enter into effect on September 28, 2016.

3 Purposes of the Legislation

A. Gaining the people's trust in public institutions

Irregularities start from the practices where solicitation is accepted as a norm due to widespread nepotism and paternalism in our society. The Improper Solicitation and Graft Act is intended to ensure fair performance of duties on the part of public officials or relevant persons by sanctioning and preventing improper solicitation in corruption-prone areas.

The Korean public has become increasingly distrustful of the public sector after some public officials who accepted large amounts of financial and other advantages escaped punishment for the reason that it was not in exchange for a favor and was unrelated to their duties. The Improper Solicitation and Graft Act is aimed at winning the people's trust by making it possible to sanction public officials for acceptance of bribes even when it is not in exchange for a favor and is unrelated to their duties.

B. Protection of public officials and others who perform public duties

Public officials' accepting improper solicitation or financial advantages undermines fairness of their performance of duties. So, the Act also serves to protect the other honest public officials who follow procedures specified in the Act from the responsibility that might be imposed on them ex post facto.

If the spouse of a public official accepts benefits in connection with the public official's duties, the public official shall be subject to punishment and the level of punishment shall be the same as the level they would receive when directly accepting such benefits. However, there is also a provision that exempts from liability the public official who reports or returns the financial and other advantages their spouse accepted.

Note 1 **How the Act fills the gap of the existing legal system**

	Limitations of the existing legal system	Improper Solicitation and Graft Act
Criminal Act	▪ Impossible to punish for bribery when it is hard to verify that the bribe was in exchange for a favor or related to the duties of the public official ▪ Members of public service-related organizations are punishable only when they are treated as civil servants in the relevant laws ▪ Only traditional types of corruption such as bribery can be regulated. New types of corruption are hard to regulate	▪ Sanctions are possible in the form of criminal punishment or fine for negligence even when the benefit offering was not in exchange for a favor and was unrelated to public duties ▪ Those subject to the Act include members of public service-related organizations, teachers and employees of private schools, members of educational corporations and media companies ▪ Improper solicitation without involving financial and other advantages is also regulated
Public Service Ethics Act	▪ Only regulates asset declaration and employment of retired persons ▪ Only applied to persons liable for asset registration (Grade 4 or higher)	▪ Legislate control devices for banning improper solicitation and acceptance of graft ▪ Those subject to the Act extends to members of public service-related organizations, teachers and employees of private schools, members of educational corporations and media companies.
Code of Conduct for Public Officials	▪ Impossible to add penalty provisions on punishment, fines for negligence, etc. as it is a presidential decree. ▪ Hard to guarantee effectiveness with discretionary sanctions ▪ Constitutional institutions are left to follow their internal rules	▪ Includes provisions on punishment and fines for negligence. ▪ Strengthened effectiveness with mandatory sanctions ▪ Obliges all public institutions to comply with the Act
ACRC Act	▪ Focused on procedural issues such as establishment and management of the ACRC and reporting of corruption cases	▪ Functions as a substantial law to prevent corruption by specifying obligations and sanctions

Note 2 Comparison between the government bill and the passed bill

	Government bill (Aug. 5, 2013)	Passed bill (Mar. 3, 2015)
Name	Act on Prevention of Unjust Solicitations and Conflicts of Interest.	The Improper Solicitation and Graft Act
Applied to	▪ Public institutions such as constitutional institutions, central administrative agencies, local governments, municipal and provincial education offices, public service-related organizations	▪ Added private schools, educational corporations and media companies
Prohibition of improper solicitation	▪ Broad definition of improper solicitation ※ Improper solicitation refers to acts of solicitation or good offices that hinder public officials from performing their duties in a fair and honest manner by having them violate laws and regulations or abuse their authority	▪ Specified types of improper solicitation in corruption-prone areas in order to present clear standards of improper solicitation ※ Enumerated duties susceptible to improper solicitation in 14 corruption-prone areas including licensing/permission, administrative actions/punishment and commutation, personnel management, contracts, disclosure of duty-related confidential information, subsidies, audit/inspection, and military service ▪ 7 exceptions were also specified
Prohibition of graft	▪ The public official who accepted financial or other advantages related to their duties or the de facto influence arising from their position or responsibilities is subject to criminal punishment even when there is no favor promised or implied in return ※ Imprisonment not exceeding three years or a fine not exceeding 30 million won ▪ A fine for negligence of two to five times the value of the financial or other advantage accepted when it was unrelated to their duties ▪ Prohibits the family of a public official from accepting financial and other advantages except those gained from their social and economic relationships	▪ A public official shall be subject to criminal punishment if they accepted financial or other advantages in excess of 1 million won at a time or 3 million won in a fiscal year from the same person, regardless of the relationship between such offer and their duties, and the motive for such offer ▪ Acceptance of financial and other advantages of up to 1 million won is subject to a fine for negligence when it is related to their duties ▪ Prohibits the spouse of a public official from accepting financial and other advantages in connection with the duties of the public official

Ⅱ. Scope of Application

Ⅱ Scope of Application

Article 2 (Definitions)

The definitions of the terms used in this Act shall be as follows:

1. The term "public institution" means any of the following agencies or organizations:
   (a) The National Assembly, courts, Constitutional Court, election commissions, Board of Audit and Inspection, National Human Rights Commission, central administrative agencies (including organizations belonging to the President and Prime Minister) and institutions affiliated therewith, and local governments;
   (b) Public service-related organizations as prescribed in Article 3-2 of the Public Service Ethics Act;
   (c) Organizations as prescribed in Article 4 of the Act on the Management of Public Institutions;
   (d) Schools of various levels established under the Elementary and Secondary Education Act, Higher Education Act, Early Childhood Education Act, and other Acts and subordinate statutes, as well as educational corporations incorporated under the Private School Act; and
   (e) Media companies as prescribed in Subparagraph 12 of Article 2 of the Act on Arbitration and Remedies, etc., for Damage Caused by Press Reports.
2. The term "public official or relevant person" means any of the following public officials or employees performing public duties
   (a) Civil servants under the State Public Officials Act or Local Public Officials Act, and persons deemed by other Acts as civil servants in terms of their qualification, appointment, educational training, service, remuneration, guarantee of tenure and so on;
   (b) The heads of public service-related organizations and public institutions prescribed in Items (b) and (c) of Subparagraph 1, and employees thereof;
   (c) The heads of schools of various levels and educational corporations prescribed in Item (d) of Subparagraph 1, and employees thereof; and
   (d) The representatives and employees of media companies as prescribed in Item (e) of Subparagraph 1.

Article 11 (Restriction of Public Duty-related Actions by Private Persons Performing Public Duties)

(1) Articles 5 through 9 shall apply mutatis mutandis to the performance of public duties by any of the following persons (hereinafter referred to as "private person performing public duties"):

1. A member of various committees established under the Act on the Establishment and Management of Councils, Commissions and Committees under Administrative Agencies, or any other Acts and subordinate statutes, who is not a public official;
2. A legal person, organization, or an organ or individual belonging thereto that has an authority delegated from a public institution under Acts and subordinate statutes;

3. An individual on assignment from the private sector to a public institution in order to perform public duties; and
4. An individual, legal person or organization that conducts deliberation or assessment in relation to public duties in accordance with Acts and subordinate statutes.

(2) When Articles 5 through 9 apply mutatis mutandis to private persons performing public duties under Paragraph (1), the term "public official or relevant person" shall be construed as "private person performing public duties" and the term "head of the relevant agency" shall be construed as "person who falls into any of the following categories":

1. A member of a committee under Subparagraph (1)1: The head of the public institution under the jurisdiction of which the committee is established;
2. A legal person, organization, or organ or individual belonging thereto under Subparagraph 2 of Paragraph (1): The head of the supervisory body or public institution that delegates or entrusts the authority;
3. An individual under Subparagraph (1)3: The head of the public institution to which the individual is on assignment; and
4. An individual, legal person or organization under Subparagraph (1)4: The head of the public institution for which the said public duties are performed.

1 Scope of Persons

A. Institutions (Public institutions)

The institutional scope subject to the act is the National Assembly, courts, Constitutional Court, election commissions, Board of Audit and Inspection, National Human Rights Commission, central administrative agencies and institutions affiliated therewith, and local governments and municipal and provincial education offices. It also includes public service-related organizations under Article 3-2 of the Public Service Ethics Act and organizations as prescribed under the Act on the Management of Public Institutions

Schools of various levels established under Early Childhood Education Act, the Elementary and Secondary Education Act, Higher Education Act, and other Acts and subordinate statutes, as well as educational corporations incorporated under the Private School Act are included.

Media companies under Subparagraph 12 of Article 2 of the Act on Arbitration and Remedies, etc., for Damage Caused by Press Reports (broadcasting business operators, newspaper business operators, business operators publishing a periodical including a magazine, news communications business operators, online newspapers business operators) are included.

The term "business operators publishing a periodical including a magazine" means any person who publishes any magazine or other publications among periodical business operators defined in subparagraph 2 of Article 2 of the Act on Promotion of Periodicals, Including Magazines. This excludes persons who publish information or electronic publications. (Subparagraph 7 of Article 2 of the Act on Arbitration and Remedies, etc., for Damage Caused by Press Reports)

B. Persons

Public officials mean civil servants under the State Public Officials Act or Local Public Officials Act, and persons deemed by other Acts as civil servants in terms of their appointment, service, guarantee of tenure and so on. Persons deemed by other Acts as civil servants include Judicial trainees (Article 72 of Court Organization Act), persons who serve as interns (Article 26-4 of State Public Officials Act), public health doctors (Article 3 of Act On The Special Measures For Public Health and Medical Services In Agricultural and Fishing Villages, etc.), registered security guards (Article 5 of Registered Security Guard Act).

Civil servants shall be classified as either public officials in career service (public

officials in general service and public officials in special service) or public officials in non-career service (public officials in political service and Public officials in extraordinary civil service). Civil servants under the State Public Officials Act or the Local Public Officials Act are subject to the Improper Solicitation and Graft Act regardless of the kind of duties they perform.

The heads of public service-related organizations and their officers and employees mean heads of public service-related organizations under Article 3-2 of the Public Service Ethics Act and Organizations under Article 4 of the Act on the Management of Public Institutions, and their officers and employees. Officers including directors, auditors refer to both standing and non-standing officers, and the worker who signed a contract of employment with a public service-related organization is regarded as its employee regardless of the form of the contract and the duties they perform.

Employees performing public duties mean principal and employees of private schools, officers and employees of educational corporations, representatives of media companies and their officers/employees.

"Representative of a media company" means any person who has legal authority to represent the operation of a media company or any other person who has the same status as that person (Subparagraph 13 of Article 2 of the Act on Arbitration and Remedies, etc., for Damage Caused by Press Reports).

"Employee" refers to a worker who signed an employment contract with a public institution regardless of the form of the contract.

Since the Improper Solicitation and Graft Act does not provide an explicit scope of work for those who perform public duties, "public duties" refer to the entire range of duties performed by the public institution in question. As for media companies, not only the persons whose duties are reporting, commentary and news gathering but also those who handle administrative affairs and simple labor are subject to the Act.

However, when it comes to companies which publish company magazines as their secondary business and are classified as media companies (magazine and other periodical business operators), only those that publish periodicals are subject to the Act.

The spouse of a public official is banned from accepting financial and other advantages in connection with the public official's duties.

Private persons performing public duties mean a member of various committees established under various laws, who is not a public official, and a legal person, an organization, or an individual that has an authority delegated from a public institution. Private persons performing public duties are subject to the Act only with regard to their performance of

public duties. "The head of the relevant agency" that they belong to could differ depending on the types of the private persons performing public duties.

Article 11 (Restriction of Public Duty-related Actions by Private Persons Performing Public Duties)
(2) When Articles 5 through 9 apply mutatis mutandis to private persons performing public duties under Paragraph (1), the term "public official or relevant person" shall be construed as "private person performing public duties" and the term "head of the relevant agency" shall be construed as "person who falls into any of the following categories":

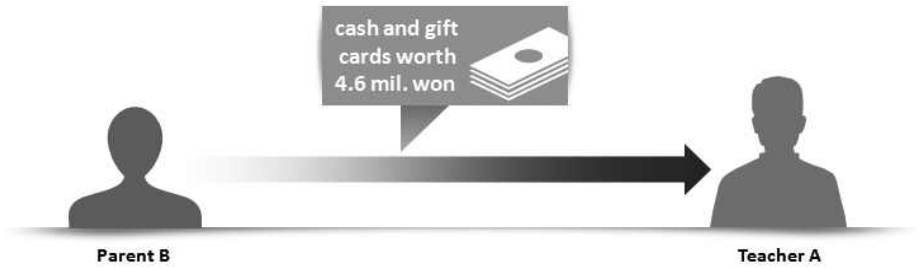
1. A member of a committee under Subparagraph (1)1: The head of the public institution under the jurisdiction of which the committee is established;
2. A legal person, organization, or organ or individual belonging thereto under Subparagraph 2 of Paragraph (1): The head of the supervisory body or public institution that delegates or entrusts the authority;
3. An individual under Subparagraph (1)3: The head of the public institution to which the individual is on assignment; and
4. An individual, legal person or organization under Subparagraph (1)4: The head of the public institution for which the said public duties are performed.

The ordinary citizen that improperly solicited a public official, or offered, promised to offer, or expressed the intention to offer any unacceptable financial or other advantages are subject to the Act. Both Korean and foreign nationals are subject to the Act as long as their offense took place in a location where the Act applies.

If an employee of a **legal person or an organization** commits a violation, not only the violator but also the legal person or organization shall be subject to punishment in accordance with the joint penal provisions of the Act (Article 24)

C. Example case

A private elementary school teacher, A accepted cash and gift cards worth 4.6 million won after being requested by a parent, B to praise her child instead of scolding him even when he did not do his homework and to write nice comments on his transcript.



Schools subject to the Act refer to schools of various levels established under the Elementary and Secondary Education Act, Higher Education Act, the Early Childhood Education Act and other Acts and subordinate statutes. And the principals and employees of those schools are regarded as public officials who are subject to the Act. A private elementary school falls into the category of the schools established under the Elementary and Secondary Education Act, and its teacher, A is subject to the Act.

Since teacher A accepted cash and gift cards whose value exceeded 1 million won at a time, the teacher is punishable by imprisonment not exceeding three years and a fine not exceeding 30 million won.

Parent B is also punishable by imprisonment not exceeding three years and a fine not exceeding 30 million won since she offered cash and gift cards whose value exceeded 1 million won at a time.

2 Scope of Places

A. Legislative principles

The Improper Solicitation and Graft Act is applied to **Korean and foreign nationals** who committed a violation within the territory of the Republic of Korea **(territorial principle)**. The territory of the Republic of Korea refers to the Korean peninsula and its annexed islands. If either an act of violation or its consequences take place within the territory, it shall be subject to the Act.

Judicial case: when a foreign national offered graft to a Korean public official in exchange for good offices and the act of offering graft took place in Korea but the act of rendering the good offices took place outside of the Korean territory, the violation shall be interpreted to have occurred within the Korean territory, and thus be subject to Subparagraph 1 of Article 90 of the former Attorney-at-Law Act under Article 2 of the Criminal Act (Supreme Court decision 99do3403, April 21, 2000).

The Act also applies to a foreign national who committed a violation on a Korean vessel

or airplane even if it was outside of the Korean territory (flag state principle).

The Improper Solicitation and Graft Act is applied to a Korean national who committed a violation outside of the Korean territory **(nationality principle)**. The Act also applies when a Korean public official accepts improper solicitation or graft from a foreign national outside of the Korean territory.

B. Example case (related to territorial principle)

Principal of a public elementary school, A received foreign liquor worth 500,000 won from a foreign national B who was a part-time language teacher with the request of allowing him/her to continue to work in the school in the following year.

A foreign national can be subject to a fine for negligence if they committed a violation within the Korean territory.

Principal A falls into the category of public officials and relevant persons subject to the Act as he/she is the principal of a school established under the Elementary and Secondary Education Act.

Both A and B are subject to a fine for negligence since principal A accepted graft of up to 1 million won from B in connection with his/her duties and a foreign national, B offered the graft. These acts of offering and accepting graft are related to the duties of the persons involved given that A is a principal of the school where the temporary teacher B works.

Note 1 Institutions governed by the Improper Solicitation and Graft Act (as of Feb. 2016)

Approximately 40,000 institutions including constitutional institutions, central administrative agencies, public service-related organizations/public institutions, schools and educational corporations, and media companies(Feb. 2016)

Relevant clause	Classfi-cation	Institutions		No. of institutions
		Total		39,965
(A) The National Assembly, courts, Constitutional Court, election commissions, Board of Audit and Inspection, National Human Rights Commission, central administrative agencies and institutions affiliated therewith, and local governments	Unitary institutions	The National Assembly, courts, Constitutional Court, election commissions, Board of Audit and Inspection, National Human Rights Commission		6
	Central administrative agencies	Central administrative agencies under Government Organization Act		42
		Central administrative agencies under individual Acts		10
	Local governments	Regional local governments		17
		Basic local governments		226
	Education offices	Municipal and provincial education offices		17
	Subtotal			318
(B) Public service-related organizations under Article 3-2 of the Public Service Ethics Act	Public service-related organizations			983
(C) Public institutions under Article 4 of the Act on the Management of Public Institutions	Public institutions (321 out of the total 323 institutions overlap with public service-related organizations)			2
(D) Schools of various levels established under the Elementary and Secondary Education Act, Higher Education Act, Early Childhood Education Act, and other Acts and subordinate statutes, as well as educational corporations incorporated under the Private School Act	Schools	Kindergartens		8,930
		Elementary, middle, high schools and others		11,799
		National, public and private universities		433
	Subtotal			21,162
	Educational corporations	Kindergarten, elementary/middle/high school, etc.		858
		University corporations		254
	Subtotal			1,112
(E) Media companies under Subparagraph 12 of Article 2 of the Act on Arbitration and Remedies, etc., for Damage Caused by Press Reports	Media companies	Broadcasting ※ Excluding community radio broadcasting business operators	Territorial broadcasters	63
			General cable broadcasters	91
			Satellite broadcasters	1
			Program providers	190
		Newspaper	General dailies (Foreign dailies)	274
			Special dailies	114
			General weeklies	1,116
			Special weeklies	1,717
		Periodical including magazine ※ Excluding information and electronic publications	Magazines	4,839
			Other publications	2,259
		News communications		18
		Online newspaper		5,706
		Subtotal		16,388

※ The list and number of institutions governed by the Act are subject to change depending on the timing of research and other factors.

Ⅲ. Duties of the State and Public Institutions & Duties of Public Officials and Relevant Persons

Ⅲ Duties of the State, Public Institutions and Public Officials, etc.

Article 3 (Duties of the State and Public Institutions)

(1) The State shall strive to guarantee working conditions under which public officials are able to perform their duties in a fair and upright manner.

(2) Public institutions shall strive to build a culture in public service under which improper solicitations and acceptance of financial or other advantages are not tolerated, to ensure that public officials or relevant persons perform their duties in a fair and upright manner.

(3) Public institutions shall take the protective measures necessary to ensure that public officials or relevant persons will not be subject to any disadvantage on grounds of reporting a violation or take any other measure pursuant to this Act.

Article 3 (Duties of Public Officials or Relevant Persons)

(1) Public officials or relevant persons shall perform their duties in a fair and upright manner free from the influence of any personal interest.

(2) Public officials or relevant persons shall act impartially in performing their duties, and shall not offer advantage to or discriminate against any person related to their duties.

A. Characteristics of the duties performed by public officials

The duties public officials perform mostly have to do with the decision of public policies and their execution. Stakeholders tend to react sensitively because public policies have a real impact on their existing or newly created interests.

Public officials have the legal authority to exert substantial influence over various types of national affairs. The fact that there are always multiple actors involved makes it a constant challenge for public officials to maintain fairness in their performance of duties.

Given the nature of the duties performed by public officials, the roles and responsibilities of the state and public institutions are very important. The attitude of the public officials who carry out their duties is also important.

B. Duties of the state and public institutions

The state or public institutions should create working conditions that enable fair and honest job performance, and make efforts to cultivate a culture that does not tolerate improper solicitation and graft.

Public institutions are responsible to put appropriate protective measures in place to ensure that public officials will not be penalized for taking measures in accordance with this Act.

C. Duties of public officials and relevant persons

Due to the nature of the duties performed by public officials, a higher level of ethics and morality is required, and more restraint in personal life is desired. Without ensuring a sufficient level of ethics among public officials, it is hard to win the people's trust in public institutions and officials.

Efforts should be made not only by the state and public institutions but also by public officials to be fair and honest in their performance duties without being affected by personal interests. Public officials should act impartially in performing their duties and should not give favors to or discriminate against anyone related to their duties.

Ⅳ. Prohibition of Improper Solicitations, etc.

Ⅳ Prohibition of Improper Solicitations, etc.

1 Prohibition of Improper Solicitations

Article 5 (Prohibition of Improper Solicitations)

(1) No one shall solicit any public official or relevant person performing his or her duties, directly or through a third party, to do any of the following improper acts:

1. Exerting influence so that authorization, permission, license, patent, approval, inspection, examination, test, certification, verification or any other duties, which are handled upon receiving an application from a duty-related party as prescribed by Acts and subordinate statutes (including ordinances and rules; hereinafter the same shall apply), are managed in violation of Acts and subordinate statutes;
2. Mitigating or remitting various administrative dispositions or punishments, such as cancellation of authorization or permission, and imposition of taxes, charges, fines for negligence, penalty surcharges, charges for compelling compliance, penalties, or disciplinary actions in violation of Acts and subordinate statutes;
3. Intervening or exerting influence in the appointment, promotion, job transfer or any other personnel management of public officials or relevant persons in violation of Acts and subordinate statutes;
4. Trading in influence in violation of Acts and subordinate statutes so that a person is appointed to or rejected from a position which intervenes in the decision-making of a public institution, including a member of various deliberation, decision-making, and arbitration committees, as well as a member of a committee for a test or screening administered by a public institution;
5. Trading in influence in violation of Acts and subordinate statutes so that a specific individual, organization, or legal person is chosen or rejected in the selection by a public institution for the recipient individual or organization of any award, prize, or commendation for outstanding performance;
6. Trading in influence so that duty-related confidential information on tender, auction, development, test, patent, military affair, taxation, etc., is disclosed in violation of Acts and subordinate statutes;
7. Trading in influence so that a specific individual, organization, or legal person is selected or rejected as a party to a contract in violation of Acts and subordinate statutes related to the contract;
8. Intervening or exerting influence so that subsidies, incentives, contributions, investments, grants, funds, etc., are assigned to, provided to, invested in, deposited in, lent to, used to make contributions to, or finance a specific individual, organization, or legal person in violation of related Acts and subordinate statutes;
9. Trading in influence so that a specific individual, organization or legal person buys, exchanges, uses, benefits from or possesses goods and services that are produced, provided or managed by public institutions beyond the monetary value prescribed by Acts and subordinate statutes or against normal transaction practices;
10. Trading in influence so that admission, grades, performance tests or other matters related

to schools of various levels are handled and manipulated in violation of Acts and subordinate statutes;

11. Trading in influence so that physical examination for conscripts, assignment to a military unit, appointment or any other matters related to military service are handled in violation of Acts and subordinate statutes;
12. Trading in influence so that, in various assessments and judgments performed by public institutions, the assessment or judgment is made in violation of Acts and subordinate statutes or the results are manipulated;
13. Trading in influence so that a specific individual, organization, or legal person is selected or rejected as subject-matter of administrative guidance, control, inspection, or examination, the outcome thereof is manipulated, or discovered violations are ignored in violation of Acts and subordinate statutes;
14. Trading in influence so that the investigation, judgment, adjudication, decision, conciliation, arbitration, or settlement of a case or any other equivalent function is handled in violation of Acts and subordinate statutes; and
15. Exerting official authority by a public official or relevant person beyond the limits of his or her position and authority granted by Acts and subordinate statutes, or doing any act for which a public official or relevant person lacks legitimate authority regarding the duties that may be subject-matter of the improper solicitation prescribed by Subparagraphs 1 through 14.

A. Overview

Although the widespread practices of solicitation associated with nepotism/paternalism is a major cause of corruption in our society, the institutional arrangements to regulate corruption have been insufficient. Unlike the Criminal Act, the Attorney-at-Law Act, the Act on Aggregated Punishment of Specific Crimes which regulate solicitation that involves graft, the Improper Solicitation and Graft Act regulates the act of improper solicitation per se.

Improper solicitation refers to "violating the law" or "abusing one's position/power" in handling the 14 duties listed in the Act. Among them, Improper solicitation related to goods and services by public institutions refers to a situation where the goods and services are traded beyond the monetary value prescribed by law or against normal transaction practices.

The Act enumerates the types of improper solicitation related to the 14 listed duties in the corruption-prone areas to provide clearer criteria for improper solicitation.

The Improper Solicitation and Graft Act prohibits improper solicitation per se regardless of whether improper solicitation affected public officials' performance of duties. In other words, even if the public official who was improperly solicited did not perform his or her duties under the solicitation, the person who made the solicitation is subject to sanctions.

Note	Cases of domestic and foreign legislation that sanctions improper solicitation per se

Domestic cases

◈ An increasing number of laws sanction the act of solicitation per se regardless of whether financial or other advantages are involved or not

- A retiree who requested an unfair favor or assistance from an incumbent of an agency to which he or she belonged before his or her retirement shall be subject to imprisonment not exceeding one year or a fine not exceeding 10 million won (Article 18-4, Article 29 of the Public Service Ethics Act).

- Any person who solicits a juror or an alternate juror to grant a favor in connection with his/her duties shall be punished by imprisonment not exceeding two years or by a fine not exceeding 5 million won (Article 56 of the Act on Citizen Participation in Criminal Trials).

- A person who receives or induces another person to receive a solicitation shall be punished by imprisonment not exceeding five years or a fine not exceeding 2.5 million won (Article 100 of the National Referendum Act).

Overseas cases

◈ OECD countries also strictly prohibit solicitation regardless of whether financial benefits are involved and any act that influences public officials' performance of duties.

- A person who privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law purposely or knowingly shall be fined not to exceed $50,000 or be imprisoned for a term not to exceed 10 years, or both (The Montana Code Annotated, U.S.).

- A person who privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law purposely or

knowingly shall be fined not to exceed $2,000 or be imprisoned for a term not to exceed one year, or both (Maine Criminal Code, U.S.).

- The public officials who believes he or she is being required to act in a way that is unlawful, improper and unethical should report the matter to the relevant head of the public service and the head of the public service should make public disclosure of the matter (EU Model Code of Conduct for Public Officials).

B. The Person Engaging in Improper Solicitation

"Anyone" is prohibited from direct or third-party improper solicitation related to the 14 duties listed in the Act (Paragraph 1 of Article 5 of the Act).

Since the scope of "Anyone" is limited to individuals who can actually engage in solicitation, only a natural person fall into the category, excluding a legal person that have to solicit through a natural person. If an employee (natural person) of a corporation commits a violation, the corporation shall be subject to punishment in accordance with the joint penal provisions of the Act (Article 24).

C. The Counterpart of Improper Solicitation

(1) The need to define the counterpart and the scope of improper solicitation

Improper solicitation refers to acts of solicitation that make "public officials in duty" perform the 14 duties listed in the Act in the way that violates the law directly or through a third party. The counterpart of improper solicitation includes "public officials performing 14 duties" listed in the Act.

When solicited for the first time, a "public official performing duties" must show clear signs of rejection, and if asked again with identical improper solicitation the official is bound to report. It is to protect honest public officials who followed proper report procedure from the responsibility that might be imposed on them ex post facto.

However, if a public official fails to report the recurrence of the identical improper solicitation, the public official shall be subject to punishment.

(2) The scope of public officials performing their duties

"Officials performing their duties" include not only the officials handling the duty but also managers and directors with approval authority. If the authority is delegated in accordance with internal policy on delegation of authority, it also includes heads of organizations who have the right to command and supervise albeit without approval authority. Even if the authority is delegated in accordance with internal policy, the head of an organization still keeps the title. Thus if the head is improperly solicited on delegated duties, he or she should also be obligated to show rejection and report in line with the purpose of the Act.

In case the improperly solicited senior public officials without approval authority but with the right to command and supervise direct junior officials for implementation, the senior public official shall be subject to criminal punishment since he/she falls into the category of officials performing their duties, and the direction per se is a duty susceptible to improper solicitation.

Since the senior public official's direction is improper solicitation for a third party, a junior official must show clear signs of rejection, and shall be subject to criminal punishment for performing a duty as directed by improper solicitation if he/she followed the direction knowing that it is improper solicitation for a third party.

However, public officials with the position or authority which may exert de facto influence do not fall into the category of officials performing their duties. The scope of mandatory report may be too extensive if they are included.

Public officials with the position or authority which may exert de facto influence shall be subject to a fine for negligence for improper solicitation for a third-party if they deliver the solicitation to officials performing their duties.

(3) Example case

A local government head, B is asked by a public official A to change his evaluation ranking, and gives an order to evaluator C to change A's rankings and to make a new ranking list although the list and rankings on evaluated officials are set by the relevant legislative procedure.

Duties related to personnel management including recruitment and promotion of public officials is one of the duties susceptible to improper solicitation under the Act.

Intervening or exerting influence on personal matters of public officials in the way that violates laws such as Local Public Officials Act, Local Public Officials Appointment Decree, Local Public Officials Evaluation Rules is improper solicitation.

A **local government head, B** is subject to criminal punishment for carrying out duties susceptible to improper solicitation, since B is a public official performing duties and has the right to command and supervise evaluator C. Public officials performing duties

susceptible to improper solicitation include not only those who handles the duties directly but also managers, directors and other officials with approval authority as well as heads of organizations with the rights to command and supervise.

Since the order by local government head B is also improper solicitation for a third party, **evaluator C** must show clear signs of rejection, and shall be subject to criminal punishment for performing a duty as directed by improper solicitation if the official followed direction knowing that it is improper solicitation for a third party.

Public official A made solicitation for him or herself, and is excluded from fines for negligence, but is subject to a disciplinary action for violating the Act (Article 5).

Article 5 (Prohibition of Improper Solicitations)
(1) No one shall solicit any public official or relevant person performing his or her duties, directly or through a third party, to do any of the following improper acts.

D. Types of Beneficiaries for Improper Solicitation

(1) The meaning of direct solicitation

No one shall solicit any public official or relevant person performing his or her duties “directly or through a third party“ to do any improper acts. However, improper solicitation for oneself does not result in a fine for negligence even though the act is prohibited.

Therefore it is important to differentiate improper solicitations through (for) a third party, which are subject to a fine for negligence, from improper solicitations by oneself, which is not subject to a fine for negligence.

"Improper solicitations by oneself" which is not subject to a fine for negligence, indicates that legal effects (advantages·disadvantages) are vested in oneself. If the advantages or disadvantages vested in oneself is indirect, or virtual/reflective, it becomes solicitation for a third party. For example, a solicitation to eliminate a specific person from a contracting party by violating relevant laws is a solicitation for a third party since the effect (disadvantage) is not vested in the solicitor.

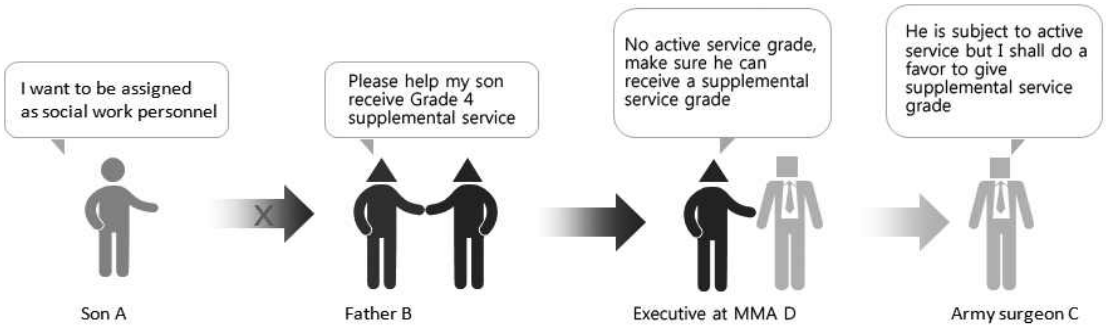
(2) Improper solicitation for family members

Whether it is a solicitation for a third party

Improper solicitation for family members including parents and children fall into the category of solicitation for a third party since the effects (advantages·disadvantages) are vested in family members, who are third parties. Here, the fact that the children is a minor or an adult is not a subject of question.

Example cases

#1. B wanted his son to get Grade 4 supplemental service from conscription examination and be able to serve as a civil worker at a social welfare center in Seoul. Without letting his son know, B solicited his close acquaintance D, who was an executive at Military Manpower Administration, to ask army surgeon C at the conscription examination center to give his son Grade 4.



Duties related to conscription examination (physical grade evaluation) is one of the duties susceptible to improper solicitation under the Act (Article 5 (1) 11). Violating the physical grade evaluation under military service laws and soliciting for Grade 4 alternative service is improper solicitation.

The **father B** who engaged in improper solicitation for his son A, who is a third party, is subject to a fine for negligence not exceeding 20 million won. In other words, since the effect (advantage) of B's solicitation is directly vested in his son A, a third party, it is categorized as improper solicitation for a third party.

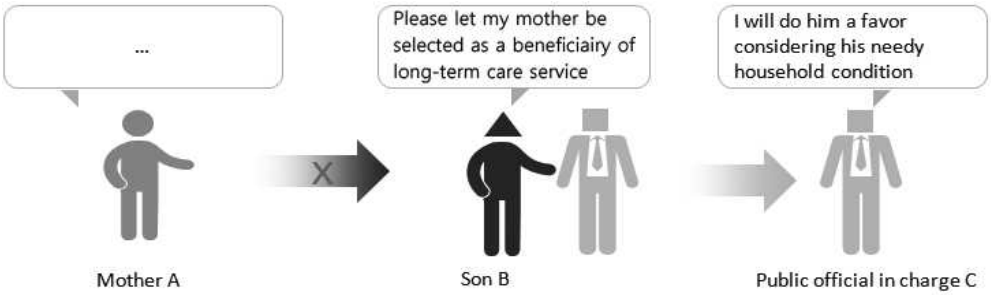
Since father B solicited without A's knowledge and **A** did not engage in improper solicitation through B, A is not subject to sanctions.

Executive D at Military Manpower Administration is subject to a fine for negligence not exceeding 30 million won as he is a public official who engaged in improper solicitation for the third party A.

If **army surgeon C** showed clear signs of rejection when he was first asked of a favor, he is to be exempted from disciplinary actions and penalty. However, if the army surgeon C is requested of identical improper solicitation again, he is bound to report to the head of the organization, and the failure to do so will make him subject to disciplinary actions.

If army surgeon C gave Grade 4 alternative service in response to improper solicitation by executive D of Military Manpower Administration, he is subject to criminal punishment (imprisonment not exceeding two years or a fine not exceeding 20 million won).

#2. B's mother A applied for long-term care service for the elderly. Knowing that his mother A does not meet the requirements stipulated on the enforcement decree of the Act on Long-Term Care Insurance for the Aged, B solicited public official C for the Long-Term Care Insurance to include A in the service, without A's knowledge.



Duties related to selection of Long-Term Care Insurance for the Aged is one of the duties susceptible to improper solicitation under the Act (Article 5 (1) 1).

Violating the Act on Long-Term Care Insurance for the Aged and including a person who does not fulfill the requirements in the list of the insured is improper solicitation.

Having engaged in improper solicitation for his mother, who is a third party, her **son, B**, is subject to a fine for negligence not exceeding 20 million won. Since the effect (advantage) of B's solicitation is directly vested in his mother, a third party, it is categorized as improper solicitation for a third party.

(3) Improper solicitation by an employee of a legal person in relation to his/her duties

Whether it is a solicitation for a third party

For a legal person that cannot engage in solicitation, it is an issue whether the improper solicitation made by an employee in relation to his or her duties is a solicitation for a third party or not.

A legal person and its employees are independent in terms of their rights and obligations. Solicitation by employees (including those with representative authority) is for the legal

person, and since the effect is vested in the legal person, it falls under the category of solicitation for a third party. Improper solicitation by employees is not considered acts performed by the legal person. According to judicial precedents, criminal actions of employees are not considered those of a legal person. If the improper solicitation of employees is always considered to be for him or herself, the legal person is always excluded from sanctions, going against the purpose of legislation.

A fine for negligence imposed on an employee who engaged in improper solicitation in relation to his/her duties

If employees of a legal person violated the Act in relation to his or her duties and is subject to a fine for negligence,

- **An employee** is subject to a fine for negligence in accordance with penalty clauses for violation of the obligation to prohibit improper solicitation and bribery.

- **A legal person** is subject to a fine for negligence in accordance with the joint penal provisions of the Act (Article 24).

Example case

Employee of ○○ construction company, A solicited public official C at a district office to grant a building permit, violating construction laws.

Duties related to building permit is one of the duties susceptible to improper solicitation under the Act (Article 5 (1) 1).

Requesting for a building permit against construction laws is improper solicitation. Improper solicitation by an employee is for the benefit of a legal person, and it corresponds to improper solicitation for a third party since its effect is vested in the legal person.

Employee A is subject to a fine for negligence not exceeding 20 million won for engaging

in improper solicitation for the legal person, which is a third party.

In accordance with the joint penal provisions of the Act (Article 24), ○○ **construction company** is subject to a fine for negligence not exceeding 20 million won. However, the company may be exempted from responsibility if it had actively taken responsibility for due diligence and supervision to prevent any violations by its employees.

E. Requirements for Improper Solicitation

(1) Violation of Acts and statutes

Scope of Acts and statutes

"Violation of Acts and statues" which is the requirement for improper solicitation, includes “laws, Presidential decree, ordinance of the Prime Minister, and Ministerial ordinance".

Acts and statutes include not only individual Acts relevant to the duties susceptible to improper solicitation, but also general Acts including State Public Official Act, Local Public Officials Act, and Criminal Act. It also includes procedures Acts, such as litigation acts, Administrative Appeals Act, Administrative Procedures Act, and Non-Contentious Case Procedure Act. Solicitation to grant a building permit without any assessment of impact on the traffic, or to grant all sorts of business permits without a hearing, and so on will be subject to the law since it violates one of the procedure .

If the specific standard is set by notifications and directives delegated by or based on upper laws, the violation of the standard stipulated in notifications and directives may correspond to the violation of upper laws.

According to judicial precedents, Regulation on Overall Property Tax (86Nu484), Local Government Head’s Notification on LPG Sales Business Permission (2000Du7933) were regarded as externally binding legal orders, complementing the upper laws.

Rules to regulate the administrative organization internally are not included in Acts and statutes.

However, if the violation of rules lead to the violation of upper laws, then it becomes a violation of Acts and statutes.

General legal principles including the principle of proportionality and the principle of good faith may be the standard for interpretation and application of individual Acts and statutes. However, such general legal principals alone cannot be the standard for determining whether Acts and statutes are violated.

Rules that are included in Acts and statutes refer to the rules enacted by heads of local governments under Article 23 of the Local Autonomy Act.

Example case

#1. A, a child of Director B of a central ministry, entered for a closed competitive examination for service as a lawyer conducted by ○○ local government. Director B secretly solicited manager C, who went in as a interviewer, to give a high score to his child for recruitment. Manager C gave a high score at the interview and A got accepted.

Duties related to personnel management including recruitment of public officials is one of the duties susceptible to improper solicitation under the Act (Article 5 (1) 3).

An act of intervening or exerting influence on personal matters of public officials to violate laws including Local Public Officials Act is improper solicitation.

"Violation of Acts and statutes" include violations of not only individual Acts relevant to the duties susceptible to improper solicitation, but also general Acts including State Public Official Act, Local Public Officials Act, and Criminal Act.

Local Public Officials Act

Article 42 (Prohibition of Act Interfering with Examination or Appointment)

No person shall intentionally commit any act interfering with, or exerting any unjustifiable influence on, any examination or appointment.

Article 43 (Prohibition of Malpractice concerning Personnel Affairs)

No person shall make any false or unlawful statement, record, certification, grading or report on any selection examination, promotion, appointment, or any other personnel records.

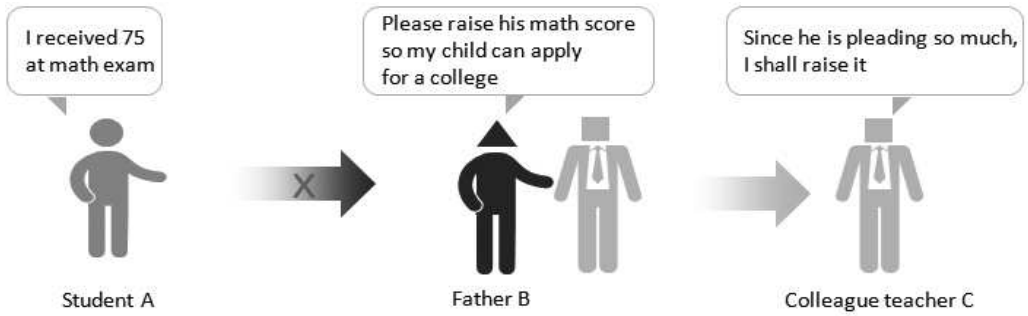
Director B is subject to a fine for negligence not exceeding 30 million won since he engaged in improper solicitation for a third party A at his own discretion. The fact that he

is a public official aggravated the punishment. Since the effect (advantage) of B‘s solicitation is directly vested in his child A, a third party, it is categorized as improper solicitation for a third party.

Since **child A** did not request for improper solicitation directly or through a third party, A is not a subject to sanctions.

Manager C is subject to criminal punishment (imprisonment not exceeding two years or a fine not exceeding 20 million won) since he/she hired director B's child A by giving high interview scores as B solicited.

#2. A, who is Grade 12 student at OO high school got the score of 75 in the final exam for math. A’s father B, who was a Korean language teacher asked A’s math teacher C to raise A’scores for better school records, without A’s knowledge.



Duties related to school records is one of the duties susceptible to improper solicitation under the Act (Article 5 (1) 10).

Solicitation to improve school records is an improper solicitation as well as a violation of Paragraph 1 of Article 314 of the Criminal Act (Interference on business). "Violation of Acts and statutes" include violations of not only individual Acts relevant to the duties susceptible to improper solicitation, but also general Acts including Criminal Act. Solicitation to improve school records makes the other party to commit the crime of interference on business under the Criminal Act, thus it is against the socially accepted rules.

In a case where a father who is a high school teacher asked a fellow teacher who handles school records to falsify his daughter’s record, the court convicted the father of obstruction of performance of official duties of the principal under the Criminal Act. (Ulsan District Court, 2014Godan899, June 13, 2014)

Father B is subject to a fine for negligence not exceeding 30 million won since he engaged in improper solicitation for his daughter who is a third party. The fact that he is a public official aggravated the punishment. Since the effect (advantage) of B‘s solicitation is directly vested in his child A, a third party, it is categorized as improper solicitation for a third party.

Fellow **teacher C** is subject to criminal punishment (imprisonment not exceeding 2 years or a fine not exceeding 20 million won) since he improved A‘s school record as B improperly solicited.

Since A did not request for improper solicitation directly or through a third party, A is not a subject to sanctions.

#3. A, who is to run a restaurant with a size of 100㎡, reported to public official C that his restaurant will install waste water treatment facilities of 5㎥/day. However, although the capacity of waste water treatment facilities at his restaurant is short of the standard stipulated in Sewerage Act, A asked his friend B, who is a public official for local taxes, to solicit public official C to accept his installation report of waste water treatment facilities.

Duties related to waste water facilities installation is one of the duties susceptible to improper solicitation under the Act (Article 5 (1) 1).

A request for a public official to proceed installation report for waste water treatment facilities in violation of installation standards under the Sewerage Act is considered as improper solicitation in violation of Acts and statutes.

The violation of “The calculation method to determine the number of people that produce waste water and use septic tank depending on the use of building (Ministry of Environment Notification #2015-133)" enacted by the Sewerage Act and its enforcement

decree is considered as violation of Acts and statutes.

According to the notification, a restaurant with the size of 100㎡ must install waste water treatment facilities with treatment capacity of 7㎥/day.

Enforcement Decree of the Sewerage Act
Article 24 (Installation of individual waste water processing facilities) ⑤ The Minister of Environment will notify the standard for waste water generation to be used for the installation of individual waste water processing in Paragraph 2 to 4.

The calculation method to determine the number of people that produce waste water and use septic tank depending on the use of building (Ministry of Environment Notification #2015-133)

<The calculation method to determine the number of people that produce waster water and use septic tank depending on the use of building>

#	Use of building			Amount of waste water			Use of septic tank	
				Daily production of waste water	BOD (㎎/L)	Note	Calculation formula	Note
3	Sales and business facilities	Restaurant	General restaurant	70l/㎡	550	Chinese food	N= 0.175A	-
					330	Korean food, snack		
					200	Japanese food, bar, pub, buffet		
					150	Western food		

Petitioner A is a stakeholder of the report for waste water treatment facilities who requested for improper solicitation through B, a third party, and is subject to a fine for negligence not exceeding 10 million won.

Public official B improperly solicited for petitioner A, who is a third party, and the fact that he is a public official aggravates sanctions against him. He is subject to a fine for negligence not exceeding 30 million won.

If **public official C** clearly expresses a intention of rejection when he is first requested of improper solicitation from friend B, he is exempted from disciplinary actions and punishment. If public official C receives identical improper solicitation again, he has the obligation to report to his head, and is subject to disciplinary actions if he fails to report. However, if public official C accepted the installation report of waste water treatment facilities in response to his friend B‘s improper solicitation, C is subject to criminal

punishment (imprisonment not exceeding two years or a fine not exceeding 20 million won).

The meaning of "in violation of Acts and subordinate statutes related to contracts"

In terms of improper solicitation regarding the selection and elimination of the contract party (Subparagraph 7), the subparagraph places limits on the scope of Acts by saying “in violation of Acts related to the contract." As long as there is the modifier, "related to the contract," the scope of Acts should be limited in its interpretation.

Acts related to the contract refer not only the Acts to be specifically enacted to regulate contracts, such as the Act on Contracts to which the State is a Party, but also contract relevant provisions in individual Acts. For the latter's example, Workers Vocational Skills Development Act has consigned contract provisions for vocational ability development training.

Furthermore, if a public official is involved, then relevant acts also include general Acts including the State Public Officials Act and procedure Acts that public officials must abide by when carrying out jobs related to contracts.

(2) Deviation from normal transaction practices

The meaning and judgment standard for “normal practices”

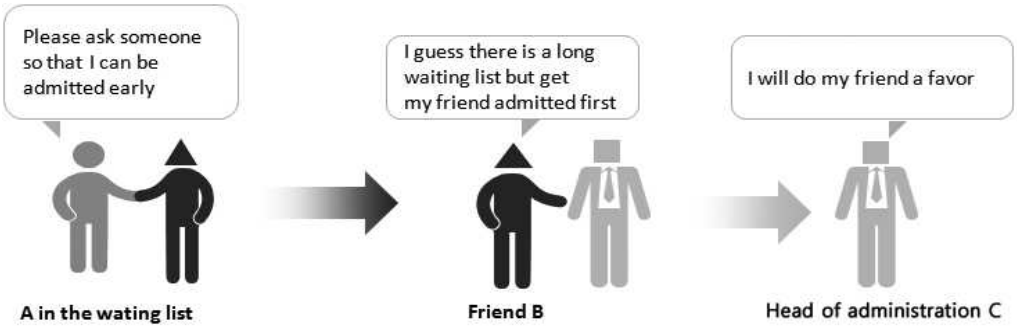
Unlike other types of improper solicitation, when it comes to goods and services of public institutions, "normal practices" are the standards for determining whether or not a certain act constitutes improper solicitation. This is because there are no set concrete actions in most Acts with regard to transactions of goods and services of public institutions.

"Normal practices" indicate the usual practices that would have taken place if there were no improper solicitation. Deviation from normal transaction practices is determined comprehensively by the intention and purpose of the actions, the nature of goods and services, the position and relationship of the parties involved, the damage done unto the other party, as well as internal standards and regulations of public institutions.

Favors given to a particular person by violating internal standards and regulations of a public institution without a particular reason is considered a practice deviant from normal ones.

Example case

A tried to register himself for hospitalization at ○○ National Hospital, but he was at the end of the list. A asked his friend B, who is a friend of the hospital's head of administration, C, to admit him first. C changed the list and facilitated A to be hospitalized ahead of others.



Duties related to hospitalization, which is a service that national university-affiliated hospitals are responsible for, is one of the duties susceptible to improper solicitation under the Act (Article 5 (1) 9). National university-affiliated hospital is a public service-related organization and is part of an incorporated educational institution, and is therefore a public institution.

Violating internal standards and regulations of public institutions to give preference to a particular person is improper solicitation that deviates from normal practices. The normal practice for hospitalization is admitting patients in the order of registration except for special circumstances.

A engaged in improper solicitation through his friend B, who is a third party, and is therefore subject to a fine for negligence not exceeding 10 million won.

A's **friend B** engaged in improper solicitation for his friend A, who is a third party, and is therefore subject to a fine for negligence not exceeding 20 million won.

Head of administration C changed the registration list in response to B's improper solicitation and allowed A to get a medical examination ahead of others, and is therefore subject to criminal punishment (imprisonment not exceeding two years, or a fine not exceeding 20 million won).

Note	Legislation cases of normal practices

"Normal practices" are stipulated as the basis for judgment in Acts including Franchise Business Act and Fair Trade Act.

Fair Transactions in Franchise Business Act

Article 12-3 (Prohibition of Unfair Restrictions on Business Hours)

(1) No franchiser shall perform an unfair act of restricting business hours of a franchisee (hereinafter referred to as "unfair restrictions on business hours") in the light of normal transaction practices.

Monopoly Regulation and Fair Trade Act

Article 23-2 (Prohibition of Provision of Inappropriate Benefit to Person with Special Interest)

(1) No company that belongs to an enterprise group falling under the standards prescribed by Presidential Decree, such as the total amount of assets not less than a fixed size, may devolve any inappropriate benefit on a person with special interest (limited to the same person and his/her relatives; hereafter the same shall apply in this Article) or on any affiliate company in which the person with special interest holds stocks of not less than the proportion of stocks determined by Presidential Decree, by conducting any of the following acts. In such cases, the categories or standards for the following acts shall be determined by Presidential Decree:

1. Conducting a transaction under the terms that are substantially favorable compared with the terms that have been applied, or judged to be applicable to normal transactions;

According to legal precedents, common practices in the Fair Trade Act are to be determined in consideration of the intention and purpose of the actions, effect and impact, the business situation, the position of the trader, disadvantages of the counterpart and more.

2 Duties subject to improper solicitation

A. Improper solicitations regarding the handling of authorization, permission, or other duties (Subparagraph 1)

It refers to the handling of duties in violation of the relevant acts and subordinate statutes upon receiving an application from a duty-related party as prescribed by the relevant acts and subordinate statutes.

In addition to authorization, permit, license, and patent, etc listed in the Act, it also includes designation, registration, reporting and others which is similar to duties listed in the Act.

Types and examples of duties in Subparagraph 1

Authorization is an administrative action that constitute the legal power of a party's legal action by supplementing such actions

Authorization of the establishment of an urban development association under the Urban Development Act, or the establishment of a private university under the Higher Education Act

Permission is an act of restoration of the rights of an individual to legally exercise his or her freedom by revoking any general prohibitions set forth in relevant acts and subordinate statues.

Building permits under the Building Act, business license for karaoke bars under the Food Sanitation Act, permission to extract aggregate under the Aggregate Extraction Act, permission for occupation and use of urban parks under the Act on Urban Parks, Greenbelts, etc.

License is a measure by any administrative institution to grant to specific persons the rights to conduct special actions that are not permitted to the general public or to grant official permission to undertake specific duties.

Licenses for medical doctors, dentists or oriental medical doctors under the Medical Service Act, licenses granted to individuals including barber's and beauty artist's certificates, etc., license for passenger transport business, reclamation license, and other business licenses

Patent is an administrative action such as granting of permit or license that establish a specific person's new rights, power, or comprehensive legal relations.

Patent of an incorporated patent holder, patent for the use of public property, mining rights, fishing rights, patent of a drug under the Pharmaceutical Affairs Act, licenses for the establishment and operation of licensed bonded areas under the Customs Act

Approval is an act of a nature requiring authorization such as the approval granted by a supervisory authority for the appointment of an executive to a school foundation under the Private School Act.

Approval of the overall project plan and implementation plan for any development projects in the construction and building sectors, approval of the business plan and construction plan in the fields industry and management, approval of a specific model related to safety matters

Examination is a system that sets up minimum legal standards and examines whether any facility or equipment meets the standards in order to protect the public from fatal or physical damages and ensure the safety of any facilities.

Safety inspection on the quality of any product, equipment, facility, or water, inspection conducted after construction in development projects

Qualification[1] is mostly set forth for the verification of personal qualifications for certain positions such as qualifications for teachers, national technical qualification, and qualifications of certified sports instructors.

Test is an act of testing materials, goods, and others; ingredient tests of pesticides; type certification testing; and tests requested at the Centers for Disease Control and Prevention, the National Institute of Environmental Research or other testing institutions.

Certification is an act of confirming the procedural legitimacy of a document or measure.

Certifications may be put in two categories of certification for quality, technology and certification for business, workplace, and business licensee

Verification is an act of making judgements and decisions in cases of dispute over the existence of certain facts or legal relations.

1) Qualification is a term similar to examination, and both are used in a confusing way in current laws where qualification is more broadly used in matters of verification of personal skills and humanistic qualities such as in qualification for Korean language skills, qualification for Korean history skills, textbook qualification, certificate qualification, while examination is reserved for those of specifications for facility and equipment.

Decision on elected person, authorization or recognition of textbooks, determination of income amounts, appeals for affirmation of nullity, etc., verification of the eligibility of a venture business

B. Improper solicitations regarding the mitigation/remission of administrative dispositions or punishments (Subparagraph 2)

It refers to acts of mitigating or remitting of administrative dispositions or imposed punishments including the revocation of any authorization or permission, imposition of taxes, charges, fines for negligence, penalty surcharges, charges for compelling compliance, penalties, and other punishments, in violation of the relevant acts and subordinate statutes.

Revocation of previous authorization or permission means to cancel any authorizations or permissions in Subparagraph 1

Tax is payment that the central or local governments impose on compulsory basis on its people or residents to meet its financial demand or to realize specific policies.

National taxes: income tax, corporate tax, value added tax, special consumption tax, defense tax, customs duty, etc.
Local taxes: acquisition tax, registration tax, license tax, local inhabitants tax, property tax, car tax, farmland tax, tobacco sales tax, urban planning tax etc.

Charge is payment imposed on a person with interest in certain public projects to make up for the project's expenses in its entirety or in part.

Example: benefit principle charges imposed on a person who benefits from certain public projects (the River Act, the Harbor Act), apportion of the cost to be paid for by the obligor liable for certain public projects (the Road Act, the River Act, the Sewerage Act), charges imposed on a person responsible for destructions (the Road Act, the Harbor Act)

Fine for negligence is punishment for violations that may impede with the administrative order or simply referring to as administrative order punishment

Example: Fines for negligence as an administrative order punishment (administrative fines under the High-pressure Gas Safety Control Act), administrative fine in civil cases (fine for negligence under the Civil Act.), fine for negligence as an disciplinary action (the Attorney-at-Law Act)

Penalty surcharge is monetary sanction imposed on a person who has violated his or her obligations set forth in any administrative laws to forfeit the financial benefits gained from such violation.

Charge for compelling compliance is means of enforcement to ensure the fulfillment of

one's duty by warning a certain amount will be fined should such a person fail to perform any substitutable or non-substitutable commissive duty, non-commissive duty, or burdened duty.

Example: Charge for compelling the construction or removal of a facility or building, charge for the act of using land(facility), charge for compelling the disposition of financial assets

Penalty is a special punitive process where the offender is given notification to make payment for his or her offense and whose imposed penalty is terminated once the payment is made (dispositions of notification).

Example: Penalties under the Punishment of Minor Offenses Act, penalties under the Road Traffic Act and the Immigration Act

Disciplinary action is taken against certain types of people such as private certification holder, against students and protected juvenile in primary, secondary schools and higher education institutions, against employees working for a government referral institution, and against employees working for a company under the supervision of a public institution if they violates relevant rules.

C. Improper solicitations regarding interventions in personnel affairs (Subparagraph 3)

It refers to intervening or exerting influence in the employment, promotion, job transfer or any other personnel management of public officials or relevant persons in violation of Acts and subordinate statutes. It also includes disciplinary actions, assignment, appointment, test, transfer, evaluation and all the other personal-management-related matters of public officials or relevant persons.

Categories	Description
Employment	• Matters related to the applicants' qualifications required for the employment of public officials or relevant persons, its due process, recommendation of a candidate, and the person of authority in such employment
Promotion	• Matters including the expected number of employees to be promoted, their qualifications, merit ratings, and the review process for special promotions
Transfer	• Matters including restrictions on and procedure of transfer, criteria for personnel assignment, personnel reshuffling, temporary placement, restrictions on concurrent holding of multiple positions
Disciplinary Actions	• Matters including the reasons and procedure of a disciplinary action, requirements for ex officio discharge, persons of authority over disciplinary measures, and appeals review
Test	• Matters including the subject matters to be tested in appointment and promotion examinations, its methods, exemption rules, and success criteria

D. Improper solicitations regarding the appointment to or rejection from a position of decision-making in a public institution (Subparagraph 4)

It refers to acts of appointing a person to or rejecting such person from a position which intervenes in the decision-making of a public institution, including a member of various deliberation, decision-making, and arbitration committees, as well as a member of a committee for a test or screening administered by a public institution in violation of Acts and subordinate statutes.

Deliberation, decision-making, and arbitration committees refers to the committees involved in decision-making functions including deliberation or resolution.

Many central administrative agencies have their own governmental committees and committees in charge of the deliberation or resolution of matters including the decision of major policies.

There are other types of committees such as local government committees related to the duties mandated by relevant acts and subordinate statutes, steering committees (whose duties include decision-making) in the case of public service-related organizations, fund management commissions, and institutions of nature related to the deliberation of entrusted duties in the case of delegated/entrusted institutions.

List of Current Committees

Categories	Institutions
Central Administrative Institutions	▪ (Presidential) Commission on Architecture Polity, National Space Committee, National Human Resource Committee, Committee on Local Autonomy Development, Council on Intellectual Property, Preparatory Committee for Unification, Regulation Reform Committee, etc. ▪ (Prime Ministerial) Committee on Assistance to International Sports Competitions, Truth Commission on Korean War Abductees and Rehabilitation, Coordination Commission on Policy for Persons with Disabilities, Committee on Green Growth, etc. ▪ (Central Administrative Institutions) Securities and Futures Commission, Korea Communications Standards Commission, Central Architectural Commission, Health Insurance Policy Deliberative Committee, Cultural Heritage Committee, National Park Committee, Supporting Committee for Trade Adjustment, Copyright Deliberation Committee, etc.
Local Government	▪ Rental Housing Dispute Mediation Committee, Market Refurbishment Project Deliberation Committee, Local Tax Deliberation Committee, Regional Development Adjustment Committee, Regional Committee for Countermeasures against School Violence, Local Deliberation Committees on Construction Technology, etc.
Public Service-related Organizations	▪ Gas Safety Technology Deliberation Committee, Medical Treatment Review Committee, National Pension Collection Examination Committee, Committee for Determination of Asbestos Injuries, Management Committee for Press Promotion Fund, Small & medium Business Corporation's Steering Committee, etc.
Delegated/Entrusted Institutions	▪ Deliberation Committee on Labels or Advertisements of Health Food Functionality, Deliberation Committee on Pharmaceutical Advertisement, Deliberation Committee on Medical Advertisement etc.

Arbitration Commissions include Press Arbitration Commission, Labor Relation Dispute Settlement Committee Commission, Environmental Dispute Settlement Committee, Condominium Building Dispute Mediation Committees, Content Dispute Resolution Committee, etc.

Audiences' Committee may present opinions or request for correction on broadcast programming and its content under the Broadcasting Acts.

The duties of School Governance Committees and Kindergarten Operation Committees include the deliberation of matters regarding the establishment/amendments of the school's charter and regulations, budgeting and settlement of accounts, implementation of the school curricula, and the creation, operation and use of school operation support funds.

School-related committees: Committee on Early Promotion, Early Graduation (Elementary and Secondary Education Act), Committee for Countermeasures against School Violence (Act on the Prevention of And Countermeasures against Violence in Schools), Teachers Competency Development Evaluation Management Committee (Rules on Teachers Training), Committee on the Protection of Teachers Rights in Schools (Rules on the Treatment of Teachers), Enrollment Fee Deliberation Committee (Higher Education Act), etc.

Test and screening examiner mean examiners of various national qualification examination or persons in charge of selecting winners or winning institutions of various public institution awards and prizes.

Example: Examiners for the hiring of public officials, members of the central appointment committee for the hiring of open position officials, examiners of national technical qualification examination, members of the deliberation committees for CPA, lawyer, licensed administrative agent examinations, members of the selection committee for scholarship students in cities and provinces, etc.

E. Improper solicitations regarding the selection or rejection of award, prize, etc. (Paragraph 5)

It refers to acts of trading in influence in violation of Acts and subordinate statutes so that a specific individual, organization, or legal person is chosen or rejected in the selection by a public institution for the recipient individual or organization of any award, prize, or commendation for outstanding performance. It also includes any other types of prizes and screenings such as citations and selection as a person of merit.

Prize: prizes are awarded for industrial, sports, cultural and general administrative achievements with each branch of the government implementing their own prize program. Most prizes given by locals government are awarded to citizens of merit (citizen prize, gun

and gu resident prizes, local council prize). Prizes in farming, fishing, and livestock industries are awarded to individuals and organizations while most education prizes are awarded in the form of scholarship.

Screening: most screenings are performed in scholarship awards, and others include commendation for companies of outstanding performance, support for successors of forestry.

Award: most awards are prescribed in local government ordinances and rules with only a few set forth in other Acts and subordinate statutes.

Example: National Science Fair Rules (Award to Winners), Enforcement Decree on Olympic Awards (Presentation of Olympic Award), Popular Culture and Arts Industry Development Act (Presentation of Korean Culture and Arts Award), Rule on Local Community Self-Development Award (presented to any person of substantial achievement who has demonstrated ample desire of self-development), Act on the Honorable Treatment and Support of Persons, etc. of Distinguished Services to the State (presentation of Veteran Culture Award)

Selection: since the purpose of making 'selections' lies in identifying and assisting companies of outstanding past performance, they are performed nearly across all industries.

F. Improper solicitations regarding duty-related confidential information on tender, auction, and others (Subparagraph 6)

It refers to acts of trading in influence so that duty-related confidential information on tender, auction, development, test, patent, military affair, taxation, etc., is disclosed in violation of Acts and subordinate statutes.

Confidential information refer to matters that are recognized as being worthy of protection not known to the general public yet possess substantial benefit.

Judicial Case: secrets obtained in the course of performing his or her duties under Article 127 of the Criminal Act shall not be limited to matters construed or categorized as confidential information by any Acts and subordinate statutes, and include matters not known to the public in a objective and general basis or from the government's or any public offices' perspective, or matters deemed confidential pursuant to any political, military, diplomatic, economic, or social demands, retaining substantial value, provided that the confidential information hereunder shall be of matters that may be recognized as possessing de facto value worthy of protection (Supreme Court decision 95DO780, May 10, 1996).

The State Public Officials Act and Local Public Officials Act set forth public officials' duty of confidentiality regarding information learned while performing his or her duties.

Article 127 of the Criminal Act set forth the offense of divulging official secrets obtained

in the course of performing his or her duties by a public official, whose offender shall be punished by imprisonment for not more than two years or suspension of qualifications for not more than five years.

Judicial case: the court found that standard evaluation results, comprehensive evaluation and other results, the names of evaluation board members and their employers fall under the category of secrets obtained in the course of performing his or her duties set forth in Article 127 of the Criminal Act because their disclosure may provoke unnecessary disputes over the credibility and fairness of the tender process and damage its fairness (Supreme Court decision 2009DO544, June 23, 2009).

Tender: the obligation of not revealing the expected price in a tender is set forth in the Act on Contracts to Which the State is a Party and Act on Contracts to Which a Local Government is a Party.

Auction: type of auctions include the ones performed by governmental agencies pursuant to relevant laws (public auction), and others among private persons (private auction). The obligation of committee members, the officers or employees of the Corporation of not revealing any confidential information obtained in the course of performing their duties is set forth in Subparagraph 3 of Article 25 of the Korea Management Corporation Act. Matters regarding any private auction are set forth in the Civil Execution Act.

Development: the obligation of not revealing of the confidential information regarding the national land development or various construction works in other 'developments' is imposed by laws.

Legislative case: prohibition on the divulgence of information regarding the provision of financial and other information under the Act on Special Measures for Designation and Management of Development Restriction Zones, prohibition on the divulgence of confidential information under the Harbor Construction Act

Military affair: The obligations of maintaining the confidentiality of military affair information are set forth in various military-affair-related acts and subordinate statutes ensuring the imposition of confidentiality obligation on matters including military operations.

Legislative case: the Act on National Defense and Military Installations Projects, National Defense Reform Act, Protection of Military Bases and Installations Act, Requisition Act, etc.

Patent: confidentiality is required for matters such as utility model, patent, the protection of designs, invention promotion and others of the Korean Intellectual Property Office.

Test: confidentiality is required for matters related to national technical qualification

examination and various other qualification examinations.

Legislative case: the obligation of maintaining the confidentiality of matters regarding executives and employees under the Human Resources Development Service of Korea Act, and executives and employees at entrusted institutions under the National Technical Qualifications Act, etc.

Taxation: the confidentiality obligation is set forth in relevant laws as such a protection of financial information related to the imposition of tax is required.

Legislative case: confidentiality obligation under the Customs Act, Framework Act on National Taxes

G. Improper solicitations regarding the selection or rejection of a contract party (Subparagraph 7)

It refers to acts of trading in influence so that a specific individual, organization, or legal entity is selected or rejected as a party to a contract in violation of Acts and subordinate statutes related to the contract.

This type of action is limited to certain legal areas referred to as 'contract-related Acts and subordinate statutes' unlike other types of solicitations.

It includes provisions in various individual acts and subordinate statutes along with those in contract-related general laws such as the Act on Contracts to Which the State is a Party and Act on Contracts to Which a Local Government is a Party.

Legislative case: General and special provisions for the contract for the selection of any organization in charge of research and development, or for the designation of any defense contractor under the Defense Acquisition Program Act; provisions for the method of contract with entrusted school meal services under the Enforcement Decree of the School Meals Act; provisions for the methods of entering into entrustment contract for recovery work under the Countermeasures Against Natural Disasters Act, etc.

H. Improper solicitations regarding the intervention in the allocation and provision of subsidies, incentives and others (Subparagraph 8)

It refers to acts of intervening or exerting influence so that subsidies, incentives, contributions, investments, grants, funds, etc., are assigned to, provided to, invested in, deposited in, lent to, used to make contributions to, or finance a specific individual, organization, or legal person in violation of related Acts and subordinate statutes.

Subsidy: legal bases for state and local subsidies are set forth in the Subsidy Management Act and the Local Treasury Bills Act respectively. Types of transfers to private sector (subsidies) include subsidy to private sector for ordinary activities, subsidy to social organizations, subsidy to private capital, subsidy for social welfare.

Incentive: it includes incentive for the promotion of employment, incentive for research and development, and incentive for policy promotion.

Legislative case: reemployment promotion incentive under the Employment Insurance Act, Science and technology development incentive under the Korea Scientists and Engineers Mutual-aid Association Act, incentive for the recruitment of outstanding workforce under the Military Personnel Management Act

Local government incentives include cremation incentive, incentive for the operation of funeral parlors, employment promotion incentive, and childbirth incentive.

Investment/Contribution: it has a legal basis on the National Finance Act, Local Finance Act, Act on the Management of Public Institutions, and Act on the Operation of Local Government Invested and Contributed Companies.

Legislative case: the Korea Foundation Act, Act on Special Cases Concerning Support for Technoparks, Korea Rural Community Corporation and Farmland Management Fund Act, etc.

Grant: 'Local subsidy tax' is a form of **grant** provided to give financial assistance required for the administrative operation of a local government under the Local Subsidy Act. Local subsidy taxes include general grants, special subsidy taxes, property subsidies and fire fighting safety subsidies. General grant is offered every year to local governments in an amount based on the deficient amount between the standards of financial income and demand.

Local education subsidy is granted for the assistance of the educational finance in elementary and secondary schools under the Local Education Subsidy Act.

Grant is also provided for certain administrative objectives to any organizations taking charge of the guidance for tax payment under the Framework Act on National Taxes.

Fund: funds are created when certain fund management is required for special purposes and the implementation of specific policies.

I. Improper solicitations regarding public institutions' sale and exchange of goods and services (Subparagraph 9)

It refers to acts of trading in influence so that a specific individual, organization or legal person buys, exchanges, uses, benefits from or possesses goods and services that are produced, provided or managed by public institutions beyond the monetary value prescribed by Acts and subordinate statutes or against normal transaction practices.

Unlike other acts of improper solicitations, those related to goods and services to public institutions are ruled on the basis of their 'normal transaction practices.'

Any acts of providing special favor to a certain person in violation of a public institution's internal rules and regulations are deemed as deviation from normal transaction practices.

Sale: most cases are related to disposals of government assets with others including the sales of properties obtained from government enterprises such as reclamation or the management of public funds, or sales of long-tern storage items.

Example: sales of any general state properties under the State Property Act, sales of assets pursuant to any disposition on default under the National Pension Act, sales of any publicly deposited long-term storage items under the Public Trust Act

Exchange: it sets forth matters related to the exchanges of general assets including land, building, land fixture performed within the scope of achieving administrative objectives.

Example: exchanges of any land or building fixtures and personal properties under the State Property Act, of trusted assets under the Public Trust Act, of cut riverside lots under the Small River Maintenance Act

Use: it refers to use of any state or public properties, expropriation and use of land to realize administrative objectives, joint use of wavelengths.

Taking profit: it refers to any profit-making projects undertaken by establishments under laws including mutual aid associations, foundations, research institutes, organizations, facilities, badge-related projects in domestic and international sports competitions, use and taking the profit from any public properties

Possession: it refers to prohibition against possession without permission, charging of fees for occupation and use without permission or indemnity

J. Improper solicitations regarding the handling of school admission, grades and others (Subparagraph 10)

It refers to acts of trading in influence so that admission, grades, performance tests or other matters related to schools of various levels are handled and manipulated in violation of Acts and subordinate statutes.

'Schools of various levels' refer to schools established under the Elementary and Secondary Education Act, the Higher Education Act, the Early Childhood Education Act and other Acts and subordinate statutes including the Private School Act.

Admission: duties include not only matters related to the method of student selection including the qualification, prescribed number in regular and special screenings, but also in-school or inter-school transfers, readmission, preferential admission for neglected and vulnerable groups.

Offenses include the admission of any unqualified candidate, any admission, in-school or inter-school transfer, or any other selection or screening in violation of Acts and subordinate statutes.

Grade and Performance Test: it refers to acts of soliciting for the manipulation of grades and performance test results, handling of test-takers who are unqualified for promotion, completion or graduation in violation of Acts and subordinate statutes.

Soliciting manipulation of school grades may constitute the Interference with Business offense prescribed in Paragraph 1 of Article 314 of the Criminal Act.

Judicial case: In a case where the defendant, a father and a high school teacher, manipulated his daughter's grades by requesting another teacher in charge of handling grades, the court found the defendant guilty of interference with business and that he interfered with the school principal's duty to evaluate school records (Ulsan District Court Decision 2014GoDan899, June 13, 2014,).

K. Improper solicitations regarding Physical Examination for Conscripts, Assignment to a Military Unit, etc. (Subparagraph 11)

It refers to acts of trading in influence so that physical examination for conscripts, assignment to a military unit, appointment of duties or any other matters related to military service are handled in violation of Acts and subordinate statutes.

Physical Examination for Conscripts: standards for the determination of physical grades in a draft physical examination, exemption from military service, postponement of physical examination or enlistment dates under the Military Service Act, its Enforcement Decree, and Enforcement Rule

Assignment to a Military Unit: enlistment as active duty servicemen or women, transfer as full-time reserve personnel, onboard ship reserve personnel, international cooperation service personnel, art and sports personnel, public health doctors, or public-service advocates, etc. under the Military Service Act, its Enforcement Decree, and Enforcement Rule

Appointment of Duties: charging and discharging of any officer's assignment under the Military Personnel Management Act, adjustment of order in call for military force mobilization under the Military Service Act, etc.

L. Improper solicitations regarding the manipulation of various assessment and judgment results, etc. (Subparagraph 12)

It refers to acts of trading in influence so that, in various assessments and judgments performed by public institutions, the assessment or judgment is made in violation of Acts and subordinate statutes or the results are manipulated.

Assessment: Assessments in the private sector, of public institutions, of asset values, etc.

Assessments in the private sector refer to assessments related to market order establishment, assessments of the state's assistance, indemnification or compensation provided to the private sector.

Most assessments in the public sector are performed for the purposes including the validation of state-assisted projects' effectiveness and the determination of the level of such assistance.

Example: assessment of specialized graduate schools under the Higher Education Act, evaluation of industrial accident insurance-related medical institutions under Industrial Accident Compensation Insurance Act, evaluation of the national research and development projects under the Framework Act on Science and Technology, assessment of the land price calculations under the Restitution of Development Gains Act, etc.

Judgment: this category consists of judgments on whether grade levels are met, on whether any subject has passed in examinations and tests, and on job performance on other administrative levels.

Example: judgments on long-term care grade under the Act on Long-Term Care Insurance for the Aged, on whether motor vehicle meets the inspection standards after a motor vehicle inspection is performed under the Motor Vehicle Management Act, on the eligibility to request the purchase of a parcel of land under the Road Act, adjudication of liability for compensation under the Board of Audit and Inspection Act, etc.

M. Improper solicitations regarding the manipulation or acquiescence of administrative guidance, control, inspection results (Subparagraph 13)

It refers to acts of trading in influence so that a specific individual, organization, or legal person is selected or rejected as subject-matter of administrative guidance, control, inspection, or examination, the outcome thereof is manipulated, or discovered violations are ignored in violation of Acts and subordinate statutes.

Administrative Guidance: the term "administrative guidance" means an administrative

action, such as guidance, recommendation, advice by an administrative agency to encourage or discourage a particular person regarding performance of certain acts, within the scope of duties or affairs under its jurisdiction in order to realize specific administrative aims (Subparagraph 3 of Article 2 of the Administrative Procedures Act)

Example: guidance and inspection on the actual state of management of illegal buildings under the Building Act, guidance on quality control of drinking water under the Drinking Water Management Act, guidances on the implementation of the criteria for sanitary handling of foods and for the observation of the requirements concerning the cooks and nutritionists under the Food Sanitation Act, etc.

Control: crackdowns in areas including amusement business affecting public morals, food sanitation, environment, road traffic and others.

Example: traffic regulation under the Road Traffic Act, control of illegal construction work in building under construction, and control of unauthorized or unreported buildings under the Building Act, removal, discard, obliteration of game products without or denied of rating qualification under the Game Industry Promotion Act, etc.

Inspection: verification of any observance of or offense against acts and subordinate statues, collection of information or documents required for the performance of any duties, inspection required for the fulfillment of obligations under various acts and subordinate statues, etc.

Example: administrative investigation under the Framework Act on Administrative Investigations, tax investigation under the Framework Act on National Taxes, investigation into status of sexual traffic under the Act on the Prevention of Sexual Traffic and Protection, etc. of Victims

Examination: audits performed by the National Assembly, Board of Audit and Inspection, and other administrative agencies.

Example: audit and inspection, and inspection of duties under the Board of Audit and Inspection Act, inspection under the Act on the Inspection and Investigation of State Administration, and other internal audit and inspections performed by administrative agencies, etc.

N. Improper solicitations regarding the handling of investigation, trial, adjudication and others (Subparagraph 14)

It refers to acts of trading in influence so that the investigation, judgment, adjudication, decision, conciliation, arbitration, or settlement of a case or any other equivalent function is handled in violation of Acts and subordinate statutes.

Investigation: it includes all procedural measures taken from the initiation to the termination

of any investigations conducted by investigative agencies. It includes not only enforcement actions taken during the course of an investigation (arrest, detention, seizure, search, verification, etc.), but also investigation-terminating measures such as prosecution or non-prosecution disposition.

Trial: it includes trials taking place in courts of all levels (Supreme Court, High Courts, District Courts, Patent Court, Family Courts, Administrative Court), trials in Military Courts, and citizen participatory trials. It includes the duties of justices, judges, military judges who preside over trials, along with those of other trial-related officers including judicial researchers, court officers, and jurors.

Adjudication: 'Adjudication' consists of administrative adjudications and special administrative adjudications with the latter including tax adjudications, patent adjudications, and appeals reviews.

Decision: it includes various types of decisions regarding any investigation, trial or adjudication, or similar decision of quasi-judicial nature.

Example: ruling on commencement of auction under the Civil Execution Act, decision on eligibility for parole under the Administration and Treatment of Correctional Institution Inmates Act, etc.

Conciliation/Arbitration: it means a legal process seeking to resolve any dispute between parties by the mediation of a third party helping them reach conciliation.

Example: conciliation of civil dispute under the Judicial Conciliation of Civil Disputes Act, conciliation by the Construction Dispute Conciliation Committee under the Construction Industry Base Act, conciliation and arbitration by the Press Arbitration Commission under the Act on Press Arbitration and Remedies, etc. for Damage Caused by Press Reports, criminal conciliation under the Crime Victim Protection Act, etc.

Settlement: it is a dispute-resolving process that may replace trials where parties enter into a contract to terminate the dispute by making compromises.

Example: compromise before a lawsuit is filed under the Civil Procedure Act, settlement between parties during arbitral proceedings under the Arbitration Act, reconciliation regarding the protective measures to be taken for public interest reports under the Protection of Public Interest Reporters Act, etc.

3 Causes for Exception to Improper Solicitations

Article 5 (Prohibition of Improper Solicitations)

(2) Notwithstanding the provisions of Paragraph (1), this Act shall not apply to any of the following cases:

1. Requesting certain actions, such as asking for the remedy against or resolution of infringement on a right, or suggesting or recommending the establishment, amendment, or rescission of related Acts and subordinate statues, and standards in accordance with the procedures and methods prescribed by the Petition Act, Civil Petitions Treatment Act, Administrative Procedures Act, National Assembly Act, other Acts and subordinate statutes, and standards (including rules, policy and standards of the public institutions as prescribed in Items 2(1)(b) through (e); hereinafter the same shall apply);
2. Publicly soliciting a public official or relevant person to take a certain action;
3. Where an elected public official, political party, civil society organization, etc., conveys a third party's complaints and grievances for the public interest, or suggests or recommends establishing, amending, or repealing any Acts and subordinate statutes and standards, or improving policies, projects, systems, and their management;
4. Requesting or demanding that a public institution complete a certain duty within a statutory deadline, or inquiring or asking verification about the progress or outcome thereof;
5. Applying or making a request for verification or certification of a certain duty or juristic relations;
6. Requesting explanation or interpretation of systems, procedures or Acts and subordinate statutes related to a certain duty in a form of inquiry or consultation; and
7. Any other conduct not deemed as defying social norms.

A. Overview

Paragraph 1 of Article 5 of this act lists specific prohibited solicitations including the handling of 14 types of duties in violation of various acts and subordinate statutes. Paragraph 2 lists 7 types of cases to which the Improper Solicitation and Graft Act is not applicable. In case where an act meets the requirement in any of the item in Paragraph 2, the act does not constitute an improper solicitation.

The relation between Paragraph 1 of Article 5 of the this Act (prohibition clause), and Paragraph 2 (exception clause) raises a problem which is related to the question of how the scope of exception should be interpreted.

Since the association between Paragraph 2 and Paragraph 1 is undeniable judging from the expression 'Notwithstanding the provisions of Paragraph (1),' the scope of exception is required to be interpreted in a rational manner.

Given the association between Paragraphs 1 and 2, if an act meets the formal requirement

of the causes for exception set forth in Paragraph 2, notwithstanding the fact that the matter constitute an improper solicitation prohibited in Paragraph 1, it may constitute a cause for exception.

B. Requests in Accordance with the Procedures and Methods Prescribed by any Acts and Subordinate Statutes or Standards (Subparagraph 1)

The expression stipulates the most typical method of communication that is already institutionalized and that people and public institutions use pursuant to the relevant acts, subordinate statutes, and standards.

Any public institutions may establish a communication channel or system between a public official and any petitioner, under its internal standards. This channel or system is to prevent any oppression in the public institutions' communication such as any public official avoiding counsel with a civil petitioner.

The problem remains concerning whether the causes for exception in Subparagraph 1 requires that both the formal requirements (procedures and methods set forth in relevant acts and subordinate statues) and the actual requirements (lawful contents). In other words, the problem lies in whether any act prohibited by Paragraph 1 can be allowed if it fulfills the formal requirements (procedures and methods set forth in relevant acts and subordinate statues).

In case the formal requirements are met, a cause for exception is constituted even if the content of the solicitation contains improper elements. The clause, "such as asking for the remedy against or resolution of infringement on a right, or suggesting or recommending the establishment, amendment, or rescission of related Acts and subordinate statues, and standards," does not limit its contents.

Demanding the fulfillment of both the formal and actual requirements may diminish its function as a cause for exception under Paragraph 1 and oppress communication in public institutions.

Even if a matter violates any acts and subordinate statues, civil petitioners who may feel that the existing acts and subordinate statues do not provide enough protection of his or her civil rights may require opportunities to request such a matter.

C. Public solicitation of a certain action (Subparagraph 2)

Since improper solicitations assume secrecy, requests made 'publicly' and not in secrecy constitute exception to improper solicitation. This means open request for certain action (openness of an action's circumstance).

In case a matter is requested publicly, because the matter become public, it functions as an autonomous regulating tool to all relevant parties including the petitioner and public officials. To make a matter open to unspecified individuals enables them to take control over the matter with various opinions to be collected on the way, and eventually leading to a reasonable conclusion.

'Publicly' means to put the request in a situation where it is noticed by unspecified individuals. Public requests include picketing in an open space, and requests via the media such as television networks or a newspapers.

Any request that meets the formal requirements (to be requested 'publicly') establishes a cause for exception regardless of its content. The cause for exception in Subparagraph 2 only set forth the formal requirements but not specifically the actual requirements (the content).

D. Conveying of complaints and grievances for the public interest (Subparagraph 3)

Requirements of a cause for exception

Subparagraph 3 stipulates the causes for exception that limit the subject (an elected public official, political party, civil society organization etc.), objective (of public interest, etc.), object of an action (complaint of grievance, etc.), and the action itself (conveying).

Subject: subjects in the exception clause are expressed as "an elected public official, political party, civil society organization, etc.," where other subjects that can be included as "etc." can be a problem.

Unlike other causes for exception, the scope of this cause needs to be determined after taking account of its legislative purport, the function and characteristics of those subjects presented as examples.

Others represented in "etc." are limited to organizations that seek public interests and can collect opinions of the public equivalent to the "public official, political party, civil society organization."

Other causes for exception (requests in accordance with the procedures and methods prescribed by Acts and subordinate statutes, requests solicited publicly, social norms, etc.) may be applied to other organizations or individuals.

Exceptional organizations may include occupation associations, interest groups, and officially approved academic societies and other associations.

Since the causes for exception such as objective (of public interest), action (of conveying) are also limited, there is no need for a too narrow interpretation of the scope of the civil society organizations.

However, the person representing the organization in question should convey on behalf of the organization, and cases where the matter is conveyed by any of its individual employees or members shall be excluded.

Objective: it includes matters pertaining to the interests of specific social organizations or of all of their members, along with the interests of a population of the state or society.

Public interest as the main objective is enough to constitute this cause. Even if it is a complaint of grievance filed by a specific third party, it may constitute the public interest objective when the matter is or may be pertinent to the interests of the majority.

Object: complaint of grievance that is the object to be conveyed, refers to complaints pertinent to matters that violate a citizen's rights or cause inconvenience or imposition.

Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission

Article 2 (Definitions)

5. The term "complaint" means any complaint on any illegal, unjustifiable or passive action of an administrative agency, etc. (including an actual act and omission) or unreasonable administrative system which violates a citizen's right or causes inconvenience or burden to a citizen.

It also includes motion or proposal for the enactment, amendment, abolition of any Acts, subordinate statutes, and standards, or the improvement of policy projects and its management.

Action: conveying means everything received is delivered in principal as it is. But it also includes conveying the matter with a few supplementations made and without fundamental changes to its contents. A matter to which fundamental changes are made beyond simple conveying or supplementation constitutes a separate new solicitation.

Example cases

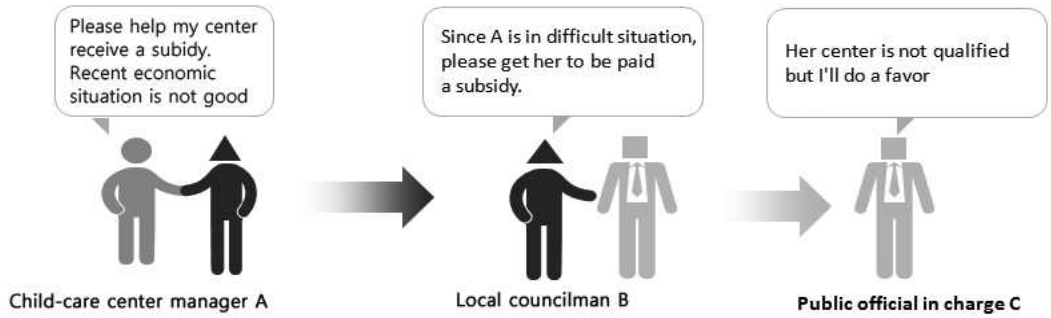
Example case 1 (case for public interest objective)

Although an amendment to the Traffic Safety Act is in effect to provide financial assistance regarding the installation of a black box (electronic event data recorder) in taxis vehicles, those that had their black boxes already installed before the act took effect are not eligible for such assistance. As such, a taxi driver A, who had his black box installed in his vehicle prior to the amendment of the Act, filed a complaint to the relevant head of office at the Ministry of Land, Infrastructure and Transport via a national assemblymen B who happens to be a member of the Land, Infrastructure and Transport Committee, which allows taxicab owners who had their black boxes installed before the Act was amended to be provided with the same financial assistance.

The case constitutes an exception to improper solicitation as it involves a complaint of grievance filed by a third party that was conveyed with public interests in mind.

Example case 2 (case against public interest objective)

A subsidy was granted to A, who operates a child-care center, after she solicited C, the public official in charge of the subsidy duties at the local government, for making her institution that is not qualified to become eligible for the assistance via a local council member B,



The duties of subsidy allocation and provision constitute those prohibited as improper solicitations under the Improper Solicitation and Graft Act (Article 5 (1) 8).

Requesting for making any individual or organization eligible for subsidy grant in violation of any relevant subsidy-related acts and subordinate statues constitutes an act of improper solicitation.

The case meets the subject, object, and action requirements as an elected public official, the local council member B, has conveyed the complaint of grievance to the public official.

However, the case may not be deemed to have an objective of public interest, since requesting for subsidy when someone is not eligible is an action, benefitng a specific person.

E. Request for the completion of a duty within statutory deadline, etc. (Subparagraphs 4, 5, 6)

Also excepted are requests for the completion of a duty within a statutory deadline, inquiry or verification request about its progress or results.

Actions such as applying or making a request for verification or certification of a certain duty or juristic relations, requesting explanation or interpretation of systems, procedures or Acts and subordinate statutes related to a certain duty in a form of inquiry or consultation are also excluded.

F. Conducts not deemed as defying social norms (Subparagraph 7)

Even if an action conforms to one of the fourteen types of improper solicitations, it is still immune from punishment when it justified in the context of the overall legal order.

In a fast-changing complex society, it is technically impossible to stipulate in detail all cases that are allowed by the social norms. The use of an indeterminate term that can encompass a wide range of cases was inevitable for the legislation.

Conducts not deemed as defying social norms refer to actions that may be approved by the public in the context of the overall legal order, or the social ethics and the socially accepted ideas behind it.

Legislative case: the concept of 'social norms (or rules)' is already employed in Article 20 of the Criminal Act, Article 5 of the Act on Press Arbitration and Remedies, etc. for Damage Caused by Press Reports and other provisions that set forth requirements for actions immune from punishment.

Decision shall be made after considering all relevant contents and formalities of a solicitation including its motive, objective, content, fairness in the public official or relevant person's undertaking of the duty, and means or methods used.

Judicial case: Because any action's legitimacy as an act that is in line with the social norms not constituting any offenses should be determined after teleological and rational deliberation of the matter in its specific context, for its legitimacy to be approved, the following requirements need to be fulfilled among others: 1) legitimacy in the motive or objective of the action, 2) reasonability of the means or methods of the action, 3) the balance of legal benefits between the interest of protection and violation, 4) urgency, and 5) the action's supplementary nature which suggests that no other means or methods that the action in question was available (Supreme Court decision 2003Do3000, September 26, 2003).

Note	Summary of court precedents related to the constitution of improper solicitation in offences of misappropriation, acceptance or giving of property

The meaning of improper solicitation in offences of misappropriation, acceptance or giving of any property is as follows:

The court found that improper solicitation in offences of misappropriation, acceptance or giving of any property is defined as a solicitation that is against the social norms and the principles of good faith.

Judicial case: Improper solicitation in offences of misappropriation, acceptance or giving of any property refers to a solicitation against the social norms and the principles of good faith, the decision of which shall be made in consideration of a broad range of factors including the content thereof, the form of and amount in property delivered or offered in connection with the matter, and the integrity of the person who handled the duty as interest protected by laws, and shall not require to be explicit (Supreme Court decision 96Do837, June 9, 1998).

The court found that legitimate performance of one's duty, simple request for favorable handling and convenience, and request for the claiming of one's rights do not constitute improper solicitation.

Legitimate performance of duties

For the defendant, a local union head at a farmers co-operative society, attracting deposits in the interest of the society constitutes solicitation for deposits as the defendant's legitimate duty (Supreme Court decision 79Do708, June 12, 1979)

Simple request for favorable handling and convenience

Case 1: the simple request co-defendants A and B have made to a third defendant C (bank clerk) asking C for a favorable handling of ○○ textile company's financial support for export within the limits allowed by the relevant regulations may not constitute an improper solicitation in violation of the social norms (Supreme Court decision 82Do1656, September 28, 1982).

Case 2: the request made to the defendant A (an assistant manager at a bank), who is in charge of the technology reviews for loan approvals, and defendant B (another assistant manager at the bank), who is in charge of the progressive payments for the loans of related funds, for the smooth handling of the subject matter etc., while providing all the convenience available within the limits of their own duties, does not constitute an illegal or improper request (Supreme Court decision 79Do3108, April 8, 1980).

Request for the claiming of one's rights

Case 1: when A, who entered into a sales agreement with a third party to dispose of a parcel of real estate that he believed was in his possession, made B, who represents the clan union, which had sought to execute the court's temporary measure decision to prohibit sales asserting its right over the property, withdrew the execution and paid for the expenses

incurred from the temporary measure application procedure, such action may be deemed as an action to claim his own right and shall not constitute an improper solicitation in violation of the social norms or the principle of good faith (Supreme Court decision 80Do19, August 26, 1980).

Case 2: when A, the CEO of ○○corporation who entered into a garbage collection contract with the garbage disposal company, B corporation for a monthly collection fee of 750,000 won, received a proposal from B corporation's competitor C corporation of a garbage collection service for the monthly collection fee of 600,000 won, and A notified the revocation of their contract to B corporation that fulfilled all of its obligations under the contract, and where D, the CEO at B corporation, requested A "not to terminate their contract for an additional amount of 3 million won," such request to claim its existing rights by maintaining the contractual relationship may not be construed as an improper solicitation (Supreme Court decision 85Do465, October 22, 1985).

Requests for preferential treatment, preferential adoption·selection or unlawful·improper handling constitute improper solicitations according to precedents.

Request for preferential treatment

When a producer in charge of producing and making a program or of relevant work at a broadcasting company received a solicitation to frequently play a certain singer's songs for his or her program (Supreme Court decision 90Do2257, January 15, 1991)

Request for preferential adoption·selection

Case 1: when a person in charge of recommending a entrusting bill collector as a branch manager of the Korea Electric Power Corporation received a solicitation from someone to make a preferential recommendation for him or her to substitute for the current bill collector A if A resigns (Supreme Court decision 89Do495, December 12, 1989)

Case 2: when the material division manager and an employee of a construction company A in charge of purchase contracts received a solicitation to sign a contract for the supply of goods in the form of a negotiated contract with the Korea Veterans Welfare Corporation and to offer conveniences in return for rewards (Supreme Court decision 90Do665, August. 10, 1990)

Case 3: when professors received a solicitation from A running a publisher to choose books published by A's company as textbooks or to entrust the publishing of collected materials to be used as a textbook to A's company (Supreme Court decision 95Do2090, October 11, 1996)

Case 4: when A in charge of power transmission facility management and power transmission line construction site supervision as a power transmission and distribution engineer for the Korea Electric Power Corporation received a solicitation from B, a subcontractor working in the power transmission line and pylon relocation construction business, to connive even if there are defects in construction (Supreme Court decision 91Do2418, November 26, 1991)

Request for unlawful ·improper handling

When a person working in the appraisal business received a solicitation to underestimate the value of an object of appraisal (Supreme Court decision 82Do925, July 13 1982)

4 Prohibition of Performing Duties due to Improper Solicitations

Article 6 (Prohibition of Performing Duties as Directed by Improper Solicitations)
No public official or relevant person who receives an improper solicitation shall perform his or her duties as directed thereby.

A public official or relevant person who receives an improper solicitation is prohibited from performing his or her duties by it, and a public official or relevant person who performs his or her duties as directed by such an improper solicitation is subject to a criminal punishment

This applies to all public officials or relevant persons who are included among 'public officials or relevant persons performing their duties' (public officials or relevant persons handling the matter themselves, directors·directors general or relevant persons who are authorized to grant approval, the heads of agencies who are not authorized to grant approval but authorized to command and supervise or relevant persons)

Even though a public official or relevant person has delegated his or her discretion in accordance with the internal rules and regulations on discretion delegation, such a public official or relevant person (e.g. the head of an agency) shall be included as well

When a superior public official or relevant person authorized to grant approval, or a superior public official or relevant person not authorized to grant approval but authorized to command and supervise receives an improper solicitation and handles the matter by giving directions, etc. to an inferior public official or relevant person;

As a superior public official is categorized as a public official performing duties, it is deemed that he or she has performed his or her duties as directed by an improper solicitation and thus shall be subject to a criminal punishment.

As a superior public official's directions are also deemed as an improper solicitation for a third party, an inferior public official shall clearly express an intention to refuse the solicitation, and should he or she follow such directions even though he or she is aware that this is an improper solicitation for a third party, it is deemed that he or she has performed his or her duties as directed by an improper solicitation and thus shall be subject to a criminal punishment

In the event that a person authorized to grant approval is unaware that an inferior public official or relevant person who received an improper solicitation performed duties as directed by the improper solicitation, no criminal punishment shall be imposed as there was no intent proved against the senior official (who shall not be punished as a negligent criminal either as there are no rules on punishment for negligent criminals in the Improper

Solicitation and Graft Act).

Meanwhile, no person who makes an improper solicitation directly for himself or herself shall be subject to sanctions, but any public official or relevant person who performs his or her duties as directed by the improper solicitation shall be subject to a criminal punishment. If a person who makes an improper solicitation directly for himself or herself is a public official or relevant person, he or she shall be subject to mandatory disciplinary action pursuant to Article 21.

5 Procedure for Handling Improper Solicitations

Article 7 (Reporting and Handling of Improper Solicitations)

(1) If a public official or relevant person receives an improper solicitation, he or she shall notify the person who made the improper solicitation that the solicitation is improper and clearly express an intention to refuse the solicitation.

(2) If a public official or relevant person receives the same improper solicitation again even though he or she took the measure as prescribed in Paragraph (1), he or she shall report such fact to the head of the relevant agency in writing (including electronic documents; hereinafter the same shall apply).

(3) A head of the relevant agency in receipt of a report under Paragraph (2) shall promptly verify whether the subject-matter of the report constitutes an improper solicitation by examining the background, purport, details and evidence of the report.

(4) A head of the relevant agency may take any of the following measure against a public official or relevant person who received an improper solicitation should the head of the relevant agency be aware of such fact or if it is deemed that the performance of the duties of the public official or relevant person may be hindered during the process of reporting the improper solicitation and verifying the report under Paragraphs (2) and (3):

1. Provisional suspension of performing the duties;
2. Designation of a substitute;
3. Change of position; and
4. Any other measures as provided by the National Assembly Regulations, Supreme Court Regulations, Constitutional Court Regulations, National Election Commission Regulations or Presidential Decree.

(5) Notwithstanding Paragraph (4), a head of the relevant agency may let the public official or relevant person continue his or her duties in any of the following cases. In this case, the head of the relevant agency shall have an official in charge who belongs thereto under Article 20 or other public official or relevant person verify and check regularly as to whether the public official or relevant person performs his or her duties uprightly.

1. In the event that it is very difficult to find a substitute for the public official or relevant person who can perform the duties;
2. In the event that the performance of the duties of the public official or relevant person is marginally affected; and
3. In the event that the necessity of continuing the duties is greater in the light of protecting national security, developing the national economy and promoting any other public interest.

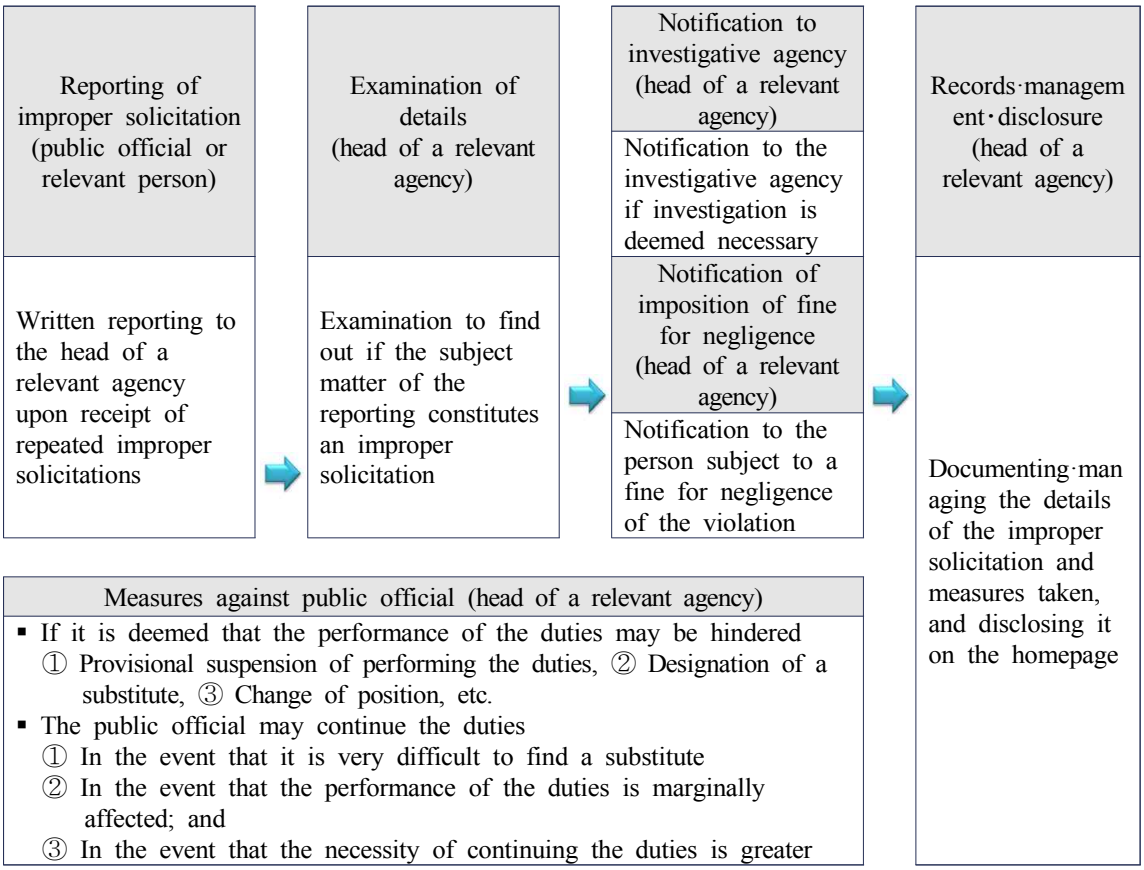
(6) A public official or relevant person may submit a report as prescribed in Paragraph (2) to a supervisory body, the Board of Audit and Inspection, an investigative agency or the Anti-Corruption and Civil Rights Commission.

(7) A head of the relevant agency may disclose the details of an improper solicitation and the measures taken on the internet homepage of the public institution to the extent it does not violate other Acts and subordinate statutes.

(8) Any other matters necessary to report, verify, handle, record, manage and disclose an improper solicitation other than those provided under Paragraphs (1) through (7) shall be

prescribed by Presidential Decree.

Procedure for handling improper solicitation reporting



A. Duty of refusal of improper solicitations

For most public officials or relevant persons, it is not easy to refuse an improper solicitation by the very nature of it even though they know well they have to refuse. As most improper solicitations are made by those the public official or relevant person knows well, it is not easy to refuse an improper solicitation from the beginning. If the public official or relevant person recognizes that he or she may be subject to a breakoff of a relationship or direct·indirect disadvantages, it is effectively difficult to refuse.

The Improper Solicitation and Graft Act imposes the duty of refusal by stipulating that public officials or relevant persons clearly express an intention to refuse when an improper solicitation is first received. This is intended as the basis for them to refuse without worrying about the possibility of a breakoff of a relationship or direct·indirect

disadvantages.

B. Reporting of improper solicitations

(1) Same improper solicitation incurring obligation of report

Determination of same improper solicitation

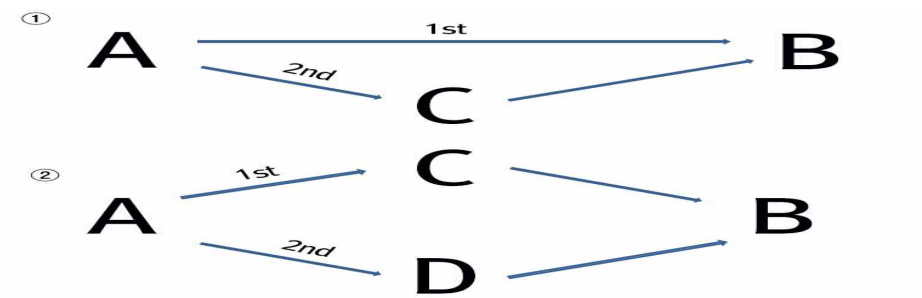
If a public official or relevant person receives an improper solicitation (for the first time), he or she shall notify the person who made the improper solicitation that the solicitation is improper and clearly express an intention to refuse the solicitation (Paragraph 1 of Article 7 of the Act).

However, If he or she receives "the same improper solicitation" again, an obligation is incurred to report such fact to the head of his or her agency (Paragraph 2 of Article 7 of the Act). Reporting is a means that can protect good public official or relevant person from ex post facto liabilities arising from any event.

Whether a solicitation is the same one is judged on 'the criteria of public official or relevant person who have the obligation to report' and whether the contents of both improper solicitations are identical. The scope of same improper solicitations was set from the perspective of public officials pursuant to the reporting process' purport of providing protection to any good public official or relevant person.

When a party of interest carries out an improper solicitation in person, and then performs the same act of solicitation again via a third party, or carries out two back-to-back improper solicitations via a third party, the request constitutes a same improper solicitation that is required to be reported.

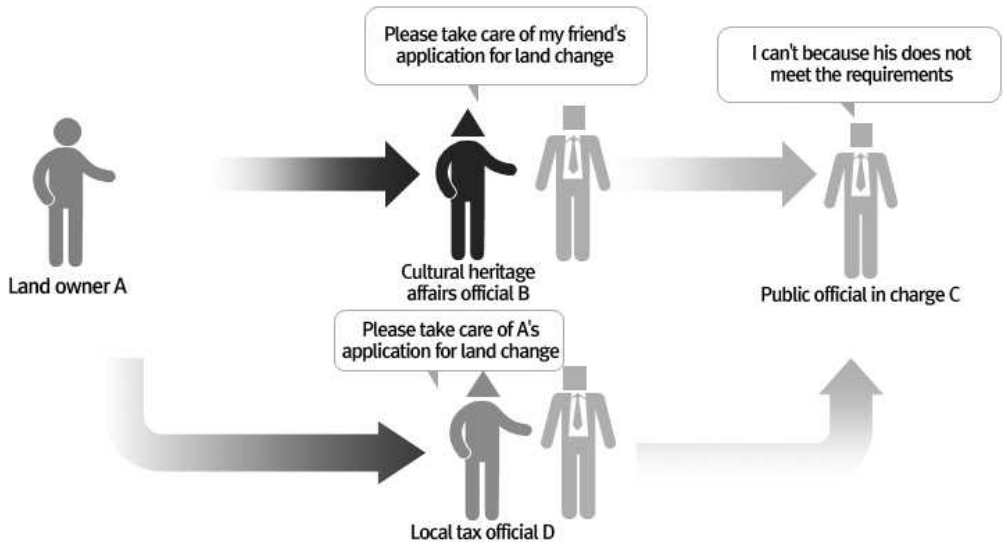
< Cases of Same Improper Solicitations >



Improper solicitations made by a multiple number of employees at the same corporation on a single subject matter constitutes a same improper solicitation which is required to be reported on.

Example cases

#1. A, who owns a parcel of land located inside a development restriction zone, filed an application for the change in the form and quality of his parcel to C, a public official at the ○○ local government office in charge of the matter, then realizing that the land fails to meet the requirements for the approval of such a change under the Act on Special Measures for Designation and Management of Development Restriction Zones and its Decree, requested via B, a cultural heritage affairs official at the ○○ local government office and a friend of his, for the approval of his application, and when C refused his request, went on to solicit D, another public official at process handling of the ○○ local government office in charge of local taxes, for the approval,



Any duty related to the permission for the alteration of the form and quality of land under the Act on Special Measures for Designation and Management of Development Restriction Zones and its Decree is subject to the prohibition of improper solicitations clause under the Improper Solicitation and Graft Act (Article 5 (1) 1).

Trading in influence so that a subject matter is handled in violation of Acts and subordinate statutes when it does not meet the requirements for permission for the alteration of the form and quality of land under the Act on Special Measures for Designation and Management of Development Restriction Zones and its Decree is subject to the prohibition of improper solicitations clause.

Since **A, the owner of the land**, committed an act of improper solicitation via a third party B, as a party of interest, he may be punished by a fine for negligence not exceeding 10 million won.

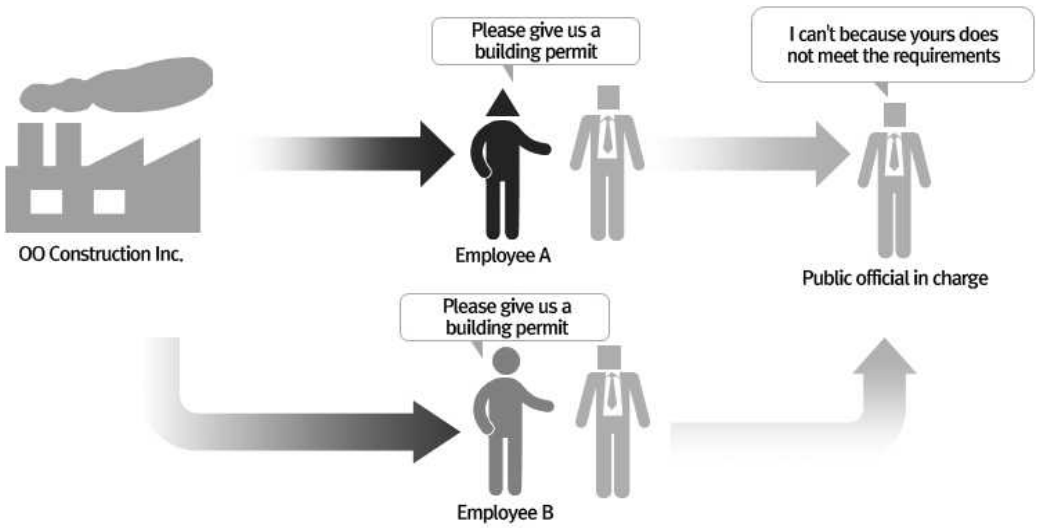
Since the **public officials B** and **D** made improper solicitations on behalf of a third party A, and are subject to the definition of public official or relevant person who require a high level of integrity, they may receive an aggravated punishment of fine for negligence not exceeding 30 million won.

As the **public officials in charge C** clearly expressed his/her intent to refuse the initial improper solicitation of B, he/she is not subject to any disciplinary action or punishment.

If the public officials in charge C fails to report the subject matter, as he/she have received the second identical solicitation through D, he/she may be subject to disciplinary actions.

If the public official in charge C approves the application for the change of form and quality of land as a result of an improper solicitation, he/she may be subject to criminal punishment (imprisonment not exceeding 2 years or fine not exceeding 20 million won).

#2. A, an employee at ○○ Construction Inc., requested C, the public official in charge at the relevant local government office, for the approval of a building permit in violation of any building-related acts and subordinate statutes, in which, the day after C refused the request, B, another employee of the construction company requested C for the same subject matter



Any duty related to granting of building permit is subject to the improper solicitations

clause under the Improper Solicitation and Graft Act (Article 5 (1) 1).

Requesting for building permit in violation of any building-related acts and subordinate statutes is subject to the prohibition of improper solicitations clause.

C who is in charge of building permit affairs has the obligation to express his or her intent to refuse any improper solicitations from the construction company employee A. Since C received a same improper solicitation for the second time from the employee B, despite initially expressing his intent to refuse, obligation to report the matter to the head of the relevant agency incurs, the failure of which may constitute cause for disciplinary action.

Since **employees A** and **B** committed improper solicitation on behalf of a third party, the corporation, they may be punished by a fine for negligence not exceeding 20 million won.

Since improper solicitations related to the duties of any executives and employees of a corporation are for the interest of the corporation, and because the effects of such improper solicitations also belong to the corporation, it constitutes improper solicitations for a third party.

○○ Construction Inc. may be punished by a fine for negligence not exceeding 20 million won under the Responsibility of Legal Persons, etc. provision of Article 24 of the Improper Solicitation and Graft Act. Provided, that the corporation was not negligent in giving due attention and supervision concerning the relevant duties so as to prevent such violation, it may be exempt from any punishments.

(2) Methods of reporting

In case a public official or relevant person receives a recurring same improper solicitation, he or she shall report the fact to the head of the relevant agency in writing (including electronic document). Items to be reported are personal information of the reporter, intent, reason, and content of the report, etc.

A public official or relevant person may submit a report to a supervisory body, the Board of Audit and Inspection, an investigative agency or the Anti-Corruption and Civil Rights Commission.

When evidence that may prove the subject matter of a report is available, it is required to be submitted with the report for the prevention of any false or irresponsible reports. False or any other improper reporting is exempt from any protection or compensation, while a false report filed with the intent to make another person subject to criminal punishment or disciplinary action constitutes an offence of false accusation.

C. Measures to be taken against public official or relevant person who received improper solicitation

(1) Types of measures

Certain measures are taken against any public official or relevant person who has received an improper solicitation in order to cut off in advance possible public suspicion about the fairness of the handling their duties.

Measures to be taken against public official or relevant person who has received an improper solicitation include "provisional suspension of performing the duties, designation of a substitute, change of position," and any other measures set forth in the Presidential Decree.

While the measures of "provisional suspension of performing the duties" and "designation of a substitute" set forth in the Act are temporary, "change of position" means a complete exclusion from the line of duty.

Category	Description
Provisional Suspension of Duties	▪ Temporary suspension of the duty in question without any changes of personnel.
Designation of a Substitute	▪ Measure to allow another person to perform the duty in question when the actual person in charge is incapable of continuing on his or her performance of the duty.
Change of Position	▪ Change in the assignment of the public official or relevant person in question

(2) Cases for exception

If required, a head of the relevant agency may let the public official or relevant person who has received an improper solicitation continue his or her duties in any of the following cases:

· In the event that it is very difficult to find a substitute for the public official or relevant person who can perform the duties

· In the event that the performance of the duties of the public official or relevant person is marginally affected

· In the event that the necessity of continuing the duties is greater in the light of protecting national security, developing the national economy and promoting any other public interest

In any of these cases, the head of the relevant agency should have an official in charge or other public official or relevant person verify and check regularly as to whether the public official or relevant person performs his or her duties in a fair manner.

D. Disclosure of the details of an improper solicitation and the measures taken

(1) Disclosure decision

The head of the relevant agency has the discretion about whether he or she should disclose an improper solicitation to prevent any similar incidents from occurring. Such decision should be made after considering all the related factors including whether any fine for negligence was imposed, a conviction was decided, or if such disclosure is necessary for the prevention of other improper solicitations.

(2) Scope and methods

Scope: the Act only lists details of improper solicitation and measures taken as items to be disclosed while not mentioning about personal information.

Because the Act failed to mandate that the Presidential Decree set forth additional details about the scope of the items to be disclosed, personal information could not be prescribed as an item subject to disclosure in the Decree.

Method: details are disclosed on Internet homepage of the public institution with a view to improve efforts for the prevention of improper solicitations.

6 Violation Penalties

Article 21 (Disciplinary Actions)

The head of each relevant agency shall take disciplinary action against each public official or relevant person who violates this Act or Decree pursuant this Act.

Article 22 (Criminal Punishments)

(2) Any of the following persons shall be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won:.

1. A public official or relevant person (including private persons performing public duties under Article 11) who performs his or her duties as directed by an improper solicitation in violation of Article 6;

Article 23 (Fines for Negligence)

(1) Any of the following persons shall be subject to a fine for negligence not exceeding 30 million won:

1. A public official or relevant person (including private persons performing public duties under Article 11) who makes an improper solicitation to another public official or relevant person (including private persons performing public duties under Article 11) for a third party, in violation of Article 5(1). Provided, that no fine for negligence shall be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked;

(2) Any person who makes an improper solicitation to a public official or relevant person (including private persons performing public duties under Article 11) for a third party in violation of Paragraph 5(1) (excluding those who are subject to Paragraph 1(1)) shall be subject to a fine for negligence not exceeding 20 million won. Provided, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked.

(3) Any person who makes an improper solicitation through a third party to a public official or relevant person (including private persons performing public duties under Article 11) in violation of Paragraph5(1) (excluding those subject to Subparagraph (1)1 and Paragraph (2)) shall be subject to a fine for negligence not exceeding ten million won. Provided, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked.

(7) A head of the relevant agency shall notify a competent court, which shall proceed to a trial on a fine for negligence pursuant to the Non-Contentious Case Procedure Act, of the violation committed by a person subject to a fine for negligence imposed under Paragraphs (1) through (5).

A. Disciplinary actions

The head of each relevant agency shall take disciplinary action against each public official or relevant person who violates this Act or Decree pursuant this Act. It means that a disciplinary action should be taken pursuant to the relevant disciplinary standards and procedure.

Although any "direct improper solicitation for his or her own interest" is exempt from fines for negligence, if such solicitation is committed by a public official or relevant person, it is a violation of this Act (Article 5) and is subject to disciplinary actions.

B. Fine for negligence or criminal punishment

A fine for negligence may be imposed through a trial (decision) at a competent court after the head of the relevant agency notify the court of the violation.

A person who makes an improper solicitation via or for a third party may be subject to a fine for negligence.

- A person who makes an improper solicitation **via a third person** may be punished by a fine for negligence not exceeding KWR10 million.

- As for improper solicitations made **for a third person**, a public official or relevant person may be punished by a fine for negligence not exceeding 30 million won, while other offenders may face a fine not exceeding 20 million won.

An improper solicitation made to a public official or relevant person in person and in his/her own interest is excluded from punishment by a fine for negligence.

A public official or relevant person who performs his or her duties as directed by an improper solicitation may be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won.

Although a person who makes an improper solicitation in person and in his or her own interest is not imposed of any fine for negligence, the public official or relevant person who performs his or her duty pursuant to the solicitation is subject to criminal punishment.

Sanction by improper solicitation types

Requirement		Sanction level
Subject	Types	
Stakeholders	Improper solicitation for oneself	No sanction
	improper solicitation through a third party	Fine for negligence up to 10 mil. won
Private person	Improper solicitation for a third party	Fine for negligence up to 20 mil. won
Public officials, etc.	Improper solicitation for a third party	Fine for negligence up to 30 mil. won
	Performing duties directed by improper solicitation	Imprisonment up to 2 years or fine up to 20 mil. won

Example cases (solicitation made in person)

A, who owns a parcel of land located inside a development restriction zone, filed an application for the change in the form and quality of his parcel to C, a public official at the ○○-Gun Office in charge of the duty. Then, even he knew that the land failed to meet the requirements for the approval of such change under the Act on Special Measures for Designation and Management of Development Restriction Zones and its Decree, A requested C to grant approval for his application.

Any duty related to the permission for the alteration of the form and quality of land under the Act on Special Measures for Designation and Management of Development Restriction Zones and its Decree is subject to the prohibition of improper solicitations clause under the Improper Solicitation and Graft Act (Article 5 (1) 1).

Trading in influence so that a subject matter is handled in violation of Acts and subordinate statutes when it does not meet the requirements for permission for the alteration of the form and quality of land under the Act on Special Measures for Designation and Management of Development Restriction Zones and its Decree is subject to the prohibition of improper solicitations clause.

Since the **land owner A** made an improper solicitation for his own interest as a party of interest, he is exempt from any sanction.

Since **C, the public official in charge**, received an improper solicitation for the first time from the land owner A, C is not subject to any disciplinary action or penalty should he express the intent for refusal.

Should the public official in charge C receive the same improper solicitation again, C is put under the duty to report the matter to the head of the relevant agency, the failure of which may be subject to disciplinary actions.

If the public official in charge C grants the land owner A the approval for the change of type and quality of the land pursuant to A's improper solicitation, C may be subject to criminal punishment (imprisonment not exceeding 2 years or a fine not exceeding 20 million won).

Although a person who makes an improper solicitation in person and in his or her own interest is not imposed of any fine for negligence, the public official or relevant person who performs his or her duty pursuant to the solicitation is subject to criminal punishment.

V. Prohibition of Acceptance of Financial or Other Advantages

Ⅴ Prohibition of Acceptance of Financial or Other Advantages

1 Unacceptable Financial or Other Advantages

Article 8 (Prohibition of Acceptance of Financial or other Advantages)

(1) No public official or relevant person shall accept, request, or promise to receive, any financial or other advantage in excess of one million won at a time or three million won in a fiscal year from the same person, regardless of the relationship between such offer and his or her duties, and the motive for such offer, including contribution, sponsorship, donation, etc.

(2) No public official or relevant person shall accept, request, or promise to receive, any financial or other advantage not exceeding the amount prescribed by Paragraph (1) in connection with his or her duties, regardless of whether such offer is given in exchange of any favors.

(3) An honorarium for an outside lecture or relevant activity as prescribed in Article 10, or any of the following financial or other advantages shall not constitute a financial or other advantage which public officials or relevant persons are restricted from accepting as prescribed in Paragraph (1) or (2):

1. Financial or other advantages that a public institution offers to public officials or relevant persons who belong to the institution or are on assignment thereto, or a senior public official or relevant person offers to his or her subordinates to either raise their morale or console, encourage, or reward them;
2. Food and drink, congratulatory or condolence money, gifts, or other items that are offered to facilitate performance of duties or for social relationships, rituals, or assistance to festivities and funerals, the value of which is within the limit provided by Presidential Decree;
3. Financial or other advantages that are offered from a legitimate source of right due to a private transaction, such as the payment of debts (excluding donation);
4. Financial or other advantages that relatives (under Article 777 of the Civil Act) of a public official or relevant person offer;
5. Financial or other advantages that employees' mutual aid societies, clubs, alumni associations, ethnic societies, friendship clubs, religious groups, social organizations, etc., related to a public official or relevant person offer to their members in accordance with the rules prescribed by respective organizations, and financial or other advantages that those who have long-term and continuous relationships with a public official or relevant person, such as a member of the same organizations with the public official or relevant person give the public official or relevant person who is in need due to a disease or other kind of disaster;
6. Financial or other advantages that are uniformly provided by an organizer of an official event related to the duties of a public official or relevant person to all participants thereof, including transportation, accommodation, and food and drink;
7. Souvenirs or promotional goods distributed to many and unspecified persons, or awards or prizes that are given by a contest or lottery; and

8. Financial or other advantages that are permitted by any other Acts and subordinate statutes, standards or social norms.

(4) No spouse of a public official or relevant person shall receive, request, or promise to receive a financial or other advantage that public officials or relevant persons are prohibited from accepting (hereinafter referred to as "unacceptable financial or other advantage") pursuant to Paragraph (1) or (2) in connection with the duties of the public official or relevant person.

(5) No one shall offer, promise to offer, or express any intention to offer, any unacceptable financial or other advantage to any public official or relevant person, or to his or her spouse.

A. Financial or other advantages subject to a punishment

(1) A financial or other advantage exceeding 1 million won per occasion or 3 million won in any given fiscal year

Cases subject to a criminal punishment

Any public official will be subject to a criminal punishment for receiving a financial or other advantage exceeding 1 million won per occasion or 3 million won in any given fiscal year from the same person, regardless of the relationship between such offer and his or her duties, and the motive for such offer.

Under the Criminal Act, an offense related to bribery requires a proof that the advantage is given because of the official duty concerned and intended to reward the recipient for performance or nonperformance of the duty, and loopholes thereby arose as the causality thereunder was hard to prove.

Therefore, in order to attain the legislative purpose of the Act to root out hospitality and entertainment practices which may lead the public to suspect the impartiality of official acts, the provisions here forbid the advantage as described above regardless whether the advantage is given because of the duty of the public official.

In addition, a financial or other advantage exceeding 1 million won, deemed as not a small amount in the light of social norms, might be interpreted as a conduct arising from the potential, if not immediate, connection to the duties of the recipient in the future.

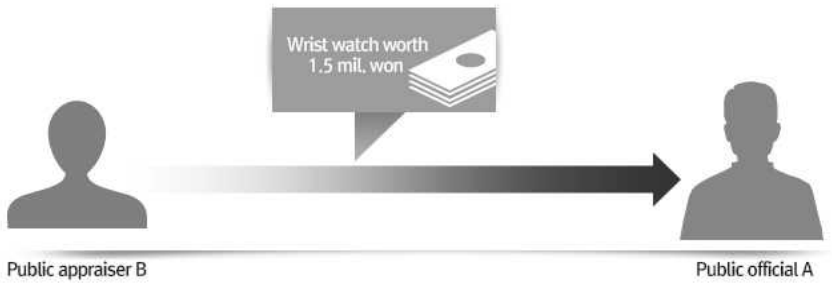
The threshold of 1 million won per occasion is a reasonable standard set comprehensively reflecting the people's expectation level on the integrity of the public service, diverse opinions collected from open discussion sessions and consultations with experts, and the case study of the Public Official Election Act. Under the Public Official Election Act, a fine for negligence for receiving a financial or other advantage is altered to a criminal punishment when the advantage exceeds 1 million won.

When the types of punishment differ or the punishment is aggravated based on a certain threshold, questions concerning the gravity of a related crime arise should the benefit slightly exceeds the threshold.

Pursuant to the Act on the Aggravated Punishment, Etc. of Specific Economic Crimes, any person who commits crimes, including but not limited to fraud, extortion, embezzlement and breach of trust, as prescribed in the Criminal Act are subject to the aggravated punishment should the related benefit or gain be valued at 500 million won or more.

Example case

Public Official A, who had been working at the Land Register Department of a municipal government for a decade, was about to be transferred to a governmental ministry that had no relations to A's current function and responsibilities. Certified Public Appraiser B, who had often contacted A for the land register work, gave a wrist watch worth 1.5 million won as a gift purchased during his overseas trip.



Public Official A is subject to criminal punishment for his receiving of the wrist watch exceeding 1 million won per occasion from Certified Public Appraiser B (imprisonment for not more than three years or a fine of 30 million won or less).

B is subject to criminal punishment for presenting the gift exceeding 1 million won per occasion to A (imprisonment for not more than three years or a fine of 30 million won or less).

Given the relationships between A and B, the gift is hard to be deemed as a financial or other advantage acceptable according to social norms.

(2) A financial or other advantage valued at 1 million won or less per occasion

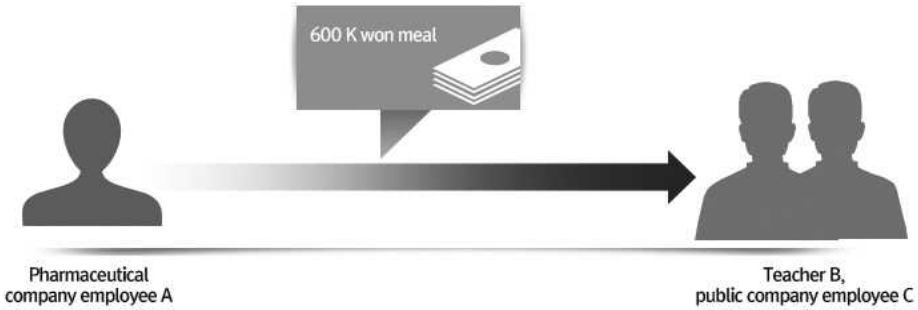
Cases in connection with duties subject to a fine for negligence

Any public official or relevant person will be subject to a fine for negligence for receiving any financial or other advantage worth 1 million won or less per occasion in connection with his or her duties, regardless of whether such offer is given in exchange of any favors. A financial or other advantage worth 1 million won or less per occasion without any connection with his or her duties is not prohibited by the law.

A public official who accepts a financial or other advantage valued at 1 million won or less per occasion in connection with his or her duty will be subject to criminal punishment for bribery as prescribed in the Criminal Act should the offer prove to reward the official for any performance or nonperformance of the duty.

Example case

Pharmaceutical company employee A, elementary school teacher B, and public electric corporation employee C are old friends as they grew up together in the same hometown. After the year-end reunion of the elementary school alumni association, they had dinner together at an expensive Korean restaurant, and A paid the bill of 600,000 won.



Both B and C are public officials subject to the provisions of the Act.

A financial or other advantage worth 1 million won or less per occasion in connection with his or her duties is subject to a fine for negligence.

Although B and C were treated by A with fine dining **worth 200,000 won** per person, they are not subject to punishment as the event had no connection with their duties.

The relationships between them are hardly deemed to have any connection to their duties without any special circumstances involved.

B. "Same person" and "per occasion"

(1) Overview

Any public official or relevant person will be subject to criminal punishment for receiving any financial or other advantage exceeding 1 million won per occasion from the same person or subject to a fine for negligence for receiving any financial or other advantage valued at 1 million won or less in connection with his or her duties.

The types of punishment can differ in accordance with the interpretation of the "same person" and "per occasion".

(2) Same person

With respect to "same person," it does not matter whether the advantage is offered or given by the provider directly or through a third party, but it will be determined based on who is the "actual provider".

According to a relevant precedent on the ceiling of loan granted to one and the same person, the ruling was based on to whom the loan was attributed in practice.

Judicial case: the court ruled that even if the loan granted in the name of other members of the union did not exceed the ceiling for one and the same person, the act of such borrowing violated the provisions in Article 32 of the former Credit Unions Act, as the loan based on the actual borrower to whom the loan was attributed exceeded the limit. (Supreme Court decision 2001Do3531, November 13, 2001)

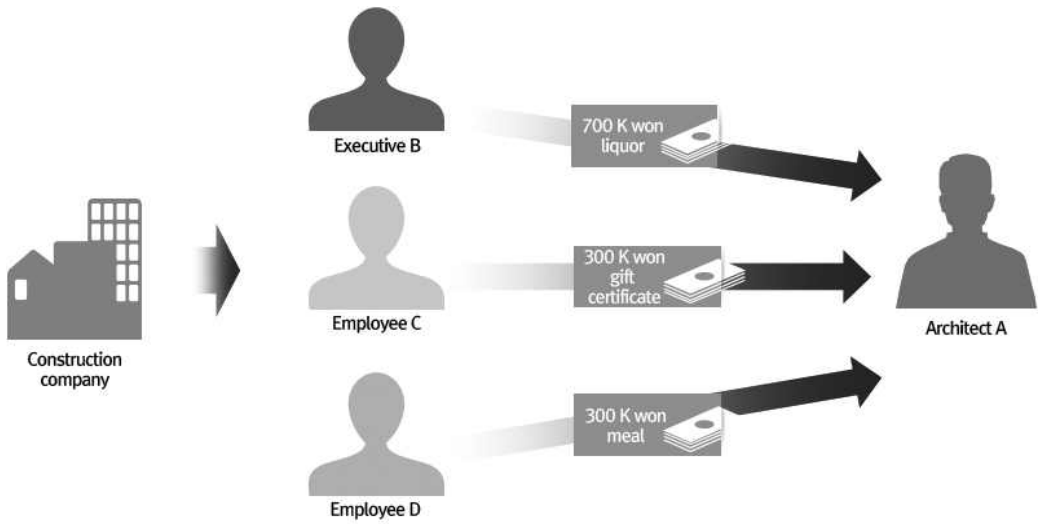
In addition, the 'same person' will be determined based on what or who is the source of the advantage. As the source of the advantage matters, the same person may include not only natural persons but also legal persons in principle.

However, as 'no one' prescribed in Paragraph 5 of Article 8 of the Act on the prohibition of offering any unacceptable financial or other advantage also refers to the provider of the advantage, the 'same person' as the provider only includes natural persons, not legal persons.

Where a representative of a legal person or organization, or an agent, employee or other servant of a legal person commits a violation hereunder concerning relevant duties, the legal person will be punished by a fine, or fine for negligence pursuant to Article 24 of the Act on the responsibility of legal persons, etc.

Example case

A construction company's design was proposed as a candidate for the screening session of the Design Review Subcommittee under the Turn-key Examination Committee in a province. Then, Executive B of the company sent a bottle of liquor worth 700,000 won to Architect A, who was a member of the subcommittee, Employee C of the company offered a gift certificate worth 300,000 won to A, and Employee D of the company also treated A with a meal valued at 300,000 won.



Architect A is not a public official but a member of the subcommittee, who performs public duties, and therefore, A is subject to the Act.

Architect A received financial or other advantages worth 1.3 million won (sum of the gift, the gift certificate and fine dining) from the construction company. Architect A received these advantages from B, C and D, but the source and the actual provider of them is the construction company.

Architect A's acts of receiving these advantages from B, C and D can be deemed as one occasion considering the temporal continuity and the relevancy of the purposes of such offers to affect the function of the examiner. The one occasion will be determined by considering the number of incidents in the legal sense, not merely based on the frequency of such conducts in the natural sense.

A is subject to criminal punishment (imprisonment for not more than three years or a fine not exceeding 30 million won) for receiving advantages exceeding 1 million won per occasion from the construction company.

B, C and D are subject to a fine for negligence of two to five times the value of the financial or other advantage related to the violation for each of them offering A the advantage valued at 1 million won or less. However, B, C and D can be liable to criminal punishment as co-principals (offering an advantage exceeding 1 million won per occasion) if they jointly conducted the offer, knowing each other's intent.

'No one' prescribed in Paragraph 5 of Article 8 herein on the prohibition of offering any unacceptable financial or other advantage includes natural persons only, who are able to perform the act of the offer in practice, and excludes legal persons.

The **construction firm** is also subject to a fine for negligence as its employees commit a violation concerning the relevant duties in accordance the provisions hereof on the responsibility of legal persons. Should Employee B, C and D jointly conduct the offer, knowing each other's intent and thereby be liable to criminal punishment as co-principals, the construction firm will be subject to a fine (criminal punishment) as prescribed in the provisions hereof on the responsibility of legal persons. *Provided*, that the provisions may not apply where the firm has not been negligent in giving due attention and supervision concerning the relevant duties of its employees so as to prevent such violation.

(3) Per occasion

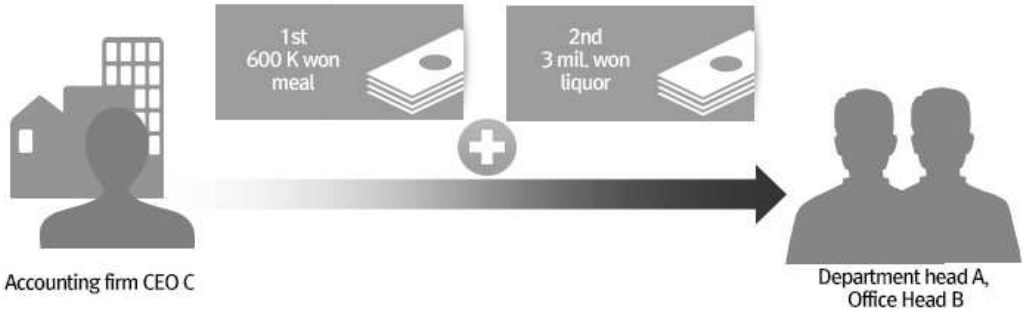
It matters whether the one occasion means the frequency of conducts in the natural sense or the number of incidents in the legal sense. If a number of conducts of offering and/or receiving can be assessed as one occasion, they will constitute one violation and the types of punishment can change accordingly.

The one occasion will be determined by considering the number of incidents in the legal sense, not merely based on the frequency of actual conducts. When there is a temporal and spacial proximity or a temporal continuity between the conducts, they are evaluated as one occasion. Providing financial or other advantages in several slots (the so-called "splitting") cannot be deemed as one occasion in the natural sense, but it can be deemed as one occasion in the legal sense.

If a number of conducts of offering and/or receiving can be assessed as one occasion, their benefits or value will be summed up as one violation, and any occasion with total value exceeding 1 million won will be liable to criminal punishment.

Example case

Department Head A of a public corporation, Seoul Office Head B of the Corporation, and CEO C of an accounting firm dined together, and C paid 600,000 won of the bill. On the same day, they wined together, and again C paid the 3 million won of the bill.



A and B are subject to criminal punishment as each of them received fine dining and entertainment worth 1.2 million won in total—200,000 won for meal and 1 million won for liquor, respectively. If the cost per each individual is not readily determined with the provider involved in wining and dining together, an equally divided amount of the total will be the value offered and received.

As the conducts of offering fine dining and wining had a temporal and spacial proximity, they can be assessed as one occasion.

C is subject to criminal punishment for offering advantages exceeding 1 million at one occasion to A and B, respectively.

The **accounting firm** will be subject to criminal punishment (fine) unless the legal person has not been negligent in giving due attention and supervision concerning the relevant duties of its employees so as to prevent such violation.

C. Fiscal year

"Fiscal year" means a period used for calculating tax revenue and expenditure.

Fiscal year herein refers to the fiscal year of the public institution where a public official who receives prohibited financial or other advantage belong. With respect to the provider of the advantage, the fiscal year beforementioned is applied.

The fiscal year of governmental institutions, local governments and other public agencies

generally commences on January 1 of each year, and ends on December 31 of each year.

Legislative case: the National Finance Act and the Local Finance Act stipulate that the State's fiscal year commences on January 1 of each year, and ends on December 31 of each year.

However, the fiscal year of school, unlike other public institutions, commences on March 1 of each year, and ends on the last day of February of each year.

Example case

Public Official A, who handled the work of acquisition tax at a city government, received financial and other advantages worth 3.5 million won in total from Tax Accountant B **from March through December last year**. B has not dealt and will not deal any related work at the city government without having solicited any request to A.

In accordance with the Act, any public official who receives a financial or other advantage exceeding 1 million per occasion or **3 million won in any given fiscal year**, as well as the provider of the advantage, is **subject to criminal punishment.**

A is subject to criminal punishment for receiving a financial or other advantage exceeding 3 million won in a fiscal year from B, **regardless whether the offer was given because of his duty**.

B is also subject to criminal punishment for offering A a financial or other advantage exceeding 3 million won in a fiscal year.

D. Definition of "in connection with duties"

(1) Related provisions in the Act

In accordance with the provisions on the prohibition of acceptance of financial or other advantages, punishment is determined or the duty to report arises based on the **relationship**

between the offer and the duties of the public official.

Financial or other advantage valued at 1 million won or less: the public official will be subject to a fine for negligence and the duty to report the case also arises only when he or she receives the advantage in connection with their duties.

Spouse of a public official: no spouse of a public official or relevant person is allowed to receive a financial or other advantage in connection with the duties of the public official, and should the public official knowingly fail to report the case, he or she will be subject to punishment.

Outside lecture or relevant activity: should the request for a lecture, etc. be made related to the duties of a public official, he or she should report the request in advance, and will be subject to a fine for negligence unless he or she reports a gratuity exceeding the threshold as prescribed in the Act and immediately returns the excess part to the provider.

(2) Related provisions in other statutes

Criminal Act: no public official or an arbitrator shall receive, demand or promise to accept a bribe in connection with his or her duties. The term "in connection with his or her duties" is a broad concept as it means all duties that the public official handles pertaining to his or her position.

Case 1: the court ruled that "duties" with respect to the offense of bribery meant not only the official duties of a public official as stipulated in statutes but also other activities closely related to the duties, the function or activity in charge as custom or in practice, and/or the performance of duties that could assist or influence decision makers. (Supreme Court decision 1999Do5753, January 19, 2001)

Case 2: the court ruled that "duties" with respect to the offense of bribery meant all duties of a public official pertaining to his or her position, including but not limited to the official duties as stipulated in statutes, other activities related to the duties, past or future function, and any general responsibility or authority arising from the position as prescribed in statutes even if the public official did not handle the function in practice. (Supreme Court decision 2003Do1060, June 13, 2003)

Case 3: the court ruled that in this case, the defendant, who assumed the position of Police Commissioner and was thereby able to exercise any official or a de facto influence over all criminal investigations, received 20,000 dollars from Mr. Kap, who was in relationships with the defendant to call to say hello three to four times a year, as a bribe in connection with the defendant's duties. (Supreme Court decision 2010Do1082, April 29, 2010)

Act on the Aggravated Punishment, Etc. of Specific Economic Crimes: any executive or employee of a financial company, etc. shall not accept, demand or promise to receive any money and valuables or other benefits, in connection with his or her duties.

The court ruled that "in connection with his or her duties" means any work that an

executive or an employee of a financial company handles pertaining to his and her position. (Supreme Court decision 97Do2836)

Code of Conduct for Public Officials: under the Code, a public official shall not accept money or other valuables from a duty-related party or a duty-related public official.

"Duty-related party" means an individual or an organization whose business is related to a public official's duties and who falls under one of the following eight definitions, and "duty-related public official" mean a public official who receives orders related to his or her duties.

Code of Conduct for Public Officials

Article 2 (Definitions)

The definitions of terms as used in this Decree shall be as follows:

1. The term "duty-related party" means an individual (including a public official who acts in his/her private capacity) or an organization whose business is related to a public official's duties and who falls under one of the following:
   (a) Any individual or organization that has filed or is sure to file a civil petition under Article 2 (2) 1 and 4 of the Enforcement Decree of the Civil Petitions Procedure Act;
   (b) Any individual or organization that will get advantages or disadvantages as a direct result of the cancellation of authorization or permission, business suspension, imposition of surcharge or fine for negligence;
   (c) Any individual or organization that is subject to investigation, audit, supervision, inspection, control or administrative guidance;
   (d) Any individual or organization that will get advantages or disadvantages as a direct result of adjudication, decision, official approval, appraisal, examination, assessment, mediation or arbitration;
   (e) Any individual or organization that is subject to conscription, muster or mobilization;
   (f) Any individual or organization that has concluded or is sure to conclude a contract with the State or a local government;
   (g) Any individual or organization that will get advantages or disadvantages as a direct result of decision or implementation of government policies or public projects; and
   (h) Any other individual or organization that is related to anti-corruption duties assigned by the head of a central administrative agency (including the head of an entity which is answerable to the President or the Prime Minister); the executive organ of a local government; the head of a local council; and the superintendent of education and the head of board of education of a special metropolitan city, a metropolitan city or a local province (hereinafter referred to as the "Agency Head").

(3) Definition of the term in the Act

In the light of the legislative intent of the Act to prohibit the acceptance of any financial or other advantage that can make the public suspect impartiality in performing of official

duties, the term "in connection with duties" in the Act means the same to the term related to the offense of bribery as stipulated in the Criminal Act. The term in the Act should be further specified with the development and accumulation of precedents on individual cases.

"Duties" in the Act means any work that a public official handles pertaining to his/her position. The court ruled that "duties" meant not only the official duties of a public official as stipulated in statutes but also other activities closely related to the duties, the function or activity in charge as custom or in practice, and/or the performance of duties that assisted or could affect decision makers. (Supreme Court decision 1999Do5753, January 19, 2001)

< Duties as general authority >

Official duties under statutes: the term refers to duties as general and/or abstract authority as prescribed in statutes, not necessarily specific duties in practice he or she assumes (General authority theory). The term includes the general authority of a public official, who is under the direction or supervision of a supervisor.

Duties as custom or in practice: the term means duties handled in practice based on general authority under statutes.

Example: the duties of tax officers include archiving and managing documents related to levying and collecting taxes.

The term includes the work a public official handles in practice or following the instruction of a supervisor even if no statutory provision related to the work is available. Therefore, it includes a case in which he or she temporarily represents the work other than his or her own duties, or a case in which he or she is temporarily entrusted with actual authority from a colleague is also included.

Judicial cases:

- a case where a guardian, who handled the work of indirect safe custody for inmates in practice assisting correctional officers, received financial advantages in return for his offering of convenience services such as mailing or bringing in cigarettes. (Supreme Court decision 87Do1463)
- a case where an assistant official, who handled the work of drafting auction approval documents in practice after reviewing the records of auction cases, accepted financial advantages for a solicitation to control the auction approval decision. (Supreme Court decision 84Do2526)

Performance of duties that may assist or influence decision makers: the duties of medium- to low-ranking officials without a final or discretionary decision-making authority, but those who may influence decision makers

Judicial cases: a case where the director of a department, an intermediate approver for Owner-driving Taxi Licensing, received financial advantages related to the issuance of the license. (Supreme Court decision 87Do1472, September 22, 1987)

< A function or activity closely related to duties >

It may not be a part of general authority of a public official, but closely related to his or her duties. The term means any use of the position or activities that can affect the fair performance or nonperformance of the duties based on the influence arising from the duties.

It also includes a function or activity, not a part of general authority, but of which opinions are respected and may influence decision makers.

Example: a case in point is that a prosecution administrative officer, who assisted prosecutors for criminal investigations, accepted financial advantages from the suspect with a request to get a decision of suspension of prosecution.

However, if a public official cannot influence the performance of those with official authority on the duties and thereby does not use of the position, the function or activity of the official has no close connection to his or her duties.

Judicial cases: the court ruled that in this case, a trial clerk received financial or other advantages with a request for sentence reduction, but sentencing is neither a general duty of the clerk nor the clerk was closely related to the duty. (Supreme Court decision 80Do1373, October 14, 1980)

Note	Precedents on connection with duties for the offense of bribery under the Criminal Act

Classification	Precedents
Positive rulings on connection with duties	• The court ruled that an assistant official, who handled the work of drafting auction approval documents in practice after reviewing the records of auction cases, accepted financial advantages for a solicitation to control the auction approval decision. (Supreme Court decision 84Do2526, February 8, 1985) • The court ruled that in this case, the act of a primary evaluator for promotion in the military asking a candidate for promotion to be a joint guarantor for the evaluator's bank loan was in connection with the assessment work. (Supreme Court decision 2000Do4714, January 5, 2001) • The court ruled that as the selection of a business operator for a national project was a part of or an act closely related to the duties of the President, offering any financial or other advantage to the President related to the project constituted the offense of bribery. (Supreme Court decision 96Do3377, April 17, 1997) • The court ruled that in this case, a member of the National Assembly, who received money as a donation in return for providing requested data to a certain association, committed a bribery offense as the act was connected to duties of the member of the National Assembly. (Supreme Court decision 2008Do8852, May 14, 2009) • The court ruled that in this case, the defendant, who assumed the position of Police Commissioner and was thereby able to exercise any official or a de facto influence over all criminal investigations, received 20,000 dollars from Mr. Kap, who was in relationships with the defendant to call to say hello three to four times a year, as a bribe in connection with the defendant's duties. (Supreme Court decision 2010Do1082, April 29, 2010)
Negative rulings on connection with duties	• The court ruled that in this case, a trial clerk received financial or other advantages with a request for sentence reduction, but sentencing is neither a general duty of the clerk nor the clerk was closely related to the duty. (Supreme Court decision 80Do1373, October 14, 1980) • The court ruled that the duties of a the police officer at the information department of the National Police had no connection with the work of the Korea Federation of Small and Medium Business's Chairman to select a domestic company to manage foreign industrial trainees. (Supreme Court decision 00Do275, June 11, 1999) • In this case, a public official, who worked for the former Ministry of Maritime Affairs and Fisheries, received money from CEO of a shipping company for a

Classification	Precedents
	request to exercise influence to China's Ministry of Transportation to issue approval of operation permits for the ships of Chinese registry. (Supreme Court decision 2009Do2453, May 26, 2011) • In this case, a land surveyor working for a city government, promised to receive financial or other advantage in return for providing an expected bid price (not the planned bid price determined by the market) based on years of experience. (Supreme Court decision 82Do1922, March 22, 1983)

E. Financial or other advantages

Article 2 (Definitions) The definitions of the terms used in this Act shall be as follows:

3. The term "financial or other advantage" means any of the following advantages:
   (a) Any financial interest, such as money, securities, real estate, goods, accommodation vouchers, facilities memberships, admission tickets, discount coupons, complimentary tickets, tickets for entertainment, entitlements to use real estate, etc.;
   (b) Offering of entertainment, such as food and drink, alcoholic beverages and golf, or conveniences, such as transportation and accommodation; and
   (c) Other tangible and intangible financial benefits, such as cancellation of debts, offering of employment opportunities, and grant of rights and interests.

(1) Types

The term includes not only property benefits such as money and goods but also any tangible and intangible benefits such as offering of convenience and services to satisfy the needs and desires of humans, including but not limited to:

Financial interest: money, securities, real estate, goods, accommodation vouchers, facilities memberships, admission tickets, discount coupons, complimentary tickets, tickets for entertainment, and entitlements to use real estate;

Offering of entertainment: food and drink, alcoholic beverages and golf, or conveniences such as transportation and accommodation; and

Other tangible and intangible financial benefits: cancellation of debts, employment opportunity, and grant of rights and interests.

Example: an opportunity for application to scholarships and prostitution can be included

(2) Standard for value calculation

General standard

The value of financial or other advantages is quite significant as it serves as the standard to determine the types of punishment (criminal punishment or a fine for negligence) and calculate the amount of a fine.

Time standard: the value is estimated based on the time of the conduct (when the financial or other advantage is accepted, required, or promised to receive or offered or promised or expressed to provide).

Value standard: the value is based on the price actually paid unless there is any significant gap between the actual price and the market price. If you cannot confirm the price paid, its value is estimated based on the market value (usual transaction price).

In the case when the market price and the purchasing price differ or the purchasing price cannot be confirmed with a receipt, the value is calculated based on the market price.

The court ruled that in the case when price data were different from each other, objective and reasonable data with credibility were given priority, but if it was difficult to tell, the value must be estimated based on the data favorable to the offender (Supreme Court decision 2001Do7056, April 9, 2002).

Individual standards

Supply opportunities for goods and/or services: the benefit is equivalent to the supply price deducting the cost of the goods, or to the actual service price deducting the legitimate service price.

Judicial cases

- The court ruled that in this case, the defendant supplied goods at about 10% higher than the market price and thereby gained a corresponding benefit or obtained the opportunity to supply the goods to the shopping center F constructed by the D beforementioned, which should be deemed as illegal profits even if the supply price was not higher than the market price, and therefore, the amount of the bribe received by the defendant must be equivalent to the corresponding benefit. (Supreme Court decision 99Do4920, January 25, 2002)
- The court ruled that the actual service value on the appraisal report submitted by the defendant should be deemed as the legitimate value of the service. (Seoul High Court Ruling 2008No42, August 8, 2008)

Entertainment: when the provider accompanies on the entertainment, the benefit is equivalent to the actual expense spent for each individual, the equally divided amount of the total if the actual expenses per person is not readily estimated, or the sum of the expenses spent for a public official as well as for a third party when the public official invites the third party to the entertainment unless there are any special condition involved.

Judicial cases: the court ruled that in the case in which the briber accompanied the defendant for the entertainment and paid the expenses, the amount of bribery received by the defendant must be equivalent to first, the expense spent to treat the defendant, separate from the spending consumed by the briber for himself; second, the equally divided amount of the total if the expense for each individual was not confirmed; or third, the sum of the expenses spent for the defendant added with the amount spent for a third party if the defendant himself invited the third party and received entertainment together and unless any special occasion was involved such as that the third party was also a public official and treated pertaining to his or her position. (Supreme Court decision 99Do5294, October 12, 2001)

Borrowing of Money: the value of financial or other advantages is equivalent to the financial benefit (loan interest rate or statutory interest rate) if money is borrowed for free of charge, or the difference between the agreed interest rate and the loan interest rate or the statutory interest rate if borrowing is made at a substantially low rate of interest.

Judicial cases: according to the court's ruling, should the offender gain illegal property benefits from borrowing money for free of charge, the unjustifiable benefit received by the offender must be equivalent to the corresponding financial profit and therefore, the corresponding profit, not the money borrowed for free of charge, should be subject to additional collection. In this regard, as the corresponding financial benefit subject to additional collection must be estimated in an objective manner, the calculation should be based on the loan interest rate borne by the offender if the offender would borrow money from a financial institution in a usual manner or the statutory interest rate applied to the loan conditions of the offender as prescribed under the Civil Act or Commercial Act if the loan interest rate cannot be readily confirmed, and thereby the calculated financial profit earned from borrowing any financial or other advantage for free of charge from its receipt date to the expiry date should be collected unless the agreement on the expiry date or damages for delay is a pretense and therefore shall be deemed null and void. (Supreme Court decision 2008Do2590, September 25, 2008)

Employment offer

It refers to job handling or offering advice and/or consultancy regardless of position or title, including outside director, advisor or consultant, or types of contract, and receiving wages or salaries as a price on a regular basis or for an agreed period.

Subject: offering an employment to a public official or the spouse of a public official in connection with the duties of the public official is prohibited. Other family member than the spouse such as the child or parent of the public official, as well as the public official, is not subject to the provision.

Value estimation: if, comprehensively considering the legality of holding another position under statutes or standards, the process of employment, actual work conditions, agreed wage, and the intent or opinion of the offender,

- in case when it constitutes a legitimate employment offer, the employment and the wages received thereby are all subject to a financial or other advantage provided from a legitimate source of right, which is stipulated as an exception.

- in case when it does not constitute a legitimate employment offer, the employment itself is subject to a prohibited financial or other advantage.

How to estimate value of an employment offer (suggestion)

- A monthly wage applying the minimum hourly wage published by the Minister of Employment and Labor in accordance with Article 10 of the Minimum Wage Act (minimum hourly wage as of 2016: 6,030 won, converted to monthly wage: 1,260,270 won)
- A monthly wage applying the average male or female laborer's daily wage from the nationwide statistics regularly surveyed by the wage statistics collection agency twice or more a year (average laborer's daily wage as of September 1, 2015: 89,566 won)
- One twelfth of the usual annual salary for an equivalent position or title in the legal body that offers employment
- The monthly wage by occupation according to the survey of work status by occupation developed and distributed by the Minister of Employment and Labor in accordance with Article 17 of the Statistics Act

Provided, that employment is a mere tool or method to offer financial or other advantages, the wage supposed to receive or received is deemed as the financial or other advantage accepted.

Judicial cases: the court ruled that in this case in which the defendant, a member of the Board of Audit and Inspection, asked the mutual savings bank on which the Financial Supervisory Service was conducting inspections at the request of the Board of Audit and Inspection to employ his elder brother and give monthly wages for a certain period and thereby was accused of violating the former Act on the Aggravated Punishment, Etc. of Specific Economic Crimes for receiving money and valuables in connection with an arrangement of matters belonging to the duties of an executive or employee of a financial firm, the accepted amount of financial benefits through the arrangement shall be the 100 million won, the total wages the brother received for ten months as the employment of the defendant's brother is deemed as a mere tool to offer money and valuables given all the facts related to the employment procedure, the actual work conditions, and the opinions of the provider and the defendant. (Seoul High Court Ruling 2011No3252, February 23, 2012)

F. Prohibited activities

(1) Case of public officials, etc.

No public official, etc. shall accept, request, or promise to receive any unacceptable financial or other advantage.

'Request' refers to a case where a public official expresses an intention of solicitation for the other party to give financial and other advantages regardless whether the other party responds to the request.

Should a public official request or promise to receive a financial or other advantage to the same person and then receive the advantage from the same person, these conducts are

combined and thereby constitute one violation (act of receiving).

(2) Provider

No one shall offer, promise, or express any intention to offer, any unacceptable financial or other advantage to any public official.

'Offer' refers to providing a financial or other advantage to a public official and leaving it into a condition for the other party to receive constitutes the offer.

Should anybody promise, or express an intention to offer, an unacceptable financial or other advantage to the public official and then offer the advantage, these conducts are combined to constitute one violation (act of offering).

"Anyone" prescribed in Paragraph 5 of Article 8 of the Act on the prohibition of offering financial or other Advantages, includes natural persons only and excludes legal persons.

(3) Relationships between the public official and the provider

With respect to a financial or other advantage, only the acts of offering and receiving the advantage are needed, and therefore, the act of the provider may constitute violation of the Act even if the act of the recipient may not necessarily constitute violation.

The act of the provider will constitute violation even if a public official who commits violation submits a report on the case and/or returns the advantage and thereby is excluded from punishment.

Judicial cases: the court ruled that to constitute an offense of bribery, one party's act of offering a bribe and the other party's act of accepting the valuable goods (including forbearance) are needed, but this does not necessarily mean that the other party's act of accepting the bribe should constitute an offense of bribery. (Supreme Court decision 87Do1699, December 22, 1987)

G. Prohibition of the acceptance of a financial or other advantage by the spouse of a public official

(1) Overview

No spouse of a public official shall receive a financial or other advantage exceeding 1 million won per occasion in connection with the duties of the public official. The provision is grounded on the practical and economic relevancy between them as they share daily life together and forge one economic unit.

In order to prevent the possibility of over regulation, receiving a financial or other

advantage in connection with the duties of a public official only is prohibited.

The spouse refers to the spouse in legal marriage relationship only since the Act does not explicitly stipulate to include the spouse in de facto marriage.

Precedents in general interpret the relative relationship from the legal point of view for criminal punishment.

Judicial cases:

- The court ruled that in this case in which a de facto mother, the victim, was in a lineal relationship, as the victim (female) took in the defendant, who was abandoned when he was a baby in front of her door, and registered a birth of him as if he were the biological child of her and her husband, which did not meet the requirements for adoption, the defendant and the victim did not constitute a relationship of mother and child, and thereby the defendant shall not be punished for the crime of lineal member murder even if the defendant murdered the victim. (Supreme Court decision 81Do2466, October 13, 1981)
- The court ruled that the relationships between the child born out of wedlock and his biological mother naturally constituted a legal kinship with the birth of the child regardless of the mother's recognition of the child or registering his birth. (Supreme Court decision 80Do1731, September 9, 1980)

Should a public official be aware of the fact that his or her spouse received a financial or other advantage in connection with his or her duties, the public has a duty to report the case. If the public official fails to file a report as described above, he or she shall be subject to a fine for negligence or criminal punishment in tandem with the value of the advantage accepted.

The spouse of a public official is not subject to punishment under the Act for receiving an unacceptable financial or other advantage but can be subject to punishment under other Act and/or rules.

Act on the Aggravated Punishment, etc. of Specific Crimes

Article 3 (Acceptance of Bribe for Mediation)

Any person who receives, demands or promises any money or interest in connection with a mediation of matters belonging to the duties of the public official, shall be punished by imprisonment for not more than five years, or a fine not exceeding ten million won.

Attorney-at-law Act

Article 111 (Penalty Provisions)

(1) Any person who has received or promised to receive money, valuables, entertainment or other benefits under the pretext of soliciting or arranging to solicit a public official handling a case or an affair for favors in connection with such case or affair, or has provided or promised to provide such things to a third party shall be punished by imprisonment with labor for not longer than five years or by a fine not exceeding ten million won. In such cases, such person may be punished by a fine and imprisonment with labor concurrently.

(2) Reference case

Pursuant to the Public Service Ethics Act, the property to be registered by a person liable for registration shall be the property of not only a person liable for registration as prescribed therein but also the spouse, lineal ascendants and lineal descendants of a person liable for registration.

In addition, any family member of a public official, etc. receives any gift from a foreign country or a foreigner in connection with the duties of such official shall report it without delay, and hand over such gift thereto (Article 4 (1), 15 (1) of the Public Service Ethics Act).

(3) Example case

Constructor B, Municipal Government Head (city mayor) A's elementary alumnus, was a bidder for the construction of a sports facility by the municipal government, and B attended the Social Welfare Facility Sponsors' Night Event hosted by A's spouse C and donated 3 million won.

1) When City Mayor A did not know the fact his spouse C received a 3 million won donation from B
2) When City Mayor A knew the fact his spouse C received a 3 million won donation from B but did not report the case
3) When City Mayor A knew the fact that his spouse C received a 3 million won donation from B and reported the case

Case 1: City Mayor A did not know the fact his spouse C received a 3 million won donation from B.

As City Mayor A is not liable to report the case and therefore, the provisions on punishment for violating the duty to report cannot apply to him, he is not subject to punishment.

Case 2: City Mayor A knew the fact that his spouse C received a 3 million won donation from B but did not report the case.

As the donation City Mayor A's spouse C received from B exceeds the minimum threshold for criminal punishment, 1 million won per occasion, A is subject to criminal punishment.

Case 3: City Mayor A knew and reported the fact that his spouse C received a 3 million won donation from B.

As City Mayor A knew the fact that his spouse C received an unacceptable financial or other advantage and reported the case, A is not subject to punishment imposed for violating the reporting duty as prescribed in the Act.

2 Exceptions for Unacceptable Financial or Other Advantages

Article 8 (Prohibition of Acceptance of Financial or other Advantages)

(3) An honorarium for an outside lecture or relevant activity as prescribed in Article 10, or any of the following financial or other advantages shall not constitute a financial or other advantage which public officials or relevant persons are restricted from accepting as prescribed in Paragraph (1) or (2):

1. Financial or other advantages that a public institution offers to public officials or relevant persons who belong to the institution or are on assignment thereto, or a senior public official or relevant person offers to his or her subordinates to either raise their morale or console, encourage, or reward them;
2. Food and drink, congratulatory or condolence money, gifts, or other items that are offered to facilitate performance of duties or for social relationships, rituals, or assistance to festivities and funerals, the value of which is within the limit provided by Presidential Decree;
3. Financial or other advantages that are offered from a legitimate source of right due to a private transaction, such as the payment of debts (excluding donation);
4. Financial or other advantages that relatives (under Article 777 of the Civil Act) of a public official or relevant person offer;
5. Financial or other advantages that employees' mutual aid societies, clubs, alumni associations, ethnic societies, friendship clubs, religious groups, social organizations, etc., related to a public official or relevant person offer to their members in accordance with the rules prescribed by respective organizations, and financial or other advantages that those who have long-term and continuous relationships with a public official or relevant person, such as a member of the same organizations with the public official or relevant person give the public official or relevant person who is in need due to a disease or other kind of disaster;
6. Financial or other advantages that are uniformly provided by an organizer of an official event related to the duties of a public official or relevant person to all participants thereof, including transportation, accommodation, and food and drink;
7. Souvenirs or promotional goods distributed to many and unspecified persons, or awards or prizes that are given by a contest or lottery; and
8. Financial or other advantages that are permitted by any other Acts and subordinate statutes, standards or social norms.

A. Overview

While an unacceptable financial or other advantage is prohibited from accepting, eight exceptions are set to guarantee a normal social life and avoid over regulation under the Act.

As the Act is a rule to secure the fair and impartial performance of a public official's duties, protect society's trust in the public service, and fill the loopholes in existing anti-corruption statutes, it needs to be interpreted aligned with provisions of other statutes.

If a public official accepts a financial or other advantage in connection with his or her duties and in return for a favor, and thereby the acceptance constitutes the offense of bribery under the Criminal Act, no exception can be made for the case.

B. Exception 1: Financial or other advantages that a public institution or a senior public official offers (Subparagraph 1 of Paragraph 3 of Article 8 of the Act)

The term refers to financial or other advantages that a public institution offers to public officials who belong to the institution or are on assignment thereto, or a senior public official offers to his or her subordinates to either raise their morale or console, encourage, or reward them.

As a supervisor and a subordinate are command-obedience relationships in accordance with duties, the relationships can exist only between the public officials who belong to the same public institution.

Financial or other advantages that a senior public official offers to his or her subordinates are restricted in terms of the purpose to either raise their morale or console, encourage, or reward them.

C. Exception 2: Food and drink, congratulatory or condolence gifts, etc. (Subparagraph 2 of Paragraph 3 of Article 8 of the Act)

The term refers to food and drink, congratulatory money, gifts, or other items that are offered to facilitate performance of duties or for social relationships, rituals, or assistance to festivities and funerals, the value of which is within the limit provided by Presidential Decree.

Food and drink and other gifts within the limit of value enough for the general public not to suspect the impartiality in the performance of official duties are recognized as an exception of the Act.

"Within the limit" provided by Presidential Decree means valued at the threshold thereby or less.

Pursuant to the provisions of the Act, the purpose of the offer is confined to facilitating performance of duties, receiving the items described above from a duty related person may be restricted even if they are within the value limit as prescribed.

With respect to the purpose of the offer, what relationships the public official and the provider have, whether they have a personal relationships, how and when they offer and accept the items described above, and whether the offer has any connection with the duties

of the public official will be comprehensively reviewed to determine the possibility that the offer may affect the performance of the duties.

If the offer is made in connection with duties and in return for a favor, it will be subject to criminal punishment (the offense of bribery under the Criminal Act) and a fine for negligence regardless of its value.

Any gift valued at the threshold or less is not allowed unless they meet the beforementioned purpose.

Restrictions on offering and receiving gifts related to the purpose (e.g.)

- Acceptance of gifts valued at the threshold amount or less from a person subject to investigation or unfavorable disposition
- Acceptance of gifts valued at the threshold amount or less from a civil petitioner who has applied for authorization and permission
- Homeroom teachers' acceptance of money or gifts valued at the threshold amount or less from a parent in connection with academic achievement assessment or performance evaluation

Note 1	Major foreign rules on prohibition of public officials' acceptance of gifts and exceptions

Country	Details
U.S.	Offering and accepting gifts exceeding 20 dollars (about 20,000 won) per occasion or 50 dollars (about 50,000 won) in any given calendar year is prohibited.
Japan	Accepting a gift exceeding 5,000 yen (about 50,000 won) per event requires to file a report.
U.K.	Accepting a gift exceeding 25-30 pounds (some 40,000-50,000 won) is prohibited.
Germany	Accepting a gift exceeding 25 euro requires an approval in advance.

Foreign cases

U.S.: 20 dollars per occasion, 50 dollars in any given calendar year

Gifts offered from a prohibited source or because of an official position are not allowed, but an exception applies to the gifts valued at 20 dollars or less per occasion or 50 dollars or less from a single prohibited source in any given calendar year.

Prohibited source includes any person who does business or seeks to do business with the public official's agency, conducts activities regulated by the official's agency, or has interests that may be substantially affected by performance or nonperformance of the official's official duties

Japan: 5,000 yen

Any national official, in principle, shall be prohibited from accepting, soliciting or promising to accept a bribe in connection with his or her duties from any stakeholder.

Middle and senior level public officials must submit a report of a gift of money, etc. valued at **5,000 yen or more (some 50 dollars)** to the head of each ministry and agency. The items described in the report are the profit/value of the gift, the date of receipt, and name and address of the business operators, etc. who gave the gift.

U.K.: 25-30 pounds

Civil servants must not accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise their personal judgement or integrity, and each ministry and city has established its own civil service code that stipulates the provisions on gifts and hospitality.

Civil servants of the City of London should seek the approval of the Monitoring Officer for gifts and/or hospitality worth 25 pounds (approx. 50 dollars) or more.

Officials at the U.K. Foreign Ministry must not accept gifts and/or hospitality valued at 30 pounds (approx. 47 dollars) or more.

Germany: 25 euro

In case of the federal government, each ministry or agency sets a standard of gifts as appropriate within the maximum threshold of 25 euro, but gifts valued more than 25 euro must be approved in advance by a supervisor.

The maximum threshold on gifts of the Federal Ministry of the Interior and the Federal Ministry of Justice and Consumer Protection is 25 euro and 5 euro, respectively.

Note 2 Precedents on gifts as social rituals versus bribes

Should a gift be given in connection with the duties of a public official and in return for a favor, it is recognized as a bribe even if it is offered and accepted for social relationships or rituals.

A gift recognized as custom may be allowed should it not make society in general suspect integrity in the performance of official duties.

Judicial case: the court ruled that to determine whether the money received by a public officer constituted bribery given in return for the performance or nonperformance of his or her duties must consider all relevant circumstances, including, but not limited to, the details of the duties, the relations between the duties and the provider of the benefits, any special, personal relationships between the parties, the amount of the benefits, and the process and the timing of offering and accepting the benefits, as well as in the light of the fact that the offense of bribery as its legal benefits to protect shall secure the impartiality in the performance of official duties and protect the trust of society therein, whether the public official's accepting the benefits made society in general suspect the impartiality in the performance of official duties. (Supreme Court decision 99Do1911, July 23, 1999)

Cases recognizing a bribery offense on small amount gifts received as social custom	• In this case, the plaintiff, deputy county head who was in charge of supervising the overall administration of the county, including the construction of a land consolidation project outsourced by the county, received a request from the contractor of the construction for a favorable arrangement related to the construction and then accepted 500,000 won as a gift for the wedding of the plaintiff's second son on the 25th of the month. (Supreme Court decision, 83Nu262, July 12, 1983) • The court ruled that in this case where the defendant, overseas labor department director of the Labor Administration who was dealing with the work such as permission to send workers overseas, was asked to send prostitutes overseas and received **stocks worth 70,000 won**, the stocks must not be regarded merely as a hospitality as social custom even if the value was not significant and thereby constituted bribery. (Supreme Court decision 83Do1499, April 10, 1984) • The court ruled that even if the **200,000 won received** by the defendant was a relatively small amount, the money was offered and accepted for an arrangement in connection with the defendant's duties to hire parking managers, the benefits must not be regarded as a mere social ritual or social custom that deserved protection. (Supreme Court decision 96Do865, June 14, 1986)

	• The court ruled that even if the defendant, head of a bank branch office, received an entertainment only **totaled 83,500 won**, the benefit could not be recognized as a mere social ritual given the relationships between the defendant and the bidder, the motive and process in which the defendant received the hospitality from the bidder, and the fact that the defendant accepted cash or checks several times in addition to the entertainment. (Supreme Court decision 96Do144, December 6, 1996) • The court ruled that the case in which the elementary school teacher received **150,000 won** from the parent of a homeroom student constituted the offense of bribery. (Daegu District Court Ruling 99Gohap504, October 29, 1999) • The court ruled that the case in which the defendant, who was chairman of the reconstruction project committee, treated with lunch twice worth **18,750 won and 12,000 won,** respectively, the housing department head at the Ward Office, who was in charge of the establishment of the reconstruction union, for a speedy approval of the establishment, constituted bribery. (Supreme Court decision 2006Do8779, November 27, 2008) • The court ruled that the case in which the elementary school teacher was treated with a **fine dining worth 189,000 won at hotel** from the parent of a homeroom student constituted bribery. (Seoul West District Court Ruling 2013Godan2289, February 19, 2014)
Cases denying a bribery offense on small amount gifts received as social custom	• The court ruled that in the case in which the defendant, chief of the video map section of the culture and tourism division of the city government, was treated with **wining and dining worth 45,000 won** from an old friend, the non-prosecuted, the hospitality must be recognized as a social ritual given the relationships developed from the childhood between the two, the attire worn at that time, the change in the work handled by the defendant, and the price of the meal for 45,000 won. (Supreme Court decision 2006Do37, January 25, 2007) • The court ruled not guilty for the defendant in the case in which the defendant, who worked for the road construction division of the general construction headquarters, was offered with a meal worth **31,500 won** from the non-prosecuted, citing the facts that they paid the cost of meals alternately before and after the occasion, and the meal at that time cost only 31,500 won and thereby the hospitality shall be recognized as a social ritual. (Supreme Court decision 2007Do10722, February 29, 2008)

D. Exception 3: A financial or other advantage that is offered from a legitimate source of right due to a private transaction, such as the payment of debts (Subparagraph 3 of Paragraph 3 of Article 8 of the Act)

The recognition and scope of a legitimate source of right

Exception 3 refers to a financial or other advantage that is offered from a legitimate source of right due to a private transaction (excluding donations), including but not limited to the payment of debts.

The scope of private transactions without any connection with the performance of duties can be formed under the principle of private autonomy as far as the legal order allows.

The lexical-semantic meanings of "legitimate" and "source of right" are "fair or reasonable" and "the source out of which a right arises," respectively.

As the provision states "legitimate" and "source of right, whether a source of right exists and the source of right is legitimate need to be considered. Whether the private transaction is normal needs to be determined, considering the objective and the legitimacy of the offer.

This means that the legitimacy of the offer must be recognized not only by the existence of a source of right, but also by the legitimacy of the source of right.

Not only donations, explicitly excluded from the legitimate source of right in the provision, but also a loan of use, a loan for consumption for free, etc. can also be excluded from the legitimate source of right based on their legitimacy.

Loan for consumption for free of interest: Denial of a legitimate source of right

The amount of interest can be evaluated as a fake legal relationship that disguises de facto gifts of money.

The free loan cannot be recognized as an exception given the legislative intent of the Act to secure the impartiality in the performance of the duties of public officials and protect the trust of society therein.

A loan for consumption for free of interest is not subject to a "legitimate source of right in return or as a price for compensation" such as the payment of debts as a private transaction prescribed in the provision.

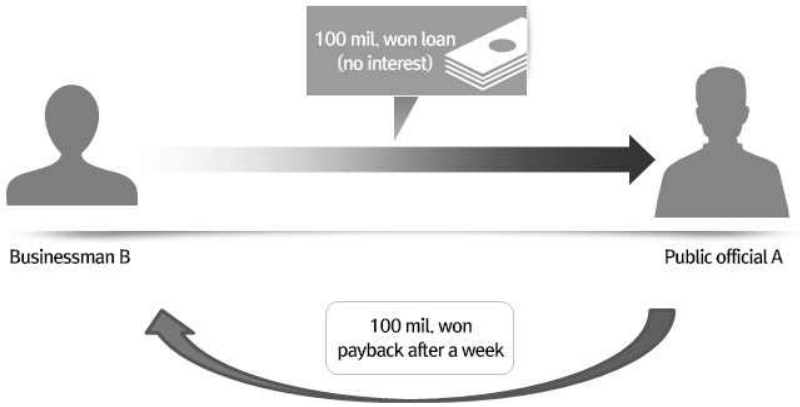
In this case, the value of the loan is the interest rate when to borrow it from a financial institution, but if it is not readily determined, the value must be estimated by reference to the statutory interest rate, pursuant to the precedent (Supreme Court decision 2008Do2590,

September 25, 2008).

Judicial case: the court ruled that given that any public official's borrowing a loan without any expiry date and/or interest in connection with his or her duties constituted bribery, the defendant, command sergeant major, borrowed money for free of interest from the parent of a soldier in the battalion and thereby received a bribe by acquiring a financial benefit equivalent to the interest amount. (Supreme Court decision 2004Do1442, May 28, 2004)

Example case

Public Official A borrowed 100 million won from Businessman B, with whom A had personal relationships, to purchase the real estate B informed of and returned the money in one week.



Loan of use: Denial of a legitimate source of right

The loan of use is to use the object for free and thereby gain benefit, and the amount equivalent to the rate for use can be evaluated as a fake legal relationships to disguise de facto gifts of money.

Example case

A lawyer offered a Mercedes-Benz car to a prosecutor to use for free of charge.

Disguised transaction: Denial of a legitimate source of right

The transaction is null and void as it intends to disguise the gifts of properties even if there exists a source of right. This means that the donation as a hidden act in the disguised transaction, is valid but excludes from a legitimate source of right.

The value of a financial or other advantage received is equivalent to the amount received, not deducting incidental expenses incurred even if the expenses were invested or economic benefit was offered to receive the financial or other advantage. (Supreme Court decision 99Do1683, October 8, 1999)

Example case

The case in which High-ranking Official A received a notable drawing worth 100 million won at the market price for 10 million won from Businessman B and disguised it as a transaction

The transaction, the external conduct (disguised act), shall be null and void and the donation as a hidden act (concealed conduct) shall be valid as the transaction in which A purchased the drawing from B is a conduct to disguise the gift.

The transaction cannot be recognized as a legitimate source of right as it is null and void, and donation, a valid conduct, shall be excluded from a legitimate source of right under the Act.

High-ranking public official A is subject to criminal punishment for receiving a financial or other advantage exceeding 1 million won per occasion from B.

Businessman B is subject to criminal punishment for offering a financial or other advantage exceeding 1 million won per occasion to A.

E. Exception 4: A financial or other advantage that relatives offer (Subparagraph 4 of Paragraph 3 of Article 8 of the Act)

Under Article 777 of the Civil Act, the term 'relatives' refers to blood relatives within the eighth degree of relationship, affinity relatives within the fourth degree of relationship, and spouse.

Blood relatives include biological blood relatives (lineal blood relatives and collateral blood relatives) and legal relatives (adoption).

Spouse means the one of a legal marriage, not the one of a de facto marriage.

F. Exception 5: A financial or other advantages in accordance with the rules prescribed by respective organizations or from those who have long-term and continuous relationships (Subparagraph 5 of Paragraph 3 of Article 8 of the Act)

Exception 5 includes a financial or other advantage that employees' mutual aid societies, clubs, social organizations, etc. related to a public official offer to their members in accordance with the rules prescribed by respective organizations, and

it also includes a financial or other advantage that those who have long-term and continuous relationships, including but not limited to a member of the same organizations with the public official, give the public official who is in need due to a disease or other kind of disaster.

A main argument point here is the scope of violation in the case where a financial or other advantage offered exceeds the rules prescribed by respective organizations.

In addition, another argument point is the meaning of "long-term and continuous relationships" and "in need due to a disease or other kind of disaster" and related criteria to determine the conditions.

A financial or other advantage exceeding the rules prescribed by respective organizations

As the advantage is acceptable once meeting the rules, the excess part of the advantage is subject to prohibition. In addition, the financial or other advantage must be provided by the person representing organizations complying with the rules, and the offer given by a member of organizations are not subject to the exception.

Example case

While the rules of an elementary school alumni association set the threshold for congratulatory or condolence money at 1 million won, Chairman B of the association gave 2.5 million won to the marriage of a child of Public Official A, who worked for a government ministry.

Public Official A is subject to criminal punishment for accepting money exceeding 1 million per occasion. As the rules of the association allow 1 million won for the marriage of a member's child, the 1.5 million won of the excess part cannot be recognized as an exception.

Chairman B is subject to criminal punishment for offering money exceeding 1 million per occasion to Public Official A.

Long-term and continuous relationships or for those in need due to a disease or other kind of disaster

Long-term and continuous relationships: a single standard cannot be applied to judging the relationships, but it requires to consider the cause or any occasion that created the relationships, the duration and frequency of exchange and/or contact to find out whether a "special" personal relationship exists.

As the source of the offer is prescribed as including "but not limited to" a member of the same organizations with the public official, a person who has a long-term and continuous relationships, equivalent to the members of the organizations described above is subject to the provision.

Friends from the same hometown, seniors or juniors from the same school or from the same workplace, or others connected with regional, academic, or blood ties, do not constitute a special personal relationships.

Needy conditions: other than a disease and/or disaster, conditions, including but not limited to stock investment and sending a child overseas to study, are not recognized to an exception.

G. Exception 6: A financial or other advantage uniformly provided by an organizer of an official event related to the duties of a public official (Subparagraph 6 of Paragraph 3 of Article 8 of the Act)

The term includes transportation, accommodation, and food and drink within the usual range that are uniformly provided by an organizer of an official event related to the duties of a public official. Main argument points here are the definitions of "official event, usual range, and uniformly."

Official event: it refers to an event only related to the duties of a public official and hosted by an organization or institution such as a public agency and a private company.

Judgment on the term needs to comprehensively consider conditions such as the host and participants, the purpose and details of the event, and internal approval for the bearing of costs and other items related to the event organization.

Usual range: it refers to a financial or other advantage recognized as equivalent to the financial or other advantage to be provided in a similar event.

Judgment on the term needs to consider similar types of event, the venue and the purpose of the event, the list of participants and their position, the internal standard of the hosting organization and its capacity to bear the costs.

Uniformly: should an offer be confined to a certain individual or a group, not uniformly, it is not subject to the exception herein.

However, this does not mean that the advantage provided should be absolutely the same for all participants, but it can differ by each participant based on their assuming role.

A public official needs to consult with the head (anti-corruption manager) of the organization to which the public official belongs to seek judgment on an official event related to the duties of a public official and the usual range.

H. Exception 7: Souvenirs or promotional goods or awards or prizes by a contest or lottery (Subparagraph 7 of Paragraph 3 of Article 8 of the Act)

Subparagraph 7 includes souvenirs or promotional goods distributed to many and unspecified persons, or awards or prizes that are given by a contest or lottery.

As a financial or other advantage distributed to many and unspecified persons does not affect the performance or of the duties of a public official and thereby it is prescribed as an exception, the meaning of many and unspecified persons is a main argument point here.

The concept of many and unspecified persons is not about numbers but about the randomness in selecting targets.

Whether a financial or other advantage is subject to souvenirs or promotional goods needs to be determined based on the inscription of the organization's name and/or logo, and the purpose, value and the number of units of production.

There is no specific threshold in the price of the product, but the price should be within an appropriate range enough to be deemed as souvenirs or promotional goods in the light of social norms.

Also categorized as an exception is awards or prizes that are given by a contest or lottery in a fair manner.

Even if the candidates of awards or prizes are specified through application, their winning is recognized as an exception as long as the application process is open to many and unspecified persons.

I. Exception 8: A financial or other advantage permitted by other statutes and/or standards, or social norms (Subparagraph 8 of Paragraph 3 of Article 8 of the Act)

Statutes: the exception includes contributions under the Political Fund Act, child rearing and care allowances under the Infant Care Act, and medical care expenses and accident relief money under the Public Officials Pension Act.

Offering and accepting a financial or other advantage entitled as a political fund shall constitute bribery if it is offered in return for the performance or nonperformance of duties.

Judicial case: the court ruled that offering and accepting a financial or other advantage entitled as a political fund shall constitute bribery as long as it was made in return for the performance of the duties of a public official and politician. (Supreme Court decision 97Do2609, December 26, 1997)

Standards: the exception only applies to the financial or other advantages allowed under the internal standards or rules of the organization to which a public official, who receives a financial or other advantage, belongs.

The internal standards refer to those of the organization of a public official, who receives a financial or other advantage, not those of the organization to which the provider of the advantage belongs that allows the offer.

Social rules: a financial or other advantage is subject to an exception if it is deemed acceptable in the light of the entire notion of legal order and/or social ethics or social norms in a broader sense.

The concept herein is inevitably unspecified as given complex and fast changing conditions in society, specifying all possible occasions allowed by social norms is impossible to prescribe in the Act.

Judgment on the social rules needs to comprehensively consider the motive and objective of the offer and reception, the relationships between related parties, the value of the accepted advantage, and the potential connection to a request.

Judicial case: the court ruled that the term "action that does not violate the social rules" set forth in Article 20 of the Criminal Act referred to the act that could be tolerated in the light of the entire notion of the legal order or social ethics or social norms that lied behind the notion, and therefore, an act shall be deemed justifiable should it meet the requirements, including, but not limited to, the legitimacy of the motive or purpose, the adequacy in the means or method of the action, the balance of legal interests between protection and infringement, urgency, and the non-supplementary nature of the means other than the act. (Supreme Court decision 99Do1683, October 8, 1999)

Example cases

- As an marketing campaign, an automaker offered discount for a certain occupation, such as public officials or teachers.
- As an airliner over-booked economy seats, the seats of public officials incidentally upgraded to business seats.
- Food and beverage were offered to the guests of festivities or funerals.

3 Reporting and Disposal of an Unacceptable Financial or Other Advantage

Article 9 (Reporting and Disposal of Unacceptable Financial or Other Advantages)

(1) A public official or relevant person shall immediately report, in writing, any of the following cases, to the head of the relevant agency:

1. A case where a public official or relevant person himself or herself receives an unacceptable financial or other advantage, or a promise or an expression of intention to do so; and
2. A case where a public official or relevant person knows the fact that his or her spouse received an unacceptable financial or other advantage, or a promise or an expression of intention to do so.

(2) Should a public official or relevant person receive an unacceptable financial or other advantage, a promise or an expression of intention to do so, or should a public official or relevant person be aware that his or her spouse received an unacceptable financial or other advantage, or a promise or an expression of intention to do so, the public official or relevant person shall immediately return, or have his or her spouse return, the advantage to the provider, manifest an intention to reject the advantage, or have his or her spouse manifest such intension. Provided, that the public official or relevant person shall deliver, or have his or her spouse deliver, the financial or other advantage received to the head of the relevant agency in any of the following cases:

1. In the event that the financial or other advantage is subject to loss, decay, or deterioration;
2. In the event that the provider of the financial or other advantage is unknown; and
3. Any other situations where it is difficult to return the financial or other advantage to the provider.

(3) If a head of the relevant agency receives a report as provided in Paragraph (1), or a financial or other advantage is delivered to him or her under the proviso to Paragraph (2), and he or she deems that the advantage is an unacceptable financial or other advantage, the head of the relevant agency shall have the public official or relevant person return or deliver the advantage, or express an intention to reject the advantage. When investigation is deemed necessary, the head of the relevant agency shall immediately notify an investigative agency of the details thereof.

(4) Should a head of the relevant agency come to know that a public official or relevant person or his or her spouse received an unacceptable financial or other advantage, a promise or an expression of intention to do so, the head of the relevant agency shall immediately inform an investigative agency of the details thereof if investigation is deemed necessary.

(5) A head of the relevant agency may take such measures as prescribed in each subparagraph of Article 7(4) and (5) against a public official or relevant person if the head of the relevant agency comes to know that the public official or relevant person or his or her spouse received an unacceptable financial or other advantage, a promise or an expression of intention to do so, or if it is deemed that the performance of the duties of the public official or relevant person may be hindered during the process of reporting, returning, or delivering the unacceptable financial or other advantage or notifying an investigative agency of the case under Paragraphs (1) through (4).

(6) A public official or relevant person may submit a report or deliver the advantage prescribed in Paragraph (1) or proviso to Paragraph (2) to a supervisory body, the Board of Audit and Inspection, an investigative agency or the Anti-Corruption and Civil Rights Commission.

(7) Should a head of the relevant agency receive a report under Subparagraph (1)2 from a public official or relevant person and it be deemed that the financial or other advantage which the spouse of the public official or relevant person refuses to return is an unacceptable financial or other advantage, the head of the relevant agency shall require the spouse of the public official or relevant person to return the advantage to the provider.

(8) Any other matters needed to report and handle unacceptable financial or other advantages other than those prescribed in Paragraphs (1) through (7) shall be prescribed by Presidential Decree.

A. Reporting and return of unacceptable financial or other advantages

(1) Reporting duty

Any public official shall immediately report, in writing (including e-document), the case where the public official and/or the spouse of the public official receives an unacceptable financial or other advantage to the head of the relevant agency. Items to be reported are personal information of the reporter, purport, purpose and details of the report which may contain personal information of the provider, types and value of the financial or other advantages received and whether it was returned.

The report shall be filed with evidence, if available, as a proof to prevent a false or improper reporting. No one who knew or could know that the information in the report he or she submitted was false or for improper purpose shall receive protection or rewards under the Act, and anybody who reports false information for the purpose of having a criminal or disciplinary punishment imposed upon another, shall constitute false accusation under the Criminal Act.

A report may be submitted to a supervisory body, the Board of Audit and Inspection, an investigative agency or the Anti-Corruption and Civil Rights Commission.

(2) Duty to return and/or deliver an unacceptable financial or other advantage

Should a public official receive the advantage by himself or herself, he or she shall immediately return and/or deliver the advantage.

Should a public official be aware that his or her spouse received the advantage, the public official shall immediately have his or her spouse return the advantage to the provider or have his or her spouse manifest an intention to reject the advantage.

Provided, that the public official shall deliver the financial or other advantage which can be decay or deteriorate.

Delivery is needed in any of the following cases: In the event that the financial or other advantage is subject to loss, decay, or deterioration, the provider of the financial or other advantage is unknown, and any other situations where it is difficult to return the financial or other advantage to the provider

(3) Timing of reporting, return and/or delivery

Submitting a report of and returning the financial or other advantage shall be made immediately, and "immediately" means "without unnecessary delay."

Should a legitimate reason that blocks the immediate reporting and/or returning exist, the reporting and/or returning should be made right after the reason is over.

"Immediately" needs to be determined depending on each case specifically and individually, not applying a single standard across the board.

(4) Effect of reporting and return and/or delivery

A public official who "immediately" submits a report or returns and/or delivers as prescribed in Paragraph 1, 2, or 6 of Article 9 are excluded from punishment.

Exemption from punishment is made based on whether the reporting or returning and/or delivery is done "immediately."

However, the case in which a public official voluntarily submitted a report but the filing was done "with a delay" may be subject to the reduction of punishment.

B. Follow-ups of the head of the relevant Agency

Request for Return, etc.: a head of the relevant agency shall have the public official return or deliver the advantage, or express an intention to reject the advantage.

When investigation is deemed necessary, the head shall immediately notify an investigative agency of the details thereof.

Should a public official be aware that his or her spouse received the advantage and the spouse refuses to return the advantage, the head shall require the spouse to return the advantage to the provider.

Measures on the relevant official: the head of the relevant agency may take measures,

including, but not limited to, provisional suspension of performing the duties, designation of a substitute, and change of position.

Notwithstanding of the provision beforehand, the head may let the public official continue his or her duties in any of the following cases and have an official in charge or other public official verify and check regularly as to whether the public official performs the duties uprightly.

Such exceptional cases include when it is difficult to find a substitute for the public official who can perform the duty; the performance of the duties of the public official is marginally affected; and the necessity of continuing the duties is greater in the light of protecting national security, developing the national economy and promoting any other public interest.

Measures for dealing with unlawful performance of duties: should a public official or relevant person be found to have been in violation of the provisions during or subsequent to the performance of his or her duties, the head shall take necessary measures, including, but not limited to, suspension or cancellation of the duties.

4 Restriction on an Honorarium for an Outside Lecture

Article 10 (Restriction of Acceptance of Honoraria for Outside Lectures or Relevant Activities)

(1) No public official or relevant person shall accept money in excess of the limits provided under Presidential Decree as an honorarium for a lecture, presentation, or contribution related to his or her duties or requested due to de facto influence arising from his or her position or responsibilities (hereinafter referred to as "outside lecture or relevant activity") at a training course, promotional event, forum, seminar, public hearing, or any other meeting

(2) If a public official or relevant person intends to conduct an outside lecture or relevant activity, he or she shall report, in writing, the details of the request for the outside lecture or relevant activity in advance to the head of the relevant agency as prescribed in Presidential Decree. Provided, that he or she need not report it if the request for the outside lecture or relevant activity is made by the State or a local government.

(3) A public official or relevant person may submit a written report on an outside lecture or relevant activity within two (2) days from the day when the outside lecture or relevant activity is finished should it be difficult to make a report on the outside lecture or relevant activity in advance under the provisions of Paragraph (2).

(4) A head of the relevant agency may restrict an outside lecture or relevant activity that a public official or relevant person reported under Paragraph (2) should it be deemed hindering the public official or relevant person from performing his or her duties uprightly.

(5) Should a public official or relevant person receive an honorarium exceeding the amount as prescribed by Paragraph (1), he or she shall report the said fact to the head of the relevant agency in accordance with Presidential Decree and immediately return the excess part to the provider.

Article 23 (Fines for Negligence)

(4) A public official or relevant person who fails to submit a report or return a financial or other advantage under Paragraph 10(5) shall be subject to a fine for negligence not exceeding five million won.

A. Legislative intent

Some have continued to voice their concerns that excessive outside lectures by some public officials and their excessive honorariums can be abused as an indirect way to offer and receive a financial or other advantage.

Expensive gratuities provided to public officials from businesses or interest groups can be abused as bribes that can or will affect the performance or nonperformance of official duties.

An honorarium for an outside lecture is provided to compensate labor and to utilize and/or

share expert knowledge. Therefore, only the outside lectures that are related to duties or requested due to a de facto influential power pertaining to the position or title of a public official should be subject to the provisions herein.

Furthermore, offering and/or receiving the amount exceeding the threshold of gratuities shall be prohibited through setting the maximum ceiling to prevent the gratuities abused as an circumventing or indirect method to offer a financial or other advantage.

B. Scope of outside lectures

(1) Relationships between Article 8 (prohibition of acceptance of financial or other advantages) and Article 10 (restriction of acceptance of honoraria for outside lectures or relevant activities) of the Act

Article 8 of the Act regulates the direct acceptance of a financial or other advantage by a public official or the spouse of a public official.

Article 10 of the Act regulates the circumventing or indirect acceptance of a financial or other advantage by a public official in the form of a honorarium of an outside lecture, etc.

Some part of an honorarium for an outside lecture are excluded from the provisions on prohibition as the honorarium is also provided in return for a lecture, etc.

A financial or other advantage other than an honorarium for an outside lecture shall be subject to the provisions of Article 8 as Article 10 is a special provision to Article 8.

(2) Criteria for the scope of outside lectures

The outside lecture subject to Article 10 is the one related to duties of a public official and in the form of a meeting to share or discuss opinions and/or knowledge with many, unspecified persons.

Outside lectures without any connection to the duties, not intended to many people, or not in the form of a meeting shall not be subject to the provisions of Article 10.

The provisions only apply to the cases in which an request for an outside lecture is made to a public official in connection with his or her duties or affected by the influential power arising from his or her position and/or title.

"In connection with his or her duties" means "related to any function or activity the public official handles pertaining to his or her position."

The lecture should be a venue to share opinions or knowledge with many persons or in the

form of a meeting for a training course, promotional event, forum, seminar, or public hearing.

The service targeting many persons or in the form of a meeting includes, but not limited to, a lecture, class, contribution, presentation, discussion, deliberation, evaluation, resolution, and consultancy.

However, a service or consultancy not targeting many people or in the form of a meeting is not subject to the outside lecture prescribed in the provisions of Article 10.

(3) Regulations on the gratuities for a service or consultancy

The gratuities for a service or consultancy, which is not a outside lecture, shall be subject to Article 8 (Prohibition of acceptance of financial or other advantages).

In particular, whether the gratuities are subject to a financial or other advantage provided by a legitimate source of right stipulated as an exception in Subparagraph 3 of Paragraph 3 of Article 8 needs to be reviewed.

A service or consultancy contract may be subject to a source of right, but in that case, the legitimacy of the source needs to be reviewed separately.

The legitimacy of the source shall be determined based on the appropriateness of the compensation through comprehensively considering the provisions of related statutes and/or standards, features of related duties, expertise, and the mission and characteristics of the relevant agency.

C. Reporting an outside lecture in advance and restrictions

A public official shall report, in writing, the details of the request for the outside lecture or relevant activity in advance to the head of the relevant agency.

The report on an outside lecture should be submitted in advance regardless of whether the public official receives a gratuity. *Provided*, that he or she needs not to report the case if the request is made by the State or a local government.

A public official or relevant person may submit a written report on an outside lecture within two days from the day when the outside lecture is finished should it be difficult to make a report on it in advance.

A head of the relevant agency may restrict an outside lecture that a public official reported should it be deemed affecting the performance of the duties of the public official.

D. Reporting and return of the excess part of an honorarium

Should a public official receive an honorarium exceeding the amount as prescribed in the Act, he or she shall report the described fact to the head of the relevant agency and return the excess part to the provider.

A public official is subject to a fine for negligence not exceeding 5 million won unless he or she submits a report and return the excess part.

As the public official needs to accomplish both the reporting and the return, he or she will be subject to a fine for negligence should he or she fail to do one of them.

Note	Foreign case study

<U.S.>

Ethics in Government Act: no public servant shall accept any gratuities in return for appearance, lecture, contribution or others directly related to or arising from his or her position while working as a public servant, and civil penalties up to 10,000 dollars shall be imposed per violation.
New York Conflicts of Interest Law: under the law, no public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action.

<U.K.>

Ministerial Code: ministers should not accept payment for speeches or media articles of an official nature or which directly draw on their responsibilities or experience as Ministers or with a view to donating the fee to charity.

<Japan>

National Public Service Ethics Code: for a national public service official to conduct a lecture, discussion; instruction and teaching at a course and/or workshop, writing, editing, compilation, or appearance in a radio and/or TV program with remuneration, upon request by an interest party, the official shall obtain approval of an Ethics Supervisory Officer in advance, and the Ethics Supervisory Officer shall set the standards on the remuneration provided by an interest party.

5 Disciplinary Action and Punishments on Violation

Article 21 (Disciplinary Actions)

The head of each relevant agency shall take disciplinary action against each public official or relevant person who violates this Act or Decree pursuant this Act.

Article 22 (Criminal Punishments)

(1) Any of the following persons shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won:

1. A public official or relevant person who violates Paragraph 8(1) (including private persons performing public duties under Article 11). Provided, that a public official or relevant person who submits a report as prescribed in Paragraph 9(1), (2), or (6), or who returned, delivered or expressed an intention to reject an unacceptable financial or other advantage shall be excluded;
2. A public official or relevant person (including private persons performing public duties under Article 11) who recognizes that his or her spouse received, requested or promised to receive an unacceptable financial or other advantage under Paragraph 8(1) in violation of Paragraph 8(4) , and fails to report such fact as prescribed in Subparagraph 9(1)2 or Paragraph 9(6). Provided, that this shall not apply where the public official or relevant person, or his or her spouse, returned, delivered, or expressed an intention to reject, the unacceptable financial or other advantage in accordance with Paragraph 9(2);
3. Any person who offers, promises to offer, or expresses an intention to offer an unacceptable financial or other advantage as prescribed in Paragraph 8(1) to a public official or relevant person (including private persons performing public duties under Article 11), or his or her spouse in violation of Paragraph 8(5);

(4) All financial or other advantages prescribed in Subparagraphs (1)1 through 3 shall be confiscated. Provided, that where it is impossible to confiscate all or any part of such financial or other advantage, an amount equivalent to the value thereof shall be collected.

Article 23 (Fines for Negligence)

(4) A public official or relevant person who fails to submit a report or return a financial or other advantage under Paragraph 10(5) shall be subject to a fine for negligence not exceeding five million won.

(5) Any of the following persons shall be subject to a fine for negligence of two to five times the value of the financial or other advantage related to the violation. Provided, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under Subparagraphs 22(1)1 through 3, or the Criminal Act and other Acts (including confiscation or collection of equivalent value), and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked:

1. A public official or relevant person who violates Paragraph8(2) (including private persons performing public duties under Article 11). Provided, that this shall not apply when the public official or relevant person submitted a report as prescribed in Paragraph 9(1), (2), or (6), or returned, delivered, or expressed an intention to reject an unacceptable financial or

other advantage;

2. A public official or relevant person (including private persons performing public duties under Article 11) who recognizes that his or her spouse received, requested or promised to receive an unacceptable financial or other advantage under Paragraph 8(2) in violation of Paragraph 8(4), and fails to report such fact as prescribed in Subparagraph 9(1)2 or Paragraph 9(6). Provided, that this shall not apply when the public official or relevant person, or his or her spouse, returned, delivered, or expressed an intention to reject the unacceptable financial or other advantage in accordance with Paragraph 9(2); and
3. Any person who offers, promises to offer, or expresses an intention to offer, an unacceptable financial or other advantage as prescribed in Paragraph 8(2) to a public official or relevant person (including private persons performing public duties under Article 11), or his or her spouse in violation of Paragraph 8(5).

(6) Notwithstanding the provisions of Paragraphs (1) through (5), no fine for negligence shall be imposed should a disciplinary committee have resolved to impose disciplinary additional charges under the State Public Officials Act, Local Public Officials Act or any other Act or subordinate statute; and no resolution to impose disciplinary additional charges shall be passed should a fine for negligence have been imposed.

(1) Disciplinary actions

The head of each relevant agency should set a specific guideline on the types of violation acts, the level of gravity, the relative affection of negligence, and other conditions.

"Shall take disciplinary action" prescribed in Article 21 of the Act means that a disciplinary procedure should be taken pursuant to disciplinary standards to impose disciplinary actions.

Receiving a financial or other advantage or a gratuity for an outside lecture exceeding the threshold stipulated herein shall not be subject to disciplinary actions should the advantage or the gratuity be reported and returned and/or delivered.

(2) Criminal punishment

A public official who accepts, requests, or promises to receive a financial or other advantage exceeding 1 million won per occasion or 3 million won in any fiscal year from a single source shall be subject to criminal punishment.

A public official who immediately reports, returns and/or delivers, or expresses to refuse the financial or other advantage is not subject to the punishment hereunder.

A public official who knowingly fails to file a report that his or her spouse accepted, requested, or promised to receive a financial or other advantage exceeding 1 million won per occasion or 3 million won in any fiscal year shall also be subject to criminal punishment.

A public official or the spouse of a public official who immediately returns and/or deliver, or manifests an intention to reject the advantage is not subject to the punishment hereunder.

Anyone who offers, promises or expresses an intention to provide a financial or other advantage exceeding 1 million won per occasion or 3 million won in any fiscal year to a public official or the spouse of a public official shall also be subject to criminal punishment.

(3) Fine for negligence

Provision or acceptance of unacceptable financial or other advantages shall put following persons to be subject to a fine for negligence of two to five times the value of the advantage:

- A public official who accepts, requests, or promises to receive a financial or other advantage up to 1 million won per occasion or 3 million won in any given fiscal year from the same person

- A public official who knowingly fails to file a report that his or her spouse accepted, requested, or promised to receive a financial or other advantage up to 1 million won per occasion or 3 million won in any given fiscal year

- Anyone who offers, promises or expresses an intention to provide a financial or other advantage up to 1 million won per occasion or 3 million won in any given fiscal year to a public official or the spouse of a public official

Gratuities for an outside lecture exceeding the threshold shall put the following person to be subject to a fine for negligence of 5 million won or less:

- A public official who fails to file a report on a gratuity for an outside lecture, etc. exceeding the threshold stipulated herein to the head of his or her agency and return the excess amount to the provider

(5) Revocation of a fine for negligence

A head of the relevant agency shall notify a competent court, pursuant to the Non-Contentious Case Procedure Act, of the violation committed by a person subject to a fine for negligence imposed hereunder.

The competent court shall proceed to a trial on a fine for negligence after receiving the notification by the head of the violation.

Should the relevant public official be subject to criminal punishment after a fine for

negligence is imposed, the imposition shall be revoked. (Paragraphs 1, 2, 3 and 5 of Article 23 of the Act).

A case imposed with a fine for negligence can also be subject to criminal punishment pursuant to other laws such as the Criminal Act and the Act.

Example: for a case imposed with a fine for negligence for receiving a financial or other advantage valued at 1 million won or less, a criminal punishment was imposed pursuant to the Criminal Act for the fact that the advantage was given in return for official acts or for accepting a financial or other advantage exceeding 3 million won per any financial year.

(6) Confiscation, additional collection and disciplinary additional charges

Confiscation and/or additional collection: all financial or other advantages subject to criminal punishments as prescribed herein shall be confiscated. Provided, that should confiscating all or any part of the advantages be impossible, an amount equivalent to the value thereof shall be additionally collected.

Disciplinary additional charges: no fine for negligence shall be imposed should a disciplinary committee have resolved to impose disciplinary additional charges under the State Public Officials Act, the Local Public Officials Act or any other Act or statutes. No disciplinary additional charges shall be imposed should a fine for negligence have been imposed.

VI. Overall Management of Duties Pertaining to Prevention of Improper Solicitations and Acceptance of Financial or other Advantages

VI Overall Management of Duties Pertaining to Prevention of Improper Solicitations, etc.

1 Institution for the Overall Management of Duties Pertaining to Prevention of Improper Solicitations, etc.

Article 12 (Overall Management of Duties Pertaining to Prevention of Improper Solicitations and Acceptance of Financial or other Advantages)

The Anti-Corruption and Civil Rights Commission shall take charge of the duties pertaining to the following subparagraphs, under this Act:

1. The improvement of systems for prohibiting improper solicitations and for prohibiting or restricting the acceptance of financial or other advantages, as well as the establishment and implementation of related training and promotion plans;
2. The formulation and dissemination of the criteria for categorizing and determining improper solicitations and unacceptable financial or other advantages, standards for their preventive measures, etc.;
3. The guidance and consultation, as well as receiving and processing of reports on improper solicitations and unacceptable financial or other advantages;
4. The protection of and rewards to reporting persons or cooperators; and
5. The conduct of the fact-finding investigation as well as the collection, management, analysis, etc., of the materials necessary for carrying out the duties described in Subparagraphs 1 through 4.

The Improper Solicitation and Graft Act stipulates the Anti-Corruption and Civil Rights Commission (ACRC), the central institution for comprehensive and impartial measures against corruption at a national level, as the institution for the overall management of duties pertaining to prevention of improper solicitations and acceptance of financial or other advantages.

The ACRC may conduct fact-finding investigation as well as the collection, management, analysis, etc. of the materials necessary for carrying out the duties pertaining to prevention of improper solicitations etc.

2 Reporting and Handling of Violations

Article 13 (Reporting of Violations)

(1) Anyone who discovers a violation of this Act has taken place or is taking place, may report it to the following authorities:

1. The public institution where the violation of the Act occurs or its supervisory body;
2. The Board of Audit and Inspection or other investigative authority; or
3. The Anti-Corruption and Civil Rights Commission.

(3) An individual who intends to submit a report under Paragraph (1) shall submit in writing his or her personal details along with the purport, purpose, and details of the report; sign the written report; and at the same time identify the suspected violator and provide evidence of a violation.

Article 14 (Processing of Reports)

(1) An agency prescribed in Subparagraph 13(1)1 or 2 (hereinafter referred to as "investigative agency") that receives a report in accordance with Paragraph (1) of the same Article, or receives a report transferred from the Anti-Corruption and Civil Rights Commission in accordance with Paragraph (2) of the same Article shall conduct the necessary examination, inspection or investigation of the information in the report.

(2) Upon receiving a report in accordance with Paragraph 13(1), the Anti-Corruption and Civil Rights Commission shall first verify the details of the report from the reporting person, then transfer the case to an investigative agency as prescribed by Presidential Decree and notify the reporting person of such fact.

(3) The investigative agency shall notify the reporting person and the Anti-Corruption and Civil Rights Commission of its findings within ten days of the day that the examination, inspection or investigation under Paragraph (1) is completed (applicable only when the case was transferred from the Anti-Corruption and Civil Rights Commission), and then, based on the results of the examination, inspection or investigation, take the necessary follow-up measures, such as filing an indictment, issuing a notification of a violation subject to a fine for negligence, or taking a disciplinary action.

(4) Upon notification of the results of an examination, inspection or investigation conducted by the investigative agency in accordance with Paragraph (3), the Anti-Corruption and Civil Rights Commission shall immediately inform the reporting person of the results of the examination, inspection, or investigation.

(5) Upon notification of the results of an examination, inspection, or investigation in accordance with Paragraph (3) or (4), the reporting person may file an appeal with the investigative agency, and the reporting person notified of the results of an examination, inspection or investigation in accordance with Paragraph (4), may also file an appeal with the Anti-Corruption and Civil Rights Commission.

(6) Should the results of the investigative agency's examination, inspection or investigation be deemed unsatisfactory, the Anti-Corruption and Civil Rights Commission may request the investigative agency to reexamine the case within thirty days after receiving the results of the examination, inspection, or investigation.

(7) The investigative agency that receives a reexamination request pursuant to Paragraph (6)

shall notify the Anti-Corruption and Civil Rights Commission of the results within seven days after completing the reexamination. Upon receipt of such results, the Anti-Corruption and Civil Rights Commission shall immediately provide the reporting person with a summary of the reexamination.

A. Reporting of violations

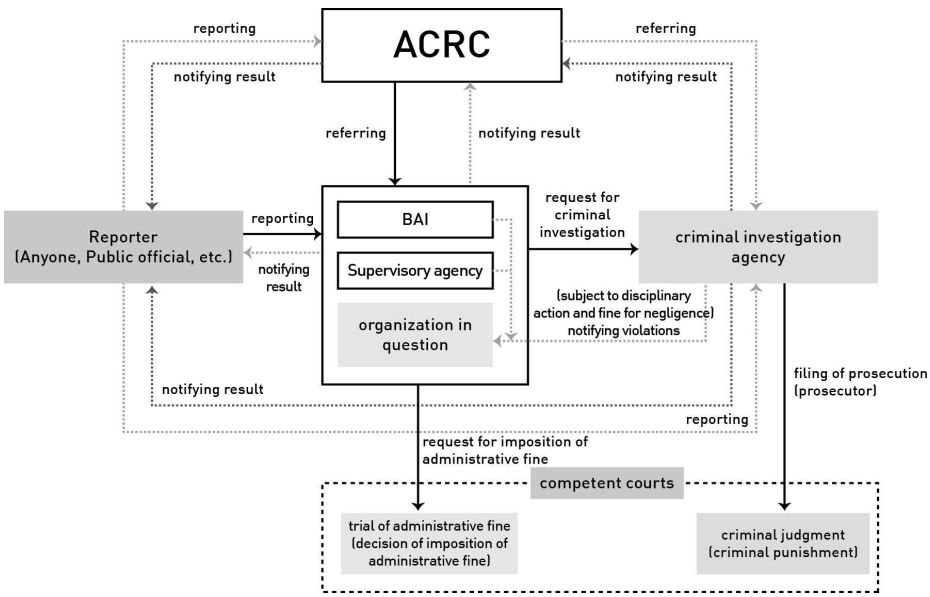
(1) Reporting system in accordance with the Improper Solicitation and Graft Act

Reports in accordance with the Improper Solicitation and Graft Act are reports in Article 7 Paragraph 2 and Article 9 Paragraph 1 of the Act (reporting person: public official or relevant person) and reports in Article 13 Paragraph 1 of the Act (reporting person: anyone).

Reports in accordance with Article 7 Paragraph 2 and Article 9 Paragraph 1 of the Act are reported by ‘public officials or relevant persons‘ as fulfillment of legal obligations to prevent from being subject to sanctions.

Reports in accordance with Article 13 Paragraph 1 of the Act are reported by ‘anyone‘ who discovers a violation of this Act has taken place or is taking place.

< **Flowchart of the Reporting and Handling Process** >



(2) Reporting method for reports in accordance with Article 13 Paragraph 1 of the Act

Reports shall be made in writing (including electronic documents) with the reporting person‘s personal details along with the purport, purpose and details of the report.

In order to prevent irresponsible reporting, false reporting, etc., the report shall include the reporting person's personal details along with the evidence.

Reference: for information on confidentiality of the reporting person, see Chapter 3: The Protection of and Rewards to Reporting Persons or Cooperators.

False reporting against objective truths for the purpose of causing others to be subject to criminal prosecution or disciplinary action, may be punished for making a false accusation.

Reports may be submitted not only to the relevant agency but also to its supervisory body, the Board of Audit and Inspection, an investigative agency or the ACRC.

B. Processing of reports

(1) Processing of reports by the ACRC

The ACRC shall first verify the details of the report, then transfer the case to an investigative agency and notify the reporting person of such fact.

(2) Processing of reports by the investigative agency

The investigative agency that receives a report or receives a report transferred by the ACRC shall conduct the necessary examination, inspection or investigation of the information in the report.

Based on the results of the examination, inspection or investigation, the necessary follow-up measures, such as filing an indictment, issuing a notification of a violation subject to a fine for negligence, or taking a disciplinary action, shall be taken place.

The investigative agency shall notify the reporting person and the ACRC (applicable only when the case was transferred) of its findings within ten days of the day that the examination, etc. is completed.

Upon notification of the results of the examination, etc. by the investigative agency, the ACRC shall immediately inform the reporting person of the results.

(3) Scope of investigation by the investigative agency

Upon receiving a report or receiving a report transferred by the ACRC, the investigative agency shall conduct the necessary examination, inspection or investigation of the information in the report.

The investigative agency may conduct examinations on third parties, such as stakeholders and reference persons, and other public institutions in addition to public officials who belong to the institution.

However, it may be conducted only in case the subject to be investigated cooperates voluntarily and it shall not be enforced if he or she does not cooperate (excluding the criminal investigation authorities such as police, prosecutor's office).

C. Filing an appeal and request for reexamination

(1) Filing an appeal

Upon notification of the results of the examination, etc., the reporting person may file an appeal with the investigative agency, and in case the results of the examination, etc. was notified by the ACRC, the reporting person may also file an appeal with the ACRC.

(2) Request for reexamination

Should the results of the examination, etc. be deemed unsatisfactory, the Anti-Corruption and Civil Rights Commission may request the investigative agency to reexamine the case.

Reexamination shall be requested within thirty days after receiving the results along with a rational reason such as material of new evidence.

The investigative agency that receives a reexamination request shall notify the ACRC of the results within seven days after completing the reexamination.

Upon receiving the results of the reexamination, the ACRC shall immediately provide the reporting person with a summary of the reexamination.

3 Protection of and Rewards to Reporting Persons, etc.

Article 13 (Reporting of Violations)

(2) No who reports pursuant to Paragraph (1) shall receive protection or rewards under this Act in any of the following cases:

1. In the event the report was filed even though the reporting person had known or could know that the information in the report was false;

2. In the event that the reporting person demanded a financial or other advantage or special privilege within the context of the employment relationship in return for the reporting; and

3. In the event that the report was filed for some other improper purpose.

Article 15 (Protection of and Rewards to Reporting Persons or Cooperators)

(1) No one may either block any of the following reporting or cooperation (hereinafter referred to as "reporting or cooperation") or coerce the person who conducted such reporting or cooperation (hereinafter referred to as "reporting person or cooperator") to withdraw the reporting or cooperation:

1. Reporting prescribed in Paragraphs 7(2) and (6);

2. Reporting or delivery as prescribed in Paragraph 9(1), the proviso to Paragraph 9(2), and Paragraph 9(6);

3. Reporting prescribed in Paragraph 13(1); and

4. Cooperation in support of an examination, inspection, investigation or litigation of a report, or an examination, litigation, etc., related to protective measures by providing statements, testimony, material evidence or other assistance by those other than the one who reports pursuant to Subparagraphs 1 through 3.

(2) No one may take any disadvantageous measure ("disadvantageous measure" as described in Subparagraph 6 of Article 2 of the Act on the Protection of Public Interest Whistleblowers; hereinafter the same shall apply) against any reporting person or cooperator on grounds of their having reported or cooperated.

(3) Should a violator of this Act voluntarily report the fact of a violation or the reporting or cooperation by a reporting person or cooperator have resulted in disclosing a violation of this Act committed by himself or herself, then the criminal punishment, fines for negligence, disciplinary actions, or other administrative dispositions for such violation may be mitigated or remitted.

(4) The provisions of Articles 11 through 13; Paragraphs 14(3) through (5); and Articles 16 through 25 of the Act on the Protection of Public Interest Whistleblowers shall apply mutatis mutandis to matters that are related to the protection or other measures for reporting persons or cooperators other than those prescribed in Paragraphs (1) through (3). In this case, the term "public interest whistleblower, etc." shall be construed as "reporting person or cooperator" and "public interest whistleblowing, etc." shall be construed as "reporting or cooperation."

(5) The Anti-Corruption and Civil Rights Commission may pay the reporting person a cash award should his or her reporting pursuant to Paragraph 13(1) contribute to financially benefiting a public institution or preventing damage thereto, or promoting the public interest.

(6) The Anti-Corruption and Civil Rights Commission shall pay the reporting person a financial

reward should his or her report pursuant to Paragraph 13(1) directly contribute to recovering or increasing the revenue of a public institution or reducing its expenses.

(7) Articles 68 through 71 of the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission shall apply mutatis mutandis to requests, payment, etc., of cash awards and rewards pursuant to the provisions of Paragraphs (5) and (6). In such cases, "one who reports a corrupt act" shall be construed as "one who reports pursuant to Paragraph 13(1)" and "report pursuant to this Act" shall be construed as "report pursuant to Paragraph 13(1)."

Article 22 (Criminal Punishments)

(1) Any of the following persons shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won:

4. Any person who tells, discloses or publicizes to any third party personal information concerning a reporting person or cooperator, or other facts from which the identity of the reporting person or cooperator can be inferred in violation of Paragraph 12(1) of the Act on the Protection of Public Interest Whistleblowers, which is applied mutatis mutandis under Paragraph 15(4);

(2) Any of the following persons shall be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won:

2. Any person who takes a disadvantageous measure falling into Item (a) of Subparagraph 6 of Article 2 in the Act on the Protection of Public Interest Whistleblowers in violation of Paragraph 15(2); and
3. Any person who fails to take a protective measure which was verified under Paragraph 21(2) in the Act on the Protection of Public Interest Whistleblowers, which is applied mutatis mutandis as prescribed in Paragraph 15(4), or as a result of an administrative litigation.

(3) Any person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than one year or by a fine not exceeding ten million won:

1. Any person who hinders reporting or cooperation or coerces withdrawal of the reporting or cooperation in violation of Paragraph 15(1); and
2. Any person who takes a disadvantageous measure against a reporting person or cooperator in violation of Paragraph 15(2), which falls into any of Items (b) through (g) of Subparagraph 6 of Article 2 in the Act on the Protection of Public Interest Whistleblowers.

Article 23 (Fines for Negligence)

(1) Any of the following persons shall be subject to a fine for negligence not exceeding 30 million won:

2.. Any person who refuses to submit relevant material, appear before the Anti-Corruption and Civil Rights Commission, and submit a written statement in violation of Paragraphs 19(2) and (3) in the Act on the Protection of Public Interest Whistleblowers which are applied mutatis mutandis pursuant to Paragraph 15(4) (including where the provisions apply mutatis mutandis under Paragraph 22(3) of the same Act).

A. Reporting persons subject to protection and reward

(1) Summary

Due to the covert nature of improper solicitations and acceptance of financial or other advantages, voluntary participation of public officials and the general public is essential.

Meanwhile, in order to create an environment for active reporting, protection of and rewards to reporting persons is necessary.

Act on the Protection of Public Interest Whistleblowers shall be applied mutatis mutandis for the protection of reporting persons and Act on Anti-Corruption and the Establishment and Operation of the Anti Corruption and Civil Rights Commission shall be applied mutatis mutandis for the rewards to reporting persons.

(2) Reports subject to protection

According to the Improper Solicitation and Graft Act, reports are categorized into reports made by ‘anyone‘ under Article 13 Paragraph 1 of the Act and reports voluntarily made by ‘public officials or relevant persons‘ under Article 7 Paragraph 2 and Article 9 Paragraph 1 of the Act.

Regardless of the reporting person, whether ‘anyone‘ or ‘public officials or relevant persons‘, all reports according to this Act shall be subject to protection.

(3) Reports subject to rewards

Reports subject to cash awards and rewards pursuant to the provisions of Article 15 Paragraphs 5 and 6 of the Act shall be limited to cases reported by ‘anyone‘ pursuant to Article 13 Paragraph 1.

Reports subject to cash awards and rewards are reports pursuant to Article 13 Paragraph 1 of the Act, therefore, voluntary reports made by public officials or relevant persons pursuant to Article 7 Paragraph 2 and Article 9 Paragraph 1 shall be excluded.

Voluntary reports made by public officials or relevant persons pursuant to Article 7 Paragraph 2 and Article 9 Paragraph 1 of the Act are reports as fulfillment of legal obligations to prevent from being subject to sanctions.

B. Protection of reporting persons

(1) Confidentiality and protection

Prohibition of disclosure and report of personal information

No one may tell, disclose or publicize to any third party personal information concerning a reporting person or other facts from which the identity of the reporting person can be inferred without consent from the reporting person.

Anyone who tells, discloses or publicizes to any third party personal information, etc. concerning a reporting person, shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won (Article 22 Paragraph 1 Subparagraph 4).

Protection

In case the reporting person, his or her relative or cohabitant suffered or there is certain concern that they may be subject to suffering serious harm to their life or body because of the report, protective measures may be requested to the Commission.

(2) Protective measures

Prohibition of disadvantageous measures

No one may take any disadvantageous measure against any reporting person.

Level of sanction for disadvantageous measures

- Anyone who takes disadvantageous measures such as expulsion, dismissal, discharge or other disadvantageous measures in terms of status against any reporting person shall be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won.
- Anyone who takes disadvantageous measures other than the above shall be punished by imprisonment for not more than one year or by a fine not exceeding 10 million won. Disadvantageous measures include disciplinary action, suspension, reduction in salary, demotion, restriction in promotion and other unjust personnel matters, transfer, duty exclusion, duty relocation, other personnel matter against his or her intention, discrimination in performance evaluation or peer evaluation and the consequent discrimination in wage or bonus, cancellation of license, permit, etc., other administrative disadvantage, cancellation of product or service contract or other financial disadvantage, etc.

Prohibition of report hindering or coercion for withdrawal of the reporting

No one is allowed to hinder reporting or coerce withdrawal of the reporting. Hindering reporting or coercing withdrawal of the reporting shall be punished by imprisonment for not more than one year or by a fine not exceeding 10 million won.

Protective measures such as restoration

In case the reporting person receives disadvantage measures due to the report, he or she may apply for restoration and other protective measures to the Commission.

Anyone not complying with protective measure decisions shall be punished by imprisonments for not more than two years or by a fine not exceeding 20 million won.

Exemption of duty

In case criminal act by the reporting person regarding the reporting of the violation is found, the sentence may be reduced.

In case the reporting person is subjected to disciplinary action due to violation regarding the reporting, the Commission may request reduction of disciplinary action to the disciplinary authority.

Priority in personnel measure

In case the reporting person directly requests measures regarding personnel, such as transfer, dispatch and other personnel matters, the employer or personnel manager shall consider it with a priority if deemed as valid.

Note	Comparison of sanctions regulation in case of violation of protective regulation for reporting persons

	Act on the Protection of Public Interest Whistleblowers Article 30 (Criminal Punishment) Article 31 (Fines)	**Improper Solicitation and Graft Act** Article 22 (Criminal Punishment) Article 23 (Fines)
Violation of prohibition of disclosure of personal information, etc. of the reporting persons, etc.	Punished by imprisonment for not more than three years or by a fine not exceeding 30 million won (Article 30 (1) 2)	Punished by imprisonment for not more than three years or by a fine not exceeding 30 million won (Article 22 (1) 4)
Disadvantageous measures (expulsion, dismissal or other status disadvantage)	Punished by imprisonment for not more than two years or by a fine not exceeding 20 million won (Article 30 (2) 1)	Punished by imprisonment for not more than two years or by a fine not exceeding 20 million won (Article 22 (2) 2)
Disadvantageous measures (other than status disadvantage)	Punished by imprisonment for not more than one year or by a fine not exceeding 10 million won (Article 30 (3) 1)	Punished by imprisonment for not more than one year or by a fine not exceeding 10 million won (Article 22 (3) 1)
Non-compliance with protective measures (requested measures)	Punished by imprisonment for not more than two years or by a fine not exceeding 20 million won (Article 30 (2) 2)	Punished by imprisonment for not more than two years or by a fine not exceeding 20 million won (Article 22 (2) 3)
Hinder reporting or coerce withdrawal of the reporting	Punished by imprisonment for not more than one year or by a fine not exceeding 10 million won (Article 30 (3) 2)	Punished by imprisonment for not more than one year or by a fine not exceeding 10 million won (Article 22 (3) 1)
Refuse to submit relevant material, appear before the ACRC, submit a written statement, etc	Punished by a fine not exceeding 30 million won (Article 31 (1))	Punished by a fine not exceeding 30 million won (Article 22 (1) 2)
Subject to administrative appeal	Prohibition of filing for administrative appeal (Article 21 (3))	Mutatis mutandis application of Act on the Protection of Public Interest Whistleblowers (Article 15 (4))

C. Reward/cash award

(1) Reason for cash award and basis for payment

Reason for payment: in case the report contributed to financially benefitting a public institution or preventing damage thereto, or promoting the public interest.

Enforcement Decree of the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission

Article 71 (Grounds for Paying Award)

(1) Award may be payable pursuant to Article 68 (1) of the Act in any one of the following cases:

1. A case in which there was prosecution, stay of prosecution, exemption of prosecution, noticed disposition, imposition of negligence fine or additional collection, disciplinary action or corrective measures against the person who committed corruption;
2. A case that results in institutional improvement, for example, in the form of the enactment or revision of the acts and subordinate statutes;
3. A case in which the disclosure contributes to preventing a public organization from bearing economic costs to be otherwise incurred by improving a related policy, or suspending or ending the implementation of such a policy;
4. A case in which a person comes forward to make a good faith disclosure of his or her receiving pecuniary benefits; and
5. Other cases in which the Reward Deliberation Board of the Commission, pursuant to the Article 69 (1) of the Act, (hereinafter referred to as the "Reward Board") deems it appropriate to pay award.

Basis for payment: cash award shall not exceed 200 million won

In case there are two or more reasons for payment of cash award, the amount shall be based on the greater one.

(2) Reason for reward and basis for payment

Reason for payment: in case the report directly contributed to recovering or increasing the revenue of a public institution or reducing its expenses or in case the report contributed to determining relevant legal relationship.

Restricted to cases in which the report, evidence material, etc. are directly related to the government‘s fines for negligence or recovery of asset.

Enforcement Decree of the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission

Article 72 (Grounds for Paying Reward)

(1) If a person's disclosure of corruption results in any of the following cases, thereby contributing directly to increasing or recovering revenues of a public organization or to preventing it from bearing economic costs to be otherwise incurred, or legal relations in that matter are established, then financial reward may be offered to him or her pursuant to the provisions of Article 68 (3) of the Act.

1. Imposition of confiscation or additional collection;
2. Imposition of national tax or local tax;
3. Recovery of capital through the compensation for damages or the return of ill-gotten gains;
4. Decrease in economic costs which comes from changes in a contract; and
5. Other measures or court decisions taken, except for the statutory notification or imposition of fines, penalties, surcharges or negligence fines.

Basis for payment: reward shall not exceed 300 million won and any amount smaller than one thousand won of the calculated reward shall not be paid.

Application and decision for payment: the reporting person shall apply for reward payment to the Commission within two years from the date that he or she has become aware that the legal relationship relevant to the recovery or increase of revenue of a public institution or reduction of its expenses has been established.

The Commission shall, within 90 days from the date of the application for payment of the reward, determine the payment and amount, unless there is a special reason.

Relationship with other legislations: the recipient of the reward shall not be prohibited from applying for reward pursuant to other legislations.

In case the recipient of reward pursuant to other legislations receives a reward pursuant to this Act due to the same reason, the amount of the reward shall be deducted and determine the amount of the reward pursuant to other legislations.

(3) Common matters for reward and cash award

Application competition: in case two or more persons report the same violation, they shall be regarded as one report in calculating the value of reward.

In determining the amount of payment for each reporting person, the degree of contribution to resolving the case, etc. shall be comprehensively considered and distributed to each reporting person. In case of reducing the value, the reason for reduction of each reporting person shall be considered.

Reduction of value: in calculating the value of the reward or cash award, degree of contribution to resolving the case and other certain reasons may be considered to reduce the value.

Reasons to be considered in reducing the amount
1. How accurate and reliable the report of corruption are;
2. Whether the informant's disclosure has been already covered by the media;
3. Whether the informant was involved in the corrupt act exposed by the report; and
4. The extent to which the disclosure contributes to settling the corruption case.

Recovery: in case the reporting person received the reward or cash award with false or other illegal method, complete or partial recovery may take place.

(4) Cash award or reward payment to reporting persons regarding institutions in the private sector

It is an issue whether or not a reporting person shall be subject to payment of cash award or reward in case the report contributed to recovering or increasing the revenue of an institution in the private sector.

Cash award

In case the report contributed to promoting public interest, it falls under reason for payment, therefore, reporting persons regarding institutions in the private sector may be subjected to the payment.

Expanding the scope of public institutions to the private sector, it is necessary to pay cash awards to promote and activate reporting for the promotion of public interest.

Reward

In case the report contributed to recovering or increasing the revenue of an institution in the private sector only without any recovery or increase in national funds, reward payment shall not take place.

It's because rewards are paid from the national fund after the report was proved to have contributed to recovering or increasing national fund or reducing its expenses,

Mutatis mutandis application of Act on Anti-Corruption and the and Operation of the Anti Corruption and Civil Rights Commission means the recovery or increase of national fund and it shall not mean the recovery or increase of private property.

4 Measures for Dealing with Unlawful Performance of Duties, etc.

Article 16 (Measures for Dealing with Unlawful Performance of Duties)

Should a public official or relevant person be found to have been in violation of the provisions of Article 5, 6, or 8 during or subsequent to the performance of his or her duties, the head of the public institution shall take necessary measures, such as suspension or cancellation of the duties.

Article 17 (Recovery of Improper Benefits)

Should the unlawfulness of the duties of a public official or relevant person performed in violation of the provisions of Article 5, 6, or 8 be verified, the head of the public institution shall recover the money, article or other financial benefit that has already been paid or handed over to the other party of those duties.

Article 18 (Prohibition on Divulgence of Confidential Information)

No public officials or relevant persons who are performing or have performed duties that fall under any of the following subparagraphs shall divulge any confidential information of which he or she has become aware in the course of performing such duties. Provided, that this shall not apply in cases of public disclosure prescribed in Paragraph 7(7).

1. Duties related to the receiving and processing of reports on improper solicitations under Article 7; and
2. Duties related to the receiving of reports on and disposal of unacceptable financial or other advantages under Article 9.

Article 19 (Training and Promotion)

(1) The head of each public institution shall provide public officials and relevant persons with regular training on matters concerning the prohibition of improper solicitations and acceptance of financial or other advantages, and shall receive from them signed pledges of compliance

(2) The head of a public institution shall guide the public in complying with this Act by actively providing information on the items that are prohibited herein.

(3) When necessary, the head of a public institution may request the support of the Anti-Corruption and Civil Rights Commission in the implementation of educational and promotional activities prescribed in Paragraphs (1) and (2). In such cases, the Anti-Corruption and Civil Rights Commission shall cooperate proactively.

Article 20 (Designation of Officers in Charge of Prohibition of Improper Solicitations and Relevant Duties)

The head of a public institution shall designate among the public officials or relevant persons who belong thereto, an officer in charge of the prohibition of improper solicitations, and each of the following relevant duties:

1. Training and consultation on matters concerning the prohibition of improper solicitations and acceptance of financial or other advantages;
2. Receiving and processing reports and requests pursuant to this Act and examining the details thereof; and

3. Notifying the courts or investigative authorities upon the detection of violations of this Act by the head of the relevant agency.

Article 22 (Criminal Punishments)

(1) Any of the following persons shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won:

4. Any person who tells, discloses or publicizes to any third party personal information concerning a reporting person or cooperator, or other facts from which the identity of the reporting person or cooperator can be inferred in violation of Paragraph 12(1) of the Act on the Protection of Public Interest Whistleblowers, which is applied mutatis mutandis under Paragraph 15(4); and
5. A public official or relevant person who divulges confidential information of which he or she has become aware in the course of performing his or her duties in violation of Article 18.

A. Measures for dealing with unlawful performance of duties and recovery of improper benefits

(1) Measures for dealing with unlawful performance of duties

Should a public official or relevant person be found to have been in violation of the Act during or subsequent to the performance of his or her duties, the head of the public institution shall take necessary measures, such as suspension or cancellation of the duties. (Article 16)

In case violation is detected during the performance of his or her duties, measures on public officials or relevant persons (provisional suspension of performing the duties, designation of a substitute, change of position, etc.) pursuant to Article 7 Paragraph 4 and Article 9 Paragraph 5 of the Act may take place.

(2) Recovery of improper benefits

Relation with individual legislations: in case other individual legislations stipulate the recovery of improper benefits, improper benefits shall be recovered in accordance with individual legislations.

Reason for recovery: improper benefits may be recovered in case violation of the provisions of Article 5, 6 or 8 of the Act and the unlawfulness of the duties performed are both verified.

In case of duties performed in violation of Article 5 (Prohibition of Improper Solicitation) Article 6 (Prohibition of Performing Duties as Directed by Improper Solicitations), the duty itself is illegal, but duties performed in violation of Article 8 (Prohibition of Acceptance of Financial or other Advantages) shall be determined separately whether or not the duty is

illegal.

A case in which the duty is determined to be illegal means a state that cannot be appealed anymore according to the appeal proceedings such as trials.

Subject of recovery: money, article or other financial benefit that has already been paid or handed over to the other party of those duties.

B. Prohibition on divulgence of confidential information

Subject: public officials or relevant persons who are performing or have performed duties of receiving and processing of reports on improper solicitation, etc.

Object: ‘confidential information that the subject has become aware in the course of performing duties‘ related to the receiving and processing of reports on improper solicitations and receiving or reports on and disposal of unacceptable financial or other advantages.

It includes not only the matters categorized as confidential information in accordance with the legislation, but also matters that are of substantial benefit that is not known objectively or generally by the public.

Judicial case: Article 127 of the Criminal Act stipulates divulgence of confidential information as public official or former public official divulging official secrets obtained in the course of performing his or her duties, and official secrets in accordance with the Act and subordinate statutes under the same Article are not limited to matters classified or classified as secret in accordance with the Act and subordinate statutes, but also includes matters made secret for political, military, diplomatical, economic or social necessity as well as matters of substantial benefit for the government, public office or citizen that is not known objectively or generally by the public, but secret in accordance with the same Article shall be deemed practically worthy of protecting as secret. (Supreme Court Decision 95Do780, May 10, 1996).

Action: divulgence means informing a third party and there shall be no restriction in the informing method.

Criminal punishment: a public official or relevant person who divulges a secret obtained in the course of performing his or her duties shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won.

Should a civil servant of the public official or relevant person divulge a secret, it may be constituted as Divulgence of Official Secrets (Article 127 of the Criminal Act).

Moreover, should a public official or relevant person disclose any personal information concerning a reporting person or cooperator, or other facts from which the identity of the

reporting person or cooperator can be inferred, in may be constituted as violation of Article Paragraph 1 of Act on the Protection of Public Interest Whistleblowers applied mutatis mutandis in accordance with Article 15 Paragraph 4 of the Act.

When a single act constitutes several crimes, punishment provided for the most severe crime shall be imposed. (Article 40 of the Criminal Act)

C. Training and promotion

The head of each public institution shall provide public officials and relevant persons with regular training on matters concerning the prohibition of improper solicitations and acceptance of financial or other advantages, and shall receive from them signed pledges of compliance.

Moreover, the head of a public institution shall guide not only the public officials or relevant persons who belong thereto, but also the public in complying with this Act by actively providing information on the items that are prohibited herein.

When necessary, the head of a public institution may request the support of the Anti-Corruption and Civil Rights Commission in the implementation of educational and promotional activities.

D. Designation of officers in charge of prohibition of improper solicitations and relevant duties

The head of a public institution shall designate among the public officials or relevant persons who belong thereto, an officer in charge of the training and consultation on matters concerning the prohibition of improper solicitations and acceptance of financial or other advantages. (Article 20)

An officer in charge of prohibition of improper solicitations shall also carry out duties of receiving and processing reports and requests and examining the details thereof, as well as notifying the courts or investigative authorities upon the detection of violations by the head of the relevant agency.

Article 20 stipulates that officers in charge shall conduct counselling on details of prevention of acceptance of financial or other advantages.

In case a public official or relevant person is solicited by or received a gift from any person related to their duties, it may affect fair performance of the duty, therefore, whether or not a matter falls under improper solicitation or whether or not it is appropriate to receive a gift shall be consulted with an officer in charge of prevention of improper solicitations.

Consultation with an officer in charge of prevention of improper solicitation may vary from simple request for advice to voluntary report of accepting financial advantage, therefore, confidentiality of the identity or personal information of the consultant shall be protected as strictly as that of the reporting person.

Ⅶ. Disciplinary Action and Punishments

Ⅶ Disciplinary Action and Punishments

1 Disciplinary Action

Article 21 (Disciplinary Actions)
The head of each relevant agency shall take disciplinary action against each public official or relevant person who violates this Act or Decree pursuant this Act.

The head of each public institution shall take a disciplinary action against each public official or relevant person who violates this Act or a decree pursuant to this Act

This means that the head of each public institution shall demand decision-making on disciplinary action when a ground for a disciplinary action occurs to a public official or relevant person and take a disciplinary action based on the decision

The head of each public institution shall take a disciplinary action against each public official or relevant person who violates this Act and receives a sanction (punishment or a fine for negligence).

Furthermore, a disciplinary action may be taken against a public official as long as there is a ground for a disciplinary action against him or her even though he or she has not had a criminal conviction yet (Supreme Court decision 2001Du4184, November 9, 2001).

Should a public official or relevant person directly make an improper solicitation, he or she is subject to a disciplinary action as such an improper solicitation violates this Act (Article 5) even though ‘an improper solicitation made directly for himself or herself’ is not subject to a fine for negligence

In the event that a financial or other advantage is immediately reported or returned· delivered upon receipt, or that an honorarium accepted in excess of the prescribed amount for an outside lecture or relevant activity is reported or immediately returned, it is subject to neither a punishment nor a disciplinary action as this is not a violation of but compliance with this Act,

2 Punishments

Article 22 (Criminal Punishments)

(1) Any of the following persons shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won:

1. A public official or relevant person who violates Paragraph 8(1) (including private persons performing public duties under Article 11). Provided, that a public official or relevant person who submits a report as prescribed in Paragraph 9(1), (2), or (6), or who returned, delivered or expressed an intention to reject an unacceptable financial or other advantage shall be excluded;
2. A public official or relevant person (including private persons performing public duties under Article 11) who recognizes that his or her spouse received, requested or promised to receive an unacceptable financial or other advantage under Paragraph 8(1) in violation of Paragraph 8(4) , and fails to report such fact as prescribed in Subparagraph 9(1)2 or Paragraph 9(6). Provided, that this shall not apply where the public official or relevant person, or his or her spouse, returned, delivered, or expressed an intention to reject, the unacceptable financial or other advantage in accordance with Paragraph 9(2);
3. Any person who offers, promises to offer, or expresses an intention to offer an unacceptable financial or other advantage as prescribed in Paragraph 8(1) to a public official or relevant person (including private persons performing public duties under Article 11), or his or her spouse in violation of Paragraph 8(5);
4. Any person who tells, discloses or publicizes to any third party personal information concerning a reporting person or cooperator, or other facts from which the identity of the reporting person or cooperator can be inferred in violation of Paragraph 12(1) of the Act on the Protection of Public Interest Whistleblowers, which is applied mutatis mutandis under Paragraph 15(4); and
5. A public official or relevant person who divulges confidential information of which he or she has become aware in the course of performing his or her duties in violation of Article 18.

(2) Any of the following persons shall be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won:

1. A public official or relevant person (including private persons performing public duties under Article 11) who performs his or her duties as directed by an improper solicitation in violation of Article 6;
2. Any person who takes a disadvantageous measure falling into Item (a) of Subparagraph 6 of Article 2 in the Act on the Protection of Public Interest Whistleblowers in violation of Paragraph 15(2); and
3. Any person who fails to take a protective measure which was verified under Paragraph 21(2) in the Act on the Protection of Public Interest Whistleblowers, which is applied mutatis mutandis as prescribed in Paragraph 15(4), or as a result of an administrative litigation.

(3) Any person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than one year or by a fine not exceeding ten million won:

1. Any person who hinders reporting or cooperation or coerces withdrawal of the reporting or cooperation in violation of Paragraph 15(1); and

2. Any person who takes a disadvantageous measure against a reporting person or cooperator in violation of Paragraph 15(2), which falls into any of Items (b) through (g) of Subparagraph 6 of Article 2 in the Act on the Protection of Public Interest Whistleblowers.

(4) All financial or other advantages prescribed in Subparagraphs (1)1 through 3 shall be confiscated. Provided, that where it is impossible to confiscate all or any part of such financial or other advantage, an amount equivalent to the value thereof shall be collected.

Article 23 (Fines for Negligence)

(1) Any of the following persons shall be subject to a fine for negligence not exceeding 30 million won:

1. A public official or relevant person (including private persons performing public duties under Article 11) who makes an improper solicitation to another public official or relevant person (including private persons performing public duties under Article 11) for a third party, in violation of Article 5(1). Provided, that no fine for negligence shall be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked; and
2. Any person who refuses to submit relevant material, appear before the Anti-Corruption and Civil Rights Commission, and submit a written statement in violation of Paragraphs 19(2) and (3) in the Act on the Protection of Public Interest Whistleblowers which are applied mutatis mutandis pursuant to Paragraph 15(4) (including where the provisions apply mutatis mutandis under Paragraph 22(3) of the same Act).

(2) Any person who makes an improper solicitation to a public official or relevant person (including private persons performing public duties under Article 11) for a third party in violation of Paragraph 5(1) (excluding those who are subject to Paragraph 1(1)) shall be subject to a fine for negligence not exceeding 20 million won. Provided, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked.

(3) Any person who makes an improper solicitation through a third party to a public official or relevant person (including private persons performing public duties under Article 11) in violation of Paragraph5(1) (excluding those subject to Subparagraph (1)1 and Paragraph (2)) shall be subject to a fine for negligence not exceeding ten million won. Provided, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked.

(4) A public official or relevant person who fails to submit a report or return a financial or other advantage under Paragraph 10(5) shall be subject to a fine for negligence not exceeding five million won.

(5) Any of the following persons shall be subject to a fine for negligence of two to five times the value of the financial or other advantage related to the violation. Provided, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under Subparagraphs 22(1)1 through 3, or the Criminal Act and other Acts

(including confiscation or collection of equivalent value), and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked:

1. A public official or relevant person who violates Paragraph8(2) (including private persons performing public duties under Article 11). Provided, that this shall not apply when the public official or relevant person submitted a report as prescribed in Paragraph 9(1), (2), or (6), or returned, delivered, or expressed an intention to reject an unacceptable financial or other advantage;
2. A public official or relevant person (including private persons performing public duties under Article 11) who recognizes that his or her spouse received, requested or promised to receive an unacceptable financial or other advantage under Paragraph 8(2) in violation of Paragraph 8(4), and fails to report such fact as prescribed in Subparagraph 9(1)2 or Paragraph 9(6). Provided, that this shall not apply when the public official or relevant person, or his or her spouse, returned, delivered, or expressed an intention to reject the unacceptable financial or other advantage in accordance with Paragraph 9(2); and
3. Any person who offers, promises to offer, or expresses an intention to offer, an unacceptable financial or other advantage as prescribed in Paragraph 8(2) to a public official or relevant person (including private persons performing public duties under Article 11), or his or her spouse in violation of Paragraph 8(5).

(6) Notwithstanding the provisions of Paragraphs (1) through (5), no fine for negligence shall be imposed should a disciplinary committee have resolved to impose disciplinary additional charges under the State Public Officials Act, Local Public Officials Act or any other Act or subordinate statute; and no resolution to impose disciplinary additional charges shall be passed should a fine for negligence have been imposed.

< Summary of punishments >

Type	Violation		Level of sanction
Prohibition of improper solicitations	▪ A stakeholder who makes an improper solicitation to a public official, etc. directly for himself or herself		None
	▪ A stakeholder who makes an improper solicitation to a public official, etc. **through a third party**		A fine for negligence not exceeding ten million won1
	▪ Any person who makes an improper solicitation **for a third party**	Anyone except for public officials, etc.	A fine for negligence not exceeding twenty million won
		Public officials, etc.	A fine for negligence not exceeding thirty million won
	▪ Any public official, etc. who receives an improper solicitation and performs his or her duties as directed by the solicitation		Imprisonment for not more than two years, a fine not exceeding twenty million won
Prohibition of acceptance of financial or other advantages	▪ Any public official, etc. who accepts any financial or other advantage in excess of one million won at a time (three million won per fiscal year) regardless of connection with the duties of the public official, etc. and of nominal reasons * Any public official, etc. who recognizes that his or her spouse received financial or other advantages in connection with the duties of the public official, etc., but fails to report such fact * Any person who offers a financial or other advantage to a public official, etc., or his or her spouse		Imprisonment for not more than three years, a fine not exceeding thirty million won (subject to confiscation·collection)
	▪ Any public official, etc. who accepts financial or other advantages not exceeding one million won at a time in connection with the duties of the public official, etc. * Any public official, etc. who recognizes that his or her spouse received a financial or other advantage in connection with the duties of the public official, etc., but fails to report such fact * Any person who offers a financial or other advantage to a public official, etc., or his or her spouse		A fine for negligence at least twice and not exceeding five times the amount accepted
	▪ Any public official, etc. who receives an honorarium in excess of the prescribed amount for an outside lecture or relevant activity, but fails to report or return it		A fine for negligence not exceeding five million won

Type	Violation	Level of sanction
Other	▪ Any person who tells, discloses or publicizes to any third party personal information concerning a reporting person or cooperator, or other facts from which the identity of the reporting person or cooperator can be inferred ▪ In the event that a public official, etc. who are performing or have performed the duty of reporting and taking measures against a violation divulges any confidential information of which he or she has become aware in the course of performing such duties	Imprisonment for not more than three years, a fine not exceeding thirty million won
	▪ Any person who takes a measure falling into Item (a) of Subparagraph 6 of Article 2 of the Act on the Protection of Public Interest Whistle-blowers[2] to the disadvantage of any reporting person or cooperator on grounds of having reported or cooperated ▪ Any person who fails to take a protective measure which was verified	Imprisonment for not more than two years, a fine not exceeding twenty million won
	▪ Any person who hinders reporting or cooperation or coerces the withdrawal of the reporting or cooperation ▪ Any person who takes a measure falling into Items (b) through (g) of Subparagraph 6 of Article 2 of the Act on the Protection of Public Interest Whistle-blowers[3] to the disadvantage of any reporting person or cooperator on grounds of having reported or cooperated	Imprisonment for not more than one year, a fine not exceeding ten million won
	▪ Any person who refuses to submit relevant material, appear, and submit a written statement even though the committee made such a demand deemed necessary for examination of an application for protective measures	A fine for negligence not exceeding thirty million won

2), 3) 6. The term "disadvantageous measures" means an action that falls under any of the following items:

a. Removal from office, release from office, dismissal or any other unfavorable personnel action equivalent to the loss of status at work;
b. Disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personnel actions;
c. Work reassignment, transfer, denial of duties, rearrangement of duties or any other personnel actions that are against the whistleblower's will;
d. Discrimination in the performance evaluation, peer review, etc. and subsequent discrimination in the payment of wages, bonuses, etc.;
e. The cancellation of education, training or other self-development opportunities; the restriction or removal of budget, work force or other available resources, the suspension of access to security information or classified information; the cancellation of authorization to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the whistleblower;
f. Putting the whistleblower's name on a black list as well as the release of such a blacklist, bullying, the use of violence and abusive language toward the whistleblower, or any other action that causes psychological or physical harm to the whistleblower;
g. Unfair audit or inspection of the whistleblower's work as well as the disclosure of the results of such an

3 Notification of Imposition of Fines for Negligence

Article 23 (Fines for Negligence)

(7) A head of the relevant agency shall notify a competent court, which shall proceed to a trial on a fine for negligence pursuant to the Non-Contentious Case Procedure Act, of the violation committed by a person subject to a fine for negligence imposed under Paragraphs (1) through (5).

Should an investigative agency receive a report or receive a report transferred, the investigative agency shall carry out a necessary examination of the subject matter of the report and notify a relevant agency if it is subject to a fine for negligence.

The Anti-Corruption and Civil Rights Commission shall verify the subject matter of the report and transfer the report to a relevant agency if it is deemed as subject to a fine for negligence.

The head of a relevant agency shall notify a competent court, which shall proceed to a trial on a fine for negligence, of the violation committed by a person subject to a fine for negligence.

Upon notification of the violation the court shall impose a fine for negligence in the form of a trial (decision) pursuant to the Non-Contentious Case Litigation Procedure Act.

Similar legislative case:

Article 30 (Administrative Fines) of the Public Service Ethics Act

(4) The competent public service ethics committee shall notify the court to commence a trial on the administrative fine under the Non-Contentious Case Litigation Procedure Act of the violations of persons subject to an administrative fine under paragraphs (1) through (3).

The head of a relevant agency may notify a competent court not only of its public official or relevant person who commits a violation but also of a civilian who makes an improper solicitation or offers a financial or other advantage.

Such a notification may also be given when the person who makes an improper solicitation or offers a financial or other advantage is a public official for another public institution.

audit or inspection;

4 Revocation of Imposition of Fines for Negligence

Article 23 (Fines for Negligence)

(1) Any of the following persons shall be subject to a fine for negligence not exceeding 30 million won:

1. A public official or relevant person (including private persons performing public duties under Article 11) who makes an improper solicitation to another public official or relevant person (including private persons performing public duties under Article 11) for a third party, in violation of Article 5(1). Provided, that no fine for negligence shall be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked;

(2) Any person who makes an improper solicitation to a public official or relevant person (including private persons performing public duties under Article 11) for a third party in violation of Paragraph 5(1) (excluding those who are subject to Paragraph 1(1)) shall be subject to a fine for negligence not exceeding 20 million won. Provided, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked.

(3) Any person who makes an improper solicitation through a third party to a public official or relevant person (including private persons performing public duties under Article 11) in violation of Paragraph5(1) (excluding those subject to Subparagraph (1)1 and Paragraph (2)) shall be subject to a fine for negligence not exceeding ten million won. Provided, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked.

(5) Any of the following persons shall be subject to a fine for negligence of two to five times the value of the financial or other advantage related to the violation. Provided, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under Subparagraphs 22(1)1 through 3, or the Criminal Act and other Acts (including confiscation or collection of equivalent value), and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked.

A case on which a fine for negligence has already been imposed may be subject to a criminal punishment again under the Criminal Act and other Acts or the Improper Solicitation and Graft Act.

As a criminal punishment and a fine for negligence have different purposes and content, concurrent imposition of them on one action is not a violation of the non bis in idem principle

However no fine for negligence shall be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other acts

Should he or she have been subject to a criminal punishment under the Criminal Act and other Acts after a fine for negligence is imposed, the imposition thereof shall be revoked. The term ‘after a fine for negligence is imposed‘ means ‘after a judgment on a fine for negligence becomes final and conclusive.

Should he or she have been subject to a criminal punishment under the Criminal Act and other Acts after a judgment on a fine for negligence became final and conclusive, the imposition thereof may be revoked pursuant to Revocation of Imposition under the Improper Solicitation and Graft Act. (under the provisos to Article 23 Paragraph 1 Subparagraph 1, Paragraph 2, Paragraph 3 and Paragraph 5)

5 Responsibility of Legal Persons (Joint Penal Provisions)

Article 24 (Responsibility of Legal Persons, etc.)

Where a representative of a legal person or organization, or an agent, employee or other servant of a legal person, organization or individual commits a violation under Subparagraph 3 of Paragraph (1) of Article 22 (excluding a case where the provider of a financial or other advantage is a public official or relevant person (including private persons performing public duties to whom Article 8 applies mutatis mutandis under Article 11)), Paragraph 23(2) or (3), or Subparagraph 23(5)3 (excluding a case where the provider of a financial or other advantage is a public official or relevant person (including private persons performing public duties to whom Article 8 applies mutatis mutandis under Article 11)), not only shall the violator be punished, but the legal person, organization or individual also shall be punished by a fine, or fine for negligence, prescribed by the corresponding provision. Provided, that this shall not apply where the legal person, organization or individual has not been negligent in giving due attention and supervision concerning the relevant duties so as to prevent such violation..

A. Responsibility of legal persons, etc. and exceptions to application

Should an employee or other servant of a legal person, organization, or individual commit a violation in connection with his or her duties, not only shall the violator be punished, but the employer (including a specific individual, organization, or legal person) shall be sanctioned pursuant to Responsibility of Legal Persons, etc. (Article 24).

Provided, that Responsibility of Legal Persons, etc. shall not apply when the provider of a financial or other advantage is a public official or relevant person.

B. Grounds for exemption from responsibility of legal persons (due attention and supervision)

(1) Grounds for exemption

Responsibility of Legal Persons, etc. shall not apply where an employer has not been negligent in giving due attention and supervision concerning the relevant duties so as to prevent such violation.

Here, the issue is how much attention and supervision the employer shall give so as to prevent such violation committed by the employee or other servant of a legal person, organization, or individual to be exempt.

(2) Criteria for judgment on due attention and supervision

Criteria for judging whether the employer gave due attention and supervision so as to prevent such violation under the Improper Solicitation and Graft Act shall be established

through cases going forward

Concerning responsibility of legal persons, etc. under other acts, precedents decided that whether due attention and supervision were given shall be judged based on all situations related to a violation (Supreme Court decision, 2009Do5824, February 25, 2010)

All situations related to a violation include the purport of the enactment of the law, the degree of the expected violation of the benefit of the law due to the violation, the purport of responsibility of legal persons, etc. regarding the violation, the details of the violation and the degree of damage or results actually caused, the size of the legal person‘s business, the supervisability of the violator or the specific supervisory relationship, measures actually taken by the legal person so as to prevent the violation, etc.

Whether an effective anti-corruption compliance program is run may be a consideration in judgment on whether due attention and supervision were given

Note 1 Anti-corruption compliance[4)]

As for the US, whether a company has designed and been running an effective anti-corruption program is one of the most important considerations in determination of indictment and punishment.

The key is not whether an anti-corruption program is put in place but whether it is effectively run.

Effective compliance program factors of the US Foreign Corrupt Practices Act guide

- Should present clear promises and policies to ensure that all corruption not to mention in the upper echelon including executives will not be forgiven
- Should develop a clear and detailed code of ethics to spread and instil in all employees
- Should put the organization's human and material resources into development and implementation of a compliance program such as personnel capable of taking charging of this process
- Should always improve a compliance program by assessing risks faced by the company effectively and constantly
- Should carry out communication through a constant, company-wide training to ensure that the company's anti-corruption compliance program is thoroughly executed and established
- Should put in place appropriate and clear disciplinary procedures for those committing a corrupt practice as well as clear incentives for employees regarding development and improvement of the compliance program or exposure of a corrupt act
- Should put in place a procedure and system to ensure that when there is a suspicion of corruption, insiders can internally bring a charge of or report a corrupt act without worrying about retaliation or confidentiality and a system to ensure fact-finding and accountability through a thorough and effective investigation without a cover-up when someone blows the whistle

4) Oh, Taek rim, a proposal for corporate criminal liability in domestic bribery law by reference to FCPA and UK bribery act, pp169~174

Note 2	Grounds for Exemption in the Guide for the UK Bribery Act[5]

In the case of the UK, if a superior organization's employee, agent, subsidiary or relevant person offer bribery to another person with the intention of winning a contract or of obtaining benefits in the course of doing business for the superior organization, a criminal responsibility shall be imposed on the superior organization.

Provided, that if the superior organization proves that it has taken adequate procedures to prevent the relevant person‘s bribery, it can be exempt

6 principles of the UK Foreign Bribery Act guide

- Proportionate procedures: A superior organization should put in place anti-corruption policies and procedures that are proportionate to the nature, magnitude, complexity, etc. of corruption risks and tasks facing it
- Top-level commitment: A superior organization's top-level officials should express their resolve and will not to tolerate corruption
- Risk assessment: A superior organization should monitor and assess the nature and extent of all types of expected corruption risks it is exposed to on a regular basis
- Due diligence: A superior organization should exercise thorough due diligence for persons performing duties for itself or on its behalf to reduce corruption risks
- Communication(including training): A superior organization should implement communication through various ways including training to ensure that its own anti-corruption policies and procedures spread throughout the organization and are embodied by itself
- Monitoring and review: A superior organization should not only constantly monitor and review its anti-corruption policies and procedures but put efforts into improving them whenever necessary

5) Oh, Taek rim, ibid., pp161~165

Note 3 Summary of issues regarding legal persons

Whether a solicitation by a legal person's employee is one for a third party

'An improper solicitation made directly for himself or herself' that is not subject to a fine for negligence means a solicitation where its legal effects (advantages and disadvantages) are directly attributed to the solicitor.

As a legal person and an employee are separate independent subjects of rights and duties and an employee's solicitation related to his or her duties is for a legal person and its effects are also attributed to the legal person, such a solicitation constitutes a solicitation for a third party.

Criteria for judging the same solicitations for a legal person

Whether two solicitations are the same improper solicitations is determined based on whether the details of such improper solicitations are essentially identical to those of "the public official or relevant person who is required to report."

The scope of the same improper solicitation should be defined from the perspective of public officials or relevant persons in accordance with the purport of the reporting procedures to protect innocent public officials or relevant persons

Should multiple employees of a legal person make improper solicitations with the same details in connection with their duties, they constitute the same improper solicitations for which the duty of reporting occurs

Whether a legal person is the provider of financial or other advantages

One of the issues in Article 8 (Prohibition of acceptance of financial or other advantages) is whether in addition to natural persons, a legal person without capacity to actually offer financial or other advantages, that is, criminal capacity, shall count as ‘the same person‘ as a subject that offers financial or other advantages to a public official.

Whether it is the same person shall be decided, not formally based on who directly delivers financial or other advantages but based on who 'the actual provider' is

Furthermore, ‘the same person‘ is a matter of where or who the source of financial or other advantages is. As the source of financial or other advantages is important, in principal a legal person as well as a natural person may count as 'the same person'.

Provided that as 'anyone' of Paragraph 5 of Article 8 that imposes the duty of forbidding offer of financial or other advantages is meant for providers, legal persons except for employees (natural persons) are excluded.

Appendix

The Improper Solicitation and Graft Act

Act No. 13278, Mar. 27, 2015

Chapter 1. General Provisions

Article 1 (Purpose)

The purpose of this Act is to ensure that public officials and relevant persons fulfill their duties uprightly and to secure public confidence in public institutions by forbidding improper solicitations to public officials and relevant persons and by prohibiting them from accepting financial or other advantages.

Article 2 (Definitions)

The definitions of the terms used in this Act shall be as follows:

1. The term "public institution" means any of the following agencies or organizations:

   (a) The National Assembly, courts, Constitutional Court, election commissions, Board of Audit and Inspection, National Human Rights Commission, central administrative agencies (including organizations belonging to the President and Prime Minister) and institutions affiliated therewith, and local governments;

   (b) Public service-related organizations as prescribed in Article 3-2 of the Public Service Ethics Act;

   (c) Organizations as prescribed in Article 4 of the Act on the Management of Public Institutions;

   (d) Schools of various levels established under the Elementary and Secondary Education Act, Higher Education Act, Early Childhood Education Act, and other Acts and subordinate statutes, as well as educational corporations incorporated under the Private School Act; and

   (e) Media companies as prescribed in Subparagraph 12 of Article 2 of the Act on Arbitration and Remedies, etc., for Damage Caused by Press Reports.

2. The term "public official or relevant person" means any of the following public

officials or employees performing public duties

(a) Civil servants under the State Public Officials Act or Local Public Officials Act, and persons deemed by other Acts as civil servants in terms of their qualification, appointment, educational training, service, remuneration, guarantee of tenure and so on;

(b) The heads of public service-related organizations and public institutions prescribed in Items (b) and (c) of Subparagraph 1, and employees thereof;

(c) The heads of schools of various levels and educational corporations prescribed in Item (d) of Subparagraph 1, and employees thereof; and

(d) The representatives and employees of media companies as prescribed in Item (e) of Subparagraph 1.

3. The term "financial or other advantage" means any of the following advantages:

(a) Any financial interest, such as money, securities, real estate, goods, accommodation vouchers, facilities memberships, admission tickets, discount coupons, complimentary tickets, tickets for entertainment, entitlements to use real estate, etc.;

(b) Offering of entertainment, such as food and drink, alcoholic beverages and golf, or conveniences, such as transportation and accommodation; and

(c) Other tangible and intangible financial benefits, such as cancellation of debts, offering of employment opportunities, and grant of rights and interests.

4. The term "head of the relevant agency" means a head of a public institution to which the public official or relevant person in question belongs.

Article 3 (Duties of the State and Public Institutions)

(1) The State shall strive to guarantee working conditions under which public officials are able to perform their duties in a fair and upright manner.

(2) Public institutions shall strive to build a culture in public service under which improper solicitations and acceptance of financial or other advantages are not tolerated, to ensure that public officials or relevant persons perform their duties in a fair and upright manner.

(3) Public institutions shall take the protective measures necessary to ensure that public officials or relevant persons will not be subject to any disadvantage on grounds of reporting a violation or take any other measure pursuant to this Act.

Article 4 (Duties of Public Officials or Relevant Persons)

(1) Public officials or relevant persons shall perform their duties in a fair and upright manner free from the influence of any personal interest.

(2) Public officials or relevant persons shall act impartially in performing their duties, and shall not offer advantage to or discriminate against any person related to their duties.

Chapter 2. Prohibition of Improper Solicitations

Article 5 (Prohibition of Improper Solicitations)

(1) No one shall solicit any public official or relevant person performing his or her duties, directly or through a third party, to do any of the following improper acts:

1. Exerting influence so that authorization, permission, license, patent, approval, inspection, examination, test, certification, verification or any other duties, which are handled upon receiving an application from a duty-related party as prescribed by Acts and subordinate statutes (including ordinances and rules; hereinafter the same shall apply), are managed in violation of Acts and subordinate statutes;

2. Mitigating or remitting various administrative dispositions or punishments, such as cancellation of authorization or permission, and imposition of taxes, charges, fines for negligence, penalty surcharges, charges for compelling compliance, penalties, or disciplinary actions in violation of Acts and subordinate statutes;

3. Intervening or exerting influence in the appointment, promotion, job transfer or any other personnel management of public officials or relevant persons in violation of Acts and subordinate statutes;

4. Trading in influence in violation of Acts and subordinate statutes so that a person is appointed to or rejected from a position which intervenes in the decision-making of a public institution, including a member of various deliberation, decision-making, and arbitration committees, as well as a member of a committee for a test or screening administered by a public institution;

5. Trading in influence in violation of Acts and subordinate statutes so that a specific individual, organization, or legal person is chosen or rejected in the selection by a public institution for the recipient individual or organization of any award, prize, or commendation for outstanding performance;

6. Trading in influence so that duty-related confidential information on tender, auction, development, test, patent, military affair, taxation, etc., is disclosed in violation of Acts and subordinate statutes;

7. Trading in influence so that a specific individual, organization, or legal person is selected or rejected as a party to a contract in violation of Acts and subordinate statutes related to the contract;

8. Intervening or exerting influence so that subsidies, incentives, contributions, investments, grants, funds, etc., are assigned to, provided to, invested in, deposited in, lent to, used to make contributions to, or finance a specific individual, organization, or legal person in violation of related Acts and subordinate statutes;

9. Trading in influence so that a specific individual, organization or legal person buys, exchanges, uses, benefits from or possesses goods and services that are produced, provided or managed by public institutions beyond the monetary value prescribed by Acts and subordinate statutes or against normal transaction practices;

10. Trading in influence so that admission, grades, performance tests or other matters related to schools of various levels are handled and manipulated in violation of Acts and subordinate statutes;

11. Trading in influence so that physical examination for conscripts, assignment to a military unit, appointment or any other matters related to military service are handled in violation of Acts and subordinate statutes;

12. Trading in influence so that, in various assessments and judgments performed by public institutions, the assessment or judgment is made in violation of Acts and subordinate statutes or the results are manipulated;

13. Trading in influence so that a specific individual, organization, or legal person is selected or rejected as subject-matter of administrative guidance, control, inspection, or examination, the outcome thereof is manipulated, or discovered violations are ignored in violation of Acts and subordinate statutes;

14. Trading in influence so that the investigation, judgment, adjudication, decision, conciliation, arbitration, or settlement of a case or any other equivalent function is handled in violation of Acts and subordinate statutes; and

15. Exerting official authority by a public official or relevant person beyond the limits of his or her position and authority granted by Acts and subordinate statutes, or doing any act for which a public official or relevant person lacks legitimate authority regarding the duties that may be subject-matter of the improper solicitation prescribed by Subparagraphs 1 through 14.

(2) Notwithstanding the provisions of Paragraph (1), this Act shall not apply to any of the following cases:

1. Requesting certain actions, such as asking for the remedy against or resolution of infringement on a right, or suggesting or recommending the establishment, amendment, or rescission of related Acts and subordinate statues, and standards in accordance with the procedures and methods prescribed by the Petition Act, Civil Petitions Treatment Act, Administrative Procedures Act, National Assembly Act, other Acts and subordinate statutes, and standards (including rules, policy and standards of the public institutions as prescribed in Items 2(1)(b) through (e); hereinafter the same shall apply);

2. Publicly soliciting a public official or relevant person to take a certain action;

3. Where an elected public official, political party, civil society organization, etc., conveys a third party's complaints and grievances for the public interest, or suggests or recommends establishing, amending, or repealing any Acts and subordinate statutes and standards, or improving policies, projects, systems, and their management;

4. Requesting or demanding that a public institution complete a certain duty within a statutory deadline, or inquiring or asking verification about the progress or outcome thereof;

5. Applying or making a request for verification or certification of a certain duty or juristic relations;

6. Requesting explanation or interpretation of systems, procedures or Acts and subordinate statutes related to a certain duty in a form of inquiry or consultation; and

7. Any other conduct not deemed as defying social norms.

Article 6 (Prohibition of Performing Duties as Directed by Improper Solicitations)

No public official or relevant person who receives an improper solicitation shall perform his or her duties as directed thereby.

Article 7 (Reporting and Handling of Improper Solicitations)

(1) If a public official or relevant person receives an improper solicitation, he or she shall notify the person who made the improper solicitation that the solicitation is improper and clearly express an intention to refuse the solicitation.

(2) If a public official or relevant person receives the same improper solicitation again even though he or she took the measure as prescribed in Paragraph (1), he or she shall report such fact to the head of the relevant agency in writing (including electronic documents; hereinafter the same shall apply).

(3) A head of the relevant agency in receipt of a report under Paragraph (2) shall promptly verify whether the subject-matter of the report constitutes an improper solicitation by examining the background, purport, details and evidence of the report.

(4) A head of the relevant agency may take any of the following measure against a public official or relevant person who received an improper solicitation should the head of the relevant agency be aware of such fact or if it is deemed that the performance of the duties of the public official or relevant person may be hindered during the process of reporting the improper solicitation and verifying the report under Paragraphs (2) and (3):

1. Provisional suspension of performing the duties;

2. Designation of a substitute;

3. Change of position; and

4. Any other measures as provided by the National Assembly Regulations, Supreme Court Regulations, Constitutional Court Regulations, National Election Commission Regulations or Presidential Decree.

(5) Notwithstanding Paragraph (4), a head of the relevant agency may let the public official or relevant person continue his or her duties in any of the following cases. In this case, the head of the relevant agency shall have an official in charge who belongs thereto under Article 20 or other public official or relevant person verify and

check regularly as to whether the public official or relevant person performs his or her duties uprightly.

1. In the event that it is very difficult to find a substitute for the public official or relevant person who can perform the duties;

2. In the event that the performance of the duties of the public official or relevant person is marginally affected; and

3. In the event that the necessity of continuing the duties is greater in the light of protecting national security, developing the national economy and promoting any other public interest.

(6) A public official or relevant person may submit a report as prescribed in Paragraph (2) to a supervisory body, the Board of Audit and Inspection, an investigative agency or the Anti-Corruption and Civil Rights Commission.

(7) A head of the relevant agency may disclose the details of an improper solicitation and the measures taken on the internet homepage of the public institution to the extent it does not violate other Acts and subordinate statutes.

(8) Any other matters necessary to report, verify, handle, record, manage and disclose an improper solicitation other than those provided under Paragraphs (1) through (7) shall be prescribed by Presidential Decree.

Chapter 3. Prohibition of Acceptance of Financial or other Advantages

Article 8 (Prohibition of Acceptance of Financial or other Advantages)

(1) No public official or relevant person shall accept, request, or promise to receive, any financial or other advantage in excess of one million won at a time or three million won in a fiscal year from the same person, regardless of the relationship between such offer and his or her duties, and the motive for such offer, including contribution, sponsorship, donation, etc.

(2) No public official or relevant person shall accept, request, or promise to receive, any financial or other advantage not exceeding the amount prescribed by Paragraph (1) in connection with his or her duties, regardless of whether such offer is given in exchange of any favors.

(3) An honorarium for an outside lecture or relevant activity as prescribed in Article 10,

or any of the following financial or other advantages shall not constitute a financial or other advantage which public officials or relevant persons are restricted from accepting as prescribed in Paragraph (1) or (2):

1. Financial or other advantages that a public institution offers to public officials or relevant persons who belong to the institution or are on assignment thereto, or a senior public official or relevant person offers to his or her subordinates to either raise their morale or console, encourage, or reward them;

2. Food and drink, congratulatory or condolence money, gifts, or other items that are offered to facilitate performance of duties or for social relationships, rituals, or assistance to festivities and funerals, the value of which is within the limit provided by Presidential Decree;

3. Financial or other advantages that are offered from a legitimate source of right due to a private transaction, such as the payment of debts (excluding donation);

4. Financial or other advantages that relatives (under Article 777 of the Civil Act) of a public official or relevant person offer;

5. Financial or other advantages that employees' mutual aid societies, clubs, alumni associations, ethnic societies, friendship clubs, religious groups, social organizations, etc., related to a public official or relevant person offer to their members in accordance with the rules prescribed by respective organizations, and financial or other advantages that those who have long-term and continuous relationships with a public official or relevant person, such as a member of the same organizations with the public official or relevant person give the public official or relevant person who is in need due to a disease or other kind of disaster;

6. Financial or other advantages that are uniformly provided by an organizer of an official event related to the duties of a public official or relevant person to all participants thereof, including transportation, accommodation, and food and drink;

7. Souvenirs or promotional goods distributed to many and unspecified persons, or awards or prizes that are given by a contest or lottery; and

8. Financial or other advantages that are permitted by any other Acts and subordinate statutes, standards or social norms.

(4) No spouse of a public official or relevant person shall receive, request, or promise to receive a financial or other advantage that public officials or relevant persons are

prohibited from accepting (hereinafter referred to as "unacceptable financial or other advantage") pursuant to Paragraph (1) or (2) in connection with the duties of the public official or relevant person.

(5) No one shall offer, promise to offer, or express any intention to offer, any unacceptable financial or other advantage to any public official or relevant person, or to his or her spouse.

Article 9 (Reporting and Disposal of Unacceptable Financial or Other Advantages)

(1) A public official or relevant person shall immediately report, in writing, any of the following cases, to the head of the relevant agency:

1. A case where a public official or relevant person himself or herself receives an unacceptable financial or other advantage, or a promise or an expression of intention to do so; and

2. A case where a public official or relevant person knows the fact that his or her spouse received an unacceptable financial or other advantage, or a promise or an expression of intention to do so.

(2) Should a public official or relevant person receive an unacceptable financial or other advantage, a promise or an expression of intention to do so, or should a public official or relevant person be aware that his or her spouse received an unacceptable financial or other advantage, or a promise or an expression of intention to do so, the public official or relevant person shall immediately return, or have his or her spouse return, the advantage to the provider, manifest an intention to reject the advantage, or have his or her spouse manifest such intension. *Provided*, that the public official or relevant person shall deliver, or have his or her spouse deliver, the financial or other advantage received to the head of the relevant agency in any of the following cases:

1. In the event that the financial or other advantage is subject to loss, decay, or deterioration;

2. In the event that the provider of the financial or other advantage is unknown; and

3. Any other situations where it is difficult to return the financial or other advantage to the provider.

(3) If a head of the relevant agency receives a report as provided in Paragraph (1), or a financial or other advantage is delivered to him or her under the proviso to

Paragraph (2), and he or she deems that the advantage is an unacceptable financial or other advantage, the head of the relevant agency shall have the public official or relevant person return or deliver the advantage, or express an intention to reject the advantage. When investigation is deemed necessary, the head of the relevant agency shall immediately notify an investigative agency of the details thereof.

(4) Should a head of the relevant agency come to know that a public official or relevant person or his or her spouse received an unacceptable financial or other advantage, a promise or an expression of intention to do so, the head of the relevant agency shall immediately inform an investigative agency of the details thereof if investigation is deemed necessary.

(5) A head of the relevant agency may take such measures as prescribed in each subparagraph of Article 7(4) and (5) against a public official or relevant person if the head of the relevant agency comes to know that the public official or relevant person or his or her spouse received an unacceptable financial or other advantage, a promise or an expression of intention to do so, or if it is deemed that the performance of the duties of the public official or relevant person may be hindered during the process of reporting, returning, or delivering the unacceptable financial or other advantage or notifying an investigative agency of the case under Paragraphs (1) through (4).

(6) A public official or relevant person may submit a report or deliver the advantage prescribed in Paragraph (1) or proviso to Paragraph (2) to a supervisory body, the Board of Audit and Inspection, an investigative agency or the Anti-Corruption and Civil Rights Commission.

(7) Should a head of the relevant agency receive a report under Subparagraph (1)2 from a public official or relevant person and it be deemed that the financial or other advantage which the spouse of the public official or relevant person refuses to return is an unacceptable financial or other advantage, the head of the relevant agency shall require the spouse of the public official or relevant person to return the advantage to the provider.

(8) Any other matters needed to report and handle unacceptable financial or other advantages other than those prescribed in Paragraphs (1) through (7) shall be prescribed by Presidential Decree.

Article 10 (Restriction of Acceptance of Honoraria for Outside Lectures or Relevant Activities)

(1) No public official or relevant person shall accept money in excess of the limits

provided under Presidential Decree as an honorarium for a lecture, presentation, or contribution related to his or her duties or requested due to *de facto* influence arising from his or her position or responsibilities (hereinafter referred to as "outside lecture or relevant activity") at a training course, promotional event, forum, seminar, public hearing, or any other meeting.

(2) If a public official or relevant person intends to conduct an outside lecture or relevant activity, he or she shall report, in writing, the details of the request for the outside lecture or relevant activity in advance to the head of the relevant agency as prescribed in Presidential Decree. *Provided*, that he or she need not report it if the request for the outside lecture or relevant activity is made by the State or a local government.

(3) A public official or relevant person may submit a written report on an outside lecture or relevant activity within two (2) days from the day when the outside lecture or relevant activity is finished should it be difficult to make a report on the outside lecture or relevant activity in advance under the provisions of Paragraph (2).

(4) A head of the relevant agency may restrict an outside lecture or relevant activity that a public official or relevant person reported under Paragraph (2) should it be deemed hindering the public official or relevant person from performing his or her duties uprightly.

(5) Should a public official or relevant person receive an honorarium exceeding the amount as prescribed by Paragraph (1), he or she shall report the said fact to the head of the relevant agency in accordance with Presidential Decree and immediately return the excess part to the provider.

Article 11 (Restriction of Public Duty-related Actions by Private Persons Performing Public Duties)

(1) Articles 5 through 9 shall apply *mutatis mutandis* to the performance of public duties by any of the following persons (hereinafter referred to as "private person performing public duties"):

1. A member of various committees established under the Act on the Establishment and Management of Councils, Commissions and Committees under Administrative Agencies, or any other Acts and subordinate statutes, who is not a public official;

2. A legal person, organization, or an organ or individual belonging thereto that has an authority delegated from a public institution under Acts and subordinate

statutes;

3. An individual on assignment from the private sector to a public institution in order to perform public duties; and

4. An individual, legal person or organization that conducts deliberation or assessment in relation to public duties in accordance with Acts and subordinate statutes.

(2) When Articles 5 through 9 apply *mutatis mutandis* to private persons performing public duties under Paragraph (1), the term "public official or relevant person" shall be construed as "private person performing public duties" and the term "head of the relevant agency" shall be construed as "person who falls into any of the following categories":

1. A member of a committee under Subparagraph (1)1: The head of the public institution under the jurisdiction of which the committee is established;

2. A legal person, organization, or organ or individual belonging thereto under Subparagraph 2 of Paragraph (1): The head of the supervisory body or public institution that delegates or entrusts the authority;

3. An individual under Subparagraph (1)3: The head of the public institution to which the individual is on assignment; and

4. An individual, legal person or organization under Subparagraph (1)4: The head of the public institution for which the said public duties are performed.

Chapter 4: Overall Management of Duties Pertaining to Prevention of Improper Solicitations and Acceptance of Financial or other Advantages

Article 12 (Overall Management of Duties Pertaining to Prevention of Improper Solicitations and Acceptance of Financial or other Advantages)

The Anti-Corruption and Civil Rights Commission shall take charge of the duties pertaining to the following subparagraphs, under this Act:

1. The improvement of systems for prohibiting improper solicitations and for prohibiting or restricting the acceptance of financial or other advantages, as well as the establishment and implementation of related training and promotion plans;

2. The formulation and dissemination of the criteria for categorizing and determining improper solicitations and unacceptable financial or other advantages, standards for their preventive measures, etc.;

3. The guidance and consultation, as well as receiving and processing of reports on improper solicitations and unacceptable financial or other advantages;

4. The protection of and rewards to reporting persons or cooperators; and

5. The conduct of the fact-finding investigation as well as the collection, management, analysis, etc., of the materials necessary for carrying out the duties described in Subparagraphs 1 through 4.

Article 13 (Reporting of Violations)

(1) Anyone who discovers a violation of this Act has taken place or is taking place, may report it to the following authorities:

1. The public institution where the violation of the Act occurs or its supervisory body;

2. The Board of Audit and Inspection or other investigative authority; or

3. The Anti-Corruption and Civil Rights Commission.

(2) No who reports pursuant to Paragraph (1) shall receive protection or rewards under this Act in any of the following cases:

1. In the event the report was filed even though the reporting person had known or could know that the information in the report was false;

2. In the event that the reporting person demanded a financial or other advantage or special privilege within the context of the employment relationship in return for the reporting; and

3. In the event that the report was filed for some other improper purpose.

(3) An individual who intends to submit a report under Paragraph (1) shall submit in writing his or her personal details along with the purport, purpose, and details of the report; sign the written report; and at the same time identify the suspected violator and provide evidence of a violation.

Article 14 (Processing of Reports)

(1) An agency prescribed in Subparagraph 13(1)1 or 2 (hereinafter referred to as "investigative agency") that receives a report in accordance with Paragraph (1) of the same Article, or receives a report transferred from the Anti-Corruption and Civil Rights Commission in accordance with Paragraph (2) of the same Article shall conduct the necessary examination, inspection or investigation of the information in the report.

(2) Upon receiving a report in accordance with Paragraph 13(1), the Anti-Corruption and Civil Rights Commission shall first verify the details of the report from the reporting person, then transfer the case to an investigative agency as prescribed by Presidential Decree and notify the reporting person of such fact.

(3) The investigative agency shall notify the reporting person and the Anti-Corruption and Civil Rights Commission of its findings within ten days of the day that the examination, inspection or investigation under Paragraph (1) is completed (applicable only when the case was transferred from the Anti-Corruption and Civil Rights Commission), and then, based on the results of the examination, inspection or investigation, take the necessary follow-up measures, such as filing an indictment, issuing a notification of a violation subject to a fine for negligence, or taking a disciplinary action.

(4) Upon notification of the results of an examination, inspection or investigation conducted by the investigative agency in accordance with Paragraph (3), the Anti-Corruption and Civil Rights Commission shall immediately inform the reporting person of the results of the examination, inspection, or investigation.

(5) Upon notification of the results of an examination, inspection, or investigation in accordance with Paragraph (3) or (4), the reporting person may file an appeal with the investigative agency, and the reporting person notified of the results of an examination, inspection or investigation in accordance with Paragraph (4), may also file an appeal with the Anti-Corruption and Civil Rights Commission.

(6) Should the results of the investigative agency's examination, inspection or investigation be deemed unsatisfactory, the Anti-Corruption and Civil Rights Commission may request the investigative agency to reexamine the case within thirty days after receiving the results of the examination, inspection, or investigation.

(7) The investigative agency that receives a reexamination request pursuant to Paragraph (6) shall notify the Anti-Corruption and Civil Rights Commission of the results within seven days after completing the reexamination. Upon receipt of such results,

the Anti-Corruption and Civil Rights Commission shall immediately provide the reporting person with a summary of the reexamination.

Article 15 (Protection of and Rewards to Reporting Persons or Cooperators)

(1) No one may either block any of the following reporting or cooperation (hereinafter referred to as "reporting or cooperation") or coerce the person who conducted such reporting or cooperation (hereinafter referred to as "reporting person or cooperator") to withdraw the reporting or cooperation:

1. Reporting prescribed in Paragraphs 7(2) and (6);

2. Reporting or delivery as prescribed in Paragraph 9(1), the proviso to Paragraph 9(2), and Paragraph 9(6);

3. Reporting prescribed in Paragraph 13(1); and

4. Cooperation in support of an examination, inspection, investigation or litigation of a report, or an examination, litigation, etc., related to protective measures by providing statements, testimony, material evidence or other assistance by those other than the one who reports pursuant to Subparagraphs 1 through 3.

(2) No one may take any disadvantageous measure ("disadvantageous measure" as described in Subparagraph 6 of Article 2 of the Act on the Protection of Public Interest Whistleblowers; hereinafter the same shall apply) against any reporting person or cooperator on grounds of their having reported or cooperated.

(3) Should a violator of this Act voluntarily report the fact of a violation or the reporting or cooperation by a reporting person or cooperator have resulted in disclosing a violation of this Act committed by himself or herself, then the criminal punishment, fines for negligence, disciplinary actions, or other administrative dispositions for such violation may be mitigated or remitted.

(4) The provisions of Articles 11 through 13; Paragraphs 14(3) through (5); and Articles 16 through 25 of the Act on the Protection of Public Interest Whistleblowers shall apply *mutatis mutandis* to matters that are related to the protection or other measures for reporting persons or cooperators other than those prescribed in Paragraphs (1) through (3). In this case, the term "public interest whistleblower, etc." shall be construed as "reporting person or cooperator" and "public interest whistleblowing, etc." shall be construed as "reporting or cooperation."

(5) The Anti-Corruption and Civil Rights Commission may pay the reporting person a

cash award should his or her reporting pursuant to Paragraph 13(1) contribute to financially benefiting a public institution or preventing damage thereto, or promoting the public interest.

(6) The Anti-Corruption and Civil Rights Commission shall pay the reporting person a financial reward should his or her report pursuant to Paragraph 13(1) directly contribute to recovering or increasing the revenue of a public institution or reducing its expenses.

(7) Articles 68 through 71 of the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission shall apply *mutatis mutandis* to requests, payment, etc., of cash awards and rewards pursuant to the provisions of Paragraphs (5) and (6). In such cases, "one who reports a corrupt act" shall be construed as "one who reports pursuant to Paragraph 13(1)" and "report pursuant to this Act" shall be construed as "report pursuant to Paragraph 13(1)."

Article 16 (Measures for Dealing with Unlawful Performance of Duties)

Should a public official or relevant person be found to have been in violation of the provisions of Article 5, 6, or 8 during or subsequent to the performance of his or her duties, the head of the public institution shall take necessary measures, such as suspension or cancellation of the duties.

Article 17 (Recovery of Improper Benefits)

Should the unlawfulness of the duties of a public official or relevant person performed in violation of the provisions of Article 5, 6, or 8 be verified, the head of the public institution shall recover the money, article or other financial benefit that has already been paid or handed over to the other party of those duties.

Article 18 (Prohibition on Divulgence of Confidential Information)

No public officials or relevant persons who are performing or have performed duties that fall under any of the following subparagraphs shall divulge any confidential information of which he or she has become aware in the course of performing such duties. *Provided*, that this shall not apply in cases of public disclosure prescribed in Paragraph 7(7).

1. Duties related to the receiving and processing of reports on improper solicitations under Article 7; and

2. Duties related to the receiving of reports on and disposal of unacceptable

financial or other advantages under Article 9.

Article 19 (Training and Promotion)

(1) The head of each public institution shall provide public officials and relevant persons with regular training on matters concerning the prohibition of improper solicitations and acceptance of financial or other advantages, and shall receive from them signed pledges of compliance.

(2) The head of a public institution shall guide the public in complying with this Act by actively providing information on the items that are prohibited herein.

(3) When necessary, the head of a public institution may request the support of the Anti-Corruption and Civil Rights Commission in the implementation of educational and promotional activities prescribed in Paragraphs (1) and (2). In such cases, the Anti-Corruption and Civil Rights Commission shall cooperate proactively.

Article 20 (Designation of Officers in Charge of Prohibition of Improper Solicitations and Relevant Duties)

The head of a public institution shall designate among the public officials or relevant persons who belong thereto, an officer in charge of the prohibition of improper solicitations, and each of the following relevant duties:

1. Training and consultation on matters concerning the prohibition of improper solicitations and acceptance of financial or other advantages;

2. Receiving and processing reports and requests pursuant to this Act and examining the details thereof; and

3. Notifying the courts or investigative authorities upon the detection of violations of this Act by the head of the relevant agency.

Chapter 5. Disciplinary Action and Punishments

Article 21 (Disciplinary Actions)

The head of each relevant agency shall take disciplinary action against each public official or relevant person who violates this Act or Decree pursuant this Act.

Article 22 (Criminal Punishments)

(1) Any of the following persons shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won:

1. A public official or relevant person who violates Paragraph 8(1) (including private persons performing public duties under Article 11). *Provided*, that a public official or relevant person who submits a report as prescribed in Paragraph 9(1), (2), or (6), or who returned, delivered or expressed an intention to reject an unacceptable financial or other advantage shall be excluded;

2. A public official or relevant person (including private persons performing public duties under Article 11) who recognizes that his or her spouse received, requested or promised to receive an unacceptable financial or other advantage under Paragraph 8(1) in violation of Paragraph 8(4) , and fails to report such fact as prescribed in Subparagraph 9(1)2 or Paragraph 9(6). *Provided*, that this shall not apply where the public official or relevant person, or his or her spouse, returned, delivered, or expressed an intention to reject, the unacceptable financial or other advantage in accordance with Paragraph 9(2);

3. Any person who offers, promises to offer, or expresses an intention to offer an unacceptable financial or other advantage as prescribed in Paragraph 8(1) to a public official or relevant person (including private persons performing public duties under Article 11), or his or her spouse in violation of Paragraph 8(5);

4. Any person who tells, discloses or publicizes to any third party personal information concerning a reporting person or cooperator, or other facts from which the identity of the reporting person or cooperator can be inferred in violation of Paragraph 12(1) of the Act on the Protection of Public Interest Whistleblowers, which is applied *mutatis mutandis* under Paragraph 15(4); and

5. A public official or relevant person who divulges confidential information of which he or she has become aware in the course of performing his or her duties in violation of Article 18.

(2) Any of the following persons shall be punished by imprisonment for not more than two years or by a fine not exceeding 20 million won:

1. A public official or relevant person (including private persons performing public duties under Article 11) who performs his or her duties as directed by an improper solicitation in violation of Article 6;

2. Any person who takes a disadvantageous measure falling into Item (a) of

Subparagraph 6 of Article 2 in the Act on the Protection of Public Interest Whistleblowers in violation of Paragraph 15(2); and

3. Any person who fails to take a protective measure which was verified under Paragraph 21(2) in the Act on the Protection of Public Interest Whistleblowers, which is applied *mutatis mutandis* as prescribed in Paragraph 15(4), or as a result of an administrative litigation.

(3) Any person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than one year or by a fine not exceeding ten million won:

1. Any person who hinders reporting or cooperation or coerces withdrawal of the reporting or cooperation in violation of Paragraph 15(1); and

2. Any person who takes a disadvantageous measure against a reporting person or cooperator in violation of Paragraph 15(2), which falls into any of Items (b) through (g) of Subparagraph 6 of Article 2 in the Act on the Protection of Public Interest Whistleblowers.

(4) All financial or other advantages prescribed in Subparagraphs (1)1 through 3shall be confiscated. *Provided*, that where it is impossible to confiscate all or any part of such financial or other advantage, an amount equivalent to the value thereof shall be collected.

Article 23 (Fines for Negligence)

(1) Any of the following persons shall be subject to a fine for negligence not exceeding 30 million won:

1. A public official or relevant person (including private persons performing public duties under Article 11) who makes an improper solicitation to another public official or relevant person (including private persons performing public duties under Article 11) for a third party, in violation of Article 5(1). *Provided*, that no fine for negligence shall be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked; and

2. Any person who refuses to submit relevant material, appear before the Anti-Corruption and Civil Rights Commission, and submit a written statement in violation of Paragraphs 19(2) and (3) in the Act on the Protection of Public

Interest Whistleblowers which are applied *mutatis mutandis* pursuant to Paragraph 15(4) (including where the provisions apply *mutatis mutandis* under Paragraph 22(3) of the same Act).

(2) Any person who makes an improper solicitation to a public official or relevant person (including private persons performing public duties under Article 11) for a third party in violation of Paragraph 5(1) (excluding those who are subject to Paragraph 1(1)) shall be subject to a fine for negligence not exceeding 20 million won. *Provided*, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked.

(3) Any person who makes an improper solicitation through a third party to a public official or relevant person (including private persons performing public duties under Article 11) in violation of Paragraph5(1) (excluding those subject to Subparagraph (1)1 and Paragraph (2)) shall be subject to a fine for negligence not exceeding ten million won. *Provided*, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under the Criminal Act and other Acts, and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked.

(4) A public official or relevant person who fails to submit a report or return a financial or other advantage under Paragraph 10(5) shall be subject to a fine for negligence not exceeding five million won.

(5) Any of the following persons shall be subject to a fine for negligence of two to five times the value of the financial or other advantage related to the violation. *Provided*, that the fine for negligence shall not be imposed should he or she have been subject to a criminal punishment under Subparagraphs 22(1)1 through 3, or the Criminal Act and other Acts (including confiscation or collection of equivalent value), and should he or she have been subject to a criminal punishment after a fine for negligence is imposed, the imposition thereof shall be revoked:

1. A public official or relevant person who violates Paragraph8(2) (including private persons performing public duties under Article 11). *Provided*, that this shall not apply when the public official or relevant person submitted a report as prescribed in Paragraph 9(1), (2), or (6), or returned, delivered, or expressed an intention to reject an unacceptable financial or other advantage;

2. A public official or relevant person (including private persons performing public duties under Article 11) who recognizes that his or her spouse received,

requested or promised to receive an unacceptable financial or other advantage under Paragraph 8(2) in violation of Paragraph 8(4), and fails to report such fact as prescribed in Subparagraph 9(1)2 or Paragraph 9(6). *Provided*, that this shall not apply when the public official or relevant person, or his or her spouse, returned, delivered, or expressed an intention to reject the unacceptable financial or other advantage in accordance with Paragraph 9(2); and

3. Any person who offers, promises to offer, or expresses an intention to offer, an unacceptable financial or other advantage as prescribed in Paragraph 8(2) to a public official or relevant person (including private persons performing public duties under Article 11), or his or her spouse in violation of Paragraph 8(5).

(6) Notwithstanding the provisions of Paragraphs (1) through (5), no fine for negligence shall be imposed should a disciplinary committee have resolved to impose disciplinary additional charges under the State Public Officials Act, Local Public Officials Act or any other Act or subordinate statute; and no resolution to impose disciplinary additional charges shall be passed should a fine for negligence have been imposed.

(7) A head of the relevant agency shall notify a competent court, which shall proceed to a trial on a fine for negligence pursuant to the Non-Contentious Case Procedure Act, of the violation committed by a person subject to a fine for negligence imposed under Paragraphs (1) through (5).

Article 24 (Responsibility of Legal Persons, etc.)

Where a representative of a legal person or organization, or an agent, employee or other servant of a legal person, organization or individual commits a violation under Subparagraph 3 of Paragraph (1) of Article 22 (excluding a case where the provider of a financial or other advantage is a public official or relevant person (including private persons performing public duties to whom Article 8 applies *mutatis mutandis* under Article 11)), Paragraph 23(2) or (3), or Subparagraph 23(5)3 (excluding a case where the provider of a financial or other advantage is a public official or relevant person (including private persons performing public duties to whom Article 8 applies *mutatis mutandis* under Article 11)), not only shall the violator be punished, but the legal person, organization or individual also shall be punished by a fine, or fine for negligence, prescribed by the corresponding provision. *Provided*, that this shall not apply where the legal person, organization or individual has not been negligent in giving due attention and supervision concerning the relevant duties so as to prevent such violation.

Addenda

Article 1 (Enforcement Date)

This Act shall enter into force one year and six months after the date of its promulgation.

Article 2 (Applicability of the Reporting of Unacceptable Financial or Other Advantages)

Paragraph 9(1) shall apply when a case that falls into any of the subparagraphs in the same paragraph occurs after the enforcement of this Act.

Article 3 (Applicability of the Restriction of Acceptance of Honoraria for Outside Lectures or Relevant Activities)

Paragraph 10(1) shall apply to an outside lecture or relevant activity that is held after this Act enters into force.