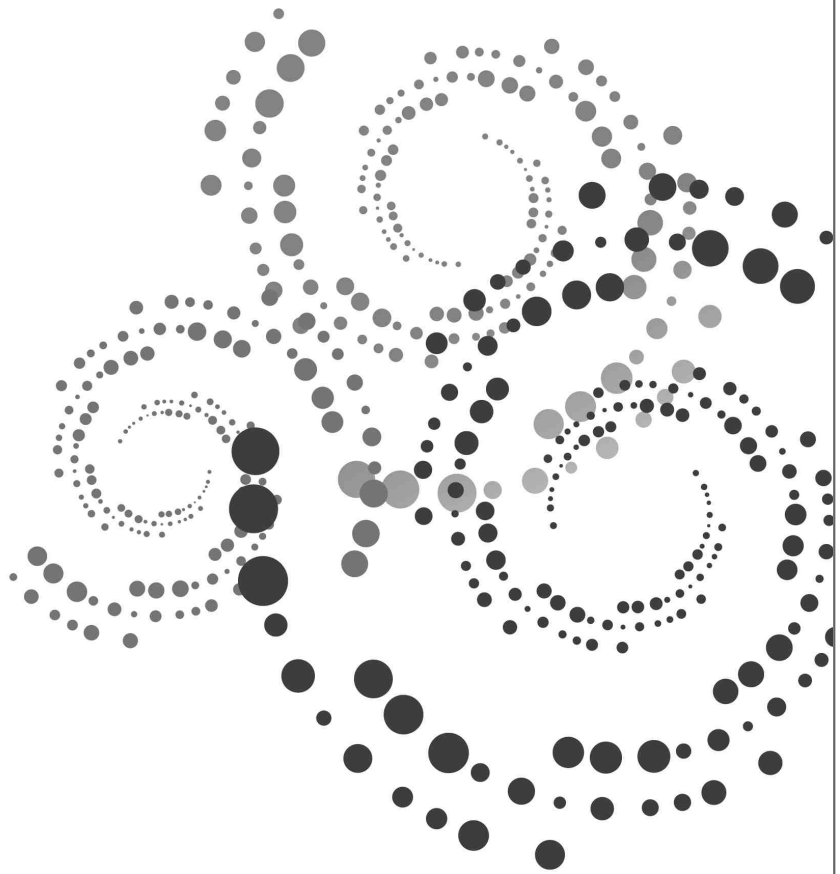


Korea-UK Anti-Corruption Seminar

9 December 2014
Seoul, Korea



Welcome Speech

Korea-UK Anti-Corruption Seminar

9 December 2014, Seoul

Sungbo Lee

Chairman, Anti-Corruption and Civil Rights Commission of Korea

Excellencies, ladies and gentlemen,

First, I would like to convey my deepest gratitude to distinguished guests for taking time out of busy schedule to attend today's event.

My sincere appreciation also goes to Ambassador Scott Wightman who provided great support for the Korea-UK Anti-Corruption Partnership Initiative and today's Korea-UK Anti-Corruption Seminar.

Moreover, I want to thank today's speakers from the UK: Roderick Macauley, International & Corporate Crime Advisor of the Ministry of Justice; Martin Crago, Regional Manager for Asia of the National Crime Agency; Peter Clark, Financial Investigator of the Proceeds of Corruption Unit of New Scotland Yard; Sam Bereket, Legal Research Officer of Public Concern at Work; and Thomas Walsh, Counsel of Clifford Chance. I would also like to thank Scott Sung-kyu Lee, Senior Partner of Kim & Chang and Yongil Jeon, Professor of Sungkyunkwan University.

9 December is International Anti-Corruption Day designated by the United Nations to raise awareness of the United Nations Convention against Corruption which was adopted in 2003. Therefore, it is our great pleasure to hold the Korea-UK Anti-Corruption Seminar on this meaningful and significant day.

The characteristics of corruption and the countermeasures against it greatly vary from country to country depending on each country's political, social and cultural environments.

In the same manner, the scope of control and the level of sanctions against corruption differ widely, and a successful anti-corruption policy in one country may be ineffective elsewhere.

With this in mind, to establish and implement effective anti-corruption policy requires comparing various anti-corruption policies of other countries and analyzing keys to success lying in those policies from multi-dimensional perspectives.

In this context, we are gathered here to share and compare the anti-corruption policies of the UK and Korea in three important areas of "Prevention of Bribery", "Recovery of the Proceeds of Corruption and Fraud", and "Protection of Whistleblowers", while exchanging ideas on how to effectively implement those policies. I believe that today we can take a first step in strengthening the anti-corruption partnership between our two countries.

So far, the Anti-Corruption and Civil Rights Commission (ACRC) has been making continuous efforts to ensure the high level of integrity and ethics in the public sector through the Integrity Assessment of government agencies and public institutions, the implementation and compliance monitoring of the Code of Conduct for Public Officials and a variety of anti-corruption training programs.

However, an increasing number of people have been recognizing the necessity of a more thorough reform to combat corruption, in order to eradicate corruption triggered by the deep-rooted practice of illegal solicitation and influence-peddling, and to address the malaise of false and illegal claims of public funds based on the mistaken public perception that the government's budget is literally easy money.

Against this backdrop, to meet the improved public expectations for a transparent and corruption-free society, the ACRC has been working on the enactment of two anti-corruption laws: “the Act on the Prevention of Illegal Solicitation and Conflict of Interest” and “the Act on the Prevention of False Claims of Public Funds”.

As Chairman of Korea’s national anti-corruption body, I am convinced that these laws would lay the firm ground for establishing government and social systems to address our corruption-prone practices and culture, leading to an enhanced level of integrity of Korea.

In line with this, today’s seminar will provide a precious opportunity for us to take a closer look at the UK’s anti-corruption policies and achievements so that we can take valuable lessons for an effective reform.

I hope that many experts and distinguished participants from both countries will actively exchange diverse experiences and ideas regarding anti-corruption policies and measures. Your voices and opinions will be highly appreciated and reflected in formulating and improving national policies to combat corruption in both countries.

Once again, I would like to express my cordial gratitude and welcome to Ambassador Scott Wightman, presenters, participants and distinguished guests for being with us today.

Thank you.

Congratulatory Remarks

Korea-UK Anti-Corruption Seminar

9 December 2014, Seoul



Scott Wightman

British Ambassador to Korea

Dear distinguished guests, Ladies and Gentlemen

Thank you to Chairman Lee for his very warm and insightful opening remarks. I am very pleased to have the opportunity to speak at this really important event.

On behalf of the UK government I would like to extend my particular appreciation to the Anti Corruption and Civil Rights Commission (ACRC) and the UN Global Compact team here in Seoul.

In many ways today's seminar symbolises how far our partnership on the Korea-UK Anti-Corruption Partnership Initiative has developed in a relatively short period of time since it was launched in April this year.

It is a testament to your leadership and the hard work and dedication of your teams and that of our other partners such as Kim and Chang. We are proud of progress to date but this is just the start. We look forward to continuing this close partnership and implementing more activities through 2015 as the Initiative develops.

I would also like to pay special thanks to today's speakers. Many of whom have travelled very long distances to be here. And all have made time in their busy schedules to share their invaluable expertise. Their accumulated knowledge and understanding on corruption, bribery and related issues is unparalleled.

It is pleasing to see so many companies, officials and related organisations represented here to enable the sharing of best practice and the challenges we all face. I am sure this afternoon's sessions will be very fruitful.

The UK Prime Minister has spoken of the absence of corruption as one of the "golden thread" conditions which allow countries to thrive. The UK government is resolutely committed to tackling corruption at home and overseas. Today we have published the UK's own Anti-Corruption Plan which sets out in detail how we are doing this.

But the global scourge of corruption cannot be tackled in isolation. Only through partnerships such as the Korea-UK Initiative can progress be made. A shared understanding, common goals and a united resolve to are vital.

The reasons for doing so are clear and simple.

As Chairman Lee has mentioned, today is International Anti-Corruption Day. It provides the perfect opportunity to underline the fundamental messages:

Corruption is bad for social and economic development, bad for business and bad for a country's reputation. The UK believes the tide is beginning to turn and there is a growing intolerance of it as more countries realise the social, economic and political impact of corruption.

Thank you again for your participation today.

CALL TO ACTION: ANTI-CORRUPTION AND THE GLOBAL DEVELOPMENT AGENDA

A Call from Business to Governments to Address Corruption and Foster Good Governance

The **Call to Action** is an appeal by the private sector to Governments to promote anti-corruption measures and to implement policies that will establish systems of good governance. The **Call to Action** urges Governments to underscore anti-corruption and good governance as fundamental pillars of a sustainable and inclusive global economy.

The **Call to Action** asks Governments to:

1. Fully implement and enforce the tenets of the UN Convention against Corruption by strengthening anti-corruption policies, laws and enforcement mechanisms to create a level playing field and incentivize good behavior;
2. Make a commitment to reduce corruption risks from procurement and contract processes of large-scale projects that are designed to support sustainable development;
3. Commit to engaging in competitive and transparent procurement processes through public advertising of all Government procurement cases;
4. Achieve greater transparency in relation to revenues received by Governments from private sector companies;

5. Support corporate efforts to enhance anti-corruption implementation, corporate governance, innovative collective action, and public-private partnership initiatives.

The **Call to Action** is the result of over six months of development and consultation by a taskforce comprising members from the UN Global Compact Anti-Corruption Working Group, the World Bank Institute, the Open Contracting Initiative and Transparency International that explored the private sector's perspective on anti-corruption and good governance in the global development agenda. For more information on the five appeals of the **Call to Action**, please read our FAQs at http://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/Call_to_Action_FAQ.pdf



WHY COMPANIES SHOULD SIGN THE CALL TO ACTION

Signing the **Call to Action** offers a unique opportunity for businesses to:

- Demonstrate leadership in advancing good governance and anti-corruption;
- Contribute to reducing the cost of corruption to doing business and to creating a level playing field for all;
- Seek a competitive advantage by attracting responsible investors, shareholders and consumers;
- Shape the anti-corruption policy agenda and influence future laws and regulations.

WHAT HAPPENS AFTER OUR COMPANY SIGNS THE CALL TO ACTION?

A company signing the **Call to Action** can also take action to continuously improve and increase its anti-corruption efforts by:

- Integrating anti-corruption efforts into its business and operational strategy, as well as its organizational culture;
- Setting the tone from the top-management of the organization towards zero-tolerance of bribery and corruption;
- Sharing good practices in the fight against corruption;
- Collectively engaging with businesses and other stakeholders through the UN Global Compact and its Local Networks, as well as other relevant initiatives;
- Engaging in policy dialogue to encourage more robust disclosure, transparency and enforcement mechanisms.

Signatories of the **Call to Action** will be acknowledged at the UN Global Compact's 10th Principle Anniversary event to be held in New York on 10 December 2014. Your company's name will also be featured as a signatory on the UN Global Compact's Website. In addition, the **Call to Action** will be forwarded to UN Secretary-General Ban Ki-Moon to highlight the private sector's continuing efforts to work with other important stakeholders in the fight against corruption.

HOW TO SIGN THE CALL TO ACTION

All companies — from learners to leaders committed to advancing anti-corruption efforts — are invited to sign the **Call to Action**. A company wishing to become a signatory to the **Call to Action** should:

1. Submit a letter signed by a C-suite level executive or Board Member responsible for corporate governance stating the company's support to the **Call to Action** and its commitment to prevent corruption in all its forms, including extortion and bribery.
 - Visit our website for a sample letter of support. In your letter, please indicate whether your company's name can be featured as a signatory on the UN Global Compact's website.
2. Send the signed letter to anticorruption@unglobalcompact.org.

SPREAD AWARENESS ON THE IMPORTANCE OF THE CALL TO ACTION!

Your company's participation in this **Call to Action** promotes your continued efforts to integrate anti-corruption into your strategies and operations. Integration of anti-corruption not only brings about change in your organization, but also inspires peers in your industry to do the same. You can publicly communicate your commitment to the **Call to Action** by having your company's name featured on the Global Compact's website and by using the hashtag **#BizAgainstCorruption**

Contact

Ms. Olajobi Makinwa
Head, Transparency and Anti-Corruption
Initiatives
UN Global Compact

anticorruption@unglobalcompact.org
www.unglobalcompact.org

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KOREA-UK ANTI-CORRUPTION SEMINAR

9 December 2014, Seoul, Republic of Korea

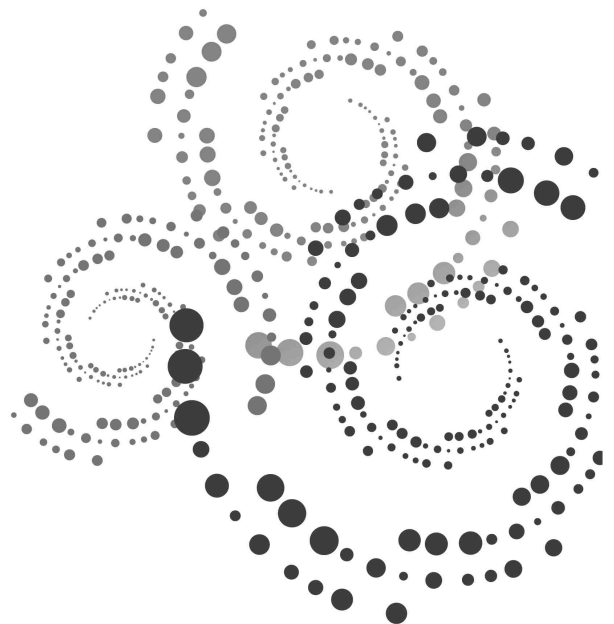
Date & time: 14:00-18:30, Tuesday, 9 December 2014
Venue: Ferrum Hall, 3F, Ferrum Tower, Seoul
Host: Anti-Corruption & Civil Rights Commission (ACRC), Korea
Participants: Domestic & foreign businesses in Korea; relevant public organizations and civil society organizations in Korea and the UK
Language: Korean & English

Seminar agenda	
14:00-14:05	Welcome Speech (<i>Sungbo Lee</i> , Chairman, ACRC, Korea)
14:05-14:10	Congratulatory Remarks (<i>Scott Wightman</i> , British Ambassador to Korea)
14:10-14:15	Call to Action: Anti-Corruption and the Global Development Agenda (<i>Eva Eun-kyung Lee</i> , Team Leader, UN Global Compact Korea Network)
14:15-14:20	Group photo
14:20-15:30	1. Prevention of bribery <ul style="list-style-type: none"> - Bill on the Prevention of Illegal Solicitation and Conflict of Interest (<i>Jun-ho Ahn</i>, Director of Anti-Corruption Policy Division, ACRC, Korea) - UK approach to bribery: The Bribery Act 2010 & Deferred Prosecution Agreements (<i>Roderick Macauley</i>, International & Corporate Crime Advisor, Ministry of Justice, UK) - Korea's anti-bribery legislation & UK Bribery Act 2010 (<i>Scott Sung-kyu Lee</i>, Senior Partner, Kim & Chang, Korea)
15:30-15:40	Coffee break
15:40-17:10	2. Recovery of the proceeds of corruption & fraud <ul style="list-style-type: none"> - Bill on the Prevention of False Claims of Public Funds (<i>Gae-ok Park</i>, Director-General of Anti-Corruption Bureau, ACRC, Korea) - UK Serious and Organised Crime Strategy (<i>Martin Crago</i>, Regional Manager for Asia, National Crime Agency, UK) - Efforts to tackle welfare benefit fraud in Korea & the UK (<i>Yongil Jeon</i>, Professor, Sungkyunkwan University, Korea) - Investigation of James Ibori & Associates (<i>Peter Clark</i>, Financial Investigator, Proceeds of Corruption Unit, New Scotland Yard, UK)
17:10-17:20	Coffee break
17:20-18:30	3. Protection of whistleblowers <ul style="list-style-type: none"> - Korea's whistleblower protection systems (<i>Kyung-hee Ju</i>, Senior Deputy Director of Public Interest Whistleblowing Policy Division, ACRC, Korea) - "Making Whistleblowing Work" (<i>Sam Bereket</i>, Legal Research Officer, Public Concern at Work, UK) - Drafting effective whistleblowing policies (<i>Thomas Walsh</i>, Counsel, Clifford Chance LLP, UK)
18:30-18:35	Closing

**Korea-UK
Anti-Corruption Seminar**

01

Prevention of bribery

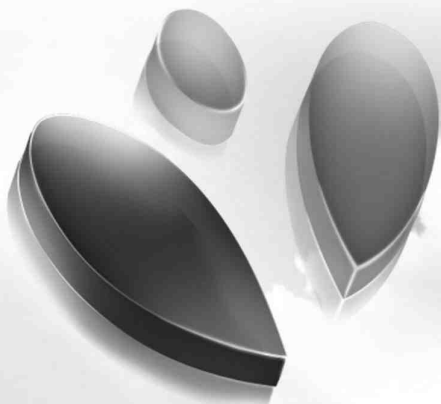




Bill on the Prevention of Illegal Solicitation & Conflict of Interest

■ Jun-ho Ahn

Director of Anti-Corruption Policy Division, ACRC, Korea



Bill on the Prohibition of Illegal Solicitation & the Prevention of Conflict of Interest

9 December 2014

Junho Ahn
Director of Anti-Corruption Policy
Anti-Corruption & Civil Rights Commission
Republic of Korea

Contents

- I** Background & progress
- II** Structure & coverage
- III** Major contents

I. Background & progress on the drafting of the Bill



Background

- The former ACRC Chairperson (KIM Young-ran) raised the need to legislate a bill to prohibit illegal solicitation at the Cabinet Meeting (June 14, 2011)

** 84.9% of the surveyed perceive improper solicitations & mediations as serious, and regard those practices as corruption (ACRC, Aug. 2011)*

- ✓ To deter undue solicitation arising from paternalism & nepotism
- ✓ To remove blind spots in the current corruption control system
“The Criminal Act of Korea requires proof of *quid pro quo* of bribes regarding public officials’ duties.” “Sponsorship”
- ✓ To set up a comprehensive conflict-of-interest management system

1

I. Background & progress on the drafting of the Bill



Progress

- The ACRC drafted the Bill and collected opinions from various stakeholders (Oct. 2011-Jun. 2012)
- The ACRC consulted with relevant government agencies (May 2012-Jun. 2013)
- The ACRC made a public announcement of the Bill (Aug. 22, 2012)
- The Bill pass the Cabinet meeting (Jul. 30, 2013)
- The Government submitted the Bill to the National Assembly (Aug. 5, 2013)
- President Park Geun-hye urged speedy passage of the Bill (May 19, 2014)



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II. Structure & coverage of the Bill



Main contents of the Conflict-of-Interest Bill

Purpose

To secure public trust in the public service and enhance integrity of public officials by:

○ Prohibition of illegal solicitation

“Illegal solicitation”: any solicitation or mediation that hinders the fair performance of public officials’ duties by making them violate laws or other rules or abuse their position or authority

○ Prohibition of giving or receiving money or other benefits

○ Prevention of conflict of interest

“Conflict of interest”: Situation where private interests of a public official hinder, are likely to hinder, or seem to hinder the fair performance of his or her duties.

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II. Structure & coverage of the Bill



Scope of application

Organizations

Applied to all public sector organizations

- ✓ National Assembly, courts, Constitutional Court, election commissions, central gov. agencies & their affiliated agencies
- ✓ Local governments, local councils & education offices
- ✓ Public service organizations & public companies
- ✓ Public schools & universities

Individuals

- ✓ Public officials and employees of public service organizations & public companies
- ✓ Civilians who participate in the process of making or executing government decisions (Private persons conducting public service)
- ✓ Individuals including businesspeople who make illegal solicitation or offer prohibited money or other benefits to public officials

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III. Major contents of the Bill



I. Prohibition of illegal solicitation

• Prohibition of making illegal solicitation

- **Prohibition of making illegal solicitation to a public official through a third party in relation to the public official's duties**

*Civil penalty: The interested party (\$10,000);

A third party (private person: \$20,000, public official: \$30,000)

• Prohibition of performing duties according to illegal solicitation

- **Prohibit public officials' performing duties according to illegal solicitation**

*Criminal penalty: Imprisonment up to 2 years or fine up to \$20,000

• Disclosure & handling of illegal solicitation

- **Report repeated solicitation to the head of the organization,**
- **Notify an investigative agency if the case needs to be investigated**



III. Major contents of the Bill



II. Prohibition of giving or receiving money or other benefits

• Prohibition of giving or receiving money or other benefits

- **A public official or family member receiving money/benefits or Any individual giving money/benefits to a public official or family member**
✓ **in relation to public duties or through influence from public position**

*Criminal penalty: Imprisonment up to 3 years or fine up to \$30,000

- ✓ **regardless of relationship with public duties, purpose or *quid pro quo***

*Civil penalty: 2-5 times of money/benefits

"Corporate Liability"

• Disposal of money or other benefits prohibited

- **Report money/benefits to the head of the organization**
- **Immediately return money/benefits to the offering party or transfer them the head of the organization**



• Restriction on receiving honorariums for outside lectures, etc.

- **Prohibition of receiving honorarium exceeding the ceiling for a lecture related to public duties or position (Civil penalty up to \$5,000)**

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III. Major contents of the Bill



III. Prevention of conflict of interest

- Prohibition of public officials' performance of duties involving private interests (Art. 11)
- Prohibition of high-level public officials' performance of duties involving private interests (Art. 12)
- Prohibition of outside activities related to public duties (Art. 13)
- Restriction on financial transactions with duty-related parties (Art. 14)
- Restriction on the employment of public officials' family members (Art. 15)
- Restriction on making a contract with the organization that a public official belongs to (Art. 16)
- Prohibition of illegal use of budget (Art. 17)
- Prohibition of personal use of public property or public position (Art. 18)
- Prohibition of use of undisclosed information (Art. 19)

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III. Major contents of the Bill



III. Prevention of conflict of interest

- Prohibition of public officials' performance of duties involving private interests
- Exclude public officials from the duties involving their or their relatives' private interests
 - Specific provisions on the cases that may involve private interests in the performance of public duties
- Provide a mechanism for managing conflict of interest through exclusion, challenge & avoidance
- Civil penalty on public officials who performed duties involving their or their relatives' private interests



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III. Major contents of the Bill



III. Prevention of conflict of interest

• Prohibition of *high-level* public officials' performance of duties involving private interests

- **Prohibit high-level public officials from performing duties for 2 years for companies, orgs. or clients that they belonged to or worked for within 3 years before appointment**
 - Restriction on duties involving the interests of duty-related parties such as financial support, approval & licensing
- **Require high-level officials to submit information about their previous duties in the private sector to the head of the organization**
- **Civil penalty for performing prohibited duties involving private interests or failing to submit requested information**

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III. Major contents of the Bill



III. Prevention of conflict of interest

• Prohibition of outside activities related to public duties

- **Prohibit duty-related outside activities which may hinder the fair performance of public duties or lead to corruption**
- **The head of the organization must order the suspension or termination of the duty-related outside activities that may hinder the fair performance of public duties**
- **Civil penalty for conducting prohibited outside activities related to public duties**

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III. Major contents of the Bill



III. Prevention of conflict of interest

• Restriction on financial transactions with duty-related parties

- **Require public officials who or whose family members intend to make financial transactions with duty-related parties to report the matter to the head of the organization**
**Financial transactions to be reported:*
 - borrowing money from or lending money to duty-related parties
 - involving in transactions of marketable securities, real estate, etc.
 - making contracts for goods, service, construction, etc.
- **The head of the organization may request the suspension of the transactions that may hinder the fair performance of public duties**
- **Civil penalty for failing to report/make such transactions; or instructing, inducing or overlooking their family members' transactions**

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III. Major contents of the Bill



III. Prevention of conflict of interest

• Restriction on the employment of public officials' family members

- **Prohibit the employment of the family members of high-level public officials, HR managers or public officials managing affiliated agencies in their organization or affiliated agencies**
**Except for recruitment through open competition process*
- **Civil penalty for instructing, inducing or overlooking the prohibited employment of their family members**

• Restriction on making a contract with the organization that a public official belongs to

- **Prohibit high-level public officials, contract managers or those managing affiliated agencies or family members from making private contracts with the public organization that they belong to or affiliated agencies**
**Except for contracting through open competition process*
- **Civil penalty for instructing, inducing or overlooking the prohibited private contracts**

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III. Major contents of the Bill



III. Prevention of conflict of interest

• Other prohibited acts

- Use of budget for unspecified purposes or personal use of public property including goods, vehicles, and facilities of public organizations
- Receipt of personal services from other public officials or those under employment contract to the public organization
- Use of confidential information obtained in the performance of duties for personal gains or acquisition of financial benefits by using such information

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III. Major contents of the Bill



Reporting of violations & protection/rewards for whistleblowers

• Reporting of violations

- Anyone may report the violation to the public organization that the violator belongs to, supervisory agency, the Board of Audit & Inspection, investigative agency or the ACRC
- The agency that receives the report shall conduct an investigation, take follow-up measures & inform the whistleblower of the results

• Protection and rewards for whistleblowers

- Protection
Prohibition of disadvantageous measures, reinstatement, confidentiality, protection of physical safety, mitigation of culpability
- Financial rewards
If the whistleblowing has directly contributed to restoring or increasing the revenues of the public organizations concerned

14





UK approach to bribery: The Bribery Act 2010 & Deferred Prosecution Agreements

■ **Roderick Macauley**

International & Corporate Crime Advisor, Ministry of Justice, UK

UK APPROACH TO BRIBERY: The Bribery Act 2010 and Deferred Prosecution Agreements

Roderick Macauley



Ministry
of Justice

OUTLINE

- Bribery Act 2010 – the general scheme
- S.7 corporate failure to prevent
- BA enforcement and incentives
- Deferred Prosecution Agreements



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of Justice

BRIBERY ACT 2010

- Mainstream criminal law
- 4 robust offences
 - The general offences – ss. 1 and 2;
 - Improper performance of a function or activity – ss. 3 to 5
 - Bribery of a foreign public official – influence model – s. 6
 - Corporate failure to prevent – section 7
- Consent to prosecution
 - Non-delegable
- Sanctions
 - 10 years' imprisonment
 - Unlimited fines
- Wide jurisdiction
 - Individuals/ bodies corporate ss. 1, 2 & 6
 - Commercial organisations s.7



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of Justice

BA s.7 FAILURE TO PREVENT

- Robust offence and equally robust legal mitigation incentive
 - Violation gains \leq Sanctions + Incentives
- Robust offence
 - Form of strict liability
 - Wide scope, commercial organisation, associated person; jurisdiction
- Full defence - adequate procedures – mitigation incentive
- Corporate good governance
 - Hospitality
 - Facilitating payments
- Corporate complicity & consent and connivance liability



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of Justice

BA ENFORCEMENT & INCENTIVES

- Corporate self referrals
 - Adequate procedures
 - Full disclosure and transparency
 - Non-criminal outcome
 - No guarantees
- Civil recovery
 - All proceeds not profit
 - s.7 defence applies - predicate offence
- Deferred Prosecution Agreements – mitigation incentive - February 24th



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of Justice

Deferred Prosecution agreements

- Section 45 and Schedule 17 of the Crime and Courts Act 2013
 - economic/financial crime Schedule 17 – includes fraud and bribery
- Organisations only
- Transparency – procedure & judicial scrutiny and publication
- Supporting guidance
 - Code of Practice
 - New sentencing guidelines
 - Criminal Procedure Rules



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of Justice

DPAs - Content

Statement of facts

- Admission of guilt not required, but must accept wrongdoing occurred
- Must be agreed by the parties – court will not resolve areas of dispute

Duration

- Expiry date to be specified

Terms

- No mandatory terms
- Non exhaustive list in Schedule 17 - compensation, financial penalty, costs, compliance measures
- Disgorge any “profits”



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of Justice

Breach and Variation

Breach

- Minor breaches – envisage provision in the DPA - parties to attempt to agree facts of minor breach, corporate party to rectify immediately
- Failing that, court to decide if there is a breach on the balance of probabilities. Parties to propose an agreed remedy, judge to vary DPA

Variation (only prosecution can apply, only judge can vary)

- Where court finds a breach parties invited to remedy
- Anticipated breaches



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Termination

Termination (only judge can terminate)

- If breach is too material for variation, or
- If parties are unable to agree a suitable remedy, or
- If the court does not approve a proposed remedy

Post termination

- Monies paid under the DPA prior to termination are non-refundable
- Prosecution can apply to lift suspension of indictment and recommence proceedings



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of Justice



Korea's anti-bribery legislation & UK Bribery Act 2010

■ **Scott Sung-kyu Lee**

Senior Partner, Kim & Chang, Korea

Korea's anti-bribery legislation

Comparison with the UK Bribery Act 2010



9 December 2014

KIM & CHANG



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- 1. Korea's anti-bribery legislation**
- 2. Comparison with the UK Bribery Act**

KIM & CHANG

Global risks of corruption



Korea

**Act on Combating Bribery of Foreign Public Officials
in International Business Transactions**



OECD

**OECD
Anti-Bribery
Convention**



UK

Bribery Act 2010



USA

**Foreign Corrupt
Practices Act
(FCPA)**



UN

**UN Convention
against Corruption
(UNCAC)**



EU

**Anti-corruption
conventions**

3 | KIM & CHANG



Korea's anti-bribery legislation

KIM & CHANG

Korea's anti-bribery legislation



5 | KIM & CHANG

Bribery

Giving bribes to public officials in connection with their duties

Public officials : public servants and those corresponding to public officials

- Applied to the employees of government-managed organizations and financial institutions under separate legislation

Bribes: all forms of tangible and intangible benefits

Punishment for both the giver and taker of bribes only with proof of connection with public officials' "duties"



Imprisonment up to 5 years or a fine up to KRW 20 million



Maximum penalty of life imprisonment according to the amount of bribes

6 | KIM & CHANG

Offence of Giving Bribes by Breach of Trust

Giving bribes to private persons

- Applied to the employees of private companies other than public officials
- Offering of money, valuables and any benefits
- Punishment for both the giver and taker of bribes only with proof of “illegal solicitation” in connection with the duties concerned



Imprisonment up to 2 years or a fine up to KRW 5 million

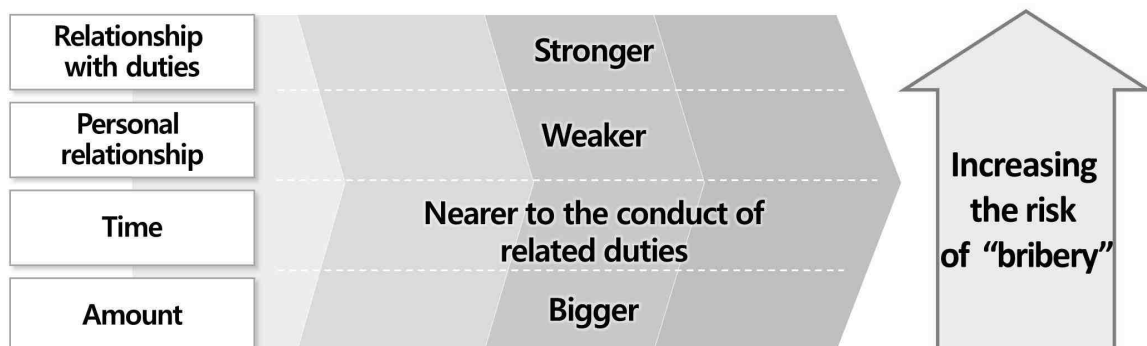


Imprisonment up to 5 years or a fine up to KRW 10 million

7 | KIM & CHANG

Elements of “bribery” offence: totality of the circumstances

- Difficult to determine bribery only with the amount and purpose
- Social customs and practices cannot be a defense for bribery
- The Supreme Court makes judgment considering “all circumstances”



8 | KIM & CHANG

Even as customary formalities...

Offering meals worth 30,000 won twice, expressing the intention of offering 5 million won and 10 million won

- The chairman of the reconstruction committee provided meals for the director of housing of Mapo-gu District Office twice
- The director of housing refused to receive 5 million won
- Purpose: Speedy approval for the establishment of a reconstruction association
- 1st trial: Imprisonment of 8 months with a stay of execution for 2 years
Appeals trial: Imprisonment of 6 months with a stay of execution for 1 year

Payment of 50,000 to 100,000 won for the wedding of public officials' children: bribery offense

- The High Court declared not guilty on the grounds that the gift of small congratulatory money is regarded as social customs
- The Supreme Court declared guilty of bribery offense regardless of the amount of money as there were no circumstances such as personal relationship

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

- Enacted in 1999 to implement the OECD Anti-Bribery Convention
 - Similar to FCPA of US
- Prohibit bribing of "foreign public officials, etc." with intent to obtain any improper advantage
- Criminal liability of legal entities for the offense committed by the representative, an agent, an employee, or a servant
 - "Defense for legal entities that have taken reasonable care or supervision to prevent the offense"

Penalties

The bribe-giver subject to 5 years in prison or a fine up to KRW 20 million

Proceeds of crime exceeding KRW 10 million lead to imprisonment up to 5 years or a fine up to an amount equivalent to double the pecuniary advantage

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Code of Conduct for Public Officials

19 May 2003

Enactment of the Code of Conduct for Public Officials (presidential decree)







- Prohibition of receiving money or other valuables ("money, gifts or entertainment") from duty-related parties
- Restriction on notification of festivities & funerals to duty-related parties / restriction on the amount of money or other valuables for festivities & funerals (KRW 50,000)

Exceptions to the prohibited money or other valuables

- Money or other articles provided by a lawful claim such as the payment of debt
- Foods or convenience provided within the scope of conventional practices (e.g., KRW 30,000)
- Transportation, accommodation or foods uniformly provided to all participants in an official event related to duties
- Souvenirs or promotional goods distributed to many and unspecified persons

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Practical work

 <p>Money gifts for congratulations & condolences</p>	 <p>Gifts (New Year's Day/ "Chuseok" Thanksgiving Day)</p>	 <p>Golf/meals</p>
 <p>Hospitality</p>	 <p>Seminars/ official events</p>	 <p>Contributions</p>

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The latest trend – harsh punishment...

1

Investigative authorities tend to add up the total amount of money, valuables and entertainment offered to one person for a long period (Usually adding up 2 to 3 years' amount)

- Companies should ensure that excessive benefits are not provided to one person

2

Investigative authorities tend to pursue the chief officer that may be involved in the offense

- However, criminal liability is imposed on individuals, not the company

3

Risk of punishment for the bribery offense committed by 3rd parties including subcontractors, distributors and business partners according to the principle of conspiracy liability

4

Risk of facing the U.S. FCPA or the U.K. Bribery Act liability

- Broad jurisdiction

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The latest trend – you may avoid criminal punishment, but...

1

Serious disturbance of work caused by investigation of bribery

- Summons and interrogation of employees, depreciation of the company's market value due to stakeholders' misunderstanding (e.g., fall in share prices, damage to the company's reputation)

2

Customers and competitors filing civil proceedings

3

Issues on the Monopoly Regulation and Fair Trade Act: Unfair trade practices including "unfairly inducing customers of competitors"

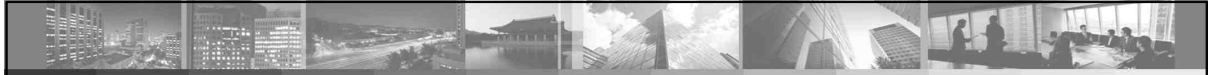
- Order of discontinuation, correction, or publication of the act of violation, imposition of fines for negligence up to 2% of the turnover, etc.

4

Issues on tax laws: Excessive hospitality expenses included in business costs may be regarded as tax evasion

- Imprisonment and fines for individual offenders, corporate liability

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Comparison with the UK Bribery Act

KIM & CHANG

UK Bribery Act (2010)

- 1 Entered into force on 1 July 2011**
- 2 An anti-corruption law with the widest scope of application in the world**
- 3 Applied to not only UK companies but also companies carrying on a business or part of a business in the UK**
- 4 Strong sanctions against the briber**

Main provisions

- **Prohibition of private companies from bribing another person or being bribed**
- **Prohibition of bribery of foreign public officials**
- **Strict liability of the company for bribery offense**
(Offence committed by "a person associated with" the company, absence of "adequate procedures")

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Comparison of Korea's anti-bribery legislation with the UK Bribery Act

- 1 No substantive difference in the definition of “bribes”
- 2 Punishment for all forms of bribery in the private sector cf. U.S. FCPA
- 3 Punishment for individuals, not legal entities under Korean legislation
- 4 “Failure of commercial organisations to prevent bribery”
unique to the UK Bribery Act
 - Punishment for bodies corporate
 - Punishment for foreign companies carrying on a business in the UK (extensive jurisdiction)

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감사합니다
Thank you

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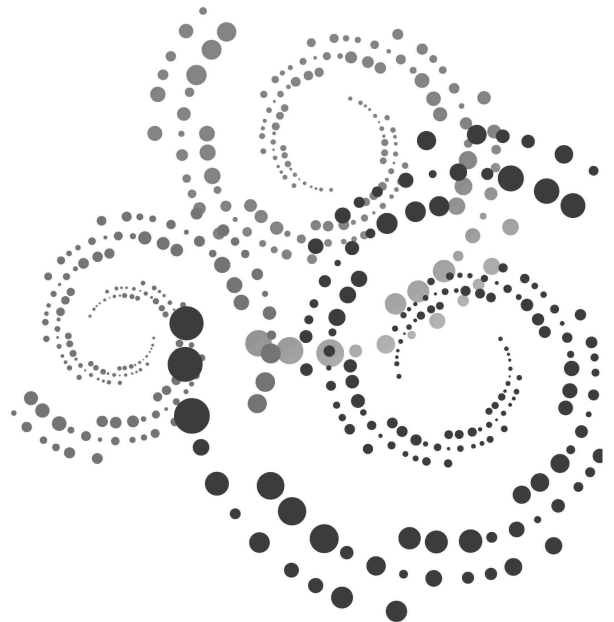
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KIM & CHANG

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**Korea-UK
Anti-Corruption Seminar**

02

**Recovery of the proceeds of
corruption & fraud**





Bill on the Prevention of False Claims of Public Funds

■ **Gae-ok Park**

Director-General of Anti-Corruption Bureau, ACRC, Korea

Bill on the Prevention of False Claims of Public Finances

December 2014

Major Contents



1

Bill on the Prevention of False
Claims of Public Finances



Introduction

I. Background

II. Progress

Background

Strengthened control of false claims of public finances

- ✓ U. S. Public Assistance Fraud Units
- ✓ U. K. Single Fraud Investigation Service (SFIS) officially launched in Dec. 2013
- ✓ Korea Government Welfare Fraud Report Center opened in Oct. 2013

1

Scale of **subsidy & welfare budget** of Korea

- ✓ Scale of government subsidies: KRW 55 trillion in FY 2014
14% of the total national budget
- ✓ Annual welfare budget: KRW115 trillion
More than 30% of government budget
- ✓ Damage to public finances: Estimated to 3%
**Average 2-5% in OECD member countries*
** Investigative authorities detected false claims of KRW 170 billion in 2013*

2

Background

Severe damage to public funds caused by false and fraudulent claims

- ✓ False and excessive budget claims; fraudulent claims for R&D funds; misuse of grants, etc.
- ✓ False claims for subsidies in nearly all fields including health, welfare, employment, agriculture, R&D, sports and tourism
- ✓ False claims accounting for 45.9% of the cases handled by ACRC (2008-2013) with KRW 54 billion subject to recovery

3

Need for a government-wide **comprehensive response system**

- ✓ Lack of systematic regulations to prevent false and fraudulent claims & recover illegitimate benefits
- ✓ Disparity in scope of regulation & levels of sanctions according to individual statutes
** National Finance Act, State Contract Act, Subsidy Management Act & Science/Technology Framework Act*

→ To formulate a general law for preventing the loss of public funds & recovering illegitimate benefits

4

Statistics: *Financial damages & recovered funds*

Health Insurance

In the last 5 years, unjustified health screenings in 2,442 institutions amounted to KRW 19.3 billion in false claims, resulting in the recovery of KRW 5.3 billion (27.5%). (National Audit, 2013)

Recovered funds for unjustified health screening

*Unit: KRW 1 million

Year	No. Institutions	No. Cases	Amounts to be recovered	Collected amounts	Uncollected amounts	Collection rate
2011	767	480,391	14,961	2,413	12,547	16.1%
2012	1,034	379,351	2,948	1,814	1,133	61.6%
Aug. 2013	641	238,099	1,415	1,089	325	77.0%
Total	2,442	1,097,841	19,324	5,317	14,006	27.5%

Statistics: *Financial damages & recovered funds*

Policy Loans

Over the last 3 years, only 27% of KRW 580 billion bad loans was recovered from public corporations. Financial losses are made up with the national budget every year. (May 2014, ACRC)

** Compensation for losses from policy loans: KRW 30 bil. (2011) → KRW 28.5 bil. (2012) → KRW 50 bil. (2013)*

Status of bad loans for public corporations

*Unit: KRW 1 million

Year	Loan agreement cancelled	Recovered amounts	Recovery rate	Repayment
2011	169,558	51,780	30.6%	64,952
2012	208,179	48,959	23.5%	104,651
2013	203,182	53,912	26.5%	104,103

Statistics: *Financial damages & recovered funds*

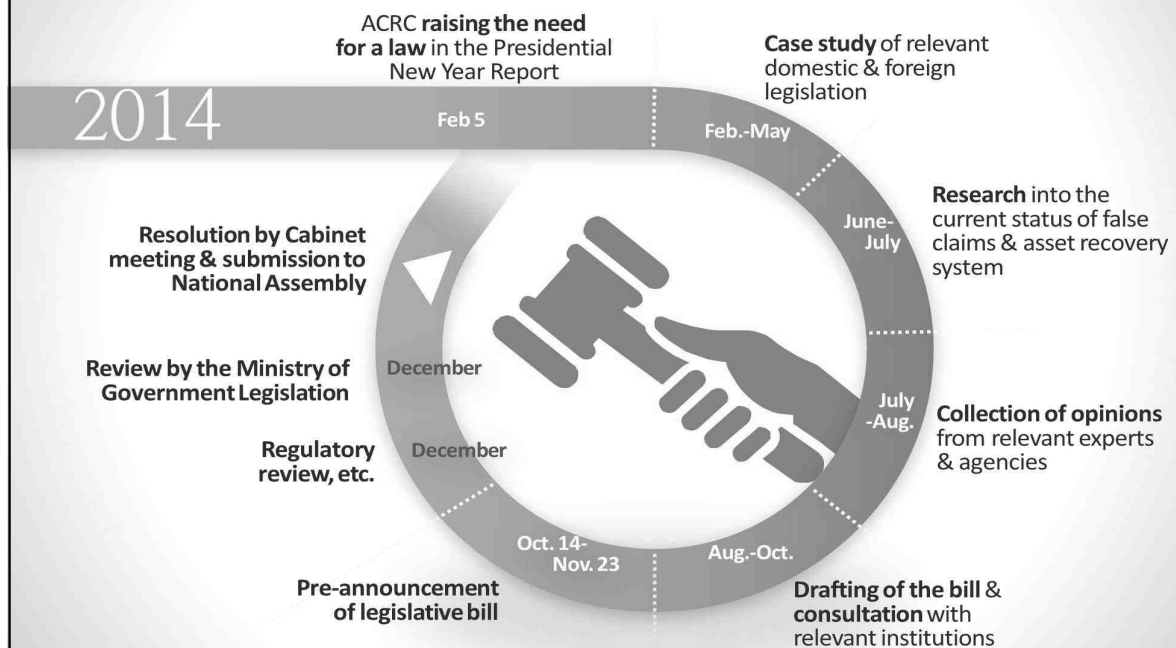
R&D Funds *Misuse of research funds by Organization “Y” during the last 3 years amounted to KRW 21.2 billion with 12 billion (56.5%) unrecovered. (Jun 2014, ACRC)*

Misuse of research funds and recovered funds

*Unit: KRW 1 million

Year	False claim amounts	Recovered amounts	Unrecovered amounts	Recovery rate
2011	2,237	1,604	633	71.7%
2012	5,367	1,669	3,698	31.1%
2013	13,660	5,967	7,692	43.7%

Progress



2

Bill on the Prevention of False
Claims of Public Finances

Structure & Scope

I. Structure

II. Scope of Application

Bill on the Prevention of False Claims of Public Finances

Structure

Purposes

Prohibition of false &
fraudulent claims
of public funds



1

Recovery of
unfair benefits
against public funds



2

Sanctions
&
procedure

Article 6
Prohibition
of false
claims

Article 7
Corrective
measures

Article 8
Recovery of
illegitimate
benefits

Articles 8-9
Imposition &
collection of
financial
penalties

Article 11
Exclusion
of minimal
amounts

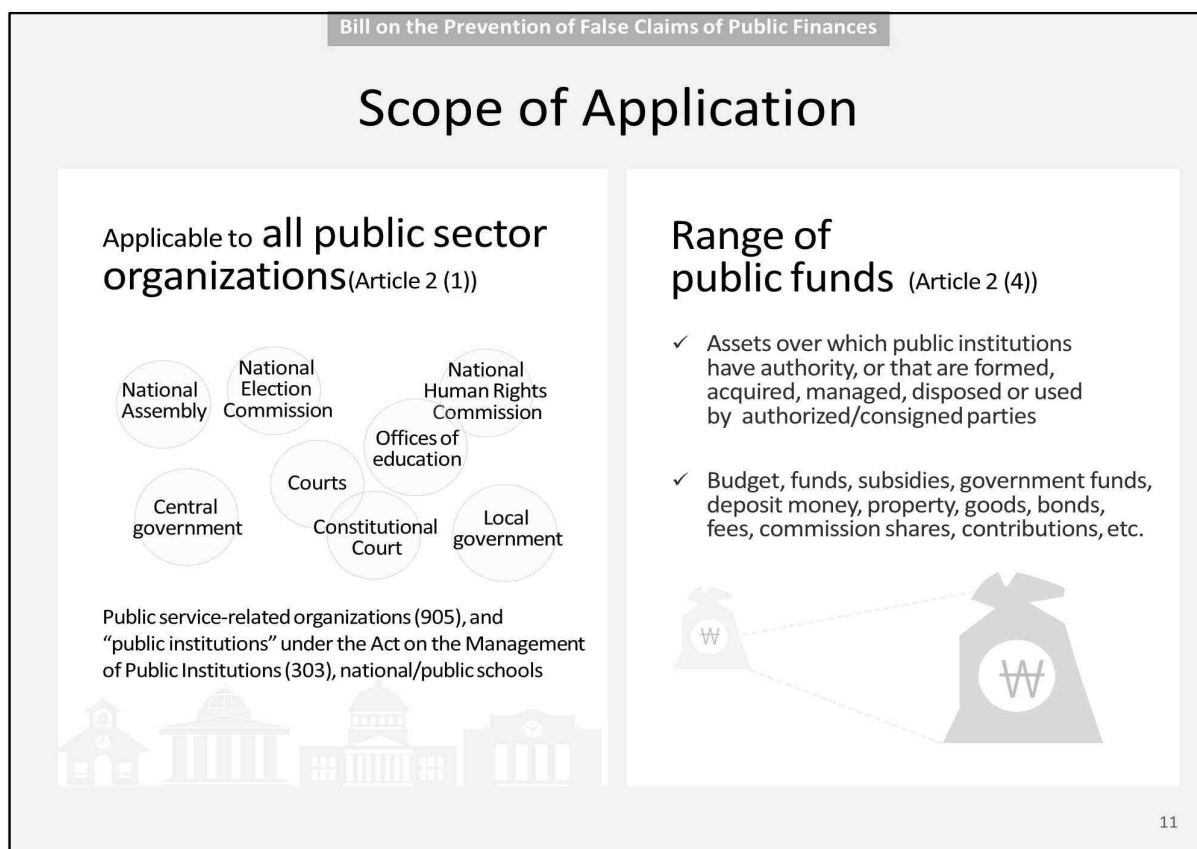
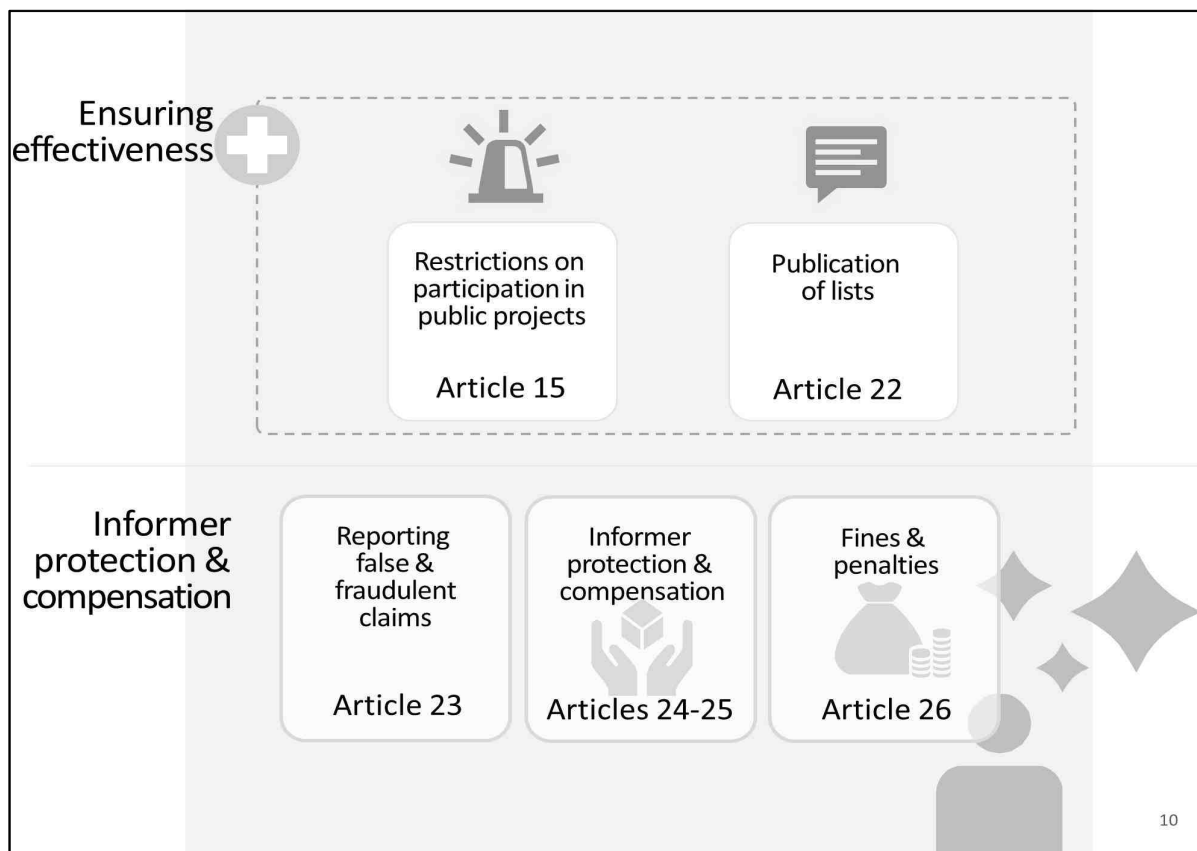
Article 19
Liability for
damages

Article 12
Collection
procedure

Article 14
Investigation

Article 14
Appeals

Articles 17-18
Prescription
& disposition
on deficits



Scope of Application

Parties subject to the Bill

(Article 2 (2) (3) and (5))

Officials	Civil servants and employees of public service-related organizations
Beneficiaries	Parties to public finance income, expenditure or management in a contractual relationship with a public institution; receipt of subsidies, investments, endowments or provisional payments; or payment of fees under relevant legislation or ordinances
Administrative agencies	National & local government agencies; organizations & individuals authorized or commissioned to act for such agencies

Exclusion of application & relation to other laws

(Articles 4 and 5)

Excluding the cases where relevant regulations exist in other laws

Excepting tax claims & claims of a punitive character



12

3

Bill on the Prevention of False Claims of Public Finances

Major Contents of the Bill

- I. Prohibition of False Claims of Public Funds
- II. Recovery of Illegitimate Benefits & Sanctions for False Claims
- III. Procedure for Imposition & Collection of Financial Penalties
- IV. Measures to Ensure Effectiveness
- V. Disclosure of False Claims & Informer Protection/Compensation

13

1. Prohibition of False Claims of Public Funds

Prohibition of false claims of public funds (Article 2 (6), Article 6)

Claims by those ineligible for financial support

"Paper company" receiving financial support for small & medium-sized start-ups

Using assets for unspecified purpose without due process

Using R&D funds to repay company debt or for vehicular purchases

Claiming payments larger than the due amount or quantity

Getting excessive subsidies by falsifying child care time or registering discharged children

Illegal public contracting or insolvent or improper contract fulfillment

Embezzling money by falsely contracting for the purchase of materials

Evasion or non-payment of liabilities including legal fees and expenses

Appropriating subsidies without paying one's liability in collusion with contractors



Prohibition

Sanctions

Procedure

Effectiveness

Whistleblowing

14

1. Prohibition of False Claims of Public Funds

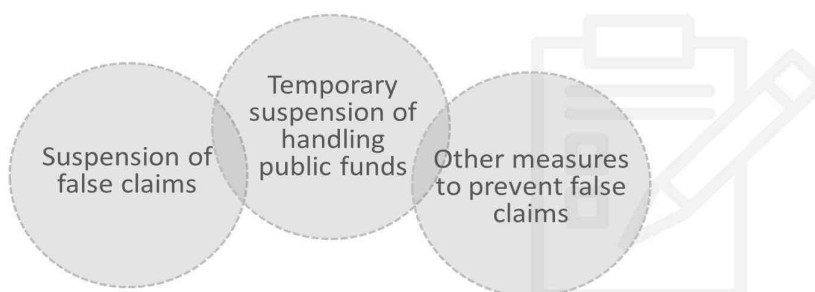
Suspension measures against false claims (Article 7)

Conditions

- ✓ Well-grounded suspicion of a false claim
- ✓ Possibility of irrecoverable financial damage

Corrective measures

The administrative agency may order:



Prohibition

Sanctions

Procedure

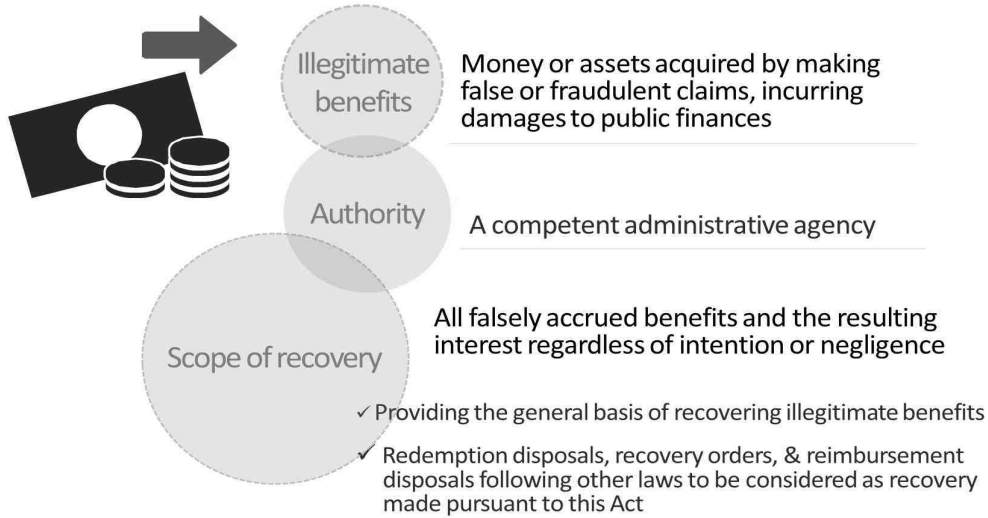
Effectiveness

Whistleblowing

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2. Recovery of Illegitimate Benefits & Sanctions for False Claims

Recovery of illegitimate benefits as restoration (Article 2 (7) and (8))



Prohibition

Sanctions

Procedure

Effectiveness

Whistleblowing

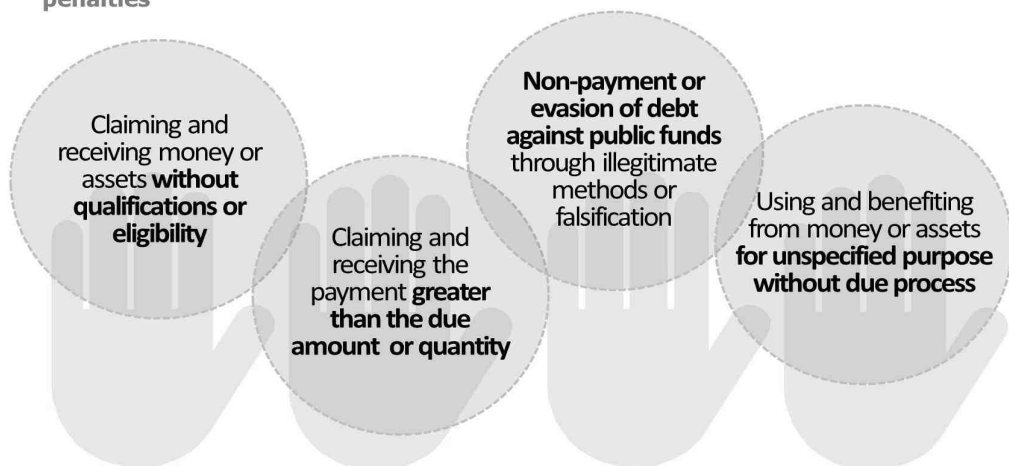
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2. Recovery of Illegitimate Benefits & Sanctions for False Claims

Financial penalties

Imposition of financial penalties

4 types of false & fraudulent claims



Prohibition

Sanctions

Procedure

Effectiveness

Whistleblowing

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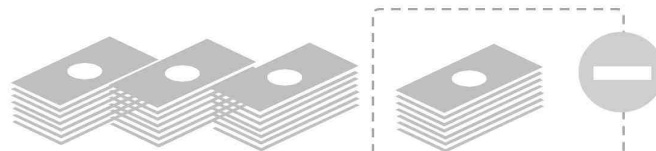
2. Recovery of Illegitimate Benefits & Sanctions for False Claims

Amount of financial penalties

Pursuit of recovery of illegitimate benefits and levying of corresponding amounts in principle
2 to 5 times the value of the illegitimate benefits according to the violations made in the last three years in the case of malicious or habitual false claimants

Penalty reductions, exemptions & exceptions

- Exemptions** Voluntary reporting & full repayment before imposition of recovery measures
- Reductions** Penalties, fines or forfeitures imposed according to other laws on false claims
- Exceptions** Damages of KRW 1 million or less; money/goods provided as minimum social welfare service



Prohibition

Sanctions

Procedure

Effectiveness

Whistleblowing

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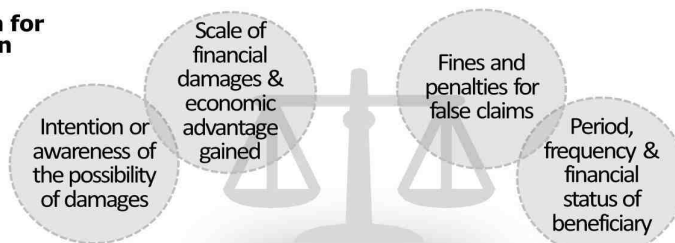
2. Recovery of Illegitimate Benefits & Sanctions for False Claims

Compensation for punitive damages

Compensation for punitive damages

- Scope of application** False claims made in such cases as contracts with a private person on equal footing
- Violations** Damages given through use of public funds for unspecified purpose or false or fraudulent methods
- Liability for negligence** It is a defence for the beneficiary to prove that the false claim was not made by intention or negligence
- Scope of compensation** Court may impose liability of 2 to 5 times the amount of damages

Court criteria for compensation



Prohibition

Sanctions

Procedure

Effectiveness

Whistleblowing

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3. Procedure for Imposition & Collection of Financial Penalties

Penalty imposition & collection procedure (Article 12, Articles 16-18)

Imposition	Regulated according to Administrative Procedures Act; specific procedures provided by the presidential decree
Additional dues	Additional dues for non-payment for up to 60 months according to the interest rate of Article 52 of the Framework Act on National Taxes
Collection & disobedience	Penalties collected according to national/local tax arrears; Appeals within 30 days of disposal notices



Joint responsibility & successive payment liability (Article 9 (3), Article 13)

Joint responsibility	Joint responsibility imposed on those jointly involved in a false claim
Successive liability	Illegitimate benefits to be recovered from heirs & transferees



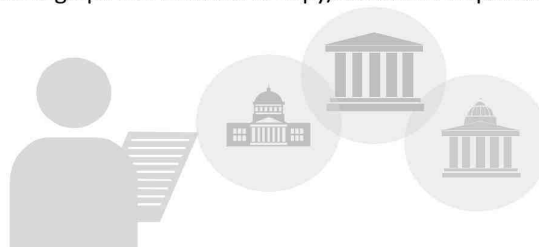
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Prohibition
Sanctions
Procedure
Effectiveness
Whistleblowing

3. Procedure for Imposition & Collection of Financial Penalties

Investigation of false claims (Article 14)

Request for documents, etc.	Administrative agencies (public institutions) may request beneficiaries and related individuals for attendance, statements & submission of documents
On-site investigation	A competent official may enter the beneficiary's place of work to investigate the state of work, account books, documents, facilities, equipment, etc.
Request for tax information	<ul style="list-style-type: none"> ✓ Tax offices or local government agencies requested to provide tax information for imposition and collection of financial penalties ✓ Registry offices and related public institutions requested for peruse, mimeograph and issuance of copy/abstract of required documents



21

Prohibition
Sanctions
Procedure
Effectiveness
Whistleblowing

4. Measures to Ensure Effectiveness

Restrictions on participation in public projects (Article 15)

Debarment Debarment from contracts with the public institution concerned for up to 2 years

Notification & cross-debarment Notification of debarment to other public institutions
Cross-debarment by other public institutions for up to 2 years



Publication of lists (Article 22)

Subjects Successive financial penalties more than once in the last three years for illegitimate benefits of KRW 30 million or more

Publication authority Chairperson of ACRC

Method & procedure A committee for deliberation over the lists will be established under ACRC; detailed procedure will be regulated by presidential decree



Prohibition

Sanctions

Procedure

Effectiveness

Whistleblowing

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5. Disclosure of False Claims & Informer Protection/Compensation

Reporting a false claim (Article 23, Article 26)

Informers Anyone who suspects an incidence of false claims or has concerns of such may report a case

Reporting agency A competent public institution, supervisory agencies, Board of Audit & Inspection, investigative agencies or ACRC
ACRC will confirm the details of the report it received, and refer it to an investigative agency.



Safeguards for informers (Article 24, Article 26)

Safeguards Robust safeguards to protect informers in the public & private sectors

Protective steps Prohibition of disadvantages against informers, reinstatement, confidentiality, personal protection & reduction of responsibility
✓ Application of the **ACRC Act**: Guarantee of Position (Article 62), Protection of Personal Safety of Reporting Persons (Article 64), Mitigation of Culpability (Article 66)



Prohibition

Sanctions

Procedure

Effectiveness

Whistleblowing

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5. Disclosure of False Claims & Informer Protection/Compensation

Incentives to encourage whistleblowing (Article 25)

Financial reward	A maximum KRW 2 billion reward for contributing directly to increasing/recovering revenues or saving costs of a public institution
Award money	Bringing financial benefits or preventing financial damage to a public institution, or promoting the public interest



Punishment for violating informer protection regulations (Article 26)

Punishment	Strict punishment for violating informer protection regulations by applying relevant provisions of the ACRC Act
Minimized penalties	Avoidance of double punishment by minimizing imposition of punishment & financial penalties



4

Bill on the Prevention of False Claims of Public Finances

Expected Effects



Expected Effects of Legislation

Effective response to false & fraudulent claims

- ✓ Since 2002, ACRC has been receiving & handling reports of corruption involving waste of public budget
- ✓ To ensure effective policy measures against corruption related to public finances

1

Systematic framework for asset recovery

- ✓ To recover illegitimate benefits based on a general law without reference to individual statutes
- ✓ To avoid the difficulty of revising numerous statutes regulating various damages to public finances

2

Expected Effects of Legislation

Stringent action against unethical conduct

- ✓ Financial penalties up to five times the value of the illegitimate benefits & compensation for punitive damages
- ✓ To eradicate lenient treatment under weak system relying on individual statutes & the wrong perception of government money as easy money

3

Effective sanctions & active protection for informers

- ✓ Restriction on participation in public projects, publication of lists of habitual violators, etc.
- ✓ Thorough informer safeguards and compensation (up to KRW 2 billion) to encourage the disclosure of false claims

4

Thank you





UK Serious and Organised Crime Strategy

■ **Martin Crago**

Regional Manager for Asia, National Crime Agency, UK

UK Serious and Organised Crime Strategy

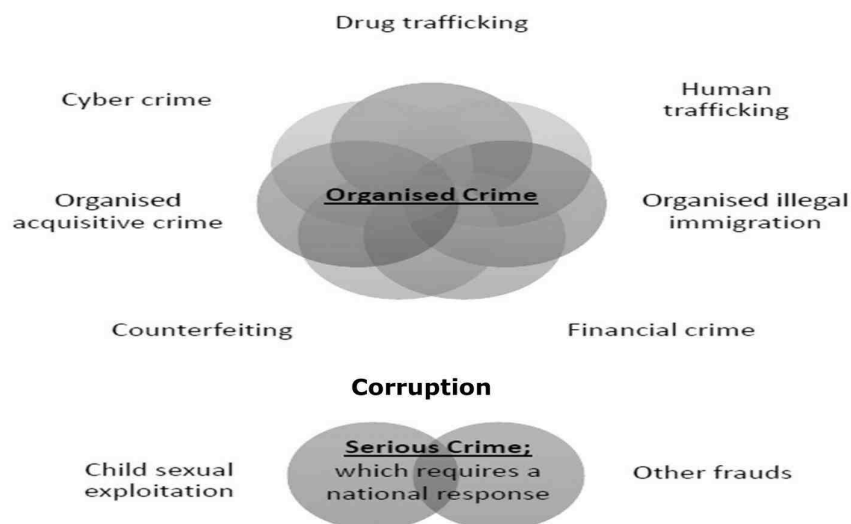
Martin Crago
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Presentation to the Korea-UK Anti-Corruption Seminar

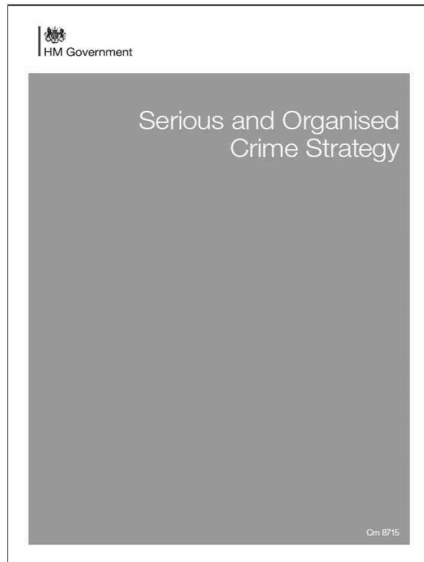
November 2014

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Serious and Organised Crime



Serious and Organised Crime Strategy



- Published in October 2013.
- Overarching aim: to substantially reduce serious and organised crime affecting the UK and its interests

Serious and Organised Crime - Threat

Characteristics

- A **national security risk**; pervasive threat with corrosive impact on communities
- Includes: drugs trafficking; human trafficking; illegal immigration; firearms; cyber crime; fraud; corruption; counterfeiting; money laundering; organised acquisitive crime; child sexual exploitation.
- Undermines our economy, financial institutions and online confidence

Scale

- Law enforcement estimates – approx. **5,500 organised crime groups**, involving approx. **37,000 individuals**.
- Costs the UK at least **£24bn** a year.
- **A complex and rapidly evolving threat**. Organised criminals operate across regional, national and international borders.

The Government approach

An improved operational response

- National Crime Agency
- £10m funding to regional organised crime policing

A stronger strategic and policy response

- New 4 'P' (CONTEST) strategy
- Treated as a national security risk.

Serious and Organised Crime Strategy

- **PURSUE**
 - Prosecute and disrupt people engaged in serious and organised criminality
- **PREVENT**
 - Prevent people from engaging in serious and organised crime
- **PROTECT**
 - Increase protection against serious and organised crime
- **PREPARE**
 - Reduce the impact of this criminality where it takes place

NATIONAL CRIME AGENCY

Leading the UK's fight to cut serious and organised crime



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The National Crime Agency (NCA)

- Formed on 7 October 2014
- Previously the Serious Organised Crime Agency (SOCA)
- Approximately 4000 officers
- 5 Commands:
 - **Economic Crime Command**
 - Border Policing Command
 - CEOP Command
 - National Cyber Crime Unit
 - Organised Crime Command

Also houses UK Interpol NCB and UKHTC



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Serious and Organised Crime Strategy 2013

- "NCA will lead on the assessment of bribery and corruption by organised crime..."
- "The Economic Crime Command...will oversee the law enforcement response to bribery and corruption more broadly [*ie not LE corruption*]."



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NCA Economic Crime Command Priorities

Four priority areas:

- Money Laundering and Asset Recovery
- **Enforcement response to Corruption and Sanctions**
- Proactive investigation of serious, organised economic crime
- Changing the economic crime operating environment

NCA ECC– 3 Key Bribery and Corruption Areas

- Foreign Bribery
- Proceeds of corruption from overseas
- Domestic bribery & corruption (not law enforcement)



Foreign Bribery & Corruption

- Serious Fraud Office
- City of London Police: Overseas Anti Corruption Unit
- Metropolitan Police Service: Proceeds of Corruption Unit
- NCA: International Corruption Intelligence Cell
- NCA: ECC Bribery & Corruption Team

Foreign Corruption

- Operational support to partners:
 - access to NCA specialist resources
 - use of NCA national footprint
 - use of NCA international access
- New MOU & revamped register of cases
- Intelligence coordination



Bribery & Corruption – The Work

- SFO Investigation (Iraq / Indonesia)
- Glaxo SmithKline (GSK) China
- Collapse of the Ukraine's Yanukovich regime
- Sports Corruption / Match Fixing





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QUESTIONS?



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Efforts to tackle welfare benefit fraud in Korea & the UK

■ **Yongil Jeon**

Professor, Sungkyunkwan University, Korea

Efforts to tackle welfare benefit fraud in Korea & the UK

9 December 2014

Yongil Jeon
Professor, Sungkyunkwan University

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I . Necessity & importance of the systems to tackle
welfare benefit fraud

II . Korea's response to welfare benefit fraud

III . UK's response to welfare benefit fraud

IV . Future direction for Korea's systems to tackle
welfare benefit fraud

I Necessity & importance of the systems to tackle welfare benefit fraud

1. Increased need to address welfare benefit fraud

Necessity & importance of the systems to tackle welfare benefit fraud

I

- The needs for public services have been on a steady increase as the role of national welfare is becoming more important
- **Annual welfare budget** steadily increased to **KRW 106.4 trillion** in 2014 from KRW 80.4 trillion in 2009
- Welfare budget represented **29.9% of total government budget** in 2014, increasing by 3.3% from 26.6% in 2009
- **Due to an increase of welfare budget** and diversification of public services, the forms of benefit fraud are becoming diverse and complicated

2. Characteristics of welfare benefit fraud

*Necessity & importance of the systems
to tackle welfare benefit fraud*

I

Concept	Factors
Intelligent & specialized	Information asymmetry among stakeholders (informants, suspected fraudsters & relevant government agencies)
Covert & organized	Prevalence of public misconception about welfare benefits and subsidies as e.g., "easy money"
Prolonged & continued	Benefit fraud becoming habitual → Need to eliminate root causes
Non-exclusive	Non-exclusiveness problems caused by free rides → Need to share information from various sources and impose severe punishment against fraudsters

5

3. Types of welfare benefit fraud

*Necessity & importance of the systems
to tackle welfare benefit fraud*

I

• Types of benefit fraud & errors in stages

Stage	Types of fraud & errors	Cause
Selection of beneficiaries	Detection of ineligible claimants	Absent/incomplete data, disconnected information systems, data recording/management errors, false reporting
	Detection of fraudulent claimants	Unreasonable selection criteria, issuance of falsified medical or other certificates
Provision / use	Ineligible use	Absence of the system to check eligibility in advance
	False and excessive claims	Falsified reporting of performance, connivance/collusion between providers & users, use of loopholes in the system
	Illegal provision of service	Illegal inducement, arrangement, etc.
	Provision of service to ineligible claimants	Unethical practices of providers
	Double payment of service	Disconnection between systems
Follow-up management	Failure to reflect changes in eligibility	Delayed confirmation and reflection of changes in incomes and assets
	Delayed processing of ineligibility	Delayed notification of death
	Negligent management of defaults	Lack of competence such as human resources

6

- Many advanced countries have created **a body to deal with benefit fraud** and to form a national consensus on counter-measures against benefit fraud
 - Identifying priorities for investigation of benefit fraud cases, and establishing consistent standards for investigation through discussion with relevant agencies
 - An integrated system for preventing, investigating and tackling benefit fraud
 - serves to secure the validity and objectivity of the result of investigation
 - provides a comprehensive investigation and analysis framework
 - enhances the effectiveness of investigation

- **Public organizations dedicated to tackling benefit fraud**
 - **UK:** Single Fraud Investigation Service (SFIS)
 - **US:** Public Assistance Fraud Unit (PAFU), etc.
 - **Sweden:** Sweden Social Insurance Agency & National Labour Market Board
 - **Canada:** The United Council on Welfare Fraud (UCOWF)

5. Establishment of the systems to tackle welfare benefit fraud

Necessity & importance of the systems to tackle welfare benefit fraud

I

- The need for a **unified system** to receive whistleblowing reports speedily and to provide convenient access
 - Inefficient management of report centers operated by separate government agencies related to welfare
 - Limitation in objectivity and professionalism
- The ACRC seeks to address false claims of welfare benefits and non-welfare subsidies

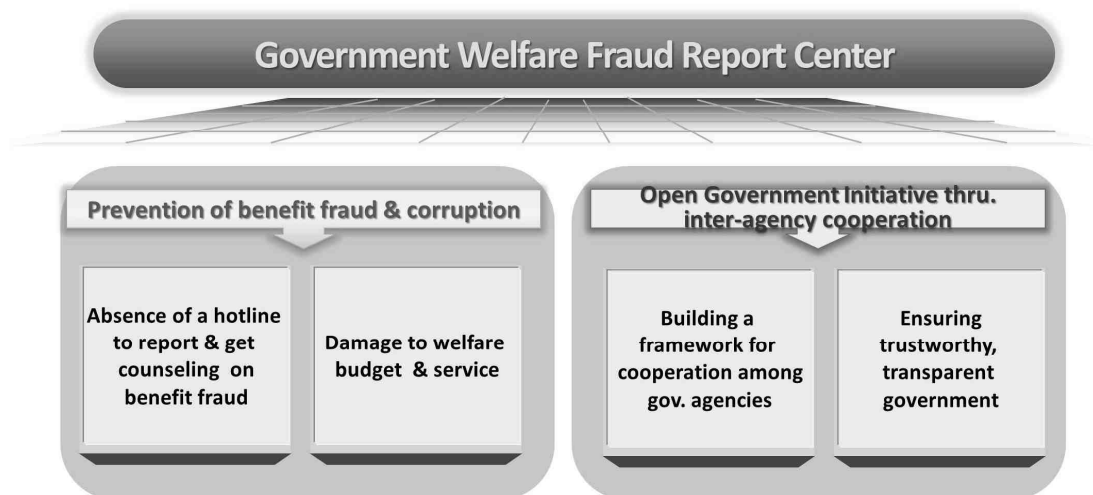
II

Korea's response to welfare benefit fraud

1. Establishment of the Government Welfare Fraud Report Center

Korea's response to welfare benefit fraud **II**

- Established in October 2013
- One-stop service for reporting and get counseling on welfare benefit frauds



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2. Overview of the Government Welfare Fraud Report Center

Korea's response to welfare benefit fraud **II**

• Organization & functions

Planning & PR Unit	Management of the Center, policy planning, cooperation with related agencies
Counseling & Guidance Unit	Counseling and guidance related to whistleblowing, reception & classification of reports
Investigation Unit	Confirmation & investigation of reports, preparation of agenda for submission to the Commission, referral to investigating authorities, notification of investigation results, management of statistics, institutional improvements

• Major characteristics & types of reports (more than 20 types)

Characteristics of benefit fraud	Intelligent & specialized, covert & organized, prolonged & continued
Major types of reports	<ul style="list-style-type: none"> ❖ Welfare fraud: basic living subsidies, medical care expenses, pensions for patriots & veterans, subsidies for social enterprises, subsidies for day care centers ❖ Non-welfare subsidy fraud: tax evasion (National Tax Service), procurement, etc.

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3. Comparative advantage of the Government Welfare Fraud Report Center

Korea's response to welfare benefit fraud II

- Securing **legitimacy & compelling power** as a regulator of benefit fraud pursuant to the **ACRC Act**
 - **ACRC**, which is responsible for the **prevention of corruption and efficient regulation**, is involved in the handling of reports received by the Center
 - Emphasizing the aspect of protecting citizens as a body under the **ACRC that protects whistleblowers**
- **A 3rd party, independent organization** monitoring corruption in the public sector
 - Monitoring & fighting corruption in each public organization
 - Monitoring both false claimants and organizations offering benefits
 - Increasing reliability of the result of investigation by conducting a preliminary assessment before referral to the organizations in charge of welfare and subsidies

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3. Comparative advantage of the Government Welfare Fraud Report Center (Cont'd)

Korea's response to welfare benefit fraud II

- Operation of "**Welfare Benefit Fraud Hotline**" for major welfare services
 - Established to promote reporting of benefit fraud, secure objectivity in investigation, and protect whistleblowers
 - Referral of reports to competent government agencies through a linkage between the Hotline and government agencies
 - Payment of awards to whistleblowers and promotion of publicity
- **Collection of comprehensive data** on the reports related to all competent government agencies

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4. Procedures for reporting & handling benefit fraud reports

Korea's response to welfare benefit fraud 

- Benefit fraud reporting procedures

Process	Government agencies		
	Government Welfare Fraud Report Center	Ministry of Health & Welfare Misconduct & Public Interest Whistleblowing Center	Ministry of Employment & Labor Report of unemployment benefit fraud
Step 1	Report (Informant)	Report (Informant)	Report (Informant)
Step 2	Counsel on & receive a report	Counsel on & receive a report	Counsel on & receive a report
Step 3	Confirmation of facts (autonomous investigation)	Examination of the status	Investigation of the business & related parties
Step 4	Referral by ACRC	Referral to MHW or local governments	Notification of advance disposition & submission of statements
Step 5	Investigation (investigating authorities)	Investigation (Inspection by MHW or the Board of Audit & Inspection)	Administrative measure against benefit fraud
Step 6	Notification of investigation result to ACRC (investigating authorities)	Measures according to investigation result in Step 5 of GWFRC	Notification of results & award application procedure
Step 7	Notification of result to informant, award payment, management of statistics	Notification, etc. of result to informant in Step 5 of GWFRC	Application for & payment of awards

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III UK's response to welfare benefit fraud

- **Overpayments due to fraud & error** (April 2013 - March 2014)
 - Total overpayments due to fraud & error: **£ 3.3bn**
(2.0% of the total benefit expenditure of £ 163.9bn)
 - **0.7%**, or **£ 1.1bn**, of total benefit expenditure is overpaid due to **fraud**
- **Relevant legislation**
 - **Social Security Administration Act 1992**
 - Public Interest Disclosure Act 1998
 - Welfare Reform Act 2012
 - Fraud Act 2006
- **BS 10500**
 - BS 10500: Providing an anti-bribery management system framework
for organizations to put in place to prevent bribery
 - ✓ Implement Anti-Bribery Management System (AMBS) based on **PDCA** (Plan-Do-Check-Act) model
 - ✓ **ISO 37001** to be developed as a new international standard for an anti-bribery management system by 2016 by using BS 10500 as a base document

- **Definition of “fraud”**
 - A person is guilty of fraud if he intends to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss
 - ✓ Penalty: imprisonment for a term not exceeding 10 years or to a fine (or to both)

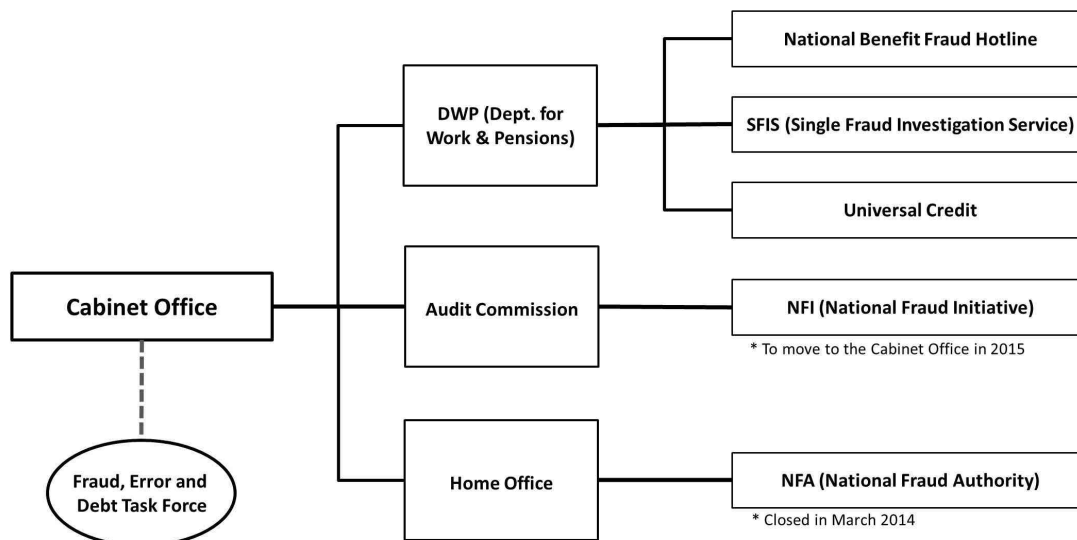
- **Types of fraud under the Fraud Act**

Article	Type
Article 2	Fraud by false representation
Article 3	Fraud by failing to disclose information
Article 4	Fraud by abusing of position
Others	<ul style="list-style-type: none"> ▪ Possession etc. of, making or supplying articles for use in frauds ▪ Participating in fraudulent business ▪ Obtaining services dishonestly

3. Fraud & error management system

UK's response to welfare benefit fraud III

- **Related government agencies**



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3. Fraud & error management system (Cont'd)

UK's response to welfare benefit fraud III

- **Related government agencies (Cont'd)**

- **Cabinet Office:** Coordinating government policy to tackle fraud including benefit fraud
- **Fraud, Error and Debt Task Force:** Strategic decision-making body for all fraud and error, debt and grant efficiency initiatives across government
- **SFIS:** Bringing together all welfare benefit fraud investigation into a unified team within the DWP Fraud and Error Service (FES); jointly with HMRC (Her Majesty's Revenue & Customs) and Local Authorities
- **Universal Credit:** DWP is operating a pilot system to automatically detect fraudulent & false claims by integrating various benefit systems and information on incomes
- **NFA:** Implemented FFT (Fighting Fraud Together); aimed to reduce financial loss from benefit fraud by £ 1.4bn by 2015

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- Investigation & punishment

Process	Description
Disclosure	<ul style="list-style-type: none"> Operation of National Benefit Fraud Hotline under DWP Method of reporting: phone/mail/online, anonymous reporting Disclosure made to: the employer → a competent government agency (Minister of the Crown, regulator) Disclosure made by: worker (excluding those involved in national security, police officers and employees of the parliament) Public Interest Disclosure Act (PIDA) <ul style="list-style-type: none"> An Act to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation Related organization: PCAW (Public Concern at Work)
Investigation	<ul style="list-style-type: none"> Investigation of the legitimacy of benefit payments and violation of relevant laws Financial investigators of DWP have investigation authority similar to the Police under Article 110 of the Social Security Administration Act 1992
Recovery	<ul style="list-style-type: none"> Article 71 of the Social Security Administration Act 1992 & Proceeds of Crime Act 2002 Part of the recovered money given to investigating authorities as an incentive
Punishment	<ul style="list-style-type: none"> Civil penalty, administrative penalty, prosecution, loss of benefit

- Strategy to tackle fraud & error

- An integrated strategy based on 5 elements:

Prevent → Detect → Correct → Punish → Deter

- Introducing **Claimant Commitment** & implementing the national strategy of "**Fighting Fraud Together**"

- ✓ Strict conditions on benefit claims by people of working-age
- ✓ Strong sanctions for non-compliance, including reduction in salary

- Other measures

- ✓ Special workshops for officials in charge of benefit fraud
- ✓ Nomination of "fraud champions"

IV Future direction for Korea's systems to tackle welfare benefit fraud

1. Future direction for the development of the Government Welfare Fraud Report Center

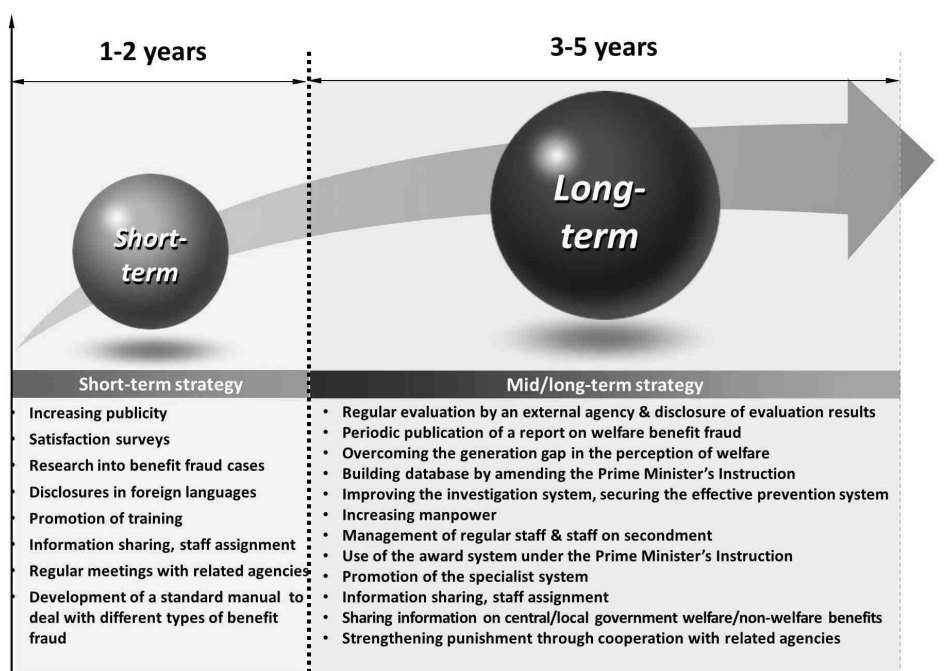
Future direction for Korea's systems to tackle welfare benefit fraud **IV**

- **Set the future direction for Korea's systems to tackle welfare benefit fraud by analyzing the relevant status, legislation, measures and systems of other countries**
- **Set up short-term & mid/long-term strategy for the development of the Government Welfare Fraud Report Center**
 - Develop a national consensus on the damage caused by benefit fraud
 - Expand the responsibilities related to the handling of benefit fraud reports
 - Improve inter-agency cooperation and personnel management
 - Address subsidy fraud in addition to welfare fraud

2. Mid/long term strategy to improve Korea's systems to tackle welfare benefit fraud

Future direction for Korea's systems to tackle welfare benefit fraud

IV



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Thank you



Investigation of James Ibori & Associates

■ **Peter Clark**

Financial Investigator, Proceeds of Corruption Unit, New Scotland Yard, UK

DC Peter Clark

Proceeds of Corruption Unit (POCU)

Room 466 Victoria Block

New Scotland Yard, London



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Proceeds of Corruption Unit New Scotland Yard Operation Tureen



Investigation of James Ibori & Associates



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The effects of political corruption



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James IBORI

Elected as Governor of Delta State, Nigeria
1999 - 2007

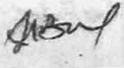



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Passport - James Ibori – 04/08/1962

DESCRIPTION SIGNALEMENT	
Bearer Titulaire	
Profession	COMPANY DIRECTOR
Place and date of birth	MOSOGAR
Lieu et date de naissance	4-8-62
Height	1.72 M.
Taille	
Colour of eyes	BROWN
Couleur des yeux	
Colour of hair	BLACK
Couleur des cheveux	
Special peculiarities	
Signes particuliers	
Thumb print of bearer	
Empreinte	
	
	
Name of bearer	Mr. O. J.
Nom du titulaire	IBORI

True date of birth consistent with age on 1989 marriage certificate

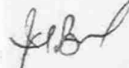



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Passport - James Ibori – 04/08/1958

DESCRIPTION SIGNALEMENT	
Bearer Titulaire	
Profession	POLICE CONSULTANT
Place and date of birth	MOSOGAR
Lieu et date de naissance	04-08-58
Height	1.74 M.
Taille	
Colour of eyes	BROWN
Couleur des yeux	
Colour of hair	BLACK
Couleur des cheveux	
Special peculiarities	NONE
Signes particuliers	
Thumb print of bearer	
Empreinte	
	
	
Name of bearer	Mr. O. J.
Nom du titulaire	IBORI

Changed date of birth to conceal convictions for US Visa & election to Governor



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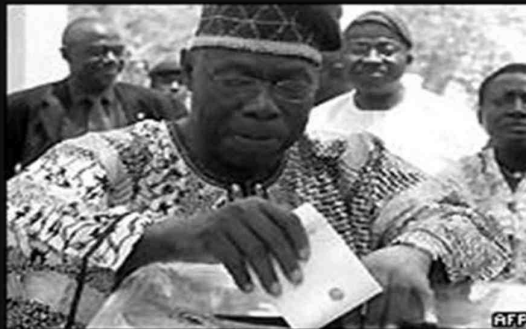
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Economic and Financial Crimes Commission

Commissioned by Former President Obasanjo to tackle corruption within Nigeria in 2002.



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CODE OF CONDUCT BUREAU

Maintain a high standard of public morality in the conduct of Government Business and to ensure that the actions and behaviour of public officers conform to the highest standard of public morality and accountability.

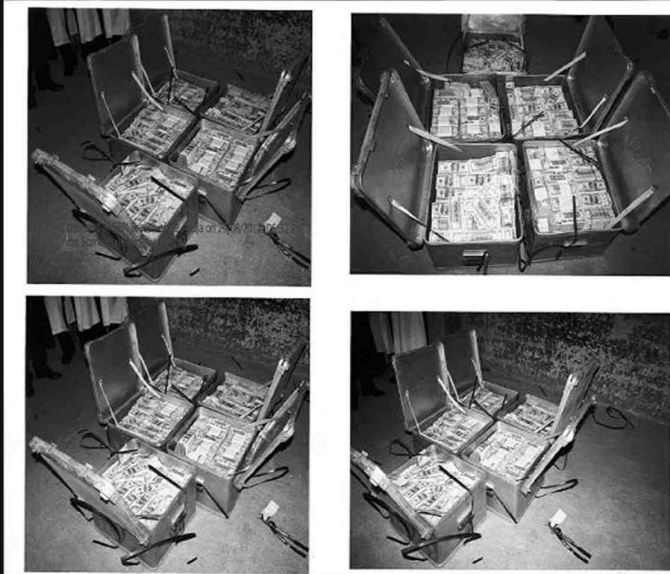


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Attempted Bribery - EFCC Chairman



- Ibori attempted to bribe Ribadu with \$15 million USD
- Subject to forfeiture in Nigeria



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Enabler - Bhadresh Gohil



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42 Great Ground, Shaftsbury Dorset



Property known to have been purchased in 2005 by Theresa and James IBORI as it was close to Port Regis Private School, where their children were being privately educated. Conveyancing conducted by GOHIL.

This property was paid for in cash via a third party HSBC Bank cheque for £311,000.00 from Udo ONUIGBO. No Due diligence conducted by Solicitors



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IBORI purchased a Mercedes 'Maybach' for €400k



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GOHIL structured a contract for the purchase of a private jet aircraft for IBORI.

- **Known that the EDO State Nigerian Governor owned a Bombardier Jet**
- **In order to 'compete' IBORI instructed GOHIL to buy a bigger and better one for him!**



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Associate – Mistress

Udoamaka Onuigbo outside Southwark Crown Court



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Udo's front 'Companies'

- Sagicon Nigeria Limited
 - Rivvbed Nigeria Limited
 - Saagaris Furniture Limited
- Only these three 'companies' tendered for contracts with Delta State with the head office being.....



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Sagicon Nigeria Limited Company HQ - Lagos



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**Vehicle driven by OKORONKWO in Lagos.
Purchased in Florida with Delta State money.
Link through VIN to
4 armoured vehicles purchased with
Rivvbed inflated contracts and authorised by IBORI.**



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Enabler – Offshore Portfolio - Guernsey



Elias Preko – Ghanaian Ex- Banker Goldman Sachs



Set up portfolio for Ibori in Guernsey

Failed to open account at Goldman Sachs

Portfolio received \$5 million USD from Sagicon (Awarded Delta Contracts)

1997 - Opened Abacha account at GSI



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Properties James and Theresa IBORI

South
Africa



Dorset
UK



Nigeria



Hampstead
London

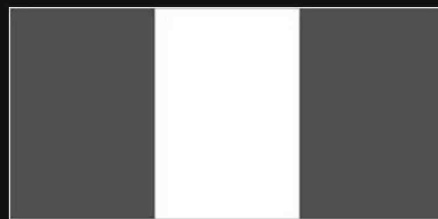


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Convictions



The Mistress
Udoamaka Onuigbo
5yrs & repay £2.7 million



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Convictions



Sister
Christine Ibori-Ibie
5 yrs imprisonment &
Repay £876,000



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Convictions

Wife



Theresa IBORI
5 yrs imprisonment &
Repay £5.1 million



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Convictions

Solicitor



Bhadresh Gohil
10yrs Imprisonment
Realisable assets
£40m



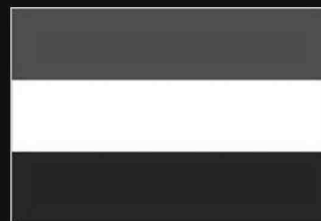
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Convictions

- **The Fiduciary Agent - UK**



Bert De Boer
30 months imprisonment
To pay £159,898.80



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Convictions

The Fiduciary Agent - Jersey



Daniel McCann
30 months imprisonment
To pay £45,114.12



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Convictions

The Merchant banker



Ellias Preko
4.5 years Imprisonment
Confiscation awaits
Assets in Ghana



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Convictions

The Principal



James IBORI
13 years Imprisonment
Known Assets £42m
Hidden £250m +



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Pre Conviction – James Ibori



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Extradition from Dubai - Heathrow - 2012



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Any questions?



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Freedom of Information Act		
Protective Marking - RESTRICTED		Publication Scheme N:
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Summary: Seoul Presentation		
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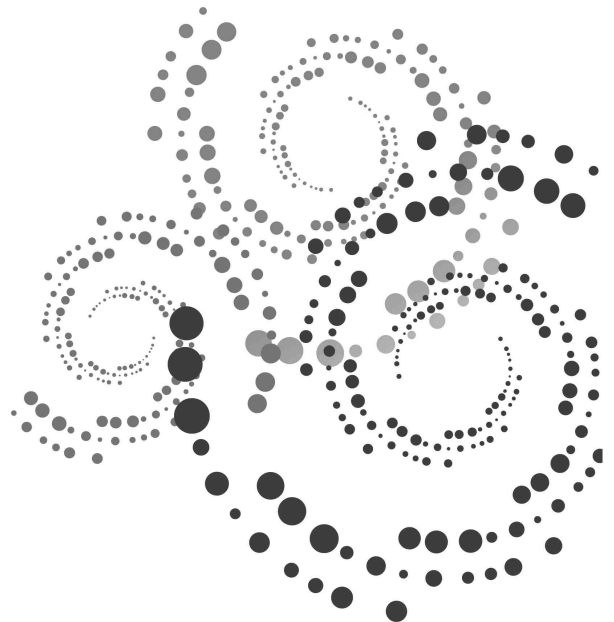
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**Korea-UK
Anti-Corruption Seminar**

03

Protection of whistleblowers





Korea's whistleblower protection systems

■ **Kyung-hee Ju**

Senior Deputy Director of Public Interest Whistleblowing
Policy Division, ACRC, Korea

Korea's Whistleblower Protection Systems

Kyung-hee Ju

Senior Deputy Director of Public Interest Whistleblowing
Policy Division, ACRC, Korea



ACRC Anti-Corruption &
Civil Rights Commission

Contents

- I Overview
- II Korea's whistleblower protection systems
- III Major whistleblowing cases
- IV Conclusion



ACRC Anti-Corruption &
Civil Rights Commission

I. Overview

Public interest whistleblowing



Watergate Scandal
(U.S., 1972)



Piper Alpha Accident
(U.K., 1989)

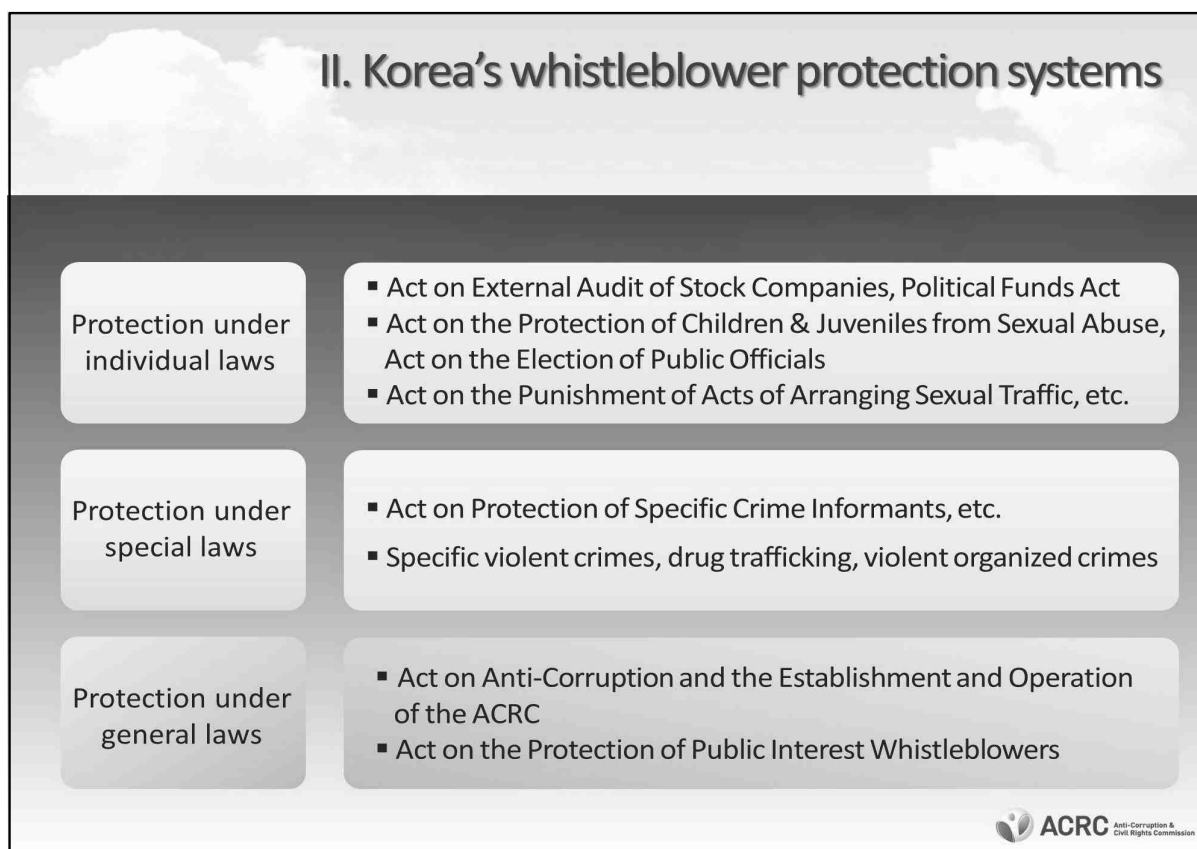
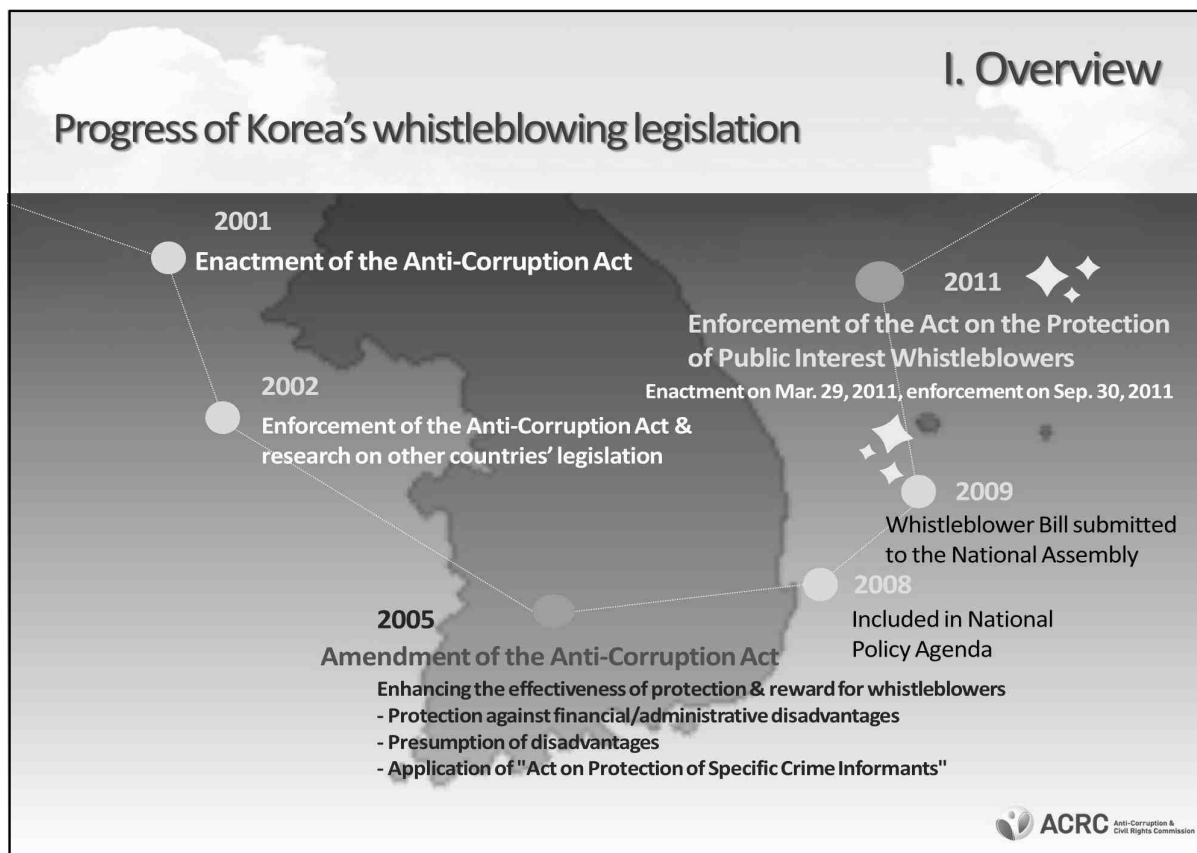


Disclosure of toxic spills
in the Han River
(Korea, 2000)

I. Overview

Whistleblowing laws in other countries





II. Korea's whistleblower protection systems

Reporting corruption vs. public interest violation

	Corruption	Public interest violation
Laws	Act on Anti-Corruption and the Establishment & Operation of ACRC (Enforcement on Jan. 25, 2002)	Act on the Protection of Public Interest Whistleblowers (Enforcement on Sep. 30, 2011)
Subjects	<ul style="list-style-type: none"> Corruption related to public officials' performance of duties Corruption related to contracts budget & properties of public agencies Forcing, recommending or suggesting the above acts 	Violation of public health, safety, the environment, consumer interests & fair competition → Breaches of 180 laws
Reporting agencies	ACRC, investigative authorities, Board of Audit & Inspection, etc.	Companies, competent public agencies, National Assembly members, ACRC, investigative authorities, BAI, etc.
Informant	Anyone including foreigners	Anyone including foreigners
Disclosure	Report with real name	Report with real name

II. Korea's whistleblower protection systems

Guarantee of confidentiality



Prohibition of disclosure of the whistleblower's identity without consent



Examination on disclosure of the whistleblower's identity & request for disciplinary action against those involved



Request for disciplinary action for breaching the confidentiality obligation & criminal punishment for violators

Personal protection



Request for protective steps

Chief of the police agency



Providing a safe house for a certain period

Escort for attendance & return as a testifier or witness

Keeping guard for a certain period

Periodic patrolling of the neighborhood

II. Korea's whistleblower protection systems

Guarantee of employment

- **Prohibition of disadvantage in employment status** including dismissal
- **Prohibition of administrative disadvantage** including cancellation of permit or license
- **Prohibition of financial disadvantage** including revocation of a contract



Prohibition of disadvantageous action against whistleblowers & criminal punishment for violators



Mitigation of culpability

- Mitigation/remission of punishment
- Exemption from the obligation of confidentiality
- Prohibition of the whistleblower's claiming damages caused by whistleblowing



II. Korea's whistleblower protection systems

Rewards & awards

	Reporting of corruption	Public interest whistleblowing
Rewards	Increasing or recovering revenues of a public organization * Up to KRW 2 billion , 4-20% of the assets to be recovered	Increasing or recovering revenues of a public organization * Up to KRW 1 billion , 4-20% of the assets to be recovered
Relief money	 -	Damage caused due to whistleblowing • Expenses for physical or psychological treatment, moving caused by a job transfer, litigation procedures, etc.
Awards	Bringing financial benefits or preventing financial damage to a public organization, or serving the public interest	- 

II. Korea's whistleblower protection systems

Protection for whistleblowers

[Protection for reporters of corruption]

Year	Total	'02-'05.	'06.	'07.	'08.	'09.	'10.	'11.	'12.	'13.
Total	181	37	15	17	20	14	13	11	27	27
Employment status	146	30	12	15	18	12	9	11	19	20
Personal safety	22	6	2	1	2	2	3	-	2	4
Confidentiality	13	1	1	1	-	-	1	-	6	3

[Protection for public interest whistleblowers]

Year	Total	'11.	'12.	'13.
Total	32	6	10	16
Employment status	23	4	6	13
Personal safety	4	-	3	1
Confidentiality	5	2	1	2

(Unit: No. of cases)

III. Major whistleblowing cases

Reporting corruption cases

Case 1.
Embezzlement
of travel expenses
by a research
institute

Receiving travel expenses without going on a business trip;
failure to return the remaining expenses despite reduced travel dates
- Suspended prosecution against 9 persons, disciplinary action against 135 persons, recovery of travel expenses of KRW 33.22 million
→ KRW 6.44 million reward

Case 2.
Defraudation
of the sewer
pipe installation
cost

Defrauding of KRW 5.5 billion for installation of sewer pipes
by falsely charging the cost for installation of temporary structures
- Imprisonment of 7 persons, recovery of construction cost of KRW 5.5 billion
→ KRW 405 million reward

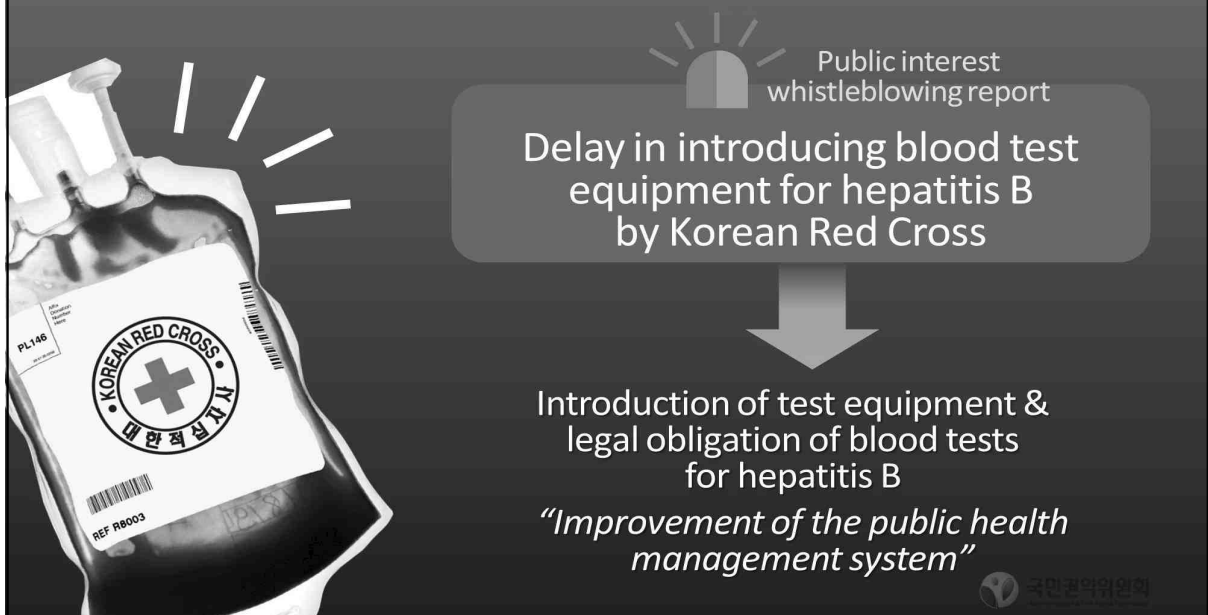
III. Major whistleblowing cases

Case 1: public interest whistleblowing



III. Major whistleblowing cases

Case 2: public interest whistleblowing



Further improvements

VI. Conclusion

Strengthening protection for whistleblowers

- Reporting of corruption: suspension of disadvantageous action, request for mitigation of culpability
- Public interest whistleblowing: examination of the disclosure of whistleblower information, expansion of the scope for mitigation of culpability

Amendment of Act on Protection of Public Interest Whistleblowers (Submitted to National Assembly in Sep. 2013)

- Increase in the number of applicable laws (180 → 280)
- Imposition of a compulsory performance charge for failure to take protective steps
- Introduction of awards and dual liability

Unification of whistleblower protection laws

- Improving the current legal systems divided into reporting of corruption and public interest whistleblowing

Improving disclosure mechanisms

- Disclosure system for individual organizations (administrative agencies, investigative authorities, private companies, National Assembly members, etc.)
- Integrated information system



Thank You





“Making Whistleblowing Work”

■ **Sam Bereket**

Legal Research Officer, Public Concern at Work, UK

Making **whistleblowing** work



Seoul

9th December 2014

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Public Concern at Work

PCaW is an independent charity, founded in 1993.

We provide:

- **free confidential advice** to people concerned about wrongdoing in the workplace who are unsure whether or how to **raise their concern**
- **training** to organisations on policy and the law concerning whistleblowing

We also:

- campaign on **public policy**
- promote **public interest whistleblowing** laws

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Whistleblowing now

- Financial crisis of 2007–08
- Scandals in the health and care, media, finance and retail sectors
- National security whistleblowers Chelsea Manning and Edward Snowden
- Bribery Act 2010:
 - A new offence under section 7 which can be committed by **commercial organisations which fail to prevent** persons associated with them from bribing another person on their behalf
 - An organisation that can prove it has **adequate procedures** in place to prevent persons associated with it from bribing will have a defence to this offence
 - What do organisations need to do to rely on this defence?

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Advice line

We have advised over **17,000** whistleblowers to date.

Top concerns: financial malpractice, public safety and patient safety.

Top industries:



Source: PCaW

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Myth 1: Whistleblowers are persistent

- The largest portion of whistleblowers (**44%**) raise a concern only once and just a further **39%** go on to raise their concern a second time.

Myth 2: Whistleblowing is always going outside

- **83%** of whistleblowers blow the whistle internally.
- Revealed by our **YouGov 2013** survey: The majority of working adults in Great Britain (**83%**) said if they had a concern about possible corruption, danger or serious malpractice at work they would raise it with their employers.

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Myth 3: Whistleblowers are always trashed

- **60%** of those who called our advice line did not report any response from management (either negative or positive).
- Of the **40%** who told us of a response, the most common action is **formal action short of discipline**.
- Our **YouGov 2013** survey: an overwhelming majority of British workers (72%) view the term whistleblower as positive or neutral

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EY Business Survey headlines

- **93%** of respondents said they have formal whistleblowing arrangements in place
- However, **1 in 3** think their whistleblowing arrangements are ineffective
- **54%** said they do not train key members of staff designated to receive concerns
- **44%** confuse personal complaints with whistleblowing
- **1 in 10** say their arrangements are not clearly endorsed by senior management

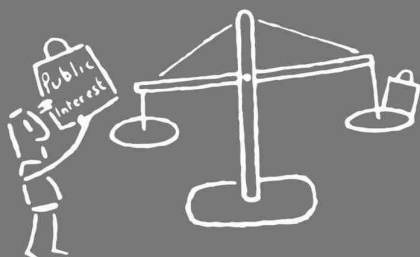
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Transparency International's 2014 Anti-Corruption Report

- Most of the companies surveyed were committed to reporting on their measures to combat corruption
- All the UK companies surveyed publicly commit to compliance with anti-corruption laws and have whistleblowing measures as well as either codes of conduct or anti-corruption policies applying to all employees

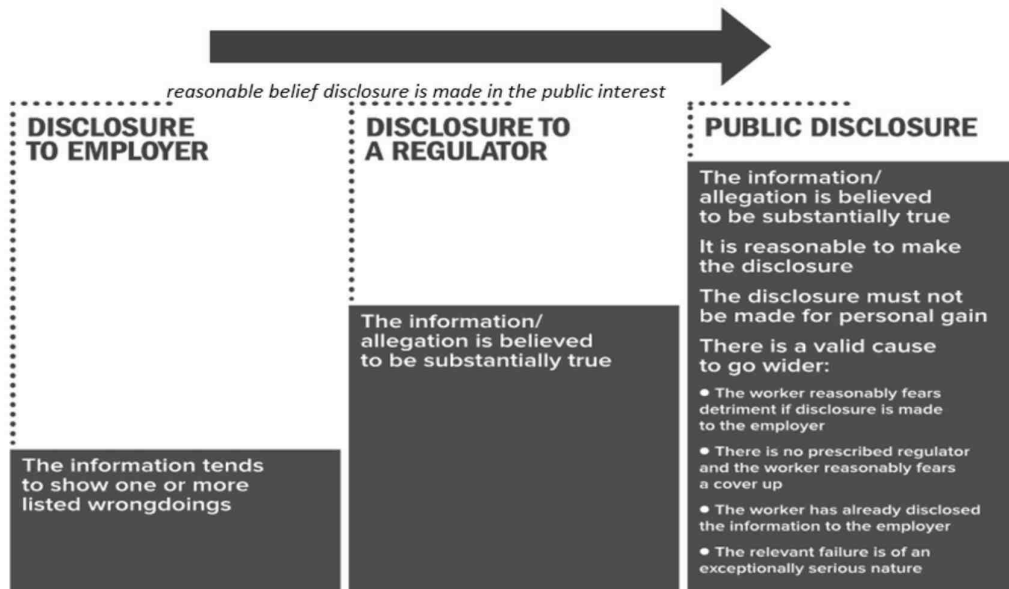
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Public Interest Disclosure Act



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The Public Interest Disclosure Act 1998



Lord Nolan's praise for 'so skilfully achieving the essential but delicate balance between the public interest and the interest of the employers'.

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Changes to PIDA

The following changes came into force on 25 June 2013

Public interest test to replace good faith test for a disclosure to be "protected" under PIDA

Good faith will only be relevant to compensation when a claim is won (the tribunal **may** deduct **up to** 25% of the compensation if found the claimant made the disclosure in bad faith)

Liability for co-workers who victimise whistleblowers.

- Employers can be held vicariously liable for these employees.
- Reasonable steps defence for employers.

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Whistleblowing Commission: Key Recommendations

- The Secretary of State to adopt the Commission's Code of Practice
- This Code of Practice to be taken into account by courts and tribunals when whistleblowing issues arise
- Regulators to require or encourage the adoption of this Code of Practice by those they regulate
- Regulators to be more transparent about their own whistleblowing arrangements
- Specific provisions against the blacklisting of whistleblowers
- Strengthening anti-gagging provisions in the law
- Specialist training for tribunal members to handle whistleblowing claims effectively
- Strengthening and clarifying the legal protection for whistleblowers

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Whistleblowing Commission: Code of Practice (1)

- Consult employers, staff and representatives when developing whistleblowing arrangements. Whistleblowing arrangements should be clear, accessible and well-publicised
- Identify types of concerns, giving relevant examples
- Include a list of persons and bodies with whom concerns can be raised
- Require that a worker raising a concern is told how and by whom the concern will be handled, how long the investigation will take and, when appropriate, the outcome of the investigation
- Provide assurances to whistleblowers regarding victimisation and confidentiality; sanction those who victimise whistleblowers
- Entitled to independent advice

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Whistleblowing Commission: Code of Practice (2)

- Secure the effective implementation of the whistleblowing arrangements
- Identify who has overall responsibility for the implementation of the whistleblowing arrangements
- Ensure independent oversight and review of the whistleblowing arrangements by the Board, the Audit or Risk Committee or equivalent body
- Include information about whistleblowing in annual reports
- Conduct periodic audits of the effectiveness of whistleblowing arrangements

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Government consultation response

- **A duty on regulators to publish information** about whistleblowing concerns raised with them
- **Improved guidance** from Government for those facing a whistleblowing dilemma and help for businesses to deliver best practice;
- **Changes to the scope of the whistleblower protection** to include student nurses (but not other categories of workers such as non-executive directors, public appointments, volunteers, interns and those working in the armed forces and national security services);
- **Review of the Employment Tribunal** regulatory referral process.

A missed opportunity for meaningful reform?

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Drafting effective whistleblowing policies

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Introduction	
 Introduction	Why protect whistleblowers
	Why have whistleblowing policies
	Relevant laws
	Tips for drafting effective whistleblowing policies
	Conclusion

Background: why protect Whistleblowers?

- Stimulate cultural change
- Corporate social responsibility
- Internal control of risk
- Avoiding external disclosures
- Avoiding criminal liability
- Avoiding “internal” litigation and damage to staff morale

Relevant Laws – an overview



Principles 5 and 6: Communication, Monitoring and Review

Principle 5: Communication

- Anti-bribery procedures must be communicated internally and externally.
- Businesses should consider both general training (e.g. for new employees) and tailored training to those in special areas.
- Employees should be able to raise concerns or provide suggestions for improvement.

Principle 6: Monitoring and review

Regular measures could include staff surveys, questionnaires and feedback from training and regular management reports.

- Organisations may wish to consider external reviews.
- Procedures should be reviewed in response to changes to the nature and scale of activity.
- External factors such as governmental changes, allegations of bribery or negative press reports might also lead to changes in procedures.

Drafting Effective Whistleblowing Policies

Convey seriousness and importance and encourage workers to raise concerns early.

Ensure workers know who to approach and have clear procedures in place.

Make it clear that whistleblowers will be defended and provide access to further sources of advice.



Drafting Tips



1 Keep it simple.

2 Consider what disclosures should be covered.

3 Encourage early disclosure.

4 Consider disclosures to regulators or other external organisations.

Protecting Whistleblowers



1 Provide support and guidance.

2 Enable confidential and anonymous disclosure.

3 Allow workers to be accompanied and make clear records.

4 Provide details of how investigations will be conducted.

5 Commit to feedback and corrective action

6 Provide options for escalation if unsatisfied.

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