

KOREA (SOUTH)

Little or no enforcement

2.9% of global exports

Investigations and cases

In the period 2016-2019, South Korea opened at least one investigation, commenced two cases and concluded five cases with sanctions.

In 2017, South Korean prosecutors in Seoul raided the offices of **SK Engineering and Construction**, an affiliate of South Korea's third largest conglomerate **SK Group**. They collected hard drives and documents with information on SK's construction contracts for the US military base Humphreys Camp, in connection with their investigation. SK had constructed multiple buildings on the base, along with road, water and power networks. In 2017, the US Department of Justice, charged Duane Nishiie, at the time a contracting officer for the US Army Corps of Engineers, and Seung-Ju Lee, a former Korean Ministry of Defence official, with multiple crimes related to directing over US\$400 million worth of contracts to SK, in exchange for US\$3 million in bribes.¹ Prosecutors accused the two of concealing the funds in bank accounts run by Lee. The company pleaded guilty to fraud charges in the US in June 2020. In another major corruption case involving the US Navy, in May 2020, the owner of Korean ship husbanding services provider, **DK Marine**, pleaded guilty in the United States to paying bribes to US officials in exchange for proprietary information and contracts.²

In another case in the United States, **Samsung Heavy Industries**, a Korean engineering company, entered into a deferred prosecution agreement

(DPA) with the US Department of Justice in 2019 to settle violations of the Foreign Corrupt Practices Act in Brazil. It agreed to pay a fine of US\$75 million, to be shared between US and Brazilian authorities.³ The company admitted to paying approximately US\$20 million in commissions to a Brazilian intermediary, knowing that some of it would be paid to officials at Petrobras to obtain improper business advantages.

A media exposé in 2016 by Australian newspaper *The Age* made serious allegations about the conduct of several Korean companies in Algeria, based on leaked emails and documents.⁴ Allegations were also made of Unaoil-orchestrated foreign bribery relating to a Korean-based company's dealings in Libya and Qatar.⁵ In one case summarised by the *Korea Times*: "Samsung Engineering and a consortium led by **Hyundai Engineering & Construction** and **Hanwha** and **Daewoo** were implicated in a rigged tender process to get a major share of a [US]\$2 billion Algerian contract to restore two decaying oil refineries [...] Leaked Unaoil emails and confidential documents...show how the company started working with Samsung in 2008 when the Korean giant was trying to win contracts for both refineries... In a backroom deal, the competitors formed a consortium to carve up the work, and pay off a Spanish bidder, Tecnicas Reunidas, to 'run dead' in the tender process [...] Unaoil created a 'sharing formula' that generated funds to bribe senior officials from Algeria's state-owned oil company, Sonatrach."⁶

In a story related to the Panama Papers, in 2016, the news agency Newstapa alleged that two shell companies in the British Virgin Islands had connections with major Korean defence contractors. The agency also published information alleging that **KTR**, a Turkish arms dealer, was agent for **Samsung Techwin**, **Hyundai Rotem**, **Hanwha Corporation**, **Poongsan Corporation**, **LIG Next**, and **Daewoo**

¹ <https://www.dw.com/en/us-military-base-in-south-korea-mired-in-corruption-scandal/a-41646903>; <https://www.justice.gov/opa/pr/two-men-charged-bribery-scheme-related-korean-base-relocation-1>; <https://www.justice.gov/opa/pr/south-korean-engineering-company-pleads-guilty-defrauding-us-army-agrees-pay-684-million>

² <https://www.justice.gov/opa/pr/former-senior-us-navy-employee-charged-role-bribery-conspiracy-and-lying-investigators>; <https://www.defensenews.com/naval/2019/07/30/korean-fat-leonard-feds-probe-new-us-navy-corruption-case-in-asia/>;

³ <https://www.justice.gov/opa/pr/samsung-heavy-industries-company-ltd-agrees-pay-75-million-global-penalties-resolve-foreign>

⁴ <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-3/koreans.html>

⁵ <https://www.theage.com.au/interactive/2016/the-bribe-factory/day-3/koreans.html>

⁶ https://www.koreatimes.co.kr/www/tech/2019/12/129_202009.html

International.⁷ After Newstapa's original story, the Korea Customs Service and the Prosecutors' Office reportedly opened an investigation and subsequently convicted a former Korean general and a former executive of a defence contractor on bribery charges.⁸ According to the news report, the bribery was in return for meddling in a suspicious deal between a domestic defence contractor and KTR.⁹

Recent developments

There were two recent amendments to the Act on Combatting Bribery of Foreign Public Officials in International Business Transactions, which criminalised foreign bribery. A 2018 amendment expanded the scope of foreign bribery to include bribery through a third party.¹⁰ A 2020 amendment, which takes effect in May 2020, increases the maximum fines, expands the scope of the aggravated penalty and expands wire-tapping powers.¹¹

In January 2020, the Korean National Assembly passed a bill redistributing the investigative authority between the prosecutors and the police, and limiting the prosecutors' direct investigative authority to specific corruption and white-collar crimes, including foreign bribery.¹²

Transparency of enforcement information

There are no publicly available statistics on foreign bribery enforcement. The official website of the Supreme Prosecutor's Office of the Republic of

Korea provides statistics on general crimes, but not on foreign bribery or general bribery.¹³ Statistics on mutual legal assistance (MLA) are not published.

All court decisions are published in full on the Supreme Court of Korea's website, but the names of the defendants are not disclosed in the published decisions, including when the defendants are companies.¹⁴ Other case resolutions, such as suspended prosecutions, are not publicly available.

Beneficial ownership transparency

Korea does not have a central beneficial ownership register. Competent enforcement authorities may not be able to obtain beneficial ownership information in a timely manner through available mechanisms.¹⁵ One of these mechanisms, applicable only to publicly listed companies, is the Corporate Filings Data Analysis, Retriever and Transfer System.¹⁶ The Financial Action Task Force's 2020 Mutual Evaluation Report for South Korea warns that "obtaining BO [beneficial ownership] information is more difficult where the corporate structure is particularly complex or involves foreign ownership". As it relates to trusts, access to beneficial ownership information depends on the type of legal arrangement involved. Information on commercial trusts is generally available from the trustee within several days, while information on civil trusts (much rarer) and on foreign trusts is harder to obtain.¹⁷

⁷ <https://newstapa.org/article/5n-jP>

⁸ <https://news.kcij.org/83>

⁹ <https://newstapa.org/article/5n-jP>

¹⁰ <http://www.acrc.go.kr/en/board.do?command=searchDetail&method=searchDetailViewInc&menuId=020501&conflid=62&conConflid=62&conTabId=0&currPageNo=2&boardNum=77241>

¹¹ [http://law.go.kr/법령/국제상거래에있어서외국공무원에대한뇌물방지법/\(15972\);](http://law.go.kr/법령/국제상거래에있어서외국공무원에대한뇌물방지법/(15972);) <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/south-korean-anti-graft-reforms-alone-wont-resolve-poor-enforcement-record>

¹² <https://news.joins.com/article/23681173>

¹³ <http://www.spo.go.kr/spo/index.jsp>

¹⁴ National Assembly Law Library, Legal Information Services, <http://Law.nanet.go.kr>; Supreme Court of Korea, <https://www.scourt.go.kr/supreme/supreme.jsp>

¹⁵ <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Korea-2020.pdf>

¹⁶ <https://dart.fss.or.kr>

¹⁷ <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Korea-2020.pdf>

Inadequacies in legal framework

The sanctions available for natural and legal persons convicted of foreign bribery in South Korea are not adequate and should be increased. The OECD WGB has also noted in its Phase 4 Report on Korea in 2018 that “the current investigation time limit and statute of limitations for legal persons have also impeded effective foreign bribery enforcement”.¹⁸ Korea’s anti-money laundering framework could be enhanced “by extending reporting requirements to appropriate non-financial entities, including lawyers, accountants and auditors, to report suspected money laundering transactions related to foreign bribery”.

Inadequacies in enforcement system

In December 2018, the OECD WGB published its Phase 4 Report on Korea, announcing that “enforcement of foreign bribery has weakened since 2011 and the enforcement rate does not correspond to the significant level of exports and outward investment by Korean companies in countries and sectors at high risk for corruption”.¹⁹ One of the reasons for this is that the capacity of Korea’s law enforcement agencies to proactively detect and investigate foreign bribery is limited and they show “a concerning lack of initiative” according to the OECD WGB in 2018.

The fragmented approach to foreign bribery enforcement, with both prosecutors and police playing a role in investigations and a lack of guidelines to clarify their roles, was also a concern raised by the OECD WGB,²⁰ as was the use of suspended prosecution.²¹ Decisions to suspend prosecution are taken solely by prosecutors and are not subject to judicial review. However, involved parties can appeal these decisions to the Constitutional Court and prosecutors may reinstate proceedings if circumstances change. A further problem cited is that prosecutors must decide

whether to prosecute within three months, which could explain their unwillingness to file MLA requests with other countries.²² A Korean expert says the lack of enforcement “has to do with the South Korean judiciary being too tolerant in enforcing economic crimes”.²³

Recommendations

- Improve public access to enforcement information
- Create a public centralised registry for beneficial ownership information
- Provide for adequate sanctions for natural and legal persons
- Ensure that the current investigation time limit and the timeframe for prosecuting companies for foreign bribery are sufficient to allow for effective foreign bribery enforcement
- Enhance detection capacities by mobilising government agencies and private-sector professionals with potential for detecting foreign bribery²⁴
- Address the fragmented approach to investigating foreign bribery and clearly define the roles of the police and prosecutors
- Extend the deadline for prosecutors to investigate foreign bribery cases
- Clarify criteria and increase transparency of decisions to suspend prosecution in foreign bribery cases and consider reforms to ensure judicial review of all such cases to ensure consistency
- Take a more proactive stance in the use of MLA requests
- Increase resources dedicated to enforcement of foreign bribery regulations and demonstrate greater commitment to investigating and prosecuting the offence.

¹⁸ <http://www.oecd.org/corruption/anti-bribery/OECD-Korea-Phase-4-Report-ENG.pdf>

¹⁹ <http://www.oecd.org/newsroom/korea-must-enhance-detection-and-reinforce-sanctions-to-boost-foreign-bribery-enforcement.htm>

²⁰ <http://www.oecd.org/newsroom/korea-must-enhance-detection-and-reinforce-sanctions-to-boost-foreign-bribery-enforcement.htm>

²¹ <http://www.oecd.org/corruption/anti-bribery/OECD-Korea-Phase-4-Report-ENG.pdf>

²² <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/south-korean-anti-graft-reforms-alone-wont-resolve-poor-enforcement-record>

²³ <https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/south-korean-anti-graft-reforms-alone-wont-resolve-poor-enforcement-record>

²⁴ <http://www.oecd.org/newsroom/korea-must-enhance-detection-and-reinforce-sanctions-to-boost-foreign-bribery-enforcement.htm>