Publication Registration Number
11-1140100-000177-01

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Better
Anti-Corruption & Civil Rights Commission

Compilation of Authoritative Interpretations of the Improper Solicitation and Graft Act

Anti-Corruption & Civil Rights Commission

Message in Celebration of the Publication

It has been two years since the Improper Solicitation and Graft Act was legislated and put into force based on the ardent aspiration of the public for building a fair and reliable society.

The Act has ignited a drastic change in the way our society perceives and responds to illegal and unjust requests and excessive entertainment, which had been accepted as customary practices in the past, by providing a watershed moment to reflect on ourselves against the yardstick of conscience and common sense.

According to the survey on the public awareness of the Act conducted in celebration of the second anniversary of its enforcement, an absolute majority of citizens and public officials were found to view the Act as a positive drive for the eradication of irregular and corrupt practices plaguing our society.

In recognition of this aspiration and the needs of the times, the Anti-Corruption & Civil Rights Commission has remained committed to helping the Act take firm root by amending pertinent laws and institutions, promoting internal reporting, reinforcing education and PR activities, and increasing related penalties.

As the control tower of anti-corruption policy, the Commission has faithfully pushed ahead with 50 tasks set by the pan-governmental Five-Year Comprehensive Anti-Corruption Plan aimed at placing Korea within the ranks of the world's 20 “cleanest” countries by 2022, while actively taking part in the establishment of comprehensive measures to root

out the abuse of power in the public sector. We have also strived to address current corruption challenges in a timely manner by looking into the overseas business travel practices of government agencies and announcing countermeasures.

We laid the legal and institutional foundation for the promotion of anti-corruption and integrity policies by proposing the amendment of the Protection of Public Interest Reporters Act and the enactment of the Act on Prohibition of False Claims of Public Funds and Recovery of Illicit Profits. We have taken the lead in the innovative anti-corruption campaign in cooperation with the private sector by launching the Public-Private Consultative Council for Transparent Society with participation from the public sector, economic circles, civic society, academic circles, and the press.

In addition, we have carried out complementary measures to ensure the substantive implementation of the Improper Solicitation and Graft Act based on opinions collected from diverse fields and results of studies conducted by expert organizations.

We listened to the public's request for flexibility for the agricultural, livestock, and fishing industries and readjusted the ceiling amount permitted for a gift of agricultural and fishery products and processed agricultural and fishery products from KRW 50,000 to KRW 100,000. The ceiling amount permitted for congratulatory and consolatory payments (for weddings, funerals, etc.) was downwardly adjusted from KRW 100,000 to KRW 50,000 in consideration of the fact that many feel burdened by this custom. We set the ceiling amount permitted for a flower arrangement sent on a congratulatory or consolatory occasion at KRW 100,000.

While laying the firm groundwork for the implementation of the Act, we set up the Improper Solicitation and Graft Act Interpretation Task Force consisting of pertinent government ministries and the Improper Solicitation and Graft Act Interpretation Advisory Panel consisting of experts of diverse fields to come up with consistent standards for different issues and expeditiously respond to the public's inquiries and concerns.

We published the Compilation of Authoritative Interpretations of the Improper Solicitation and Graft Act comprising an in-depth analysis of over 18,000 cases of inquiries for interpretations of the Act to set interpretation standards for areas of focus and reflect the amendment of the Enforcement Decree of the Act and on new decisions made by the Improper Solicitation and Graft Act Interpretation Advisory Panel, etc.

This publication is designed to help readers gain a better understanding of the Act without separately referring to the statute book or commentary book by providing a compilation of the important provisions of the Act and other acts, as well as respective notes, at the beginning of each chapter before moving on to the cases in detail. We also ensured to select and present cases best suited for enhancing the understanding of the Act and most frequently inquired about to make this publication more useful.

The inquiries are compiled by subject (targets of the Act; improper solicitation; provision and acceptance of money, goods, etc.; and outside lectures, etc.), and each inquiry has notes on major issues attached to help readers grasp important information at-a-glance.

I sincerely hope that the publication of the Compilation of Authoritative Interpretations of the Improper Solicitation and Graft Act can serve as a cornerstone for materializing a fairer, cleaner society by promoting a better understanding and active implementation of the Act by both public officials, etc., and the public and helping the Act take firm root.

April 2019

Chairperson of the Commission

Pak Un Jong

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Compilation of Authoritative Interpretations of the Improper Solicitation and Graft Act

I

Targets of the Improper Solicitation and Graft Act

1. Important Provisions and Notes
2. Cases

1. Important Provisions and Notes

Article 2 (Definitions)
Article 11 (Restriction on Actions related to Public Duties by Private Persons Performing Public Duties)
Article 8 (4) (Spouses of Public Servant, Etc.)

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

1. The term "public institution" means any of the following institutions and organizations:
   (a) The National Assembly, courts, the Constitutional Court, Election Commissions, the Board of Audit and Inspection, the National Human Rights Commission, central administrative agencies (including institutions affiliated with the office of the President and the office of the Prime Minister) and institutions affiliated therewith, and local governments;
   (b) Organizations related to public service as set forth in Article 3-2 of the Public Service Ethics Act;
   (c) Institutions set forth in Article 4 of the Act on the Management of Public Institutions;
   (d) Schools of each level established under the Elementary and Secondary Education Act, the Higher Education Act, the Early Childhood Education Act, or any other Act or subordinate statute; and educational foundations established under the Private School Act;
   (e) Press organizations defined by subparagraph 12 of Article 2 of the Act on Press Arbitration and Remedies, etc. for Damage Caused by Press Reports.
2. The term "public servant, etc." means any of the following public servants or persons engaging in public duties:
   (a) Public officials specified by the State Public Officials Act or the Local Public Officials Act and persons recognized by other Acts as public officials in their qualification, appointment, educational training, service, remuneration, guarantee of status, etc.;

(b) Heads of organizations related to public service and institutions described in subparagraphs 1 (b) and (c), and executive officers and employees thereof;
(c) Heads and faculty members of schools of each level described in subparagraph 1 (d), and executive officers and employees of educational foundations described in subparagraph 1 (d);
(d) Representatives, executive officers, and employees of the press organizations described in subparagraph 1 (e).

Article 11 (Restriction on Actions related to Public Duties by Private Persons Performing Public Duties) (1) Articles 5 through 9 shall apply mutatis mutandis to the performance of public duties by any of the following persons (hereinafter referred to as "private person performing public duties"):

1. A member, who is not a public servant, of any committee established under the Act on the Establishment and Management of Councils, Commissions and Committees under Administrative Agencies, or any other Act or subordinate statute;
2. A juridical person or an organization, an organ thereof, or an individual to which authority has been delegated or entrusted by a public institution under Acts or subordinate statues;on to public duties in accordance with Acts or subordinate statutes.
3. An individual dispatched from the private sector to a public institution in order to perform public duties;
4. An individual, a juridical person, or an organization that conducts deliberation or assessment in relation to public duties in accordance with Acts or subordinate statutes.

(2) Where Articles 5 through 9 apply mutatis mutandis to private persons performing public duties under paragraph (1), "public servant, etc." shall be construed as "private person performing public duties"; and "head of a/the relevant institution" shall be construed as "person who falls into any of the following categories":

1. A member of a committee described in paragraph (1) 1: The head of the public institution where the committee is established;
2. A juridical person or an organization, an organ thereof, or an individual described in paragraph (1) 2: The head of the supervisory institution or public institution that delegates or entrusts the authority;

3. An individual described in paragraph (1) 3: The head of the public institution where the individual is dispatched;
4. An individual, a juridical person, or an organization described in paragraph (1) 4: The head of the public institution for which the said public duties are performed.

Article 8 (Prohibition of Receipt of Money, Goods, etc.) (4) No spouse of a public servant, etc. shall, in connection with the duties of the public servant, etc., receive, request, or promise to receive any money, goods, etc. that public servants, etc. are prohibited from accepting (hereinafter referred to as "prohibited money, goods, etc.") under paragraph (1) or (2).

[1] Target Public Institutions

- National Assembly, courts, Constitutional Court of Korea, National Election Commission, Board of Audit and Inspection of Korea, National Human Rights Commission of Korea, central administrative agencies and their affiliated institutions, local governments, and Offices of Education
- Public service-related organizations set forth in Article 3-2 of the Public Service Ethics Act and public institutions stipulated in Article 4 of the Act on the Management of Public Institutions
- Schools of different levels including preschools, elementary schools, middle schools, high schools, and universities established under pertinent acts and subordinate statutes and educational foundations established under the Private School Act
- Press organizations defined in Subparagraph 12 of Article 2 of the Act on Press Arbitration and Remedies, Etc., for Damage Caused by Press Reports (broadcasting business operators, newspaper business operators, business operators publishing magazines and other periodicals, news communications business operators, and online newspaper business operators)

[2] Target Individuals

(1) Public Servant, Etc.

- Public officials specified in the State Public Officials Act and Local Public Officials Act and those recognized by other acts as public officials in terms of appointment, service, guarantee of status, etc.
  - ※ Judicial trainees (Court Organization Act), public health doctors (Act on Special Measures for Health and Medical Services in Agricultural and Fishing Villages, Etc.), and registered security guards (Registered Security Guard Act)
  - ※ Public officials in political service, such as National Assembly members and local government council members
- Heads, executives, and staff members of public service-related organizations pursuant to Article 3-2 of the Public Service Ethics Act and to Article 4 of the Act on the Management of Public Institutions
  - ※ Executives (directors and auditors) include both standing and non-standing directors, and staff members encompass non-regular employees including contract employees.
- Heads and school personnel of private schools and executives and staff members of educational foundations
- CEOs, executives, and employees of press organizations

(2) Private Persons Performing Public Duties

- Articles 5 through 9 of the Improper Solicitation and Graft Act shall apply mutatis mutandis to the activities of private persons performing public duties.

- (Article 11 (1) 1 of the Improper Solicitation and Graft Act) A member, who is not a public servant, of any committee established under the Act on the Establishment and Management of Councils, Commissions and Committees under Administrative Agencies or any other act or subordinate statute
  - Acts and subordinate statutes include acts; presidential decrees; ordinances of the Prime Minister; ordinances of the Ministries (including municipal ordinances and rules); and public notices, directives, and guidelines delegated by or based on acts and subordinate statutes
    - ※ School governance committee (Elementary and Secondary Education Act), autonomous committee for countermeasures against school violence (Act on the Prevention of and Countermeasures against Violence in Schools), enrollment fee deliberation committee (Higher Education Act), viewers committee (Broadcasting Act), etc.
- (Article 11 (1) 2 of the Improper Solicitation and Graft Act) A juridical person or an organization, an organ thereof, or an individual to which authority has been delegated or entrusted by a public institution under acts or subordinate statutes
  - Individuals who are members of juridical persons or organizations, such as representatives that act on behalf of juridical persons or organizations, are not included.
    - ※ The Korean Institute of Certified Public Accountants delegated and entrusted with tasks such as the registration and registration cancellation of certified public accountants, etc., pursuant to the Certified Public Accountant Act, Korea Association of Property Appraisers entrusted with tasks of the registration and registration renewal of certified appraisers pursuant to the Act on Appraisal and Certified Appraisers, etc.

- (Article 11 (1) 3 of the Improper Solicitation and Graft Act) Those dispatched from the private sector to public institutions to perform public service
- (Article 11 (1) 4 of the Improper Solicitation and Graft Act) Individuals or juridical persons and groups performing deliberations and evaluations as part of public service based on pertinent acts and subordinate statutes

  ※ Construction supervisors pursuant to the Building Act, designated motor vehicle maintenance business operators pursuant to the Motor Vehicle Management Act, etc.

(3) Spouses of Public Servant, Etc.

- Spouses of public servant, etc., are prohibited from receiving money, goods, etc., "in relation to the duties of public servant, etc."

2. Cases

[1] Whether Recognized as Public Servant, Etc.

	Whether those whose appointment as a public official has been postponed fall under the category of public servant, etc.
Q1	I passed the state civil service examination and postponed my appointment to attend college. The private institute that I attended as a candidate for the examination offered me a scholarship. Does the Improper Solicitation and Graft Act apply to me while my appointment as a public official is postponed?
[A]	Public servant, etc., specified in Subparagraph 2 (a) of Article 2 of the Act refer to public officials prescribed in the State Public Officials Act and the Local Public Officials Act and those recognized by other acts as public officials for their qualification, appointment, educational training, service, remuneration, guarantee of status, etc. As such, those whose appointment as a public official has been postponed as described hereinabove do not fall under the category of Public Servant, Etc., pursuant to Subparagraph 2 (a) of Article 2 of the Act, and the regulations of the Act do not apply to the cases of civilians who are not Public Servant, Etc., being provided with scholarships.

❖ Public officials: Public officials prescribed in the State Public Officials Act and the Local Public Officials Act and those recognized by other acts as public officials for their appointment, service, guarantee of status, etc.

- Public officials in career service (public officials in general service and special service) and public officials in non-career service (public officials in political service and extraordinary civil service)
- Those recognized by other acts as public officials: Judicial trainees (Article 72 of the Court Organization Act), interns (Article 26-4 of the State Public Officials Act), public health doctors (Article 3 of the Act on Special Measures for Health and Medical Services in Agricultural and Fishing Villages, Etc.), and registered security guards (Article 5 of the Registered Security Guard Act)

❖ State Public Officials Act

Article 2 (Categories of Public Officials) (1) The State public officials (hereinafter referred to as "public officials") shall be classified as either public officials in career service or public officials in non-career service.

(2) "Public officials in career service" means public officials appointed based on their performance and general qualifications, whose status is guaranteed, and who are expected to spend their entire lives (referring to a specified period where public officials are appointed for such period of service) as public officials, and such officials shall be classified as follows: 〈Amended by Act No. 11530, Dec. 11, 2012〉

1. Public officials in general service: Public officials in charge of technical or research affairs, or general administration;
2. Public officials in special service: Judges, public prosecutors, foreign service officials, police officers, fire officers, public educational officials, members of armed forces, military service officials, research officers of the Constitutional Court, employees of the National Intelligence Service, and public officials in charge of affairs in special fields, as designated by other Acts as public officials in special service;

(3) "Public officials in non-career service" means public officials, other than those in career service, and such public officials shall be classified as follows: 〈Amended by Act No. 11530, Dec. 11, 2012; Act No. 11690, Mar. 23, 2013〉

1. Public officials in political service:
   (a) Public officials appointed by election, or whose appointment requires approval from the National Assembly;
   (b) Public officials in charge of affairs regarding sophisticated policy decision-making or of assisting such affairs, who are designated by Acts or Presidential Decree (limited to Presidential Decree concerning the organization of the Office of the President, and Office of the Chief of National Security) as in political service;
2. Public officials in extraordinary civil service: Public officials designated by statutes as in extraordinary civil service to perform such assistance duties as secretary, or to perform any specified duties;

Q2	Whether executives and employees of subsidiaries of public institutions fall under the category of Public Servant, Etc. Do executives and employees of a subsidiary of a public corporation designated as a public institution pursuant to Article 4 of the Act on the Management of Public Institutions fall under the category of Public Servant, Etc., that are subject to the Improper Solicitation and Graft Act?
[A]	Public Servant, Etc., who are subject to the Improper Solicitation and Graft Act are those who fall under any of the categories under Subparagraph 2 of Article 2 of the same Act. As such, unless the said subsidiary was designated as a public institution in accordance with Article 4 of the Act on the Management of Public Institutions, executives and employees of the said subsidiary are not subject to the regulations of the Improper Solicitation and Graft Act based solely on its parent company's status as a public institution.

❖ Heads, executives, and staff members of public service-related organizations: Heads, executives, and staff members of public service-related organizations pursuant to Article 3-2 of the Public Service Ethics Act

※ Designated by the Public Service Ethics Committee and listed on the website of the Ministry of Personnel Management (mpm.go.kr)

❖ Heads, executives, and staff members of public institutions: Heads, executives, and staff members of institutions prescribed in Article 4 of the Act on the Management of Public Institutions

※ Designated by the Minister of Economy and Finance and listed on the All Public Information In-One site (alio.go.kr)

❖ Public Service Ethics Act

Article 3-2 (Public Service-Related Organizations) (1) The Public Service Ethics Committee of the Government referred to in Article 9 (2) 8 may designate the following institutions or organizations as public service-related organizations in consideration of the scale of financial support provided by of the Government or local governments, methods of appointing their executive officers, and other relevant matters

1. The Bank of Korea;
2. Public enterprises;
3. Institutions and organizations receiving investments, contributions, or subsidies (including re-investments and re-contributions) from the Government, and other institutions and organizations performing tasks entrusted by the Government, or performing such tasks on behalf of the Government;
4. Institutions and organizations receiving investments, contributions, or subsidies (including re-investments and re-contributions) from local government-invested public corporations and local government public corporations established under the Local Public Enterprises Act, and other institutions and organizations performing tasks entrusted by local governments, or performing such tasks on behalf of local governments;
5. Institutions and organizations which requires approval, consent, and recommendations of, agreement with, etc. the head of a central administrative agency or the head of a local government when appointing their executive officers, or their executive officers are appointed, named, and commissioned by the head of a central administrative agency or the head of a local government.

❖ Act on the Management of Public Institutions

Article 4 (Public Institutions) (1) The Minister of Strategy and Finance may designate any of the following institutions, which are a legal entity, organization, or institution (hereinafter referred to as "institution") other than the State or a local government, as a public institution

1. An institution directly established pursuant to other Act with an investment by the Government;
2. An institution for which the amount of the Government grants (in cases of an

institution to whom some affairs of the Government are directly commissioned, or a monopoly is granted, pursuant to statutes, the revenue earned from its commissioned affairs or monopoly shall be included; hereinafter the same shall apply) exceeds one-half of the amount of its total revenue;

3. An institution which the Government holds at least 50/100 of the outstanding shares of, or secures de facto control over decision-making on policies through the exercise, etc. of the power to appoint executive officers with at least thirty percent of such outstanding shares;
4. An institution which the Government together with an institution falling under any of subparagraphs 1 through 3 hold at least 50/100 of the outstanding shares of, or secure de facto control over decision-making on policies through the exercise etc. of the power to appoint executive officers with at least thirty percent of such outstanding shares;
5. An institution which a single institution, or two or more institutions, falling under any of subparagraphs 1 through 4, hold at least 50/100 of the outstanding shares of, or secure de facto control over decision-making on policies through the exercise, etc. of the power to appoint executive officers with at least 30/100 of such outstanding shares;
6. An institution established by an institution falling under any of subparagraphs 1 through 4 with an investment by the State or the establishing institution.

Q3	Whether open-ended contract workers fall under the category of public servant, Etc. Open-ended contract workers of public service-related organizations and local government bodies perform duties in the same or a similar way as public officials. Are they subject to the Improper Solicitation and Graft Act?
[A]	(Open-ended contract workers of public service-related organizations) Open-ended contract workers who directly conclude employment contracts with public service-related organizations and offer their services are considered staff members of public service-related organizations who fall under the category of Public Servant, Etc., under Subparagraph 2 (b) of Article 2 of the Improper Solicitation and Graft Act and thus are subject to the Act. (Open-ended contract workers of local government bodies) Open-ended contract workers of local government bodies (civilian workers with no fixed term) are those who conclude employment contracts with such local government bodies pursuant to the Labor Standards Act and cannot be viewed as public officials or those recognized as public officials specified in Subparagraph 2 (a) of Article 2 of the Improper Solicitation and Graft Act. Thus, they are not subject to the Act.

❖ Targets and Non-Targets of the Improper Solicitation and Graft Act

Classification	Targets	Non-targets
Administrative agencies	• Public officials in fixed term positions specified in the State Public Officials Act, etc.	• Short-term civilian workers and civilian workers with no fixed term (open-ended contract workers)
Public service-related organizations	• Non-regular executives and staff members, such as contract personnel	• Executives and employees of partner companies of such organizations

❖ State Public Officials Act

Article 26-5 (Public Officials Appointed for Fixed Terms of Office) (1) When appointing a public official in career service to take charge of duties that require specialized knowledge, technical skills, or duties that require special expertise for appointment management, a person with the authority to appoint may appoint a public official to serve fixed terms of office (hereinafter referred to as "public official in a fixed term position").

Q4	Whether non-standing directors of educational foundations fall under the category of Public Servant, Etc. Is a non-standing director of an educational foundation subject to the Improper Solicitation and Graft Act?
[A]	Executives and staff members of an educational foundation fall under the category of Public Servant, Etc., subject to the Act (Subparagraph 2 (d) of Article 2 of the Act). Executives refer to both standing and non-standing directors and auditors. As such, a non-standing director of an educational foundation is subject to the Act.

❖ Executives: Standing and non-standing directors and auditors

❖ Staff members: Workers who directly conclude employment contracts with educational foundations

- An adviser to an educational foundation, if he/she is interpreted to have directly concluded an employment contract with the foundation, may fall under the category of Public Servant, Etc.
- Those providing security, cleaning, and facility management services in accordance with service contracts concluded between an educational foundation and partner companies are not categorized as Public Servant, Etc., as they belong to such companies, not the foundation.

Q5	Whether unpaid non-standing directors of public service-related organizations fall under the category of public servant, etc. Are the unpaid non-standing directors of an association, which is a public service-related organization based on Article 3-2 of the Public Service Ethics Act, subject to the Improper Solicitation and Graft Act? These unpaid non-standing directors are elected among the CEOs of the association's member companies.
[A]	Executives and staff members of public service-related organizations are categorized as public servant, etc., who are subject to the Improper Solicitation and Graft Act (Subparagraph 2 (b) of Article 2 of the Act). Executives herein refer to both standing and non-standing directors and auditors. As such, a non-standing director of the association, although unpaid, is granted the status of a public official, etc., and thus is subject to the Act.

❖ Executives: Standing and non-standing directors and auditors

❖ Staff members: Workers who directly conclude employment contracts with public service-related organizations

- Non-regular staff members, including contract workers, are categorized as Public Servant, Etc., if they have directly concluded employment contracts.
- Those providing security, cleaning, and facility management services in accordance with service contracts concluded between a public service-related organization and partner companies are not categorized as Public Servant, Etc., as they belong to such companies, not the organization.

Q6	Whether adjunct lecturers, honorary professors, etc., of universities and colleges fall under the category of Public Servant, Etc. Are adjunct lecturers, honorary professors, and part-time lecturers of universities and colleges subject to the Improper Solicitation and Graft Act?
[A]	Pursuant to Article 17 of the Higher Education Act, adjunct lecturers, honorary professors, and part-time lecturers are classified as those other than faculty members and are not included in university personnel. As such, they are not subject to the Improper Solicitation and Graft Act. However, after the amended Higher Education Act is enforced on August 1, 2019, part-time lecturers shall be included in faculty members.

❖ Targets and Non-targets of the Improper Solicitation and Graft Act

Classification	Targets	Non-targets
Universities and colleges	• President, deans, professors, associate professors, and assistant professors	• Adjunct lecturers and honorary professors • Part-time lecturers (to be included in faculty members from August 1, 2019 onwards based on the amended Higher Education Act)

Q7	Whether executives and employees of outsourcing production companies of broadcasting business operators fall under the category of Public Servant, Etc.
	Are executives and employees of an outsourcing production company that has concluded a TV program production contract with a broadcasting business operator and supplies the said TV program subject to the Improper Solicitation and Graft Act?
[A]	Outsourcing production companies that directly contract with broadcasting business operators to produce TV programs and supply such programs accordingly are considered the other party of such service contracts, and executives and employees of outsourcing production companies are not executives and employees that have directly concluded employment contracts with such broadcasting business operators. Therefore, executives and employees of outsourcing production companies are not subject to the said Act.

❖ Press organizations: Broadcasting business operators, newspaper business operators, business operators publishing magazines and other periodicals, news communications business operators, and online newspaper business operators pursuant to the Act on Press Arbitration and Remedies, Etc., for Damage Caused by Press Reports

- (Broadcasting business operators) Broadcasting business operators refer to terrestrial broadcasting business operators, cable TV business operators, satellite broadcasting business operators, and program providers defined in Subparagraph 3 of Article 2 of the Broadcasting Act.

- (Newspaper business operators) Newspaper business operators refer to business operators that publish newspapers as specified in Subparagraph 3 of Article 2 of the Act on the Promotion of Newspapers, Etc.
- (Business operators publishing magazines and other periodicals) Business operators publishing magazines and other periodicals refer to business operators that have registered or reported as those publishing magazines or other types of periodicals among periodical business operators defined in Subparagraph 2 of Article 2 of the Act on the Promotion of Periodicals, including Magazines.
- (News communications business operators) News communications business operators refer to juridical persons registered for and managing news communications business pursuant to Subparagraph 3 of Article 2 of the Act on Promotion of News Communications.
- (Online newspaper business operators) Online newspaper business operators refer to business operators that publish electronic newspapers online pursuant to Subparagraph 4 of Article 2 of the Act on the Promotion of Newspapers, Etc.

Q8	Whether executives and employees of online portal sites fall under the category of Public Servant, Etc. Do executives and employees of online portal sites (online news service business operators) such as Naver and Daum fall under the category of Public Servant, Etc., pursuant to the Improper Solicitation and Graft Act?
[A]	Press organizations classified as public institutions pursuant to the Improper Solicitation and Graft Act refer to broadcasting business operators, newspaper business operators, business operators publishing magazines and other periodicals, news communications business operators, and online newspaper business operators based on Subparagraph 12 of Article 2 of the Act on Press Arbitration and Remedies, Etc., for Damage Caused by Press Reports. Online news service business operators (Subparagraph 19 of Article 2 of the same Act) are not included in the aforementioned press organizations. As such, online portal sites that are online news service business operators do not fall under the category of public institutions specified in the Improper Solicitation and Graft Act, and their executives and employees are not categorized as Public Servant, Etc.

❖ Act on Press Arbitration and Remedies, etc. for Damage Caused By Press Reports

The terms used in this Act shall be defined as follows:

12. The term "press organization" means any broadcasting business operator, newspaper business operator, business operator publishing periodicals including magazines, news communications business operator, or online newspaper business operator;
18. The term "Internet news service" means any electronic publication that continues to provide or intermediate press articles via the Internet: Provided, That any online newspaper, Internet multimedia broadcasting or other electronic publications prescribed by Presidential Decree shall be excluded;
19. The term "Internet news service provider" means any person who manages any electronic publications referred to in subparagraph 18;

Q9	Whether executives and employees of private companies that publish PR newsletters fall under the category of Public Servant, Etc. Are all executives and employees of an IT company that publishes a PR newsletter registered as a magazine pursuant to Article 2 of the Act on the Promotion of Periodicals, including Magazines subject to the Improper Solicitation and Graft Act?
[A]	Press organizations that are public institutions pursuant to the said Act include broadcasting business operators, newspaper business operators, business operators publishing magazines and other periodicals, news communications business operators, and online newspaper business operators Among them, business operators publishing magazines and other periodicals are those that publish periodicals as specified in Subparagraph 1 of Article 2 of the Act on the Promotion of Periodicals, including Magazines and that have been registered or have reported in accordance with Article 15 (1) and Article 16 (1) of the same Act. If a PR newsletter published by a private company has been registered as a magazine described in Article 2 of the same Act, the said company is categorized as a press organization. However, the publication of PR newsletters is not one of the main activities of such companies, and thus, only those responsible for the publication of such PR newsletters are subject to the Improper Solicitation and Graft Act.

❖ Act on Promotion of Periodicals, including Magazines

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

1. The term "periodical" means any publication issued without interruption under the same title not less than twice a year and refers to the following items except any newspaper under Article 2 of the Act on the Promotion of Newspapers, Etc.:
   (a) Magazine: A publication in bound form that is periodically issued under the same title not more than once a month with the aim of propagating reports, commentaries, public opinion and information, etc. pertaining to the entire fields or the specific fields of politics, economy, society, culture, current affairs, industry, science, religion, education, sports, etc.;
   (b) Informative publication: A publication issued for the purposes of providing information regarding daily lives or specific matters, such as guidance and notice, with no purpose, such as reports, commentaries, or the formation of public opinion;
   (c) Electronic publication: A publication issued electronically to allow users to read, watch, or listen to, by making use of the information-processing equipment, including computers without using the communications network;
   (d) Other publication: A publication not in bound form issued not more than once a month;
2. The term "periodical business entity" means anyone who publishes a periodical and files a registration or report under Article 15 (1) or 16 (1);

Q10	Whether conscripted auxiliary police officers fall under the category of Public Servant, Etc. If tickets for movies, sports matches, etc., are provided for free to conscripted auxiliary police officers by external organizations as a means of improving their morale, does that constitute a violation of the Improper Solicitation and Graft Act?
[A]	Conscripted auxiliary police officers in service are not categorized as Public Servant, Etc., in accordance with the said Act. Thus, it does not constitute a violation of the said Act to provide tickets for movies, sports matches, etc., for free.

❖ Soldiers and auxiliary police officers conscripted pursuant to the Military Service Act, etc., are not categorized as Public Servant, Etc., who are subject to the Improper Solicitation and Graft Act.

- However, police officers, soldiers (including commissioned officers), etc., are defined by the State Public Officials Act as public officials in special service and thus fall under the category of Public Servant, Etc., who are subject to the Improper Solicitation and Graft Act (Subparagraph 2 (a) of Article 2 of the said Act).

Q11	Whether public officials of other nations fall under the category of public servant, Etc. One of the government agencies has been operating an invitation training program for high-ranking public officials of the treasury departments and central banks of less developed countries in Asia. The invited public officials of other nations will be offered luncheons and dinners, each of which exceeds KRW 30,000; souvenirs that exceed KRW 50,000 in total; and hotel accommodation using the national budget. Does this violate the Improper Solicitation and Graft Act?
[A]	The Improper Solicitation and Graft Act applies to public servant, etc., under Subparagraph 2 of Article 2 of the said Act and private persons performing public duties under Article 11 (1) of the said Act (Articles 5 through 9 of the said Act applying mutatis mutandis to the activities of private persons performing public duties). As such, the acceptance of money, goods, etc., by public officials of other nations who do not fall under the aforementioned categories is not subject to the said Act.

❖ Application Principles of the Improper Solicitation and Graft Act

- Personal principle: The Act applies to Korean nationals who commit a violation of the Act outside the territory of Korea.
  - The Act applies to Public Servant, Etc., who are citizens of the Republic of Korea and accept requests for improper solicitation or money, goods, etc., from foreign nationals outside the territory of Korea.

- Territorial principle: The Act applies to both Korean and foreign nationals who commit a violation of the Act within the territory of Korea.
  - The Act applies to both Public Servant, Etc., who accept requests for improper solicitation or money, goods, etc., from foreign nationals within the territory of Korea, and the said foreign nationals.

Q12	Whether physicians of privately-run university hospitals fall under the category of Public Servant, Etc. A physician working at a privately-run university hospital is not a professor at the same university but has concluded an employment contract with the educational foundation to which the said university hospital belongs. Is the physician subject to the Improper Solicitation and Graft Act?
[A]	Executives and staff members of an educational foundation established under the Private School Act are categorized as Public Servant, Etc., subject to the Improper Solicitation and Graft Act pursuant to Subparagraph 2 (c) of Article 2 of the said Act. As such, this physician who has concluded an employment contract with the said educational foundation and works at the hospital of a university that belongs to the said foundation is a staff member of the said foundation and therefore is subject to the said Act.

❖ Whether physicians of university hospitals are subject to the Improper Solicitation and Graft Act (provided that they are not university professors and that they conclude employment contracts with the said hospitals or the educational or public foundations that operate the said hospitals)

※ Medical school professors (faculty members pursuant to the Higher Education Act) are Public Servant, Etc., specified in Subparagraph 2 of Article 2 of the Improper Solicitation and Graft Act.

– (Physicians of Seoul National University Hospital) Seoul National University Hospital is a public service-related organization, and thus

physicians of Seoul National University Hospital fall under the category of executives and staff members of public service-related organizations (Subparagraph 2 (b) of Article 2 of the Improper Solicitation and Graft Act) who are Public Servant, Etc., subject to the said Act.

- (Physicians of other national university hospitals) As national university hospitals are public service-related organizations, physicians of national university hospitals fall under the category of executives and staff members of public service-related organizations (Subparagraph 2 (b) of Article 2 of the Improper Solicitation and Graft Act) who are Public Servant, Etc., subject to the said Act.
- (Physicians of privately-run university hospitals) Physicians of privately-run university hospitals that belong to educational foundations operating the said private universities are categorized as executives and staff members of educational foundations pursuant to the Private School Act (Subparagraph 2 (c) of Article 2 of the said Act) and therefore are Public Servant, Etc., subject to the said Act.
- (Physicians of hospitals established by public foundations) Physicians of hospitals established by public foundations and contracted for educational cooperation with private universities are not categorized as Public Servant, Etc., subject to the said Act.

	Public servant, etc., serving in concurrent posts (i.e. national university professor cum outside director of a private company)
Q13	Would it violate the Improper Solicitation and Graft Act if a private company invited a professor of a national university, who is an outside director of the said company and falls under the category of Public Servant, Etc., pursuant to the said Act, to an in-house sports event and provided goods such as athletic wear?
[A]	Pursuant to the Improper Solicitation and Graft Act, Public Servant, Etc., may not accept, request, or agree to receive any money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year from the same person regardless of any pretext even if the said person is unrelated to their duties, and no Public Servant, Etc., may receive any money, goods, etc., in any amount in relation to their duties whether or not they are given as part of a quid pro quo arrangement (Article 8 (1) and (2) of the said Act). However, money, goods, etc., may be accepted if they are recognized as falling under any Subparagraph under Article 8 (3) of the said Act. If they are concurrently retaining the status of Public Servant, Etc., outside directors of private companies are prohibited from accepting money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year, unless they fall under any Subparagraph under Article 8 (3) of the said Act.

	Public servant, etc., serving in concurrent posts (i.e. private company' s CEO cum outside director of a public service-related organization)
Q14	Would a CEO of a private company that concurrently holds the post of an outside director (non-standing director) of a public service-related organization unconditionally be subject to punishment if he/she receives money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year unrelated to his/her duties as an outside director? Is it still prohibited to receive money, goods, etc., that are not related to the duties as an outside director?
[A]	Pursuant to the Improper Solicitation and Graft Act, Public Servant, Etc., may not accept, request, or agree to receive any money, goods, etc., exceeding KRW 1 million at a time or KRW 3 million per fiscal year from the same person regardless of any pretext even if the said person is unrelated to their duties, and no Public Servant, Etc., may receive any money, goods, etc., in any amount in relation to their duties whether or not they are given as part of a quid pro quo arrangement (Article 8 (1) and (2) of the said Act). However, money, goods, etc., may be accepted if they are recognized to fall under any Subparagraph under Article 8 (3) of the said Act. The said CEO of the private company falls under the category of Public Servant, Etc., (as an outside director of a public service-related organization) and thus is subject to the Improper Solicitation and Graft Act. If they are concurrently retaining the status of Public Servant, Etc., CEOs of private companies are prohibited from accepting money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year, unless they fall under any Subparagraph under Article 8 (3) of the said Act.

2 Whether Recognized as Private Persons Performing Public Duties

	Whether a non-standing member of Korea Communications Standards Commission is recognized as a private person performing public duties
Q1	Does a non-standing member of Korea Communications Standards Commission fall under either Public Servant, Etc., pursuant to Subparagraph 2 of Article 2 of the Improper Solicitation and Graft Act or private persons performing public duties pursuant to Article 11 (1) of the said Act?
[A]	Korea Communications Standards Committee (hereinafter "KCSC") is a public service-related organization. Therefore, executives and staff members of KCSC fall under the category of Public Servant, Etc., pursuant to the said Act (Subparagraph 2 (b) of Article 2 of the Act). However, non-standing members who are not Public Servant, Etc., cannot be viewed as executives and staff members of KCSC and thus do not fall under the category of Public Servant, Etc., specified in the Act. KCSC is a legal committee established pursuant to the Act on the Establishment and Operation of Korea Communications Commission. As such, non-standing members of KCSC are "non-public-official members among members of committees established pursuant to the Act on the Establishment and Management of Councils, Commissions, and Committees under Administrative Agencies and other acts and subordinate statutes" specified in Article 11 (1) 1 of the Improper Solicitation and Graft Act and should be viewed to fall under the category of private persons performing public duties.

❖ Act on the Establishment and Operation of Korea Communications Commission

Article 18 (Establishment, etc. of the Korea Communications Standards Commission) (1) The Korea Communications Standards Commission (hereinafter referred to as the "Korea Communications Standards Commission") shall be established to perform its duties independently, with the purposes of guaranteeing the public nature and fairness of broadcasting contents, creating a sound culture in the areas of information and communications, and creating an environment where information and communications are used in an appropriate manner.

Article 21 (Duties of the Korea Communications Standards Commission) Duties of the Korea Communications Standards Commission shall be as follows:

1. Deliberation on matters falling under Article 32 of the Broadcasting Act;
2. Deliberation and resolution on sanctions, etc. under Article 100 of the Broadcasting Act;

❖Broadcasting Act

Article 32 (Deliberation on Impartiality and Public Nature of Broadcast) The Korea Communications Standards Commission shall deliberate on and pass a resolution as to whether the contents of a broadcast, a CATV relay broadcast and an electric sign board broadcast, or the contents of information similar to a broadcast and the information prescribed by Presidential Decree, from among the information circulated through telecommunication circuits aiming at opening to the public, maintain their impartiality and public nature, and as to whether they observe public responsibilities, after they are broadcasted or circulated. In such cases, the characteristics by medium and by channel shall be taken into consideration.

Article 100 (Sanctions, etc.) (1) Where a broadcasting business operator, a CATV relay broadcasting business operator, an electric sign board broadcasting business operator, or an external producer violates any provision of the Review Regulations formulated under Article 33 and the regulations for announcement of sponsors under Article 74 (2), the Korea Communications Commission may impose a penalty of not more than 50 million won, or impose any of the following sanctions, considering the cause, gravity, and frequency of the violation. The same shall also apply, if deemed necessary for imposing a sanction as a result of the

settlement of viewers' complaints under Article 35: Provided, That, where such business operator's violation of the Review Regulations, etc. is grave enough to impose a sanction, the Korea Communications Commission may advise or suggest its opinions to the relevant business operator, or the person in charge of, or related to, the relevant broadcast program or commercial:

1. Deleted;
2. A correction, rectification, or suspension of the relevant broadcast program or commercial;
3. A disciplinary action against the person in charge of broadcast programming or the person related to the relevant broadcast program or commercial;
4. A caution or warning.

(2) Where the sanction under paragraph (1) is imposed due to a person cast for the relevant broadcast program, the relevant broadcasting business operator shall take an appropriate measure, such as a warning, restrictions on casting for the relevant broadcasting program.

(3) Notwithstanding paragraph (1), the Korea Communications Commission may impose a penalty surcharge of not more than 100 million won for the following grave violations:

1. A violation of the Review Regulations in terms of lewdness, decadence, violence, etc.;
2. A violation of the Review Regulations for such reasons as appearing on broadcasting after having taken, injected, inhaled, or drunken narcotics defined under subparagraph 1 of Article 2 of the Narcotics Control Act;
3. A repeated violation of the Review Regulations for the same reason, as prescribed by Presidential Decree, although any of the sanctions provided in paragraph (1) 1 through 3 was imposed.

(4) Upon receipt of imposition of the penalty or sanction under paragraph (1) or (3), a broadcasting business operator, a CATV relay broadcasting business operator, an electric sign board broadcasting business operator, and an external producer shall broadcast without delay the full text of the decision made by the Korea Communications Commission with regard to the content of the relevant order (excluding an external producer), and implement the sanction within seven days from receipt of such sanction, and report the outcome of implementation to the Korea Communications Commission.

(5) Program providers that engage in specialized programming of product

introduction and sales, if and when they receive an order for the imposition of a fine or sanction pursuant to Paragraphs 1 and 3 under this Article in violation of the provisions set forth in Article 33 hereof through acts of falsehood, exaggeration, etc., that may mislead viewers, shall post the whole text of the related decision of Korea Communications Commission on their website or send the said text of the related decision to those consumers who purchased the respective products by post, email, etc., in compliance with the criteria and methods designated by the relevant Presidential Decree. The said program providers shall implement the said decision of Korea Communications Commission within seven days from the date of the receipt of the said order and report the implementation status to Korea Communications Commission.

(6) Korea Communications Commission shall provide the party concerned or his/her representative the opportunity to state his/her opinions prior to the issuance of the order for the imposition of a fine or sanction in compliance with Paragraphs 1 and 3 under this Article, provided that the foregoing shall not apply when the party concerned or his/her representative refuses to state his/her opinions without a valid reason.

(7) Those who have an objection against the order for the imposition of a fine or sanction under Paragraphs 1 and 3 under this Article may file for a review by Korea Communications Commission within 30 days from the date of the issuance of the said order.

(8) Korea Communications Commission shall notify the party concerned or his/her representative of the result of a review performed pursuant to the preceding Paragraph.

Q2	Whether to recognize members of committees established under internal regulations of public institutions as private persons performing public duties Is a non-public-official member of a committee established and operated under internal regulations of a public institution, instead of acts and subordinate statutes, recognized as a private person performing public duties?
[A]	The non-public-official members of committees established pursuant to the Act on the Establishment and Management of Councils, Commissions, and Committees under Administrative Agencies and other acts and subordinate statutes are categorized as private persons performing public duties based on Article 11 (1) 1 of the Improper Solicitation and Graft Act. As such, a non-public-official member of a committee established under internal regulations of a public institution is not recognized as a private person performing public duties defined in the same Act.

❖ Private persons performing public duties under Article 11 (1) 1 of the Improper Solicitation and Graft Act: Non-public-official members of committees established under the Act on the Establishment and Management of Councils, Commissions, and Committees under Administrative Agencies and other acts and subordinate statutes

- School governance committee under the Elementary and Secondary Education Act
- Autonomous committee for countermeasures against school violence under the Act on the Prevention of and Countermeasures against Violence in Schools

- Enrollment fee deliberation committee under the Higher Education Act
- Personnel Committee under the Educational Officials Act
- Viewers committee under the Broadcasting Act
- Editorial committee under the Act on the Promotion of Newspapers, Etc.
- Readers' rights and interests committee under the Act on the Promotion of Newspapers, Etc.
- Personal Information Protection Commission under the Personal Information Protection Act
- Multi-family Housing Management Dispute Mediation Committee of ◇◇ District of 00 Metropolitan City under the Ordinance on the Organization and Operation of the Multi-family Housing Management Dispute Mediation Committee of ◇◇ District of 00 Metropolitan City

Q3	**Whether heads and employees of foreign bank branches entrusted with tasks related to foreign exchange transactions are recognized as private persons performing public duties** To my knowledge, heads of commercial banks are recognized as private persons performing public duties as representatives of institutions dealing with foreign exchange tasks entrusted with foreign exchange transactions by the Minister of Economy and Finance pursuant to the Foreign Exchange Transaction Act. Are heads and employees of foreign bank branches entrusted with tasks related to foreign exchange transactions pursuant to the Foreign Exchange Transaction Act categorized as private persons performing public duties specified in the Improper Solicitation and Graft Act?
[A]	A juridical person or an organization, an organ thereof, or an individual to which authority has been delegated or entrusted by a public institution under acts or subordinate statutes falls under the category of private persons performing public duties (Article 11 (1) 2 of the Improper Solicitation and Graft Act). As such, the head of an institution dealing with foreign exchange tasks entrusted with the authority of foreign exchange transactions by the Minister of Economy and Finance pursuant to Article 23 of the Foreign Exchange Transaction Act and Article 37 of the Enforcement Decree of the said Act is categorized as a private person performing public duties based on the Improper Solicitation and Graft Act. The branches and agencies of foreign banks authorized in compliance with the Banking Act are all viewed as banks in accordance with the said Act, and domestic representatives of such foreign banks are all viewed as executives of such foreign banks in

accordance with the said Act. Therefore, domestic representatives of such foreign banks, who have been entrusted with the authority by the Minister of Economy and Finance pursuant to the Foreign Exchange Transaction Act and the Enforcement Decree of the said Act as heads of institutions dealing with foreign exchange tasks, are recognized as private persons performing public duties (Article 11 (1) 2 of the Improper Solicitation and Graft Act).

However, employees who perform tasks related to foreign exchange transactions entrusted to foreign bank branches do not fall under the category of private persons performing public duties under Article 11 (1) 2 of the said Act.

❖ Private persons performing public duties specified in Article 11 (1) 2 of the Improper Solicitation and Graft Act: Juridical person or organization, an organ thereof, or individual to which authority has been delegated or entrusted by a public institution under acts or subordinate statutes

- Representatives who act on behalf of juridical persons or organizations, in addition to juridical persons or organizations delegated or entrusted with authority, are included.
- Individuals who are members of juridical persons or organizations are not included even when they substantively perform delegated or entrusted duties.

❖ Foreign Exchange Transactions Act

Article 8 (Registration, etc. of Foreign Exchange Business) (1) Any person who intends to engage in a foreign exchange affair shall prepare capital, facilities and professional human resources sufficient to conduct such affair and register it as

business with the Minister of Strategy and Finance in advance, as prescribed by Presidential Decree: Provided, That this shall not apply to any financial company, etc., for which the Minister of Strategy and Finance deems such registration unnecessary taking into account the details of such business, and which is prescribed by Presidential Decree.
(2) Only financial companies, etc. are entitled to engage in a foreign exchange business, and a financial company, etc. engaging in a foreign exchange affair may conduct such foreign exchange affair insofar as it is directly related to the business of the financial company, etc., as prescribed by Presidential Decree.
(5) Any financial company, etc. which has registered its foreign exchange business pursuant to paragraph (1) (including any financial company, etc. pursuant to the proviso to paragraph (1); hereinafter referred to as "foreign exchange agency", shall obtain authorization of the Minister of Strategy and Finance in concluding a contract concerning business subject to application of this Act with foreign financial institutions, if such authorization is prescribed by Presidential Decree as it is deemed necessary for the sound development of the national economy and maintenance of international peace and security, etc

Article 23 (Delegation, Entrustment, etc. of Authority) (1) The Minister of Strategy and Finance may, pursuant to Presidential Decree, delegate or entrust part of his/her authority under this Act to the Financial Services Commission, the Securities Futures Commission, the heads of the administrative agencies concerned, the Governor of the Bank of Korea, the Governor of the Financial Supervisory Service, the heads of foreign exchange agencies, etc., or other persons prescribed by Presidential Decree.

❖ Enforcement Decree of the Foreign Exchange Transactions Act

Article 37 (Delegation and Entrustment of Authority) (5) The authority of the Minister of Strategy and Finance concerning the following matters pursuant to Article 23 (1) of the Act shall be entrusted to the heads of foreign exchange agencies: 〈Amended by Presidential Decree No. 24727, Sep. 17, 2013; Presidential Decree No. 25818, Dec. 9, 2014; Presidential Decree No. 28145, Jun. 27, 2017〉
1. Reporting on methods under subparagraphs 1 or 3 of Article 16 of the Act

(limited to matters publicly notified by the Minister of Strategy and Finance);

2. Reporting on capital transactions under Article 18 of the Act (limited to matters publicly notified by the Minister of Strategy and Finance);
3. Warnings, suspension of, or restrictions on related foreign exchange transactions, payments or receipt (limited to where credit card companies under the Specialized Credit Financial Business Act do so to the card members) under Article 19 of the Act, and holding hearings under paragraph (3) of the same Article;
4. Request for a report made under Article 20 (1) of the Act (limited to cases necessary to handle any business entrusted under this paragraph).

❖ Banking Act

Article 58 (Authorization, etc. on Banking Business for Foreign Banks) Where any foreign bank (referring to an entity that currently runs banking business overseas after having been established pursuant to foreign Acts and subordinate statutes; hereinafter the same shall apply) intends to establish or close its branch or agency to run banking business in the Republic of Korea, it shall obtain authorization from the Financial Services Commission, as prescribed by Presidential Decree, notwithstanding Articles 8 (2) and 55.

Article 59 (Application of Acts to Foreign Banks) (1) A branch or agency of a foreign bank with authorization granted under Article 58 (1) shall be deemed a bank under this Act, and the domestic representative of a foreign bank shall be deemed an executive of a bank under this Act: Provided, That Articles 4, 9, 15, 15-3 through 15-5, 16, 16-2 through 16-5, 48-2, and 53-2 shall not apply hereto.

Q4	**Whether groups funded by local government bodies are recognized as private persons performing public duties** The Town and Township Residents' Sports Association (not delegated or entrusted with any authority pursuant to the County's Ordinance on the Delegation of Affairs to the Private Sector) receives funds from the County for all of the expenses to take part in sports competitions for county residents and for part of the expenses to hold sports competitions for township residents. Is this association categorized as a private person performing public duties pursuant to Article 11 (1) of the Improper Solicitation and Graft Act?
[A]	In order to be recognized as a private person performing public duties pursuant to the Improper Solicitation and Graft Act, the association has to fall under any Subparagraph of Article 11 (1) of the said Act. The association cannot be viewed as a private person performing public duties solely because it is funded for part of its expenses by an administrative agency.

❖ Types of private persons performing public duties (Article 11 (1) of the Improper Solicitation and Graft Act)

- (Type 1) Non-public-official member of a committee established under the Act on the Establishment and Management of Councils, Commissions, and Committees under Administrative Agencies or any other acts or subordinate statutes
- (Type 2) Juridical person or organization, an organ thereof, or individual to which authority has been delegated or entrusted by a public institution under acts or subordinate statutes

- (Type 3) Individual dispatched from the private sector to a public institution to perform public duties
- (Type 4) Individual, juridical person, or organization that conducts deliberation or assessment in relation to public duties in accordance with acts and subordinate statutes

	Whether heads of associations of land owners for housing redevelopment and reconstruction are recognized as private persons performing public duties (Type 2)
Q5	Are heads, executives, and members of associations of land owners for housing redevelopment and reconstruction engaging in development projects (redevelopment, reconstruction, etc.) implemented pursuant to the Act on the Improvement of Urban Areas and Residential Environments subject to the Improper Solicitation and Graft Act (private persons performing public duties)?
[A]	In order to fall under the category of private persons performing public duties specified in Article 11 (1) 2 of the Improper Solicitation and Graft Act, the said associations have to be "a juridical person or an organization, an organ thereof, or an individual to which authority has been delegated or entrusted by a public institution under acts or subordinate statutes." As the Act on the Improvement of Urban Areas and Residential Environments does not explicitly specify that heads, etc., of associations of land owners for housing redevelopment and reconstruction are delegated or entrusted with the authority of a public institution, the said heads, etc., do not fall under the category of private persons performing public duties under Article 11 (1) 2 of the Improper Solicitation and Graft Act.

❖ Private persons performing public duties under Article 11 (1) 2 of the Improper Solicitation and Graft Act: Juridical person or organization, an organ thereof, or individual to which authority has been

delegated or entrusted by a public institution under acts or subordinate statutes

- The Korean Institute of Certified Public Accountants delegated and entrusted with tasks such as the registration and registration cancellation of a certified public accountant under the Certified Public Accountant Act
- The Korea Association of Property Appraisers entrusted with the registration and registration renewal of property appraisers under the Act on Appraisal and Certified Appraisers
- The Korea Housing Association entrusted with modifications of registered information of housing construction project operators, the submission of monthly housing sales plans and sales results, etc., under the Housing Act

Q6	Whether heads of urban and rural villages (Tong and Ri) are recognized as private persons performing public duties Are the heads of urban and rural villages recognized as private persons performing public duties?
[A]	As affairs handled by the heads of urban and rural villages cannot be viewed to have been explicitly delegated or entrusted by public institutions based on acts and subordinate statutes, the heads of urban and rural villages are not recognized as private persons performing public duties.

❖ Framework Act on Civil Defense

Article 19 (Formation) (1) A civil defense unit shall be formed into a local civil defense unit consisting of the residents in an area and a workplace civil defense unit manned with the employees of a workplace: Provided, That a small unit prescribed by the Presidential Decree may be integrated with other units.

(2) A local civil defense unit referred to in paragraph (1) shall be divided into a Tong/Ri civil defense unit in a Tong/Ri area and a Si/Gun/Gu civil defense technical support unit in a Si/Gun/Gu area (hereinafter referred to as "civil defense technical support unit").

(3) A Tong/Ri civil defense unit shall be manned with members of a civil defense unit residing in the relevant Tong and Ri, as stipulated in Article 18, and a civil defense technical support unit shall be manned with specialists selected by the head of a Si/Gun/Gu from among such skilled personnel as flood-disaster fighting specialists, air-defense specialists, medical specialists, electricians, communication-technicians, civil and construction engineers, and CBR (chemical, biological and radiological) specialists upon recommendation by the head of an Eup/Myeon/Dong and the commander of the workplace civil defense unit.

(4) The following establishments shall organize a workplace civil defense unit:

1. National and local government agencies prescribed by the Presidential Decree;
2. Public institutions and enterprises prescribed by the Presidential Decree.

(5) A person shall not serve as a member of the Tong/Ri civil defense unit, civil defense technical support unit, or workplace civil defense unit at the same time.

(6) The head of a Tong/Ri shall become the commander of the civil defense unit for the Tong/Ri, and the head of a Si/Gun/Gu shall serve as the commander of a civil defense technical support unit: Provided, That where the commander of a Tong/Ri civil defense unit is judged to be unable to exercise control over a civil defense emergency due to the advanced age of 65 years or more, physical or mental weakness, etc., a person appointed by the head of an Eup/Myeon/Dong may serve as the commander of the Tong/Ri civil defense unit.

❖ Enforcement Rules of the Act on Acquisition of and Compensation for Land, Etc., for Public Works Projects

Article 48 (Compensation for Loss in Farming) (7) An actual farmer specified in Article 77 (2) herein refers to the person recognized to be occupying farmland under the ownership of another person on lawful grounds, such as through lease, and to be cultivating his/her own farm products as of the date of the announcement of the approval of a project, etc., by submitting the documentation under the following Subparagraphs. If the person seeking to be recognized as an actual farmer submits only the documentation specified under the following Subparagraph 3, the project operator may notify the fact to the farmland owner in written form. If the farmland owner does not raise any objection against the fact within 30 days from the date of the notification of the fact, the documentation specified under the following Subparagraph 2 is viewed to have been submitted.

1. Lease of farmland
2. Written confirmation of the fact of cultivation confirmed by the farmland owner
3. Written confirmation of the fact of cultivation confirmed by the head of the urban or rural village in the zone where the relevant public works are performed
4. Other objective documentation testifying to his/her status as an actual farmer

❖ Promotion of Mutual Exchange between Cities and Agricultural or Fishing Villages Act

Article 15 (Issuance of Certificate of Mutual Exchanges between Cities and Rural Communities) (1) In order to promote activities of mutual exchanges between cities and rural communities, the head of the competent Si/Gun may issue a certificate of the performance of activities of mutual exchanges between a city and a rural community (hereinafter referred to as "certificate of mutual exchanges between a city and a rural community") to a person who makes a donation (including a donation in cash and in kind) to an organization of rural communities and agricultural and fishing villages, a rural community for experience and recreation in an agricultural or fishing village, a tourist farm. The head of a Ri/Dong, an entity for community experiential and recreational business in an agricultural or fishing village, or a tourist farm business, in which activities for experiencing daily life in the rural community or volunteer works have been provided, may issue a certificate of mutual exchanges between a city and a rural community.

❖ Resident Registration Act

Article 20 (Factual Investigation and Discretionary Measures) (1) The head of a Si/Gun/Gu may conduct a factual investigation into a person obligated to report, if the person falls under any of the following subparagraphs

1. If the person fails to file a report on matters specified in Articles 10 and 10-2 within a period prescribed by this Act;
2. If matters specified in Articles 10 and 10-2 are not reliable;
3. If reasonable grounds exist to believe that entries reported with respect to matters provided for in Articles 10 and 10-2, are untrue.

(2) If the head of a Si/Gun/Gu discovers in the course of the factual investigation under paragraph (1), that a person obligated to report fails to report on matters that he/she was required to state in the report or that any entries in the report filed by him/her is untrue, he/she shall issue a peremptory notice to the person, requesting him/her to file a report on actual facts within a prescribed period. The same shall apply where the head of a Si/Gun/Gu has received a notice under Article 15 (2).

(3) If the head of a Si/Gun/Gu is unable to deliver a peremptory notice to a person obligated to report, he/she shall issue a public notice requiring the person to file a report within a prescribed period, as prescribed by Presidential Decree.
(4) Where a person obligated to report fails to report within the prescribed period, the head of a Si/Gun/Gu shall include a statement that he/she may, at his/her discretion, register the resident, correct or delete any registry entries, or register his/her domicile as unknown under paragraph (6) when he/she issues a peremptory notice under paragraph (2) or a public notice under paragraph (3).
(5) Where a person obligated to report fails to report within the period prescribed pursuant to paragraph (2) or (3), the head of a Si/Gun/Gu shall register the resident, correct or delete any registry entries, or register that a domicile is unknown under paragraph (6) in accordance with the findings of a factual investigation under paragraph (1), the entries in public records, or with verification by the head of the competent Tong/Ri.

	Whether construction project supervisors are recognized as private persons performing public duties (Type 4)
Q7	Are those in charge of supervising construction projects commissioned by central and local government bodies, etc., categorized as private persons performing public duties under the Improper Solicitation and Graft Act?
[A]	A supervisor falls under the category of an individual, juridical person, or organization that conducts deliberation or assessment in relation to public duties in accordance with acts and subordinate statutes such as the Building Act (Article 11 (1) 4 of the Improper Solicitation and Graft Act). As such, supervisors responsible for supervising housing and construction of the public sector and private sector are categorized as private persons performing public duties based on the Improper Solicitation and Graft Act. However, unlike Public Servant, Etc., private persons performing public duties are subject to Articles 5 through 9 of the said Act "only for public duties for which they are responsible" (Article 11 (1) of the said Act). Therefore, daily life activities, etc., that are completely unrelated to their public duties are not affected by the said Act.

❖ Private persons performing public duties under Article 11 (1) 4 of the Improper Solicitation and Graft Act: Individual, juridical person, or organization that conducts deliberation or assessment in relation to public duties in accordance with acts and subordinate statutes

- Landscape Committee in charge of deliberation on landscapes of buildings under the Landscape Act
- Infectious Disease Control Committee in charge of deliberation on compensation for loss incurred by infectious diseases under the Infectious Disease Control and Prevention Act
- Auditors responsible for conducting auditing of stock companies under the Act on External Audit of Stock Companies, Etc.
- Designated motor vehicle maintenance business operators under the Motor Vehicle Management Act
- Evaluation agencies responsible for the evaluation of the understanding of insurance policies of insurance consumers, etc., under the Insurance Business Act

Q8	Public Servant, Etc., serving in concurrent posts (i.e. attorney cum private person performing public duties) If an attorney of a law firm, who is concurrently serving as a non-standing member of the administrative appeals commission of a metropolitan city established under the Administrative Appeals Act, won a favorable decision in a criminal case unrelated to any administrative appeals and received a gift from his/her client as a token of appreciation, would the said attorney be subject to the sanctions specified in the Improper Solicitation and Graft Act?
[A]	The said attorney, who is a non-public-official member of the administrative appeals commission established under the Administrative Appeals Act, is a private person performing public duties subject to the mutatis mutandis application of Articles 5 through 9 of the Improper Solicitation and Graft Act (Article 11 (1) 1 of the said Act). The said attorney is deemed to concurrently hold the posts of a private person performing public duties and an attorney. However, unlike Public Servant, Etc., private persons performing public duties are subject to Articles 5 through 9 of the said Act "only for public duties for which they are responsible" (Article 11 (1) of the said Act). The gift was not offered to the said attorney in relation to his/her performance of public duties as a non-standing member of the said commission but as an attorney working for a law firm and thus is not subject to the sanctions specified in the said Act.

Q9	Whether to apply the Improper Solicitation and Graft Act when pertinent acts and subordinate statutes specify that "[ ]* shall be viewed as a public official when applying Articles 129 through 132 of the Criminal Act"
	When pertinent acts and subordinate statutes specify that "[ ] shall be viewed as a public official when applying Articles 129 through 132 of the Criminal Act", is [ ] subject to the Improper Solicitation and Graft Act?
[A]	Those deemed to be subject to the said Act are Public Servant, Etc., specified in Subparagraph 2 of Article 2 of the said Act and private persons performing public duties specified in Article 11 (1) of the said Act (Articles 5 through 9 of the said Act applying mutatis mutandis to the activities of private persons performing public duties). The mere existence of the provision "[ ] shall be viewed as a public official when applying Articles 129 through 132 of the Criminal Act" in pertinent acts and subordinate statutes does not necessarily mean that they shall fall under the category of Public Servant, Etc., or private persons performing public duties under the Improper Solicitation and Graft Act. *Persons performing specific duties defined in specific acts and subordinate statutes, such as non-public-official members of specific committees

❖ Criminal Act

Article 129 (Acceptance of Bribe and Advance Acceptance) (1) A public official or an arbitrator who receives, demands or promises to accept a bribe in connection

with his/her duties, shall be punished by imprisonment for not more than five years or suspension of qualifications for not more than ten years.
(2) If a person who is to become a public official or an arbitrator receives, demands or promises to accept a bribe in response to a solicitation, in connection with the duty which he/she is to perform and he/she actually becomes a public official or arbitrator, imprisonment for not more than three years or suspension of qualifications for not more than seven years shall be imposed.

Article 130 (Bribe to Third Person) A public official or an arbitrator who causes, demands or promises a bribe to be given to a third party on acceptance of an unjust solicitation in connection with his/her duties shall be punished by imprisonment for not more than five years or suspension of qualifications for not more than ten years.

Article 131 (Improper Action after Acceptance of Bribe and Subsequent Bribery) (1) If a public official or an arbitrator takes an improper action after committing the offenses under the preceding two Articles, imprisonment for a limited term of at least one year shall be imposed.
(2) If a public official or an arbitrator receives, demands or promises to receive a bribe, or causes, demands or promises a bribe to be given to a third party, after taking an improper action in the course of performing his/her duties, the punishment specified in the preceding paragraph shall be imposed.
(3) If a person who was a public official or an arbitrator receives a bribe or demands or agrees to receive a bribe after taking an improper action in the course of performing his/her duties on acceptance of a solicitation made during his/her incumbency, imprisonment for not more than five years or suspension of qualifications for not more than ten years shall be imposed.
(4) In the case of the preceding three paragraphs, suspension of qualifications for not more than ten years may concurrently be imposed.

Article 132 (Acceptance of Bribe through Good Offices) A public official who, by taking advantage of his/her post, receives, demands or agrees to receive a bribe concerning the use of the good offices in connection with the affairs which belong to the functions of another public official, shall be punished by imprisonment for not more than three years or suspension of qualifications for not more than seven years.

[3] Others

	The acceptance of a gift worth more than KRW 50,000 by a company's executive whose spouse is a public official
Q1	If an executive of a private company, who is married to a public official, accepted beverages, etc., worth more than KRW 50,000 from the said company's partner company and shared them with other employees of the said company, does that violate the Improper Solicitation and Graft Act?
[A]	Spouses of Public Servant, Etc., are prohibited from accepting money, goods, etc., in relation to the duties of the said Public Servant, Etc. (Article 8 (4) of the said Act). If the beverages received by the said executive are not related to his/her spouse's duties, it is not subject to the sanctions defined in the said Act.

❖ Prohibition of the acceptance of money, goods, etc., by spouses of public servant, etc.

- Spouses of public servant, etc., are prohibited from accepting money, goods, etc., exceeding KRW 1 million at one time only when they are related to the duties performed by the said Public Servant, Etc.
- Spouses herein refer to legally married spouses only, unless explicitly specified to encompass common-law spouses by law.
- Public Servant, Etc., are obligated to report the acceptance of money, goods, etc., by their spouses in relation to their public duties as soon as they are informed of the fact.

※ Public servant, etc., who fail to fulfill the aforementioned obligation are subject to the imposition of a fine or criminal punishment in accordance with the monetary value of the money, goods, etc., accepted.

- Spouses of public servant, etc., who accepted prohibited money, goods, etc., may not be subject to the sanctions under the Improper Solicitation and Graft Act but may become subject to sanctions mandated by other acts.

Q2	Punishment for those who offered money, goods, etc., to spouses of Public Servant, Etc. The spouse of a public official accepted money, goods, etc., worth KRW 500,000 from the owner of a construction company in relation to the said public official's duties. The said public official reported his/her spouse's acceptance of the money, goods, etc., to the head of his/her institution as soon as he/she came to know the fact and returned the money, goods, etc., to the owner of the construction company immediately, thus avoiding punishment. What punishment would the said owner be subject to?
[A]	It is prohibited to offer, promise to offer, or manifest an intention to offer prohibited money, goods, etc., to Public Servant, Etc., or their spouses (Article 8 (5) of the Improper Solicitation and Graft Act). Those who offer money, goods, etc., prohibited pursuant to Article 8 (2) of the said Act to Public Servant, Etc., or their spouses in violation of Article 8 (5) of the said Act shall be subject to a fine of two to five times the monetary value of the money, goods, etc., related to the violation (Article 23 (5) 3 of the said Act).

	Prohibition of the acceptance of money, goods, etc., by spouses
Q3	Our company (a private company) offers its executives and employees a physical checkup service worth KRW 1 million, a coupon to stay at a condominium owned by our company, gifts for holidays, congratulatory and consolatory payments (KRW 300,000), and discounts for our company's products every year. My spouse is a public official. Can I accept the said benefits?
[A]	As long as the spouse of an employee of a private company, who falls under the category of Public Servant, Etc., pursuant to the Improper Solicitation and Graft Act, has no relation to any business or job handled by the said company, the said Act does not apply Even if the said spouse has a relation to any business or job handled by the said company, such benefits offered to executives and employees by the said company based on its internal criteria cannot be viewed to compromise the impartiality of the said spouse in performing his/her duties without any justifiable reasons. Therefore, such benefits are permitted based on Article 8 (3) 8 of the said Act.

Ⅱ

Improper Solicitation

1. Important Provisions and Notes
2. Cases

1. Important Provisions and Notes

Article 5 (1) (Prohibition of Improper Solicitation), (2) (Exceptions) Article 7 (Obligation to Report)

Article 5 (Prohibition of Improper Solicitation) (1) No person shall make any of the following improper solicitations to any public servant, etc. performing his/her duties, directly or through a third party: 〈Amended by Act No. 14183, May 29, 2016〉

1. Soliciting to process, in violation of Acts or subordinate statutes, such tasks as authorization, permission, license, patent, approval, inspection, qualification, test, certification, or verification, for which Acts and subordinate statutes (including Ordinances and Rules; hereinafter the same shall apply) prescribe requirements and which should be processed upon application by a duty-related party;
2. Soliciting to mitigate or remit administrative dispositions or punishments such as cancellation of authorization or permission, and imposition of taxes, charges, administrative fines, penalty surcharges, charges for compelling compliance, penalties, or disciplinary actions, in violation of Acts or subordinate statutes;
3. Soliciting to intervene or exert influence in the appointment, promotion, assignment or reassignment, or any other personnel matter with respect to any public servant, etc., in violation of Acts or subordinate statutes;
4. Soliciting to select or reject a person, in violation of Acts or subordinate statutes, for a position which intervenes in the decision-making of a public institution, such as a member of various deliberation, decision-making, and arbitration committees, and a member of a committee for a test or screening administered by a public institution;
5. Soliciting to select or reject a specific individual, organization, or juridical person, in violation of Acts or subordinate statutes, in any award, prize, or selection of outstanding institutions or persons, administered by a public institution;

6. Soliciting to disclose, in violation of Acts or subordinate statutes, duty-related confidential information on tender, auction, development, examination, patent, military affairs, taxation, etc.;
7. Soliciting to select or reject a specific individual, organization, or juridical person as a party to a contract, in violation of Acts or subordinate statutes governing contracts;
8. Soliciting to intervene or exert influence so that subsidies, incentives, contributions, investments, grants, funds, etc., are assigned to, provided to, invested in, deposited in, lent to, contributed to, or financed to a specific individual, organization, or juridical person, in violation of Acts or subordinate statutes;
9. Soliciting to allow a specific individual, organization, or juridical person to buy, exchange, use, benefit from, or possess goods and services that are produced, supplied, or managed by public institutions, at prices different from what is prescribed by Acts or subordinate statutes, or against normal transaction practices;
10. Soliciting to process or manipulate affairs of schools of each level, such as admission, grades, or performance tests, in violation of Acts or subordinate statutes;
11. Soliciting to process affairs related to military service, such as physical examination for military service, assignment to a military unit, or appointment to a position, in violation of Acts or subordinate statutes;
12. Soliciting to conduct various assessments or judgements implemented by public institutions, or manipulate the results thereof, in violation of Acts or subordinate statutes;
13. Soliciting to make a specific individual, organization, or juridical person subject to or exempt from administrative guidance, enforcement activities, audit, or investigation; to manipulate the outcome thereof; or to ignore any illegality, in violation of Acts or subordinate statues;
14. Soliciting to process investigation of a case, trial, adjudication, decision, mediation, arbitration, reconciliation, or other equivalent affairs, in violation of Acts or subordinate statutes;
15. Soliciting a public servant, etc. to act beyond the limits of his/her position and authority granted by Acts or subordinate statutes, or to take any action for which he/she lacks legitimate authority, regarding any and all affairs that may be the subject-matter of improper solicitation as prescribed by subparagraphs 1 through 14.

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

1. Where demanding particular action such as relief or settlement of infringement on rights in accordance with the procedures or methods prescribed by the Petition Act, the Civil Petitions Treatment Act, the Administrative Procedures Act, the National Assembly Act, or other Acts, subordinate statutes, or standards (including regulations, rules, and standards of the public institutions set forth in subparagraphs 1 (b) through (e) of Article 2; hereinafter the same shall apply); or suggesting or proposing enactment, amendment, or rescission of any Act, subordinate statute, or standards relevant thereto;
2. Where publicly demanding a public servant, etc. to take a particular action;
3. Where an elected public servant, political party, civil society organization, etc., conveys a third party's complaints and grievances for the public interest; make suggestions or proposals regarding establishment, amendment, or rescission of any Act, subordinate statute, or standards; or make suggestions or proposals regarding improvement of policies, projects, systems, or the administration thereof;
4. Where requesting or demanding a public institution to complete a certain duty within a statutory deadline, or asking confirmation or inquiring about the progress or outcome thereof;
5. Where requesting or demanding confirmation or certification for duties or legal relations;
6. Where demanding explanation or interpretation of Acts or subordinate statutes, systems, procedures, etc., related to duties, in the form of inquiry or consultation;
7. Any other conduct recognized to be consistent with societal rules and norms.

Article 7 (Reporting and Processing Improper Solicitations) (1) Upon receipt of an improper solicitation, a public servant, etc. shall notify the person making such solicitation that it constitutes an improper solicitation and clearly express his/her intention to reject it.

(2) If a public servant, etc. receives the same improper solicitation again, even after taking action as described in paragraph (1), he/she shall report such fact to the head of the relevant institution in writing (including electronic documents; hereinafter the same shall apply).

1 Initiator of Improper Solicitation

- No person shall make any improper solicitations to any Public Servant, Etc., as listed under Article 5 (1) of the Improper Solicitation and Graft Act directly or through a third party.
- The foregoing "no person" applies to natural persons only. Should any executive or employee of a juridical person commit a violation in relation to duties performed by Public Servant, Etc., the said juridical person shall be subject to sanctions pursuant to Article 24 (Joint Penalty Provision) of the said Act.
  - However, the foregoing shall not apply if the juridical person was not negligent in paying due attention and duly engaging in supervision to prevent such a violation.

2 Improper Solicitations concerning Different Duties Listed under Article 5 (1) of the Improper Solicitation and Graft Act

- Solicitation to process such duties as authorization, permission, licensing, etc., for which acts and subordinate statutes prescribe requirements and which should be processed upon application (Article 5 (1) 1.)
- Solicitation to mitigate or remit administrative dispositions or punishments (Article 5 (1) 2.)
- Solicitation to intervene in or exert influence on personnel matters of Public Servant, Etc., such as recruitment and promotion (Article 5 (1) 3.)

- Solicitation to select or reject a person for a position that engages in the decision-making process of a public institution (Article 5 (1) 4.)
- Solicitation to select or reject a specific individual, organization, or juridical person for any prize, reward, etc. (Article 5 (1) 5.)
- Solicitation to disclose duty-related confidential information on bidding, auction, etc. (Article 5 (1) 6.)
- Solicitation to select or reject a specific individual, organization, or juridical person as a party to a contract (Article 5 (1) 7.)
- Solicitation to intervene or exert influence so that subsidies, funds, etc., are assigned to, provided to, invested in, etc., a specific individual, organization, or juridical person (Article 5 (1) 8.)
- Solicitation to allow a specific individual, organization, or juridical person to engage in transactions of goods and services with public institutions (Article 5 (1) 9.)
- Solicitation to process or manipulate affairs of schools of different levels, such as admissions, grades, or performance tests (Article 5 (1) 10.)
- Solicitation to process affairs related to military service (Article 5 (1) 11.)
- Solicitation to perform assessments and examinations conducted by public institutions or to manipulate the results thereof (Article 5 (1) 12.)
- Solicitation to make a specific individual, organization, or juridical person subject to or exempt from administrative guidance, enforcement activities, audit, or investigation; to manipulate the outcome thereof; or to ignore any illegality (Article 5 (1) 13.)
- Solicitation to process investigations, trials, adjudications, decisions, mediations, arbitrations, etc. (Article 5 (1) 14.)
- Solicitation Public Servant, Etc., to seek measures beyond the parameters of their position and given authorities regarding any affairs related to improper solicitations prescribed in Subparagraphs 1 through 14

3 Receiver of Improper Solicitation: Public Servant, Etc., in Charge of Relevant Duties

- "Public Servant, Etc., in charge of relevant duties" include division heads, bureau heads, etc., responsible for giving approval in addition to Public Servant, Etc., who directly handle such duties on the front lines.
  - Heads of institutions, etc., with directing and supervisory authority are also included if the authorities to make arbitrary decisions have been delegated to them in accordance with pertinent internal regulations.
- When higher-ranking Public Servant, Etc., with directing and supervisory authority receive improper solicitations and perform relevant duties accordingly by giving instructions, etc., to lower-ranking public officials, although they are not in the position to give direct approval
  - (Higher-ranking public officials) As instructions of higher-ranking public officials in charge of relevant duties attest to the performance of relevant duties in accordance with the solicitation, they are subject to criminal punishment.
  - (Lower-ranking public officials) Public officials in lower ranks must clearly express their refusal to follow instructions given in accordance with improper solicitations. If they are found to have realized that instructions were made in accordance with improper solicitations of a third party and still carried out the said instructions, they are subject to criminal punishment for performing public duties in accordance with improper solicitations.
- However, Public Servant, Etc., in positions that can exert substantive influence are not included in "Public Servant, Etc., in charge of relevant duties."

4 Violation of Acts and Subordinate Statutes as a Condition for the Establishment of Improper Solicitation

- In order for an improper solicitation to be established, the solicitation made must involve any of the affairs specified in Subparagraphs 1 through 14 under Article 5 (1) of the Improper Solicitation and Graft Act and the violation of acts and subordinate statutes must be recognized.
  - Subparagraph 9 encompasses those transaction practices that surpass the bounds of normal ones.
- Simple requests, etc., regarding the affairs specified in Subparagraphs 1 through 14 under Article 5 (1) of the said Act are difficult to be viewed as violating acts and subordinate statutes.
  - However, a person seemingly soliciting a public official, etc., to take care of a "request" at his/her own discretion may, in actuality, be implying the underlying message that the said request must be granted by violating acts and subordinate statutes or going beyond the parameters of the authorities permitted by acts and subordinate statutes. If the said public official, etc., in charge of relevant duties performs his/her duties in accordance with the solicitation in violation of acts and subordinate statutes, it may constitute an improper solicitation.
- One of the conditions to establish an improper solicitation is "the violation of acts and subordinate statutes," and the said acts and subordinate statutes include acts, presidential decrees, ordinances of the Prime Minister, and ordinances of the Ministries.
  - A violation of criteria designated by public notices, directives, etc., as delegated by or based on upper-level acts and subordinate statutes can be viewed as a violation of the said upper-level acts and subordinate statutes.

5 Types and Sanctions of Improper Solicitations

- An improper solicitation made for the initiator himself/herself: The initiator of the solicitation directly makes an improper solicitation for his/her own interests, and the legal result thereof is vested in the initiator of the said solicitation.
  - It does not incur the imposition of an administrative fine. However, if the initiator of the said improper solicitation is a public official, etc., he/she may be subject to disciplinary action.
- An improper solicitation made for or through a third party: The legal result thereof is vested in a third party.
  - It incurs the imposition of an administrative fine. If the initiator of the said improper solicitation is a public official, etc., he/she may be subject to disciplinary action in addition to the imposition of an administrative fine.

❖ Sanctions for Improper Solicitations

Type	Violation		Sanction
Prohibition of improper solicitations	• Soliciting Public Servant, Etc., for the interests of the initiator of the solicitation		No sanction *Disciplinary action if the initiator is a public official, etc.
	• Soliciting Public Servant, Etc., through a third party		An administrative fine of up to KRW 10 million
	• Soliciting Public Servant, Etc., for a third party	• Civilians excluding Public Servant, Etc.	An administrative fine of up to KRW 20 million
		• Public Servant, Etc.	An administrative fine of up to KRW 30 million
	• Public Servant, Etc., performing relevant duties in accordance with improper solicitations		A fine of up to KRW 20 million or imprisonment with labor for up to two years

[6] Obligation to Report

- Upon receiving an improper solicitation for the first time, the public official, etc., must inform the initiator of the said solicitation that it constitutes an improper solicitation and clearly express his/her will of refusal (Article 7 (1) of the Improper Solicitation and Graft Act).
- If the same improper solicitation is made for a second time, it incurs the obligation to report it to the head of the institution of the said public official, etc. (Article 7 (2) of the said Act).
  - Whether the second improper solicitation is a repetition of the first one incurring the obligation to report should be determined by examining the nature of both solicitations.
  - It incurs the obligation to report in cases in which the initiator directly makes an improper solicitation and the same improper solicitation again through a third party and when the initiator makes an improper solicitation twice through a third party.

2. Cases

1 Conditions Constituting Improper Solicitation

Q1	Solicitations made to those who are not public servant, etc., in charge of relevant duties A journalist at a press organization asked a well-acquainted public official to book a condominium for him, and the said public official relayed the request to a managing director at a resort company who is his high school friend. Does this constitute an improper solicitation pursuant to the Improper Solicitation and Graft Act?
[A]	The receiver should be categorized under "Public Servant, Etc., in charge of relevant duties" to establish an improper solicitation. However, a managing director of a private company does not fall under the category of Public Servant, Etc., specified in the Improper Solicitation and Graft Act. Thus, this case does not constitute an improper solicitation pursuant to the said Act, although the possibility of the violation of other acts and subordinate statutes such as the Code of Conduct for Public Officials should be reviewed.

Q2	Issuance of official letters to businesses within the jurisdiction for price discounts The 00-gu District Office contacted businesses within its jurisdiction in seeking to elicit more residents to display the national flag on national holidays. The 00-gu District Office asked these businesses to give price discounts to those residents who bring photos of the national flag displayed at their homes. Does it violate the Improper Solicitation and Graft Act for the 00-gu District Office to send official letters to businesses within its jurisdiction to give price discounts to residents?
[A]	The Improper Solicitation and Graft Act is designed to regulate improper solicitations targeted at Public Servant, Etc. As such, the request of the 00-gu District Office to private businesses that do not fall under the category of Public Servant, Etc., to give price discounts for those who bring photos of the national flag displayed at their homes cannot be viewed as an improper solicitation under Article 5 of the said Act, although the possibility of the violation of other acts and subordinate statutes such as the Code of Conduct for Public Officials should be reviewed.

❖ Enforcement Decree of the Act on the Flag of the Republic of Korea

Article 2 (Promotion of the National Flag by the Central and Local Governments)

Heads of local government bodies shall push ahead with and support national flag promotion projects, including education and PR activities required to improve the understanding of the national flag and uphold its dignity.

❖ Regulations on the Display, Management, and Promotion of the National Flag (Directive of the Prime Minister)

Article 19 (Promotion of the National Flag) (1) Local government bodies shall develop and push ahead with diverse national flag promotion projects from national flag distribution campaigns to national flag-themed essay writing contests, drawing contests, and photo contests in an aim to uphold the dignity and status of the national flag and help citizens improve their understanding of and develop greater affection for the national flag.

(2) Local government bodies shall actively take part in national flag promotion campaigns targeting the public.

	A government agency telling potential respondents of customer satisfaction surveys that it is "looking forward to their kind cooperation"
Q3	If a government agency, which conducts customer satisfaction surveys every year pursuant to Article 13 (Customer Charter and Customer Satisfaction Level Survey) of the Act on the Management of Public Institutions and Article 17 (Customer Charter, Etc.) of the Enforcement Decree of the said Act, appeals to potential respondents for their "kind cooperation in participating as actual respondents," does it constitute an improper solicitation?
[A]	The Improper Solicitation and Graft Act does not apply when the receiver of a solicitation does not fall under the category of Public Servant, Etc., defined in the said Act. Even if the receiver of a solicitation does fall under the category of Public Servant, Etc., or private persons performing public duties defined in the said Act, it is difficult to view a request for kind cooperation as a violation of law. However, a person seemingly soliciting a public official, etc., to take care of a "request" at his/her own discretion may, in actuality, be implying the underlying message that the said request must be granted by violating acts and subordinate statutes or going beyond the parameters of the authorities permitted by acts and subordinate statutes. If the said public official, etc., in charge of relevant duties performs his/her duties in accordance with the solicitation in violation of acts and subordinate statutes, it may constitute an improper solicitation.

Q4	Request for preferential purchasing based on the Act on the Facilitation of Entrepreneurial Activities of Persons with Disabilities My business, classified as "an enterprise owned or operated by the disabled" pursuant to the Act on the Facilitation of Entrepreneurial Activities of Persons with Disabilities, manufactures and sells products to local government bodies. I recently requested a public official in charge of purchasing at a city government to purchase our products based on the preferential purchase provisions of the said Act, and the public official said my request falls under the category of improper solicitation specified in the Improper Solicitation and Graft Act. Is that correct?
[A]	For a request to constitute an improper solicitation under the Improper Solicitation and Graft Act, it has to fall under any of the Subparagraphs listed under Article 5 (1) of the said Act and be recognized to have violated acts or subordinate statutes. As such, a request for preferential purchasing pursuant to acts and subordinate statutes concerning persons with disabilities does not necessarily constitute an improper solicitation defined in the said Act. The act of solicitation to give priority to the products of enterprises owned or operated by the disabled in violation of acts or subordinate statutes governing contracts (as specified in Article 5 (1) 7 of the said Act), etc., may fall under the category of improper solicitation pursuant to the said Act. However, the request to comply with the preferential purchase ratio for public institutions set forth in Article 9-2 (3) of the Act on the Facilitation of Entrepreneurial Activities of Persons with Disabilities and Article 7-2 of the Enforcement Decree of the said Act cannot be viewed as an improper solicitation.

❖ Act on the Facilitation of Entrepreneurial Activities of Persons with Disabilities

Article 9-2 (Preferential Purchase by Public Institutions) (1) The head of a public institution shall promote the purchase of products, services, and construction directly produced, provided, and conducted by enterprises owned or operated by persons with disabilities (only applicable to SMEs under Article 2 of the Framework Act on Small and Medium Enterprises and the same shall apply hereafter) (hereafter in this Article referred to as "products of enterprises owned or operated by persons with disabilities").

(2) The head of a public institution shall include a separate purchase plan for products of enterprises owned or operated by persons with disabilities in a purchase plan prepared pursuant to Article 5 (1) of the Act on Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products and Support for Development of Their Markets.

(3) A purchase plan for products of enterprises owned or operated by persons with disabilities referred to in the preceding Paragraph shall include a purchase goal set at or above the ratio determined by Presidential Decree, and the head of a public institution shall endeavor to purchase at least as many products of enterprises owned or operated by persons with disabilities as specified in the relevant purchase plan.

❖ Enforcement Decree of the Act on the Facilitation of Entrepreneurial of Persons with Disabilities

Article 7-2 (Preferential Purchase Ratio of Public Institutions) "Ratio determined by Presidential Decree" referred to in Article 9-2 (3) of the Act, means 1/100 of the total amount of products to be purchased by the relevant institution in the relevant year: Provided, That the head of a public institution which has difficulty attaining the purchase ratio of at least 1/100 due to the characteristics of the public institution may separately determine the purchase ratio in consultation with the Minister of SMEs and Startups.

❖ Precedents of cases ruled as not constituting improper solicitation pursuant to the Criminal Act

- The Supreme Court of Korea ruled that reasonable business activities and simple requests for favorable arrangements and convenience and for the guarantee of rights, etc., are not categorized as improper solicitations.
- (Reasonable business activities) The defendant, who serves as a unit union head of an agricultural cooperative, attracted deposit clients for the unit union as part of his reasonable business activities, and solicitation to achieve this goal cannot be viewed as improper solicitation unless special circumstances exist (Supreme Court of Korea; June 12, 1979; Adjudication 79-do-708).
- (Simple requests for favorable arrangements and convenience) The request made to Defendant A, who is a lower-ranking staff member at a bank responsible for technical inspections for loan approval, and Defendant B, who is also a lower-ranking staff member at the bank responsible for completed amount inspections for construction loans, to handle tasks within their vested authorities and make favorable arrangements is not viewed as an appeal to handle tasks in an illegal or unreasonable manner (Supreme Court of Korea; April 8, 1980; Adjudication 79-do-3108).

Q5	**If the goal of an improper solicitation was not achieved** A parent made an improper solicitation to the coach of a school sports team to upwardly adjust his/her child's performance. However, the coach did not perform duties in accordance with the said solicitation. Is this case still subject to the legally specified sanctions?
[A]	The Improper Solicitation and Graft Act regulates the act of improper solicitation itself, irrelevant to whether or not the goal of such an improper solicitation is achieved. Even if the goal of an improper solicitation is not achieved, the said parent can be subject to the sanctions specified in the said Act (Article 23 (2) of the said Act). The coach must clearly express his/her will of refusal upon receiving such an improper solicitation (Article 7 (1) of the said Act) and report it to the head of his/her school if the same solicitation is made for a second time (Article 7 (2) of the said Act). Failure to fulfill the obligation to report is subject to disciplinary action.

Q6	When improper solicitations are not delivered to public servant, etc. The owner of land within a development restriction zone applied for approval for land shape and quality alteration to a public official at the county office. After the submission of the application, the land owner found that his/her land was not qualified for approval pursuant to acts and subordinate statutes pertinent to land shape and quality alteration. The land owner asked an acquaintance of the said public official to solicit for approval nonetheless on his/her behalf, but the said acquaintance did not relay the attempted solicitation to the public official. Is the land owner still viewed to have made an improper solicitation?
[A]	Article 5 of the Improper Solicitation and Graft Act specifies that no person shall make improper solicitations to Public Servant, Etc., in charge of relevant duties directly or through a third party. If an improper solicitation delivered to a third party was not relayed to Public Servant, Etc., in charge of relevant duties, it cannot be viewed that it constitutes an improper solicitation under Article 5 (1) of the said Act.

2 Improper Solicitations concerning Different Duties

	Solicitation for processing authorization, permission, etc. (Subparagraph 1)
Q1	An employee of a construction company solicited a public official in charge of construction permission at a district office to issue construction permission in violation of pertinent acts and subordinate statutes. After a few days, another employee of the same company made the same solicitation to the public official. Does this constitute an improper solicitation under the Improper Solicitation and Graft Act? How should the public official react?
[A]	The act of solicitation to process such duties as authorization, permission, licensing, patenting, approval, inspection, qualification, testing, certification, and verification, for which acts and subordinate statutes (including ordinances and rules; the same shall apply hereafter) prescribe requirements and which should be processed upon application by the duty-related party, in violation of acts and subordinate statutes falls under the category of improper solicitation specified in Article 5 (1) 1 of the said Act. As duties related to construction permission concern Article 5 (1) 1 of the said Act, the act of requesting the issuance of construction permission in violation of pertinent acts and subordinate statutes constitutes an improper solicitation. The aforementioned public official must clearly express his/her will of refusal upon receiving the solicitation for the first time (Article 7 (1) of the said Act) and is obligated to report to the head of the

district office upon receiving the same solicitation for a second time (Article 7 (2) of the said Act). Failure to fulfill the obligation to report is subject to disciplinary action.

The responsibility of the improper solicitations made by the two employees is to be vested in the said construction company. Thus, these improper solicitations can be viewed to have been made for a third party and are subject to the imposition of an administrative fine of up to KRW 20 million each. The construction company is also subject to the imposition of an administrative fine of up to KRW 20 million pursuant to Article 24 (Joint Penalty Provisions) of the said Act. However, the foregoing shall not apply if the construction company was not negligent in paying due attention and duly engaging in supervision to prevent such violations.

❖ Solicitation to process authorization, permission, etc. (Subparagraph 1)

- The act of solicitation to process such duties as authorization and permission, for which acts and subordinate statutes prescribe requirements and which should be processed upon application by the duty-related party, in violation of acts and subordinate statutes
- Duties equivalent to authorization, permission, licensing, patenting, etc., listed in the Improper Solicitation and Graft Act, such as designation, registration, and reporting, are also included.

	Solicitation for processing authorization, permission, etc. (Subparagraph 1)
Q2	A chairperson of a newspaper company asked a journalist in charge of legal affairs at the same newspaper company for a special visit to meet a friend in prison, and the journalist solicited the request to the pertinent institution. Does this constitute an improper solicitation under the Improper Solicitation and Graft Act?
[A]	A special visit is permitted "when the inmate's correctional record is excellent" or "when it is deemed especially necessary for the inmate's edification or sound rehabilitation into society" pursuant to Article 59 of the Enforcement Decree of the Administration and Treatment of Correctional Institution Inmates Act in a facility that does not block direct contact between inmates and visitors. The said request concerns Article 5 (1) 1 of the Improper Solicitation and Graft Act. It constitutes an improper solicitation if the said chairperson, knowing well that the aforementioned conditions for a special visit were not met, made the request in a manner that urges the public official in charge to violate acts and subordinate statutes or go beyond the parameters of the authorities granted by acts and subordinate statutes and if relevant duties were performed in accordance with the solicitation in violation of pertinent acts and subordinate statutes.

❖ Extent of acts and subordinate statutes

- Acts and subordinate statutes referred to in "in violation of acts and subordinate statutes" encompass acts, presidential decrees, ordinances of the Prime Minister, and ordinances of the Ministries.

- Acts and subordinate statutes include general laws such as the State Public Officials Act, Local Public Officials Act, and Criminal Act, in addition to acts and subordinate statues pertaining to public duties concerning improper solicitations.
- They also include legal procedure laws and adjective laws such as the Administrative Appeals Act and Non-Contentious Case Procedure Act.
- A violation of criteria designated by public notices, directives, etc., as delegated by or based on upper-level acts and subordinate statutes can be viewed as a violation of the said upper-level acts and subordinate statutes.

Q3	Solicitation to intervene in personnel matters, etc. (Subparagraph 3) Is it against the Improper Solicitation and Graft Act for a third party to solicit the principal of a school to recruit his/her acquaintance as a sports coach of the school?
[A]	In order for an improper solicitation to be established, the solicitation made must involve any of the affairs specified in Subparagraphs 1 through 14 under Article 5 (1) of the Improper Solicitation and Graft Act and the violation of acts and subordinate statutes must be recognized. A third party intervening in or exerting influence on the principal of a school regarding the recruitment of a sports coach in violation of acts and subordinate statutes (Article 5 (1) 3 of the said Act) and the principal hiring the said person as a sports coach accordingly can lead to the imposition of an administrative fine for the former (Article 23 (1) or (2) of the said Act) and criminal punishment for the latter (Article 22 (2) 1 of the said Act). However, if the third party's request did not imply an urging to recruit his/her acquaintance in violation of acts and subordinate statutes and was no more than a recommendation of a candidate and if the principal recruited the said acquaintance without violating acts and subordinate statutes and without going beyond his/her granted authorities, it does not violate the said Act. If the third party offered prohibited money, goods, etc., for the recruitment of his/her acquaintance to the principal in addition to the solicitation, it can be subject to the sanctions specified in the said Act (Article 8 (1) and (2) of the said Act).

❖ Solicitation to intervene in personnel matters, etc. (Subparagraph 3)

- All acts of soliciting Public Servant, Etc., to intervene in or influence the recruitment, promotion, transfer, etc., of Public Servant, Etc., in violation of acts and subordinate statutes are concerned.
- Personnel matters of Public Servant, Etc., equivalent to recruitment, promotion, and transfer, such as disciplinary action, assignment, testing, transferring-in/-out, and evaluation, are included.

	Solicitation to intervene in personnel matters, etc. (Subparagraph 3)
Q4	A city government is operating an internship program for college students at one of its public institutions to help college students in the local communities find jobs and accumulate experience in the public sector. The city government issues a letter of recommendation for those students who successfully complete the said program under the name of the public institution or division. 1. Does the issuance of a recommendation letter under the name of the public institution or division by the local government body violate the Improper Solicitation and Graft Act? 2. If the issued recommendation letter is submitted to the private sector, not the public sector (public corporations, etc.), does this make a difference?
[A]	(Regarding Question 1) The act of a local government body issuing a recommendation letter for an intern, etc., under the name of a public institution or division itself cannot be readily viewed as an improper solicitation unless special circumstances exist. However, a request to employ the recommended person at a public institution in violation of acts and subordinate statutes can be an improper solicitation that falls under Article 5 (1) 3 of the Improper Solicitation and Graft Act (solicitation to intervene in or influence the recruitment, promotion, transfer, etc., of Public Servant, Etc., in violation of acts and subordinate statutes). (Regarding Question 2) The receiver of a solicitation must be a public official, etc., to constitute an improper solicitation by law. As such, a recommendation made to an employee of a private company is not subject to the sanctions specified in the said Act, although the possibility of the violation of other acts and subordinate statutes such as the Code of Conduct for Public Officials should be reviewed.

❖ Personnel matters

- Recruitment: Recruitment qualifications, recruitment procedures, recommendation of candidates, authority of recruitment, etc.
- Promotion: Number of Public Servant, Etc., to be promoted, promotion qualifications, performance evaluation, deliberation procedures for special promotion, etc.
- Transfer: Restrictions on transfer, transfer procedures, personnel placement standards, personnel exchange, dispatch, restrictions on holding concurrent posts, etc.
- Disciplinary action: Grounds for disciplinary action, disciplinary action procedures, grounds for *ex officio* dismissal, authority of disciplinary action, appeal system, etc.
- Testing: Subjects for appointment and promotion tests, testing procedures, exemption from testing, decision on acceptance, etc.

	Solicitation to intervene in personnel matters, etc. (Subparagraph 3)
Q5	Is the act of sharing and discussing my problems, complaints, and preferences regarding personnel matters with a personnel manager or my superior categorized as an improper solicitation (assuming no money, goods, etc., were given)?
[A]	Any person who solicits Public Servant, Etc., in charge of relevant duties to intervene in or influence the personnel matters (promotion, etc.) of Public Servant, Etc., in violation of acts and subordinate statutes 'directly or through a third party' can be viewed to have committed an improper solicitation under Article 5 (1) 3 of the Improper Solicitation and Graft Act. Soliciting directly for his/her own interests means the legal responsibility thereof is vested in the initiator of the solicitation. It is not an improper solicitation to share or discuss personnel matter-related difficulties and complaints with a personnel manager or senior superior. However, it is a violation of law to aggressively request a promotion in violation of acts and subordinate statutes. An improper solicitation made for the initiator's own interests is not subject to the imposition of an administrative fine under the Improper Solicitation and Graft Act, but, if the initiator is a public official, etc., he/she is subject to disciplinary action (Article 21 of the said Act). If the personnel manager or superior fails to clearly express his/her will of refusal and make a report (Article 6 of the said Act) and handles relevant duties in accordance with the improper solicitation, he/she is subject to criminal punishment (Article 22 (2) 1 of the said Act) and disciplinary action (Article 21 of the said Act).

❖ Solicitation for the interests of the initiator of the solicitation

- A solicitation for the interests of the initiator of the solicitation refers to a solicitation where the legal responsibility thereof (advantages and disadvantages) is vested in the person who makes such a solicitation.
- Such a solicitation is exempt from the imposition of an administrative fine, and thus the acts prohibited and those subject to the imposition of an administrative fine do not overlap.

❖ Solicitation for a third party

- Solicitation for family members, such as parents and children, falls under solicitations for a third party as the legal responsibility thereof is vested in such family members, not the initiator of such a solicitation.

	Solicitation to select or reject a specific individual, organization, or juridical person for any prize, reward, etc. (Subparagraph 5)
Q6	If a sports coach of a school asks a person concerned with a commendation to adjust the requirements in favor of himself/herself to receive the said commendation, does it violate the Improper Solicitation and Graft Act?
[A]	Any act of solicitation to select or reject a specific individual, organization, or juridical person in violation of acts and subordinate statutes with respect to any award, reward, and the selection of outstanding institutions or persons administered by a public institution falls under the category of improper solicitation pursuant to Article 5 (1) 5 of the said Act As such, if the request made by the said coach falls under Article 5 (1) 5 of the said Act, it will be subject to the sanctions specified in the said Act.

❖ Solicitation to select or reject a specific individual, organization, or juridical person for any prize, reward, etc. (Subparagraph 5)

- Any act of solicitation to select or reject a specific individual, organization, or juridical person in violation of acts and subordinate statutes with respect to any award, reward, and the selection of outstanding institutions or persons administered by a public institution falls under the category of improper solicitation.
- All reward and screening systems, such as the selection of winners for commendations and persons of national merit, in addition to awards, rewards, and the selection of outstanding institutions and persons are included.

Q7	Solicitation to select or reject a specific individual, organization, or juridical person for any prize, reward, etc. (Subparagraph 5) If a public official scheduled to retire soon asks another public official in charge of prizes and decorations to recommend him/her for a retirement reward, does that constitute an improper solicitation? 1. If a public official of a city government scheduled to retire soon requests another public official in charge of prizes and decorations to help him/her gain the recommendation of the meritorious achievement review committee in violation of pertinent acts and subordinate statutes despite the fact that he/she is unqualified for the recommendation under pertinent acts and subordinate statutes 2. If a local resident makes the same request to the public official in charge of prizes and decorations on behalf of the retiring public official to help him/her gain the recommendation of the said committee
[A]	The act of solicitation to select or reject a specific individual for any reward administered by a public institution in violation of acts and subordinate statutes can be an improper solicitation (Article 5 (1) 5 of the Improper Solicitation and Graft Act). (Regarding Question 1) If the retiring public official directly makes the improper solicitation to the public official in charge of prizes and decorations for his/her own interest, he/she shall not be subject to the imposition of an administrative fine but will be subject to disciplinary action (Article 21 of the said Act). If the latter fails to fulfill the obligations to refuse and report (Article 7 of the said Act) and performs his/her duties in accordance with the improper solicitation, he/she shall be

subject to criminal punishment (imprisonment with labor for up to two years or a fine of up to KRW 20 million) pursuant to Article 22 (2) 1 of the said Act and disciplinary action pursuant to Article 21 of the said Act.

(Regarding Question 2)
The local resident is subject to the imposition of an administrative fine of up to KRW 20 million for making an improper solicitation on behalf of a third party (Article 23 (2) of the said Act), while the public official in charge of prizes and decorations is subject to criminal punishment (imprisonment with labor for up to two years or a fine of up to KRW 20 million) pursuant to Article 22 (2) 1 of the said Act and disciplinary action pursuant to Article 21 of the said Act if he/she fails to fulfill the obligations to refuse and report (Article 7 of the said Act) and performs his/her duties in accordance with the improper solicitation.

❖ Expression of the will of refusal and the obligation to report improper solicitations (Article 7 of the Improper Solicitation and Graft Act)

- Public Servant, Etc., in charge of relevant duties must clearly express their will of refusal upon receiving an improper solicitation for the first time and are obligated to report it if the same solicitation is made again for a second time despite such a refusal.
- Those Public Servant, Etc., who fail to make a report after receiving the same solicitation for a second time are subject to disciplinary action.

❖ Improper Solicitation and Graft Act

Article 7 (Reporting and Processing Improper Solicitations) (1) Upon receipt of an

improper solicitation, a public servant, etc. shall notify the person making such solicitation that it constitutes an improper solicitation and clearly express his/her intention to reject it.

(2) If a public servant, etc. receives the same improper solicitation again, even after taking action as described in paragraph (1), he/she shall report such fact to the head of the relevant institution in writing (including electronic documents; hereinafter the same shall apply).

Article 21 (Disciplinary Action) The head of a relevant institution, etc. shall take disciplinary action against any public servant, etc. who violates this Act or an order issued pursuant to this Act.

Article 22 (Penalty Provisions) (2) Any of the following persons shall be subject to imprisonment with labor for not more than two years or a fine not exceeding 20 million won:

1. A public servant, etc. (including private persons performing public duties under Article 11) who accepts improper solicitation and performs his/her duties as solicited, in violation of Article 6;

Article 23 (Imposition of Administrative Fines) (1) Any of the following persons shall be subject to an administrative fine not exceeding 30 million won:

1. A public servant, etc. (including private persons performing public duties under Article 11) who makes an improper solicitation to another public servant, etc. (including private persons performing public duties under Article 11) for a third party, in violation of Article 5 (1): Provided, That no administrative fine shall be imposed if criminal punishment is imposed under the Criminal Act or any other Act; if criminal punishment is imposed after an administrative fine is imposed, the imposition of the administrative fine shall be revoked;
2. A person who refuses to submit relevant materials, make an appearance, or submit a written statement, in violation of Article 19 (2) and (3) of the Protection of Public Interest Reporters Act, applying mutatis mutandis pursuant to Article 15 (4) (including cases where the said Article 19 (2) and (3) apply mutatis mutandis pursuant to Article 22 (3) of the same Act).

(2) A person (excluding persons subject to paragraph (1) 1), who makes an improper solicitation to a public servant, etc. (including private persons performing public duties under Article 11) for a third party, in violation of Article

5 (1), shall be subject to an administrative fine not exceeding 20 million won: Provided, That no administrative fine shall be imposed if criminal punishment is imposed under the Criminal Act or any other Act; if criminal punishment is imposed after an administrative fine is imposed, the imposition of the administrative fine shall be revoked.

(3) A person (excluding persons subject to paragraph (1) 1 and (2)) who makes an improper solicitation to a public servant, etc. (including private persons performing public duties under Article 11), through a third party, in violation of Article 5 (1), shall be subject to an administrative fine not exceeding ten million won: Provided, That no administrative fine shall be imposed if criminal punishment is imposed under the Criminal Act or any other Act; if criminal punishment is imposed after an administrative fine is imposed, the imposition of the administrative fine shall be revoked.

Q8	Solicitation to disclose duty-related confidential information on bidding, auction, etc. (Subparagraph 6) A textile business owner heard that a competitor applied for a patent for a new material. The business owner requested a patent attorney to ask for pertinent information from his/her acquaintance who is a public official in charge of patent review. The patent attorney relayed this message to the public official in charge who refused this request. Are these three people subject to any sanctions?
[A]	Article 5 (1) 6 of the Improper Solicitation and Graft Act specifies that the act of solicitation to disclose, in violation of acts and subordinate statutes, duty-related confidential information on bidding, auction, development, examination, patenting, military affairs, taxation, etc., is an improper solicitation. The act of requesting disclosure of confidential information about a product under patent-pending status obtained while on duty in violation of the Patent Act, etc., can be categorized as an improper solicitation. The business owner is subject to the imposition of an administrative fine of up to KRW 10 million as he/she initiated an improper solicitation through a third party (Article 23 (3) of the said Act). The public official in charge clearly expressed his/her will of refusal after receiving the patent attorney's request and thus is exempt from disciplinary action and punishment (Article 7 (1) of the said Act). The patent attorney made an improper solicitation for a third party and thus is subject to the imposition of an administrative fine of up to KRW 20 million (Article 23 (2) of the said Act).

❖ Patent Act

Article 226 (Divulgence of Confidential Information, etc.) Any current or former employee of the Korean Intellectual Property Office or the Korean Intellectual Property Trial and Appeal Board who divulges or misappropriates confidential information he/she has become aware of regarding an invention claimed in a pending patent (including an invention claimed in a pending international patent application) in the course of performing his/her duties shall be punished by imprisonment with labor for not more than five years, or by a fine not exceeding 50 million won.

Q9	Solicitation to select or reject a specific individual, organization, or juridical person as a party to a contract (Subparagraph 7) A construction company owner came to know that a national university was planning to have its facilities waterproofed. The company owner solicited the national university's staff member in charge of contracting through his/her friend who is a professor at the university to select his/her company as a party to the contract for the waterproofing construction by splitting the construction into multiple smaller-scale projects to enable non-competitive, negotiated contracting. As a result, his/her company was selected as a party to the contract. What sanctions are these three people subject to?
[A]	Article 5 (1) 7 of the Improper Solicitation and Graft Act defines the act of solicitation to select or reject a specific individual, organization, or juridical person as a party to a contract in violation of pertinent acts and subordinate statutes as an improper solicitation. As such, the act of splitting a large-scale construction project, which originally requires competitive bidding, into multiple smaller-scale projects to enable non-competitive, negotiated contracting with a specific individual in violation of acts and subordinate statutes pertaining to contracting can be categorized as an improper solicitation. The construction company owner is subject to the imposition of an administrative fine of up to KRW 10 million as he/she initiated an improper solicitation through a third party (Article 23 (3) of the Improper Solicitation and Graft Act).

The professor of the national university is a public official, etc., who made an improper solicitation for a third party and thus is subject to the imposition of an administrative fine of up to KRW 30 million (Article 23 (1) 1 of the said Act).

The national university's staff member selected the said company owner as a party to the waterproofing construction contract in accordance with the professor's improper solicitation and thus is subject to imprisonment with labor for up to two years or the imposition of a fine of up to KRW 20 million (Article 22 (2) 1 of the said Act) as well as disciplinary action (Article 21 of the said Act).

❖ Solicitation to select or reject a specific individual, organization, or juridical person as a party to a contract (Subparagraph 7)

- The act of solicitation to select or reject a specific individual, organization, or juridical person as a party to a contract in violation of acts and subordinate statutes pertaining to contracting is defined as an improper solicitation.
- Unlike other types of improper solicitations, this act is more specifically governed by acts and subordinate statutes pertaining to contracting.
- Acts and subordinate statutes pertaining to contracting include general acts pertaining to contracting such as the Act on Contracts to Which the State Is a Party and the Act on Contracts to Which a Local Government Body Is a Party as well as provisions concerning contracting in individual acts and subordinate statutes.

❖ Precedents of cases ruled as improper solicitation regarding the selection or rejection of a party to a contract

- A division head and staff member in charge of commodity purchasing and contracting at a public corporation received a solicitation to help form a non-competitive, negotiated contract for product supply with Korea Veterans Health Service and make favorable arrangements in return for gratuities (Supreme Court of Korea; August 10, 1990; Adjudication 90-do-665).
- A physician hired by a hospital was solicited to ensure that the hospital purchase medical devices of a certain brand or to promote a certain drug by prescribing the said drug frequently (Supreme Court of Korea; June 11, 1991; Adjudication 91-do-413).
- Professors at a university hospital were solicited by a publishing company owner to select one of the publications of the company as a learning material and to have new learning materials published through the company (Supreme Court of Korea; October 11, 1996; Adjudication 95-do-2090).

❖ Act on Contracts to Which the State is a Party

Article 7 (Method of Contracting) (1) Where the head or contracting officer of a central government agency intends to make a contract, he/she shall call for open tenders for the contract: Provided, That if it is deemed necessary in the light of the purposes, nature, size, etc. of a contract, the head or contracting officer of a central government agency may place restrictions on the qualification for participants or designate participants to invite competitive tenders or may execute a negotiated contract, as prescribed by Presidential Decree.

❖ Enforcement Decree of the Act on Contracts to Which the State is a Party

Article 68 (Prohibition of Division of Contract for Construction Project) The head or a contracting officer of a central administrative agency shall not divide a construction project for identical structures specified by the Minister of Strategy and Finance or a single construction project with the entire construction works fixed by design documents, etc. to make partial contracts based on construction periods or based on the volume of construction works: Provided, That the foregoing shall not apply to construction works specified in any of the following:

	Solicitation to intervene or exert influence so that subsidies, funds, etc., are assigned to, provided to, invested in, etc., a specific individual, organization, or juridical person (Subparagraph 8)
Q10	If a National Assembly Member or the head of a local government body demands budget allocation for a project designed for residents of a certain region, a certain organization, etc., to the public official in charge at the relevant ministry, does it constitute an improper solicitation?
[A]	The act of solicitation to intervene in and exert influence on duties with respect to subsidies, incentives, contributions, investments, grants, funds, etc., to assign, provide, lend, contribute, or finance them to or invest or deposit them in a specific individual, organization, or juridical person in violation of acts and subordinate statutes is categorized as an improper solicitation (Article 5 (1) 8 of the Improper Solicitation and Graft Act). Article 5 (1) 8 of the said Act does not apply to general budget compilation and deliberation tasks, which are unrelated to the assignment, provision, etc., of subsidies, incentives, etc. However, solicitation of budget execution of subsidies, incentives, contributions, investments, grants, funds, etc., to be assigned, provided, etc., to a specific individual, organization, or juridical person in the budget compilation process can constitute an improper solicitation.

❖ Solicitation to intervene or exert influence so that subsidies, funds, etc., are assigned to, provided to, invested in, etc., a specific individual, organization, or juridical person (Subparagraph 8)

- The act of solicitation to intervene in and exert influence on duties with respect to subsidies, incentives, contributions, investments, grants, and funds to assign, provide, lend, contribute, or finance them to or invest or deposit them in a specific individual, organization, or juridical person in violation of acts and subordinate statutes is categorized as an improper solicitation.
- (Subsidies) Central government subsidies based on the Subsidy Management Act and local subsidies based on the Local Finance Act
- (Incentives) Reemployment promotion incentives based on the Employment Insurance Act, science and technology development incentives based on the Korea Scientists and Engineers Mutual Aid Association Act, incentives to secure a talented workforce based on the Military Personnel Management Act, etc.
- (Contributions and investments) Contributions and investments based on the National Finance Act, the Local Finance Act, the Act on the Management of Public Institutions, the Act on the Operation of Local Government-Invested or -Funded Institutions, etc.
- (Grants) Grants provided for the administrative operation of local government bodies by the state pursuant to the Local Subsidy Act

	Solicitation to intervene or exert influence so that subsidies, funds, etc., are assigned to, provided to, invested in, etc., a specific individual, organization, or juridical person (Subparagraph 8)
Q11	A public official (division head) in charge of budgeting introduced his/her acquaintance also in charge of budgeting at a local government body to his/her junior staff in charge of budgeting during the period of budget compilation. Does this constitute an improper solicitation pursuant to the Improper Solicitation and Graft Act?
[A]	An improper solicitation pursuant to the Improper Solicitation and Graft Act refers to any act of solicitation of Public Servant, Etc., in charge of relevant duties to engage in affairs described in Article 5 (1) 1 through 14 of the said Act in violation of acts and subordinate statutes. In order for an improper solicitation to be established under the said Act, the solicitation must concern any of the affairs described in Article 5 (1) 1 through 14 of the said Act and be recognized as a violation of law. It does not constitute an improper solicitation simply to introduce an acquaintance to a public official in charge of budget compilation. However, if it implied an urging to adjust budgeting with respect to any affairs under Article 5 (1) of the said Act in violation of acts or subordinate statutes or by going beyond his/her granted authorities, it can constitute an improper solicitation. Pursuant to Article 11 (2) of the Code of Conduct for Public Officials, public officials are prohibited from introducing a duty-related party to another duty-related party or other public officials in an attempt to pursue their own interests or the interests of others improperly. As such, this case needs to be further reviewed for a violation of the Code of Conduct for Public Officials.

	Solicitation to intervene or exert influence so that subsidies, funds, etc., are assigned to, provided to, invested in, etc., a specific individual, organization, or juridical person (Subparagraph 8)
Q12	A public official in charge of managing and supervising the assignment of subsidies, etc., works under a division head whose acquaintance is the chairperson of the board of a non-profit organization. The said chairperson, who is not a public official, solicited the said public official by phone to assign subsidies in an amount larger than legally specified, but the public official clearly refused. The chairperson then made the same request to the division head of the public official, and the division head ordered the public official to seek ways to assign more subsidies to the chairperson's organization. In the end, the public official followed the division head's order. Does this constitute an improper solicitation?
[A]	The chairperson's solicitation to assign more subsidies than legally specified initiated to the public official and the division head is in violation of Article 5 (1) 8 of the Improper Solicitation and Graft Act, soliciting them to intervene in or exert influence on the assignment and provision of subsidies, etc., to a specific individual, organization, or juridical person, and thus falls under the category of improper solicitation. Pursuant to Article 7 (1) of the said Act, upon receiving an improper solicitation, Public Servant, Etc., must clearly inform the initiator of the solicitation that it is an improper solicitation and express their will of refusal. The said public official complied with the said Act. The division head is a higher-ranking public official involved in the decision-making process and "a public official, etc., in charge of relevant duties." The order he/she issued to the public official itself can be viewed as the implementation of duties in accordance with

an improper solicitation and can be subject to criminal punishment pursuant to Article 22 (2) 1 of the said Act.

The public official is also subject to criminal punishment pursuant to Article 22 (2) 1 of the said Act as he/she followed the division head's order despite being aware that it was an improper solicitation for a third party.

The chairperson made an improper solicitation through a third party and thus is subject to the imposition of an administrative fine pursuant to Article 23 (3) of the said Act.

❖ "Public Servant, Etc., in charge of relevant duties"

- "Public Servant, Etc., in charge of relevant duties" include division heads, bureau heads, etc., responsible for giving approval in addition to Public Servant, Etc., who directly handle such duties on the front lines.
- Heads of organizations, etc., with directing and supervisory authority are also included if authorities to make arbitrary decisions have been delegated to them in accordance with pertinent internal regulations.

	Solicitation to allow a specific individual, organization, or juridical person to engage in transactions of goods and services with public institutions (Subparagraph 9)
Q13	1. If a partner company of a public corporation that purchases products from the said corporation requests additional supplies other than those contracted or supplies for free, does it constitute an improper solicitation? 2. If the said corporation requests its partner company to expand the purchasing of supplies to boost its sales, does it constitute an improper solicitation?
[A]	(Regarding Question 1) Article 5 (1) 9 of the Improper Solicitation and Graft Act stipulates that the act of solicitation to allow a specific individual, organization, or juridical person to buy, exchange, use, benefit from, or possess goods and services that are produced, supplied, or managed by public institutions at prices discrepant from those prescribed in acts or subordinate statutes or from normal transaction practices is an improper solicitation. The request of the partner company for additional supplies and for support in the form of free supplies shall have to be reviewed further to check whether it falls under the category of improper solicitation described in Subparagraph 9. Preferential treatment, etc., given to a specific individual, organization, or juridical person in violation of internal standards, bylaws, etc., of a public institution without a valid reason falls under the category of acts discrepant from normal transaction practices. (Regarding Question 2) If the public corporation requests the partner company to expand

the purchasing of supplies, it hardly constitutes an improper solicitation as the partner company is not a public institution under the Improper Solicitation and Graft Act and as its employees are not Public Servant, Etc., under the said Act.

❖ Solicitation to allow a specific individual, organization, or juridical person to engage in transactions of goods and services with public institutions (Subparagraph 9)

- The act of solicitation to allow a specific individual, organization, or juridical person to buy, exchange, use, benefit from, or possess goods and services that are produced, supplied, or managed by public institutions at prices discrepant from those prescribed in acts or subordinate statutes or from normal transaction practices is an improper solicitation.
- Unlike other improper solicitations, the 'normal transaction practices' of public institutions serve as the yardstick for judgment.
- Preferential treatment, etc., given to a specific individual, organization, or juridical person in violation of internal standards, bylaws, etc., of a public institution without a valid reason falls under the category of acts discrepant from normal transaction practices.

	Solicitation to allow a specific individual, organization, or juridical person to engage in transactions of goods and services with public institutions (Subparagraph 9)
Q14	A patient waiting in line to be hospitalized at a national university hospital decided to queue-jump and solicited the hospital's chief administrator to give him/her priority in allocating a bed against the hospital's internal regulations, while also requesting his/her acquaintance to make the same solicitation to the hospital's chief administrator. Did these three people violate the Improper Solicitation and Graft Act?
[A]	Soliciting to queue-jump against the hospital's internal regulations and be allocated a bed ahead of others falls under the category of solicitation to allow a specific individual, organization, or juridical person to buy, exchange, use, benefit from, or possess goods and services that are produced, supplied, or managed by public institutions at prices discrepant from those prescribed in acts or subordinate statutes or from normal transaction practices specified in Article 5 (1) 9 of the Improper Solicitation and Graft Act. The act of giving the patient higher priority in accordance with the patient's solicitation is an 'act discrepant from normal transaction practices'. Thus, this case may constitutes an improper solicitation. The patient initiated an improper solicitation through a third party and is subject to the imposition of an administrative fine of up to KRW 10 million (Article 23 (3) of the said Act), while his/her acquaintance is subject to the imposition of an administrative fine of up to KRW 20 million for making an improper solicitation for a third party (Article 23 (2) of the said Act). The chief administrator, if he/she performed his/her duties in accordance with the improper solicitation, is subject to criminal punishment of imprisonment with labor for up to two years or a fine of up to KRW 20 million (Article 22 (2) 1 of the said Act).

❖ Sanctions for Improper Solicitations

Type	Violation		Sanction
Prohibition of improper solicitations	• Soliciting Public Servant, Etc., directly for the interests of the initiator of the solicitation		No sanction *Disciplinary action when the initiator is a public official, etc.
	• Soliciting Public Servant, Etc., through a third party		An administrative fine of up to KRW 10 million
	• Soliciting Public Servant, Etc., for a third party	• Citizens excluding Public Servant, Etc.	An administrative fine of up to KRW 20 million
		• Public Servant, Etc.	An administrative fine of up to KRW 30 million
	• Public Servant, Etc., performing relevant duties in accordance with improper solicitations		A fine of up to KRW 20 million or imprisonment with labor for up to two years

	Solicitation to allow a specific individual, organization, or juridical person to engage in transactions of goods and services with public institutions (Subparagraph 9)
Q15	A company, engaging in the hospitality, ski, and golf businesses, is classified as a public service-related organization pursuant to Article 3-2 of the Public Service Ethics Act. If a customer requests a discount or negotiation against its internal regulations or demands the use of its place of business for free for reasons not specified in its internal regulations, does it constitute an improper solicitation?
[A]	The act of solicitation to allow a specific individual, organization, or juridical person to buy, exchange, use, benefit from, or possess goods and services that are produced, supplied, or managed by public institutions at prices discrepant from those prescribed in acts or subordinate statutes or from normal transaction practices is an improper solicitation pursuant to Article 5 (1) 9 of the Improper Solicitation and Graft Act, and preferential treatment, etc., given to a specific individual, organization, or juridical person in violation of internal standards, bylaws, etc., of a public institution without a valid reason falls under the category of acts discrepant from normal transaction practices. As such, if a customer demands an employee of a public institution to give a discount, etc., regarding the said institution's place of business against its internal standards and regulations, it can constitute an improper solicitation under the Improper Solicitation and Graft Act. If the customer initiated the improper solicitation to the said employee directly, not through a third party, he/she is not subject to the imposition of an administrative fine.

However, if the customer is a public official, etc., he/she may be subject to disciplinary action.

Upon receiving the improper solicitation for the first time, the said employee must clearly inform the said customer that it constitutes an improper solicitation and clearly express his/her will of refusal (Article 7 (1) of the said Act). Upon receiving the same improper solicitation for a second time, the employee must report to the head of the public institution in written form (Article 7 (2) of the said Act). Failure to fulfill such legally specified obligations and the performance of relevant duties in accordance with the improper solicitation are subject to criminal punishment (Article 22 (2) of the Act).

Q16	Solicitation to allow a specific individual, organization, or juridical person to engage in transactions of goods and services with public institutions (Subparagraph 9) If a public official, who is a duty-related party, initiates an act of solicitation to book a golf course operated by a public institution or a condominium-style training institute affiliated with a public institution, is it a violation of the Improper Solicitation and Graft Act?
[A]	The act of solicitation to allow a specific individual, organization, or juridical person to buy, exchange, use, benefit from, or possess goods and services that are produced, supplied, or managed by public institutions at prices discrepant from those prescribed in acts or subordinate statutes or from normal transaction practices is an improper solicitation pursuant to Article 5 (1) 9 of the Improper Solicitation and Graft Act, and preferential treatment, etc., granted to a specific individual, organization, or juridical person in violation of internal standards, bylaws, etc., of a public institution without a valid reason falls under the category of acts discrepant from normal transaction practices Public Servant, Etc., are prohibited from accepting, demanding, or agreeing to receive money, goods, etc., in relation to their duties whether or not they are given as part of a quid pro quo arrangement (Article 8 (2) of the said Act). Money, goods, etc., under the said Act encompass all forms of tangible and intangible financial benefits such as conveniences, in addition to all financial interests. As such, the convenience of having the golf course and condominium booked is included in prohibited money, goods, etc., and the request to provide such a convenience may be deemed a violation of Article 8 (Prohibition of Money, goods, Etc.) of the said Act.

Solicitation to book a golf course operated by a private-sector owner is likely to be excluded from the category of improper solicitation as it does not concern Public Servant, Etc., in charge of relevant duties but is deemed to require a separate review under the possibility of violating the Code of Conduct for Public Servant, Etc.

❖ Precedent of a case ruled as improper solicitation regarding the demand to give priority for the rental of a store site

- Solicitation of the person with the authority of leasing and managing store sites, etc., to give priority by the defendant,who is a division head engaging in rental-related duties , in return for gratuities, especially when another candidate was about to rent the site, is an improper solicitation (Supreme Court of Korea; August 21, 1984; Adjudication 83-do-2447).

Q17	Solicitation to process or manipulate affairs of schools of different levels, such as admissions, grades, or performance tests (Subparagraph 10) If a college student-athlete did not attend a regular course without any valid reason and demanded the professor to still acknowledge his/her attendance, is it a violation of the Improper Solicitation and Graft Act?
[A]	Solicitation to process or manipulate affairs of schools of different levels, such as admissions, grades, and performance tests (including the student attendance record), in violation of acts or subordinate statutes can be subject to the sanctions specified in the said Act when recognized as an improper solicitation (Article 5 (1) 10 of the said Act). However, if attendance is acknowledged in accordance with school regulations and the Guidelines on the Creation and Management of Student Records under acts and subordinate statutes pertaining to elementary and secondary education, it does not violate the said Act.

❖ Solicitation to process or manipulate affairs of schools of different levels, such as admissions, grades, or performance tests (Subparagraph 10)

- Solicitation to process or manipulate affairs of schools of different levels, such as admissions, grades, and performance tests (including the student attendance record), in violation of acts or subordinate statutes is categorized as an improper solicitation.

- Schools of different levels refer to schools established under diverse acts and subordinate statutes including the Elementary and Secondary Education Act, Higher Education Act, Early Childhood Education Act, Private School Act, etc.

❖ Higher Education Act

Article 21 (Operation of Curriculum) (1) Schools shall operate curriculums, as determined by school regulations: Provided, That any curriculum operated jointly with domestic or foreign universities shall be prescribed by Presidential Decree.

	Solicitation to process or manipulate affairs of schools of different levels, such as admissions, grades, or performance tests (Subparagraph 10)
Q18	A student who was employed prior to his/her graduation and could not attend his/her courses asked the professor to acknowledge his/her attendance, and the professor accepted the request. Is the professor subject to the sanctions specified in the Improper Solicitation and Graft Act? If the receiver of the student's solicitation is a part-time lecturer, would it still entail the same sanctions?
[A]	Solicitation to acknowledge the minimum days of attendance required without attending classes falls under the category of acts of solicitation to process or manipulate affairs of schools of different levels, such as admissions, grades, and performance tests, in violation of acts or subordinate statutes defined in Article 5 (1) 10 of the said Act. Article 21 (1) of the Higher Education Act specifies that schools shall operate curriculums as determined by school regulations. As such, if the minimum days of attendance required is acknowledged in accordance with the aforementioned solicitation in violation of school regulations, it can be subject to the sanctions specified in the Improper Solicitation and Graft Act. Also, pursuant to the said Act, the said student is not subject to the imposition of an administrative fine as he/she initiated the solicitation for himself/herself. Pursuant to the amended Higher Education Act to be enforced on August 1, 2019, part-time lecturers are included as faculty members and thus are categorized as Public Servant, Etc. Therefore, the solicitation of a part-time lecturer can be subject to the sanctions specified in the Improper Solicitation and Graft Act.

	Solicitation to process or manipulate affairs of schools of different levels, such as admissions, grades, or performance tests (Subparagraph 10)
Q19	If a student or a parent of a student requests the homeroom teacher to "be generous when creating the student record," "modify the student record more favorably," or "change the student record as the student wishes," is it a violation of the Improper Solicitation and Graft Act?
[A]	Article 5 (1) 10 of the said Act stipulates that solicitation to process or manipulate affairs of schools of different levels, such as admissions, grades, and performance tests, in violation of acts or subordinate statutes, constitutes an improper solicitation. "In violation of acts or subordinate statutes" is one of the conditions that establish an improper solicitation, and acts and subordinate statutes include acts, subordinate statutes, presidential decrees, ordinances of the Prime Minister, and ordinances of the Ministries. If specific criteria are described in directives, public notices, etc., as delegated by or based on upper-level acts and subordinate statutes, the violation of the said criteria is likely to be viewed as the violation of upper-level acts and subordinate statutes. As such, the aforementioned solicitation in violation of school regulations and the Guidelines on the Creation and Management of Student Records under acts and subordinate statutes pertaining to elementary and secondary education can fall under the category of improper solicitation.

Q20	Solicitation to process affairs related to military service (Subparagraph 11) A parent, wishing his/her son to be rated Grade 4 in the draft physical examination to perform supplementary service and serve as social work personnel in Seoul, solicited a military doctor overseeing the physical examination on-site to help his/her son receive Grade 4 in violation of the criteria for the physical grade system without telling his/her son. Does this violate the Improper Solicitation and Graft Act?
[A]	Solicitation to process affairs related to military service, such as a physical examination for military service, assignment to a military unit, and appointment to a position, is an improper solicitation under Article 5 (1) 11 of the said Act. As such, the parent's act of solicitation to receive a grade for performing supplementary service in violation of the criteria for the physical grade system under acts and subordinate statutes pertaining to military service is an improper solicitation. The parent made the solicitation for a third party (his/her son) and thus is subject to the imposition of an administrative fine of up to KRW 20 million (Article 23 (2) of the Improper Solicitation and Graft Act). As the legal responsibility of the said solicitation is vested in his/her son, not himself/herself, it is categorized as an improper solicitation for a third party. As the parent made the solicitation without informing his/her son, who did not request the parent to make the solicitation, his/her son is not subject to the sanctions under the said Act.

The military doctor shall not be subject to the sanctions and disciplinary action under the said Act if he/she clearly expresses his/her will of refusal when receiving such a solicitation for the first time. Upon receiving the same solicitation for a second time, he/she is obligated to report to the head of his/her institution, and failure to report shall entail disciplinary action.

	Solicitation to perform assessments and examinations conducted by public institutions or to manipulate the results thereof (Subparagraph 12)
Q21	A public official, in charge of examining acts and subordinate statutes upon the request of different ministries, received a solicitation from a higher-ranking official of one of the ministries by phone to expedite his/her ministry's request ahead of others. Does this constitute an improper solicitation?
[A]	The examination of acts and subordinate statutes does not fall under any Subparagraph under Article 5 (1) of the Improper Solicitation and Graft Act. Even if the examination of acts and subordinate statutes is viewed to fall under Article 5 (1) 12 of the said Act (assessments and examinations conducted by public institutions), it is difficult to recognize it as an improper solicitation simply because the higher-ranking official requested to expedite his/her ministry's request.

❖ Solicitation to perform assessments and examinations conducted by public institutions or to manipulate the results thereof (Subparagraph 12)

- The act of solicitation to perform assessments and examinations conducted by public institutions or to manipulate the results thereof in violation of acts and subordinate statutes is defined as an improper solicitation.
- (Assessments) Specialized graduate schools under the Higher Education Act, medical institutions under the Industrial Accident Compensation Insurance Act, national research and development projects under the Framework Act on Science and Technology, land price calculation under the Restitution of Development Gains Act, etc.

- (Examinations) Long-term care need under the Long-Term Care Insurance Act, whether or not test results of motor vehicles satisfy safety standards under the Vehicle Management Act, land subject to purchase under the Road Act, liability for compensation under the Board of Audit and Inspection Act, etc.

❖ Precedent of a case ruled to constitute an improper solicitation

- (Manipulation of an assessment result) Those serving in the appraisal industry were solicited to downwardly adjust the appraised value of the object of appraisal (Supreme Court of Korea; July 13, 1982; Adjudication 82-do-925).

	Solicitation to make a specific individual, organization, or juridical person subject to or exempt from administrative guidance, enforcement activities, audit, or investigation; to manipulate the outcome thereof; or to ignore any illegality (Subparagraph 13)
Q22	Officers of city and district governments, while regulating parking and stopping violations in accordance with Article 35 of the Road Traffic Act, etc., were solicited by a driver to overlook his/her violation, referring personal relationship with a mayor. Does it constitute an improper solicitation and the officers will be subject to punishment?
[A]	Solicitation to make a specific individual, organization, or juridical person subject to or exempt from administrative guidance, enforcement activities, audit, or investigation; to manipulate the outcome thereof; or to ignore any illegality in violation of acts or subordinate statutes is an improper solicitation under Article 5 (1) 13 of the Improper Solicitation and Graft Act. Solicitation related to parking and stopping regulations under the Road Traffic Act falls under the category of improper solicitation described in Article 5 (1) 13 of the said Act. If the driver found to have committed a parking or stopping violation solicits the officers to overlook his/her wrongdoing in violation of acts and statutes, it can constitute an improper solicitation. If the officers in charge of regulating parking and stopping violations perform their duties in accordance with the solicitation, they can become subject to criminal punishment (Article 22 (2) 1 of the Improper Solicitation and Graft Act) and disciplinary action (Article 21 of the said Act) in violation of Article 6 of the said Act.

❖ Solicitation to make a specific individual, organization, or juridical person subject to or exempt from administrative guidance, enforcement activities, audit, or investigation; to manipulate the outcome thereof; or to ignore any illegality (Subparagraph 13)

- Solicitation to make a specific individual, organization, or juridical person subject to or exempt from administrative guidance, enforcement activities, audit, or investigation; to manipulate the outcome thereof; or to ignore any illegality in violation of acts or subordinate statutes is an improper solicitation.
- (Administrative guidance) Management status of illegal buildings under the Building Act, drinking water quality management under the Drinking Water Management Act, compliance with food sanitation standards and requirements for cooks and dietitians under the Food Sanitation Act, etc.
- (Enforcement activities) Traffic control and regulation under the Road Traffic Act; regulation of illegal construction of buildings under construction and unauthorized and unreported buildings under the Building Act; collection, disposal, deletion, etc., of unrated game products, or game products, etc. rejected for rating classification under the Game Industry Promotion Act, etc.

[3] Exceptions to Improper Solicitation

Q1	The act of demanding a particular action in accordance with procedures and methods prescribed in acts, subordinate statutes, and standards (Subparagraph 1) If an ordinary citizen suggests or proposes the enactment or amendment of an act to a National Assembly Member, does it constitute an improper solicitation?
[A]	The act of an ordinary citizen suggesting or proposing a National Assembly Member to enact or amend an act cannot be viewed to fall under Subparagraphs 1 through 14 under Article 5 (1) of the Improper Solicitation and Graft Act and thus is not an improper solicitation. Pursuant to Article 5 (2) 1 of the said Act, the act of demanding a particular action such as relief or settlement of infringement of rights in accordance with procedures and methods prescribed in the Petition Act, the Civil Petitions Treatment Act, the Administrative Procedures Act, the National Assembly Act, and other acts, subordinate statutes, and standards (including regulations, bylaws, and standards of the public institutions set forth in Subparagraph 1 (b) through (e) of Article 2 of the said Act) or of suggesting or proposing the enactment, amendment, or rescission of any act, subordinate statute, or standards relevant thereto is an exception to improper solicitation. Therefore, if the act of an ordinary citizen suggesting or proposing a National Assembly Member to enact or amend an act falls under this category, it shall not be an improper solicitation.

	The act of publicly demanding a public official, etc., to take a particular action (Subparagraph 2)
Q2	What is the extent of "publicly" in the provision of Article 5 (2) 2 of the Improper Solicitation and Graft Act? Does it encompass the act of explicitly specifying the said particular action on social networking services, etc., and personally contacting the public official, etc., to communicate the request?
[A]	"Publicly" has to do with the state through which many and unspecified persons can become aware of the solicitation, rather than a certain physical space. A demand made by picketing in public places or through media such as TV and newspapers falls under this category. If the solicitation is posted on social networking services and recognizable by many and unspecified persons, it can be viewed as an act of publicly demanding a public official, etc., to take a particular action (Article 5 (2) 2 of the said Act) and an exception to improper solicitation. However, personally contacting a public official, etc., regarding a solicitation has to be reviewed separately.

❖ The act of publicly demanding a public official, etc., to take a particular action (Subparagraph 2)

- It means to place the demand or solicitation in the state through which many and unspecified persons can become aware of the said demand or solicitation. Once the demand or solicitation is deemed to have been made public, it is recognized to be an exception to improper solicitation regardless of its details.

	The act of publicly demanding a public official, etc., to take a particular action (Subparagraph 2)
Q3	School B located in County A constructed a school building on land outside the authorized area, and thus the regional Office of Education revoked authorization for the establishment of School B. Following this measure, County A sent an official letter requesting the cooperation of the Office of Education on the grounds that "the school was the only specialized high school within its jurisdiction and therefore is critically needed to be maintained" and "opened this letter to the public." Does this act constitute "the act of publicly demanding a public official, etc., to take a particular action" specified in Article 5 (2) 2 of the Improper Solicitation and Graft Act?
[A]	"Publicly" stipulated in "the act of publicly demanding a public official, etc., to take a particular action" under Article 5 (2) 2 of the said Act has to do with the state through which many and unspecified persons can become aware of the demand, rather than a certain physical space. By opening a document to the public, a public institution makes the document browsable and downloadable on the publicized government document website (open.go.kr). As such, this case can be viewed as an act of publicly demanding a particular action.

	The act of demanding to complete a certain duty within a statutory deadline, etc. (Subparagraph 4)
Q4	If a citizen who applied for permission from the district office for the extension of a building asks his/her friend who is a public official at the said district office to inquire about the progress thereof, does it constitute an improper solicitation?
[A]	The extension of buildings pursuant to pertinent acts and subordinate statutes concerns the fulfillment of preset requirements and an application by the duty-related party for authorization, permission, licensing, etc., as specified in Article 5 (1) 1 of the Improper Solicitation and Graft Act, and thus the said citizen's request falls under the category of improper solicitation. However, a simple inquiry about the progress of the processing of the permission for the said extension can be categorized as "the act of requesting or demanding a public institution to complete a certain duty within a statutory deadline or asking for confirmation or inquiring about the progress or outcome thereof" under Article 5 (2) 4 of the same Act and considered an exception to improper solicitation.

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Compilation of Authoritative Interpretations of the Improper Solicitation and Graft Act

III

Prohibited Money, Goods, Etc.

1. Important Provisions and Notes
2. Cases

1. Important Provisions and Notes

Article 8 (Prohibition of Receipt of Money, Goods, etc.)

Article 8 (Prohibition of Receipt of Money, Goods, etc.) (1) No public servant, etc. shall accept, request, or promise to receive any money, goods, etc. exceeding one million won at a time or three million won in a fiscal year from the same person, regardless of any connection to his/her duties and regardless of any pretext such as donation, sponsorship, gift, etc.

(2) No public servant, etc. shall, in connection with his/her duties, accept, request, or promise to receive any money, goods, etc. not exceeding the amount prescribed by paragraph (1), regardless of whether the money, goods, etc. are given as part of any quid pro quo.

(3) An honorarium for an outside lecture, etc. described in Article 10, or any of the following shall not constitute money, goods, etc., the receipt of which is prohibited by paragraph (1) or (2):

1. Money, goods, etc. that a public institution offers to its public servants, etc. and seconded public servants, etc.; or a senior public servant, etc. offers to subordinate public servants, etc. for purposes of consolation, encouragement, reward, etc.;
2. Money, goods, etc. the value of which is within the limits specified by Presidential Decree, in the form of food and beverages, congratulatory or condolence money, gifts, etc. offered for purposes of facilitating performance of duties, social relationships, rituals, or aid;
3. Money, goods, etc. offered from a legitimate source of right such as payment of debts (excluding donation) incurred in a private transaction;
4. Money, goods, etc. provided by relatives (relatives defined in Article 777 of the Civil Act) of a public servant, etc.;

5. Money, goods, etc. provided by employees' mutual aid societies, clubs, alumni associations, hometown associations, friendship clubs, religious groups, social organizations, etc., related to a public servant, etc. to their members in accordance with the rules prescribed by respective organizations; and money, goods, etc. offered by those who have long-term and continuous relationships with a public servant, etc., such as a member of the aforementioned groups, to the public servant, etc. who is in need due to a disease, disaster, etc.;
6. Money, goods, etc., provided uniformly in a normally accepted range by an organizer of an official event related to the duties of a public servant, etc. to all participants thereof, in the form of transportation, accommodation, food and beverages, etc.;
7. Souvenirs, promotional goods, etc. to be distributed to multiple unspecified persons, or awards or prizes given in a contest, a raffle, or a lottery;
8. Money, goods, etc. permitted by other Acts, subordinate statutes, standards, or societal rules and norms.

(4) No spouse of a public servant, etc. shall, in connection with the duties of the public servant, etc., receive, request, or promise to receive any money, goods, etc. that public servants, etc. are prohibited from accepting (hereinafter referred to as "prohibited money, goods, etc.") under paragraph (1) or (2).

(5) No person shall offer, promise to offer, or express any intention to offer any prohibited money, goods, etc. to any public servant, etc. or to his/her spouse.

Article 17 and Attached Table 1 (Limits on Monetary Value of Food, Congratulatory and Consolatory Payments, Etc.) of the Enforcement Decree of the Act

Article 17 (Limits on Monetary Value of Food, Congratulatory and Consolatory Payments, Etc., Offered for Social and Customary Purposes) "Limits on monetary value specified by Presidential Decree" in Article 8 (3) 2 herein shall be described in Attached Table 1.

Limits on monetary value of food, congratulatory and consolatory payments, gifts, etc.
(Attached Table 1 of the Enforcement Decree of the Act with respect to Article 17 of the said Enforcement Decree)

1. Food (meals, beverages, alcoholic beverages, snacks, etc., shared by the provider and the public official, etc.): KRW 30,000
2. Congratulatory and consolatory payments: KRW 50,000 for cash and KRW 100,000 for flower arrangements that substitute cash
3. Gifts: KRW 50,000 for cash, securities, goods excluding food specified in Subparagraph 1 and congratulatory and consolatory payments specified in Subparagraph 2, and other similar gifts; KRW 100,000 for agricultural and fishery products pursuant to Article 2 (1) 1 of the Agricultural and Fishery Product Quality Control Act (hereinafter referred to as "agricultural and fishery products") and for processed agricultural and fishery products pursuant to Article 2 (1) 13 of the said Act (meaning those processed products containing more than 50% of agricultural and fishery products as their raw ingredients or ingredients and hereinafter referred to as "processed agricultural and fishery products")

Notes

a. Each ceiling monetary value specified in Subparagraph 1, in the text and proviso of Subparagraph 2, and in the text and proviso of Subparagraph 3 refers to the total monetary value of all items of each specified type combined.
b. If congratulatory and consolatory payments specified in the text of Subparagraph 2 and flower arrangements specified in the proviso of the said Subparagraph are received together or if a gift specified in the text of Subparagraph 3 and agricultural and fishery products and processed agricultural and fishery products specified in the proviso of the said Subparagraph are received together, the monetary values of the received items of both types should be combined. In such cases, the limit on the total monetary value of all received items should be KRW 100,000, provided that the monetary values specified in the text and proviso of Subparagraph 2 and in the text and proviso of Subparagraph 3 do not exceed the respective limits specified herein.
c. If items of two or more types among food specified in Subparagraph 1, congratulatory and consolatory payments specified in Subparagraph 2, and gifts specified in Subparagraph 3 are received at once, the monetary values of all items received should be combined. In such cases, the limit on the total monetary value can be set at the highest limit among those specified in Subparagraphs 1 through 3, provided that the total monetary value for each type does not exceed the respective limits specified in Subparagraphs 1 through 3.

1 Provision and Acceptance of Money, Goods, Etc., Prohibited by the Improper Solicitation and Graft Act

- More than KRW 1 million at one time or more than KRW 3 million per fiscal year
  - The acceptance of money, goods, etc., worth more than KRW 1 million at one time or more than KRW 3 million per fiscal year from the same person is subject to criminal punishment regardless of whether or not they are provided in relation to duties performed or whether or not they are given as donations, sponsorship, gratuitous transfers of property, etc.
- KRW 1 million or less at one time
  - The acceptance of money, goods, etc., worth up to KRW 1 million at one time provided in relation to duties performed is subject to the imposition of an administrative fine regardless of whether or not they are given as part of a quid pro quo arrangement.
  - The acceptance of money, goods, etc., worth KRW 1 million or less at one time provided unrelated to duties performed is not prohibited.

2 "Same Person" and "at One Time"

- Same person
  - The "same person" herein refers to the "de facto provider" of money, goods, etc., not the deliverer.

- At one time
  - "At one time" herein does not simply refer to the number of physical acts of delivering money, goods, etc., but the number of acts of delivering money, goods, etc., as identified and assessed by law.

    ※ If such acts take place in close proximity to each other in terms of time and venue or in a manner that displays temporal continuity, then such acts can be assessed to form one round of delivery of money, goods, etc.
  - If money, goods, etc., are intentionally split and delivered in series, it can appear to form several rounds of delivery of money, goods, etc., but can be assessed to form only one round from a legal perspective.

[3] Fiscal Year

- The "fiscal year" refers to that of the public institution to which the public official, etc., who accepts prohibited money, goods, etc., belongs.
  - The fiscal year of the public institution to which the foregoing public official, etc., belongs also applies to the provider.
- The fiscal year of state institutions, local government bodies, public service-related organizations, etc., generally begins on January 1st and ends on December 31st each year.

  ※ However, the fiscal year of schools begins on March 1st each year and ends on the last day of February the following year, unlike that of other public institutions.

[4] "In Relation to Duties"

- Relation to duties performed defined in the Improper Solicitation and Graft Act
- The purpose of the Improper Solicitation and Graft Act is to prohibit the acceptance of money, goods, etc., that cast doubt on the impartiality of duties performed, and therefore, "in relation to duties" under the said Act is the same as "in relation to duties" regarding bribery in the Criminal Act.
  - However, relation to duties under the Improper Solicitation and Graft Act, which is a statutory law, has yet to be further materialized through the accumulation of precedents of individual cases.
- Duties under the said Act refer to "the entirety of affairs entailed by different positions of Public Servant, Etc., and dealt with by such Public Servant, Etc."
  - The foregoing duties include not only duties administered as specified by acts and subordinate statutes but also all acts closely related to such duties, acts handled substantively and conventionally, and acts performed to assist or influence decision-makers.
- In accordance with precedents, the standard for judgment is whether the acceptance of money, goods, etc., by the publics servant, etc., leads to public distrust in the impartiality of duties performed, as the purpose of the Improper Solicitation and Graft Act is to preserve the impartiality of duties performed through the prohibition of the acceptance of money, goods, etc.
  - The overall circumstances, including details of the duties of the public official, etc.; the relevance between duties performed and the provider

of money, goods, etc.; whether a special personal relationship exists between the provider and the public official, etc.; the scale of money, goods, etc., given; and the exact account and time of the acceptance of money, goods, etc., are taken into consideration to judge relation to duties.

〈 Provisions Specifying Restrictions regarding Money, Goods, Etc., and Outside Lectures, Etc. 〉

Classification	Details	Provisions
Acceptance of money, goods, etc.	▪ Public Servant, Etc., are prohibited from accepting, demanding, or agreeing to receive any money, goods, etc., in any amount, including those worth up to KRW 1 million at one time, in relation to their duties whether or not they are given as part of a quid pro quo arrangement.	Article 8 (2)
	▪ Spouses of Public Servant, Etc., are prohibited from accepting, demanding, or agreeing to receive prohibited money, goods, etc., in relation to the duties of the said Public Servant, Etc.	Article 8 (2)
Outside lectures, etc.	▪ Public Servant, Etc., are prohibited from accepting honoraria in amounts that exceed those designated by Presidential Decree as a return for outside lectures, etc., requested to them in relation to their duties or based on de facto influence originating from their positions and duties.	Article 10 (1)

◈ Precedents

- If a public official accepts money, goods, and other gains from a person who is the target of his/her duties performed, it cannot be viewed as unrelated to his/her duties unless such money, goods, and other gains are provided in an effort to repay what the said person had received from the said public official in the past and recognized as conventional by socially accepted rules or unless the grounds to accept such money, goods, and other gains due to a friendly relationship is clearly recognized (Supreme Court of Korea; January 21, 2000; Adjudication 99-do-4940).

- Considering that the purpose of the Improper Solicitation and Graft Act is to preserve impartiality in performing duties through the prohibition of the acceptance of money, goods, etc., the standard for judgment for relation to duties performed is whether the acceptance of money, goods, etc., by the public official, etc., leads to public distrust in the impartiality of duties performed (Andong Branch Court of the Daegu District Court; March 3, 2017; Verdict 2017-gwa-2).

- Considering the purpose of the Improper Solicitation and Graft Act and its provisions in detail, it appears clear that the narrowing of the extent of the relation to duties performed under the said Act to "where the public official, etc., is charged with duties directly related to the provider of money, goods, etc.," disregards the purpose of the said Act and creates loopholes in the legal restrictions. Therefore, it is deemed reasonable to view that the public official, etc., responsible for duties or in a position that can influence those charged with duties directly related to the provider of money, goods, etc., (i.e. through offering information or opinions on the said provider), in addition to those charged with duties directly related to the said provider, are also related to the said provider in terms of their duties (Daejeon District Court; March 27, 2017; Verdict 2016-gwa-527).

2. Cases

1 Definition of Money, Goods, Etc.; Definition of Relation to Duties Performed; and Assessment of Monetary Value of Money, Goods, Etc.

Q1	Whether the provision of transportation falls under the category of money, goods, etc. Sometimes an auditee institution provides transportation to public officials of the auditor institution to support their mobility. Does this violate the Improper Solicitation and Graft Act?
[A]	The provision of transportation falls under the category of money, goods, etc., specified in Subparagraph 3 (b) of Article 2 of the said Act, and Public Servant, Etc., are prohibited from accepting any money, goods, etc., in relation to their duties pursuant to Article 8 (2) of the said Act. It should be reviewed in detail if transportation was provided because a lack of alternative means of transportation made it impossible to perform duties or because the use of alternative means of transportation would lead to a substantial decrease in work efficiency. However, considering the relationship between the two said parties, the time and background of the provision of transportation, etc., it is deemed difficult to be permitted under the said Act unless special circumstances exist.

❖ Extent of money, goods, etc., under the Improper Solicitation and Graft Act (Subparagraph 3 of Article 2 of the said Act)

- Any and all financial interests, including money, securities, real estate, goods, complimentary accommodations, memberships to clubs and facilities, admission tickets for venues and performances, discount coupons, invitation tickets, entertainment tickets, and licenses and permissions to use real estate, etc.
- Offering entertainment such as food and beverages, alcoholic beverages, and golf and conveniences such as transportation and accommodations
- Other tangible and intangible financial benefits such as a release from a debt, employment, the provision of rights and interests, etc.

Q2	Whether installing lotus lanterns at the square of a district office falls under the provision of money, goods, etc. A friendly Buddhist gathering of staff members of a district office requested a Buddhist temple to install lotus lanterns at the square of the district office for free in celebration of the Buddha's Birthday holiday. The lanterns will be removed after two weeks. Does this constitute an improper solicitation?
[A]	Although the lanterns were installed upon the request of a friendly gathering of public officials of the said district office for free by a temple, they were installed at the square of the district office, an open public space, where all citizens can enjoy them. As such, it is difficult to view this case as an acceptance of money, goods, etc., by public servant, etc., working at a district office.

Q3	Whether singing at a wedding falls under the category of the provision of money, goods, etc. If students sing at the wedding of their homeroom teacher, is it a violation of the Improper Solicitation and Graft Act?
[A]	Considering the proximity between the two parties in terms of a teacher's duties, the provision of money, goods, etc., to the homeroom teacher by his/her students is prohibited by law. However, it is difficult to view the students' performance of a nuptial song at their homeroom teacher's wedding as the provision of money, goods, etc., under Subparagraph 3 of Article 2 of the said Act.

	Delivery of money, goods, etc., on behalf of others
Q4	A private fire-fighting equipment manufacturing company entrusted a local fire station to distribute and install fire extinguishers for the underprivileged in the community, and the said fire station is temporarily keeping the entrusted fire extinguishers (with the name of the donor company marked on each fire extinguisher) and selecting the prospective recipients before installing them. If the fire extinguishers are delivered to the underprivileged (civilians) under the names of both the entrusted fire station and the said manufacturing company, does that constitute a provision of money, goods, etc., under the Improper Solicitation and Graft Act?
[A]	If the fire extinguishers, etc., are not vested in or donated to the fire station and if the fire station is simply delivering them to the underprivileged (civilians) on behalf of the manufacturing company, it is not subject to the sanctions specified in the said Act unless special circumstances exist. Even if the manufacturing company and fire station are related to each other in terms of duties performed, such as fire inspections, and the fire station is responsible for more than just the delivery of the fire extinguishers (i.e. the selection of the prospective recipients), it can be permitted as long as the provision of fire extinguishers, etc., conforms to socially accepted rules and ethics and is deemed unlikely to compromise the impartiality of the fire station's performance of its duties based on the purpose and background of the donation, the recipient selection process, etc., from the perspective of socially accepted rules (Article 8 (3) 8 of the said Act).

However, if the fire station unduly demands fire extinguishers, etc., from the private company and if the provision of fire extinguishers, etc., is likely to compromise the impartiality of the fire station's performance of its duties in relation to the private company, this case shall be difficult to be viewed as complying with socially accepted rules.

	Money, goods, etc., worth more than KRW 1 million at one time
Q5	A public official was given an electronic product worth KRW 1.5 million as a wedding gift by a childhood friend who has no relation to him/her in terms of duties performed. Does this violate Article 8 of the Improper Solicitation and Graft Act?
[A]	Pursuant to the said Act, Public Servant, Etc., may not receive money, goods, etc., worth more than KRW 1 million at one time and worth more than KRW 3 million per fiscal year from the same person regardless of their lack of relation to duties performed or background and may not receive any money, goods, etc., in any amount in relation to their duties (Article 8 (1) and (2) of the said Act). However, they are permitted when falling under the exceptions specified in Article 8 (3) of the said Act. Based on Article 8 (1) of the said Act, Public Servant, Etc., are not subject to the sanctions specified in the said Act when accepting money, goods, etc., worth up to KRW 1 million at one time from those deemed unrelated to their duties. However, the acceptance of money, goods, etc., exceeding KRW 1 million may not be permitted if it does not satisfy the conditions for exceptions specified under Article 8 (3) of the said Act.

Q6	**Money, goods, etc., worth more than KRW 3 million per fiscal year** A public official of a city government accepted money, goods, etc., worth KRW 3.5 million from an acquaintance from March to December 2017. The said acquaintance has never engaged in any affairs related to the city government where the said public official works and does not plan to in the future. The said acquaintance has also never initiated any solicitations. Are the public official and his/her acquaintance subject to any sanctions?
[A]	Pursuant to the Improper Solicitation and Graft Act, Public Servant, Etc., may not receive money, goods, etc., worth more than KRW 1 million at one time and more than KRW 3 million per fiscal year from the same person regardless of their lack of relation to their duties and may not receive any money, goods, etc., in any amount in relation to their duties (Article 8 (1) and (2) of the said Act). However, cases that fall under Article 8 (3) of the said Act may be permitted as exceptions. If the said public official received money, goods, etc., exceeding KRW 3 million per fiscal year and cannot present any background that falls under Article 8 (3) of the said Act, he/she may be subject to the legally specified sanctions for the violation of Article 8 (1) of the said Act, while the provider of money, goods, etc., may also be subject to the legally specified sanctions for the violation of Article 8 (5) of the said Act.

Q7	"The same person" Is it possible for an organization (under its own name or that of its representative) and its branch office to separately provide flower arrangements or congratulatory or consolatory payments to a relevant government institution within the extent that does not exceed the limits defined in Article 8 (3) 2 of the Improper Solicitation and Graft Act to facilitate the performance of related duties? All pertinent expenses shall be processed from the said organization's budget.
[A]	In principle, it is prohibited to provide money, goods, etc., to Public Servant, Etc., recognized to be performing related duties. However, congratulatory and consolatory payments (KRW 50,000 for cash and KRW 100,000 for flower arrangements to substitute cash) or gifts within the limits specified in the Improper Solicitation and Graft Act (KRW 50,000 for gifts and KRW 100,000 for agricultural and fishery products under Article 2 (1) 1 of the Agricultural and Fishery Product Quality Control Act and for processed agricultural and fishery products containing more than 50% of agricultural and fishery products as their raw ingredients or ingredients under Article 2 (1) 13 of the same Act) for the purposes of facilitating the performance of duties, promoting friendship, following formalities, and commemorating congratulatory and consolatory occasions are permitted. Whether the case fulfills any of the foregoing purposes should be determined by taking into account the relationship between the two parties (whether the two have a personal friendship), the exact account and time of the acceptance of such money, goods, etc., how closely the two parties are related in terms of duties, and if

the acceptance of such money, goods, etc., is likely to compromise impartiality in performing such duties.

In this case, it would be possible to recognize that the said flower arrangements or payments do not come from the same organization but from two separate organizations by comprehensively taking into account the sources of money and the agreement between the providers, etc., provided that each adhere to the ceiling amount criteria under Article 8 (3) 2 of the Improper Solicitation and Graft Act.

Q8	"At one time" (1) If I treated a journalist from a press organization to a meal worth KRW 30,000 and met with the said journalist again after three days and offered a gift worth no more than KRW 50,000, am I considered to have violated the Improper Solicitation and Graft Act by combining the monetary values of the two?
[A]	For the meal and gift to be recognized as one single round of treatment under the said Act, temporal and spatial proximity and temporal continuity must be established. The interval of three days between the meal and the gift cannot be viewed to establish temporal proximity or continuity unless special circumstances exist, and thus it is reasonable to consider the meal worth KRW 30,000 and the gift worth no more than KRW 50,000 as two separate rounds of treatment. As such, if the meal and gift were offered within the limits set by the said Act for the purposes of facilitating the performance of duties, promoting friendship, and following formalities, neither are subject to the sanctions specified in the said Act.

Q9	"At one time" (2) Our institution plans to hold a collective meeting with public officials from a central ministry for one night and two days. Does the limit on the monetary value for food apply to one meal or all meals added up throughout the meeting (four meals and snacks)?
[A]	Food worth within the limit on the monetary value (KRW 30,000) for the purposes of facilitating duties, promoting friendship, and following formalities may be offered to Public Servant, Etc., pursuant to the Improper Solicitation and Graft Act (Article 8 (3) 2 of the said Act). If the meeting lasts from the time for breakfast past the time for lunch or from the time for lunch past the time for dinner and thus food and beverages are provided to the participants at acceptable hours, the said ceiling monetary value applies to each meal provided. However, if two or more meals are provided on the same day and such meals demonstrate temporal or spatial proximity or temporal continuity, such meals can be assessed as one round of treatment. In such cases, the ceiling monetary value for all meals combined should be KRW 30,000.

Q10	"In relation to duties" What is the extent of "In relation to duties"? Does it involve the entire occupational group, such as construction, civil engineering, and machinery? Or does it involve each individual's job? For instance, if a public official in charge of the maintenance and management of road facilities provides advice on railroad facilities, are the two jobs considered related to each other?
[A]	The overall circumstances, including details of the duties of the public official, etc.; the relevance between duties performed and the provider of money, goods, etc.; whether a special personal relationship exists between the provider and the public official, etc.; the scale of money, goods, etc., given; and the exact account and time of the acceptance of money, goods, etc., are taken into consideration to assess relation to duties. As for this case, it is difficult to assess the relation to duties performed simply based on occupational groups or individual jobs. The position of the public official, etc., in question and his/her job extent, etc., should be comprehensively examined as well.

❖ Precedents

- Considering that the purpose of the Improper Solicitation and Graft Act is to preserve impartiality in performing duties through the prohibition of the acceptance of money, goods, etc., the standard for judgment for relation to duties performed is whether the acceptance of money, goods, etc., by the public official, etc., leads to public distrust in the impartiality of duties performed (Andong Branch Court of the Daegu District Court; March 3, 2017; Verdict 2017-gwa-2).

- Considering the purpose of the Improper Solicitation and Graft Act and its provisions in detail, it appears clear that the narrowing of the extent of the relation to duties performed under the said Act to "where the public servant, etc., is charged with duties directly related to the provider of money, goods, etc.," disregards the purpose of the said Act and creates loopholes in the legal restrictions. Therefore, it is deemed reasonable to view that the public official, etc., responsible for duties or in a position that can influence those charged with duties directly related to the provider of money, goods, etc., (i.e. through offering information or opinions on the said provider), in addition to those charged with duties directly related to the said provider, are also related to the said provider in terms of their duties (Daejeon District Court; March 27, 2017; Verdict 2016-gwa-527).

Q11	Whether relation to duties performed is recognized (professors, graduates, and enrolled students) To my knowledge, a graduate school student is related to duties performed by his/her academic advisor, and thus no gifts can be exchanged between the two parties. Is it against the Improper Solicitation and Graft Act for a graduate school student who has passed the thesis examination and is about to complete his/her study within the current semester to treat his/her professors to a simple meal and gift?
[A]	In general, students are related to duties performed by academic advisors who regularly assess and guide students. The exchange of money, goods, etc., between the two parties is prohibited in principle, and it is difficult to recognize the purpose of facilitating duties performed, promoting friendship, or following formalities. As such, it is not permissible pursuant to the said Act for a student to provide food or gifts to his/her professor at his/her own expense. However, graduates are viewed to no longer be related to duties performed by professors (teachers). Therefore, the provision of money, goods, etc., within the extent specified in Article 8 (1) of the said Act by a graduate to his/her professor (teacher) after the academic schedule comes to an end is deemed permissible unless special circumstances exist.

	Whether relation to duties performed is recognized (colleagues at work)
Q12	Can a public official be related to duties performed by his/her colleagues? Does the ceiling amount of KRW 50,000 apply to congratulatory and consolatory payments exchanged between public officials?
[A]	Pursuant to the Improper Solicitation and Graft Act, Public Servant, Etc., may not accept money, goods, etc., worth more than KRW 1 million at one time and more than KRW 3 million per fiscal year from the same person and may not receive any money, goods, etc., in relation to their duties (Article 8 (1) and (2) of the said Act). If the provider of money, goods, etc., is a colleague, etc., of a public official, etc., with no special relation to duties performed, the provision of money, goods, etc., worth up to KRW 1 million at one time is permitted. However, the overall circumstances such as the details of duties performed, the relationship between the two parties, and the exact account and time of the exchange of money, goods, etc., must be closely examined to determine if the two parties are unrelated to each other in terms of duties. While public servant, etc., are prohibited from accepting money, goods, etc., offered by those related to their duties in principle, congratulatory and consolatory payments within the legally specified ceiling amount are permitted for the purposes of facilitating duties performed, promoting friendship, following formalities, and commemorating congratulatory and consolatory occasions (Article 8 (3) 2 of the said Act and Attached Table 1 of the Enforcement Decree of the said Act). Whether the case fulfills

the purpose of facilitating duties performed, promoting friendship, following formalities, or commemorating congratulatory and consolatory occasions should be determined by comprehensively examining the relationship between the provider and the public servant, etc., (i.e. the existence of a friendly relationship between the two parties); the exact account and time of the exchange of money, goods, etc.; and the extent of their relation to each other in terms of duties performed, etc.

The ceiling amount for congratulatory and consolatory payments in cash is KRW 50,000 and the ceiling monetary value for flower arrangements is KRW 100,000. When offering a combination of the said payments and flower arrangements, the ceiling amount is KRW 100,000, but the amount of cash still cannot exceed KRW 50,000 (Attached Table 1 of the Enforcement Decree of the said Act).

	Whether relation to duties performed is recognized (superior and junior public officials at a public institution)
Q13	Can a higher-ranking official of Division B of Bureau A be viewed as a colleague of a lower-ranking official of Division D of Bureau C with no relation between the two parties in terms of duties performed?
[A]	It is reasonable to view that, in principle, a higher-ranking official and a lower-ranking official who is guided and supervised by the said higher-ranking official for duties performed within a public institution are related to each other in terms of duties. However, as a higher-ranking official in a different division is not in a position to guide or supervise a lower-ranking official within the structure of a public institution unless special circumstances exist (i.e. the higher-ranking official is a member of a personnel division, an auditing division, or a personnel committee), it is reasonable to view that the two parties are not related to each other in terms of duties, although it is still necessary to review the relationship between the two parties and the exact account and time of the exchange of money, goods, etc.

Q14	Whether relation to duties performed is recognized (transferred public servant, etc.) Can a high school student give a gift to his/her former teacher who was transferred to another school?
[A]	As the said teacher was transferred to another school, the said student is viewed to be unrelated to the duties performed by the teacher unless special circumstances exist. In such a case, it is permitted to provide money, goods, etc., worth up to KRW 1 million at one time and up to KRW 3 million per fiscal year.

Q15	Assessment of monetary value of a gift Is it against the Improper Solicitation and Graft Act to purchase a gift worth KRW 70,000 at a discounted price of KRW 50,000 and present it to a public official related to the provider in terms of duties performed?
[A]	The monetary value of money, goods, etc., is viewed to be the actual price paid at the time of purchase unless it is substantially different from the market price. If the actual price paid is unknown, it will be reasonable to base the assessment on the market price (the usual transaction price). As such, the market price should be the basis of the assessment when the actual price paid cannot be proven with a receipt, etc.

Q16	**Assessment of monetary value of golf entertainment** Three employees of a private company play golf with a public official in charge of authorization and permission using the company's corporate membership with an unnamed player option and pay KRW 50,000 each (KRW 200,000 for four players), which is the rate applied to the corporate membership with an unnamed player option. If the rate applied to a non-member player is KRW 250,000, can this case be considered as a provision of money, goods, etc., to a public official? If it is, is it permissible pursuant to the Improper Solicitation and Graft Act?
[A]	A public servant, etc., may accept the benefit of playing golf at a discounted rate in the amount of up to KRW 1 million at one time and up to KRW 3 million per fiscal year pursuant to the said Act, provided that the provider of the said benefit has no relation to the public servant, etc., in terms of his/her duties. If the said provider is recognized to be related to the public servant, etc., in terms of his/her duties, the said benefit should be viewed as money, goods, etc., offered by a duty-related party. As such, if this case does not meet any of the exceptional conditions specified in Article 8 (3) of the said Act, the acceptance of the benefit of playing golf at a discounted rate is not permissible.

Q17	Assessment of monetary value of accommodation at a membership facility A public official demands a construction company owner to provide a night's stay at a high-end condominium in Korea (KRW 600,000 per night for non-members and KRW 150,000 per night for members), which is then arranged by the company owner. The company owner pays in advance for the room charge for one night using the company's corporate membership with an unnamed guest option and provides the accommodation to the public official for free. In this case, what is the monetary value of money, goods, etc., offered to the public official who is not a member of the condominium?
[A]	It is reasonable to assess that the monetary value of one night's stay at the condominium provided is not the discounted rate applied to members based on the condominium's internal regulations but the rate applied to non-members as the public official is not entitled to the discount as a member.

Q18	**Provision of money, goods, etc., in rotation** A group of four students and one professor regularly have meals together. In order to comply with the Improper Solicitation and Graft Act, each must pay for his/her own meal. However, it is difficult to collect money from each person every time they have a meal. As such, they decide to pay in rotation. Four students pay for four rounds of meals (each costing KRW 100,000) in a row with money they contributed together and the professor pays KRW 100,000 for the fifth round. Does this violate the said Act?
[A]	Students are related to professors, who regularly assess and guide students, in terms of their duties, and the provision of meals for professors by students cannot be viewed to fulfill the purpose of facilitating duties performed, promoting friendship, or following formalities. Therefore, it is not permitted by the said Act for students to treat professors to meals at their own expense. However, a group of students and their professor sharing a meal with each paying for his/her own meal should not be subject to the sanctions specified in the said Act. That said, if the members of the group pay for meals in rotation to return the favor for one another in an equal monetary value with an interval of days in between meals, it is difficult to be viewed as a return of the received money, goods, etc., to the provider without delay. Also, the group has no clear regulations regarding deductions and compensations for the provision of a meal in an equal monetary value as the meal previously offered, and deductions and compensations with regulations, if permitted, may incur a result that runs counter to the purpose of the said Act, which is the guarantee of impartiality in the performance of duties by Public Servant, Etc. As such, paying for meals in rotation cannot be viewed as each paying for their own meal.

Q19	Assessment of monetary value of food and beverages provided after each pays for his/her own food and beverages on an amount that exceeds KRW 30,000
	A deputy director of a central ministry has lunch with a department head and a team head of a public institution affiliated with the ministry, which costs KRW 50,000 per person. As the ceiling monetary value for the provision of food and beverages is KRW 30,000 pursuant to Article 8 (3) 2 of the Improper Solicitation and Graft Act, the department head pays KRW 90,000, and the three pay KRW 20,000 each, an amount that exceeds the ceiling monetary value. Does this case violate the said Act?
[A]	As the amount that exceeds the ceiling monetary value for each person was paid by each person, it can be viewed that the meal was provided within the ceiling monetary value of KRW 30,000 for food and beverages. If this case is recognized to fulfill any of the purposes of facilitating duties performed, etc., it can be excluded from the provision of prohibited money, goods, etc. (Article 8 (3) 2 of the said Act). However, if the provider of the meal has, in any way, compensated with cash for the amount paid individually, such an act can be subject to the sanctions specified in the said Act, and objective evidence such as a receipt will be required to confirm whether the ceiling monetary value requirements were complied with.

Q20	**Deductions and compensations for mutual entertaining** A higher-ranking public official and a lower-ranking public official of the same public institution who are recognized to be related to each other in terms of duties performed are having a meal together. The latter paid for the meal, which cost KRW 70,000, but the former also brought a bottle of wine worth KRW 50,000. Is this case against the Improper Solicitation and Graft Act?
[A]	It is reasonable to view, in principle, that deductions and compensations for mutual entertaining of public servant, etc., are not permitted. It is permissible as an exception only when such an act of mutual entertaining displays temporal and spatial proximity and the said public servant, etc., can be recognized to have shared a meal, etc., together at the same venue and also to have each paid for his/her share of the said meal. If deductions and compensations are permissible for mutual entertaining in this case, the higher-ranking public official should be considered to have been provided food and beverages worth KRW 10,000 from the lower-ranking public official, which is permissible under the said Act if any of the purposes of facilitating duties performed, promoting friendship, and following formalities is fulfilled (Article 8 (3) 2 of the said Act). * When the entertainment provider shares in the entertainment offered, the expenses actually spent on each party should be calculated to determine whether the ceiling monetary value requirements were met. If the amount of such expenses spent on each party is difficult to be calculated, the total expenses should be split evenly for each party.

2 Exceptions to Prohibited Money, Goods, Etc.
❶ Money, Goods, Etc., Offered by Public Institutions, Etc., to Their Public

Q1	Congratulatory and consolatory payments offered by higher-ranking public servant, etc. The internal regulations of a public institution permit the provision of KRW 100,000 under the name of the head of the institution as a congratulatory payment for the wedding of a public official of the institution. However, the amended Enforcement Decree of the Improper Solicitation and Graft Act mandates that the ceiling amount of congratulatory and consolatory payments in cash is KRW 50,000. Is it against the said Act to offer KRW 100,000 under the name of the head of the institution for the wedding of a public official of the institution?
[A]	Money, goods, etc., offered by higher-ranking Public Servant, Etc., to lower-ranking public servant, etc., as a consolatory gift, an encouragement, a reward, etc., are permitted pursuant to Article 8 (3) 1 of the said Act. As such, the congratulatory payment of KRW 100,000 provided by the head of the said institution to its public official in this context is viewed as permissible under Article 8 (3) 1 of the said Act.

❖ Money, goods, etc., offered by a public institution or higher-ranking Public Servant, Etc.

- The provision of money, goods, etc., by a public institution to its public servant, etc., or Public Servant, Etc., dispatched to the said institution or

offered by higher-ranking public servant, etc., to lower-ranking Public Servant, Etc., as a consolatory gift, an encouragement, a reward, etc., is permitted pursuant to Article 8 (3) 1 of the Improper Solicitation and Graft Act.

- A higher-ranking public official issues orders, which, in principle, must be followed by a lower-ranking public official. As such, it is reasonable to view that the provision of money, goods, etc., by higher-ranking Public Servant, Etc., to lower-ranking Public Servant, Etc., of the same public institution is permitted.

  ※ Each individual case should be reviewed and interpreted based on situations specified in diverse acts and subordinate statutes including the Government Organization Act regarding supervisory authority, etc., for personnel, service, disciplinary action, etc.

- Money, goods, etc., offered by higher-ranking Public Servant, Etc., to lower-ranking Public Servant, Etc., must fulfill the specified conditions of a consolatory gift, an encouragement, a reward, etc.

Q2	Money, goods, etc., offered by a public institution (persons serving in concurrent posts) A university professor subject to the Improper Solicitation and Graft Act is scheduled to retire from a public institution after serving out his/her term as its outside director. The public institution plans to offer a souvenir exceeding KRW 1 million to celebrate his/her retirement. 1. Can this case be permitted as a public institution offering money, goods, etc., to its public officials under Article 8 (3) 1 of the said Act? 2. Does the relation between the time of the outside director's retirement and the time of the provision of the souvenir affect the outcome of Question 1 (the souvenir offered before or after retirement)?
[A]	If money, goods, etc., offered to Public Servant, Etc., fall under the category of money, goods, etc., provided by a public institution to its Public Servant, Etc., then they can be permitted under Article 8 (3) 1 of the said Act. If the said university professor already retired from the public institution, the money, goods, etc., received cannot be viewed to fall under Article 8 (3) 1 of the said Act. If the said professor is categorized as a public sevant, etc., pursuant to the said Act, accepting money, goods, etc., exceeding KRW 1 million at one time shall not be permitted unless any of the conditions under Article 8 (3) of the said Act is met.

Q3	**Criteria for higher-ranking public officials and lower-ranking public officials** Article 8 (3) 1 of the Improper Solicitation and Graft Act specifies that money, goods, etc., offered by a public institution to its public servant, etc., or Public Servant, Etc., dispatched to the said institution or offered by higher-ranking Public Servant, Etc., to lower-ranking Public Servant, Etc., as a consolatory gift, an encouragement, a reward, etc., are excluded from prohibited money, goods, etc. What are the exact criteria that divide higher-ranking and lower-ranking public officials? For instance, if Division Head A at a public institution who joined the institution six months ahead of Division Head B provides the latter money, goods, etc., as an encouragement, should it be viewed as money, goods, etc., offered by a higher-ranking public official although both are in the same rank?
[A]	A higher-ranking public official issues orders, which must, in principle, be followed by a lower-ranking public official. As such, it is reasonable to view that the provision of money, goods, etc., by higher-ranking public servant, etc., to lower-ranking public officials of the same public institution is permitted. Each individual case should be reviewed and interpreted based on situations specified in diverse acts and subordinate statutes including the Government Organization Act regarding supervisory authority, etc., for personnel, service, disciplinary action, etc.

	Money, goods, etc., offered by a public institution to its employees (including the head of the said institution)
Q4	An institution funded by a local government plans to provide securities (Onnuri Gift Certificates that can be used at traditional markets) to its executives and employees as a holiday gift. Pursuant to pertinent acts and subordinate statutes, an institution or higher-ranking employees at such an institution may provide securities as consolatory gifts, an encouragement, a reward, etc. Is it permitted for the head of such an institution to receive the same type and amount of securities (no more than KRW 100,000)?
[A]	If Onnuri Gift Certificates to be offered to the head of the said institution fall under money, goods, etc., offered by a public institution to its Public Servant, Etc., they are viewed as permissible unless special circumstances exist (Article 8 (3) 1 of the said Act).

	Whether Article 8 (3) 1 of the Improper Solicitation and Graft Act applies to an outside director of a private company
Q5	Is a university professor serving as an outside director of a private company permitted to receive benefits offered by the said company (i.e. a golf club membership, an overseas trip, etc.) under Article 8 (3) 1 of the Improper Solicitation and Graft Act?
[A]	Article 8 (3) 1 of the said Act specifies money, goods, etc., offered by a public institution to its Public Servant, Etc., as an exception to prohibited money, goods, etc. Money, goods, etc., offered by the said private company to the said public servant, etc., serving as its outside director cannot be viewed to fall under Article 8 (3) 1 of the said Act. However, money, goods, etc., worth up to KRW 1 million at one time and up to KRW 3 million per fiscal year may be permitted unless they are related to duties performed as a public official, etc. (Article 8 (1) of the said Act). If the said university professor receives money, goods, etc., exceeding KRW 1 million at one time and KRW 3 million per fiscal year, they should also fulfill the conditions under Article 8 (3) of the said Act to be recognized as permissible.

2 Exceptions to Prohibited Money, Goods, Etc.
❷ Money, Goods, Etc., Offered for the Purposes of Facilitating the Performance of Duties, Promoting Friendship, Following Formalities, Etc.

Q1	Gifts in celebration of holiday seasons offered to public officials If a person who came to know a public official as a duty-related party sends a holiday gift to the said public official, is that a violation of the Improper Solicitation and Graft Act? The said person is no longer involved in the business related to the duties performed by the said public official.
[A]	The provision of money, goods, etc., worth up to KRW 1 million at one time and up to KRW 3 million per fiscal year is permitted under the said Act when the provider is not related to the public official, etc., in terms of duties (Article 8 (1) and (2) of the said Act). However, the relation of the two parties in terms of duties should be determined by comprehensively examining the details of such duties, the relationship between the two parties, and the exact account of the exchange of money, goods, etc. In principle, public servant, etc., may not accept any money, goods, etc., in any amount from a duty-related party. However, gifts within the legally specified ceiling monetary values for the purposes of facilitating duties performed, promoting friendship, and following formalities are permitted (Article 8 (3) 2 of the said Act and Attached Table 1 of the Enforcement Decree of the said Act). Whether a case fulfills the purpose of facilitating the performance

of such duties, promoting friendship, or following formalities should be determined by comprehensively examining the nature of the relationship between the two parties (whether the two have a personal friendship), the exact account and time of the exchange of such a gift, how closely the two parties are related in terms of duties, etc.

❖ Exceptions under Article 8 (3) 2 of the Improper Solicitation and Graft Act

- Money, goods, etc., offered in the forms of food and beverages, congratulatory and consolatory payments in cash, gifts, etc., for the purposes of facilitating duties performed, promoting friendship, following formalities, and commemorating congratulatory and consolatory occasions within the ceiling monetary values set forth by Presidential Decree are not included in prohibited money, goods, etc.
- The Enforcement Decree of the Improper Solicitation and Graft Act sets the ceiling monetary value for food at KRW 30,000, for a gift at KRW 50,000 (for agricultural and fishery products and processed agricultural and fishery products at KRW 100,000), and for congratulatory and consolatory payments in cash at KRW 50,000 (for flower arrangements at KRW 100,000) as described in Attached Table 1 with respect to Article 17 of the Enforcement Decree of the said Act.
- Whether an individual case fulfills any of the foregoing purposes should be determined by comprehensively examining the nature of the relationship between the two parties (whether the two have a personal friendship); the exact account and time of the exchange of such money, goods, etc.; how closely the two parties are related in terms of duties; and whether the exchange of such a gift may compromise impartiality in duties performed.

- Even when gifts, etc., offered by a duty-related party are within the legally specified ceiling monetary values, their acceptance is not permitted if they fail to fulfill any of the foregoing purposes.

	Holiday gifts offered to the head of a team or division (money, goods, etc., offered by multiple people)
Q2	Is it permitted for ten public officials of the same division at a public institution to contribute KRW 20,000 each and purchase a gift worth KRW 200,000 for their division head in celebration of the Korean Thanksgiving season?
[A]	Considering the details of duties performed, the relationship between the two parties, etc., it is reasonable to view that the said members of the division and the division head are related to each other in terms of duties performed. Public servant, etc., are prohibited from accepting money, goods, etc., from any duty-related party in principle, but a gift within the ceiling monetary value (KRW 50,000 for gifts and KRW 100,000 for agricultural and fishery products pursuant to Article 2 (1) 1 of the Agricultural and Fishery Product Quality Control Act and for processed agricultural and fishery products pursuant to Article 2 (1) 13 of the same Act) offered for the purpose of facilitating duties performed, promoting friendship, or following formalities may be permitted (Article 8 (3) 2 of the said Act and Attached Table 1 of the Enforcement Decree of the said Act). Whether a case fulfills the purpose of facilitating the performance of such duties, promoting friendship, or following formalities should be determined by comprehensively examining the nature of the relationship between the two parties (whether the two have a personal friendship), the exact account and time of the exchange of such a gift, how closely the two parties are related in terms of duties, and whether the exchange of such a gift may compromise impartiality in duties performed. When the two parties are too

closely related to each other in terms of duties and interest (i.e. during the periods of personnel reshuffling, performance assessment, etc.), the case may not be recognized as fulfilling the foregoing purposes.

Also, when multiple people make contributions under mutual consent to offer money, goods, etc., the total amount of contributions combined should be within the ceiling monetary value specified in acts and subordinate statutes.

Q3	Gifts within the legally specified ceiling monetary value (money, goods, etc., offered by multiple people) Five public officials in the same division of a public institution plan to purchase a gift worth KRW 110,000 for their colleague whose spouse just gave birth. They are all viewed to be related to the said colleague in terms of duties. In this case, is a gift, etc., worth up to KRW 50,000 offered for the purpose of facilitating duties performed, promoting friendship, or following formalities permitted as an exception?
[A]	In principle, public servant, etc., may not accept money, goods, etc., worth more than KRW 1 million at one time and more than KRW 3 million per fiscal year from the same person and may not receive any money, goods, etc., in any amount in relation to their duties (Article 8 (1) and (2) of the Improper Solicitation and Graft Act). If the provider and the receiving public official, etc., are colleagues not related to each other in terms of duties, the provision of money, goods, etc., worth up to KRW 1 million at one time is permitted. However, whether the two parties are not related to each other in terms of duties should be determined by closely examining the details of their duties, relationship between the two parties, and the exact account and time of the exchange of money, goods, etc. Public servant, etc., are prohibited from accepting money, goods, etc., from any duty-related party in principle (Article 8 (2) of the said Act), but a gift within the ceiling monetary value (KRW 50,000 for gifts and KRW 100,000 for agricultural and fishery products pursuant to Article 2 (1) 1 of the Agricultural and Fishery Product Quality Control Act and for processed agricultural and fishery products pursuant to Article 2 (1) 13 of the same Act) offered for

the purpose of facilitating duties performed, promoting friendship, or following formalities may be permitted (Article 8 (3) 2 of the said Act and Attached Table 1 of the Enforcement Decree of the said Act). Also, when multiple people make contributions under mutual consent to offer money, goods, etc., the total amount of contributions combined should be within the ceiling monetary value specified in acts and subordinate statutes.

❖ Act on the Regulation of Violations of Public Order

Article 12 (Joint Violation of Public Order) (1) When two or more persons have jointly committed a violation of public order, each of them shall be deemed to have committed the violation of public order.

Q4	Provision of a gift within the ceiling monetary value several times Can a public official receive a gift within the ceiling monetary value under the Improper Solicitation and Graft Act several times?
[A]	The provision of money, goods, etc., worth no more than KRW 50,000 as a gift, etc., with the purpose of facilitating duties performed, promoting friendship, following formalities, or commemorating congratulatory and consolatory occasions is permitted as an exception under Article 8 (3) 2 of the said Act. However, the acceptance of such a gift, even when it is within the ceiling monetary value, is viewed to be in violation of the said Act if it does not fulfill the foregoing purposes. In this case, it is not required, in principle, to total all the monetary values of gifts given to assess whether it is a violation of the said Act. However, if the repeated provision of a gift several times is viewed to have become unrelated to the foregoing purposes and have reached the point of incurring public distrust in the impartiality of duties performed, this case may constitute a violation of the said Act.

Q5	Whether gifts purchased with the budget for task operating expenses are permitted Can a local government purchase and distribute gifts (local agricultural produce in celebration of a holiday season) for members of press organizations and the local council with the budget for policy task operating expenses allocated to the head of the said government for the purpose of facilitating duties performed?
[A]	In principle, Public Servant, Etc., performing related duties cannot be provided with money, goods, etc. However, if the case is recognized to fulfill the purpose of facilitating the performance of such duties, promoting friendship, or following formalities, a gift worth up to KRW 50,000 (KRW 100,000 for agricultural and fishery products pursuant to Article 2 (1) 1 of the Agricultural and Fishery Product Quality Control Act and processed products containing more than 50% of agricultural and fishery products as their raw ingredients or ingredients pursuant to Article 2 (1) 13 of the same Act) is permissible under Article 8 (3) 2 of the Improper Solicitation and Graft Act and Attached Table 1 of the Enforcement Decree of the said Act. Whether a case fulfills the purpose of facilitating the performance of such duties, promoting friendship, or following formalities should be determined by comprehensively examining the nature of the relationship between the two parties (whether the two have a personal friendship), the exact account and time of the exchange of such a gift, how closely the two parties are related in terms of duties, and whether the exchange of such a gift may compromise impartiality in duties performed. Also, whether the use of the budget for task operating expenses for such gifts is legally acceptable should be separately reviewed based on other acts and subordinate statutes pertaining to budgeting and internal standards of the said local government.

❖ Limits on monetary value of food, congratulatory and consolatory payments, gifts, etc. (Attached Table 1 of the Enforcement Decree of the Improper Solicitation and Graft Act)

1. Food (meals, beverages, alcoholic beverages, snacks, etc., shared by the provider and the public official, etc.): KRW 30,000
2. Congratulatory and consolatory payments: KRW 50,000 for cash and KRW 100,000 for flower arrangements that substitute cash
3. Gifts: KRW 50,000 for cash, securities, goods excluding food specified in Subparagraph 1 and congratulatory and consolatory payments specified in Subparagraph 2, and others of similar types; KRW 100,000 for agricultural and fishery products pursuant to Article 2 (1) 1 of the Agricultural and Fishery Product Quality Control Act (hereinafter referred to as "agricultural and fishery products") and for processed agricultural and fishery products pursuant to Article 2 (1) 13 of the said Act (meaning those processed products containing more than 50% of agricultural and fishery products as their raw ingredients or ingredients and hereinafter referred to as "processed agricultural and fishery products")

	Standards for processed agricultural and fishery products
Q6	Would it be against the Improper Solicitation and Graft Act to offer health supplement food (red ginseng) to an acquaintance who is a public official under the said Act?
[A]	The provision of money, goods, etc., worth up to KRW 1 million at one time or up to KRW 3 million per fiscal year is permitted if the provider and the public official, etc., are not related to each other in terms of duties. However, it is necessary to comprehensively review if the two parties are related to each other in terms of duties based on the details of their duties, relationship between the two parties, and exact account of the acceptance of money, valuable, etc. In principle, public servant, etc., may not accept money, goods, etc., from a duty-related party (Article 8 (2) of the said Act). However, a gift within the legally specified ceiling monetary value (KRW 50,000 for gifts and KRW 100,000 for agricultural and fishery products pursuant to Article 2 (1) 1 of the Agricultural and Fishery Product Quality Control Act and for processed agricultural and fishery products pursuant to Article 2 (1) 13 of the same Act) provided to facilitate the performance of duties, promote friendship, or follow formalities may be permitted (Article 8 (3) 2 of the Improper Solicitation and Graft Act and Attached Table 1 of the Enforcement Decree of the said Act). Whether a case fulfills the purpose of facilitating the performance of such duties, promoting friendship, or following formalities should be determined by comprehensively examining the nature of the relationship between the two parties (whether the two have a

personal friendship), the exact account and time of the acceptance of such food, how closely the two parties are related in terms of duties, etc.

The ceiling monetary value permitted for processed agricultural and fishery products (those containing more than 50% of agricultural and fishery products as their raw ingredients or ingredients) is KRW 100,000. Thus, red ginseng worth up to KRW 100,000 can be provided if it is recognized to contain more than 50% of agricultural and fishery products as its raw ingredients or ingredients by the Ministry of Agriculture, Food and Rural Affairs and the Ministry of Oceans and Fisheries based on pertinent acts and subordinate statutes such as the Agricultural and Fishery Product Quality Control Act.

	Whether securities are gifts
Q7	Are a gifticon (worth KRW 15,000) issued by a coffee shop and a meal certificate (worth KRW 30,000) issued by a family restaurant included in the category of securities or considered gifts?
[A]	Securities collectively refer to all financial instruments that require the possession of such securities for the exercise of the rights to and disposal of the assets marked on such securities, and the said gift certificates should be viewed as securities if no special circumstances exist. With the enforcement of the amended Enforcement Decree of the Improper Solicitation and Graft Act on January 17, 2018, securities were excluded from "gifts" specified in Article 8 (3) 2 of the said Act. As such, the provision of securities, including gift certificates, to Public Servant, Etc., performing related duties as "gifts" under Article 8 (3) 2 is not permitted.

❖ Precedents

- Securities collectively refer to all financial instruments that require the possession of such securities for the exercise of the rights to and disposal of the assets marked on such securities (Supreme Court of Korea; February 27, 1998; Adjudication 97-do-2483).

	"Food" under the Improper Solicitation and Graft Act
Q8	If a duty-related party pays a restaurant in advance and invites public servant,etc., to the said restaurant to treat each to a meal worth no more than KRW 30,000, is it permitted by the Improper Solicitation and Graft Act (provided that the said duty-related party does not share the meal together with the public servant, etc.)?
[A]	In principle, it is prohibited to provide money, goods, etc., to public servant, etc., performing related duties. However, it is permitted to provide food worth no more than the legally specified ceiling amount (KRW 30,000) for the purposes of facilitating the performance of such duties, promoting friendship, and following formalities (Article 8 (3) 2 of the said Act). Food hereof refers to meals, snacks, alcoholic beverages, beverages, etc., shared by the provider and Public Servant, Etc., (Attached Table 1 of the Enforcement Decree of the said Act) and thus, if the aforementioned provider only pays in advance for the meal that he/she does not share with the public servant, etc., it does not fall under "food" permitted in Article 8 (3) 2 of the said Act.

❖ Definition of Food, Gifts, and Congratulatory and Consolatory Payments under the Improper Solicitation and Graft Act (pursuant to Attached Table 1 of the Enforcement Decree of the said Act)

- (Food) Meals, snacks, alcoholic beverages, beverages, etc., shared by the provider and Public Servant, Etc.
- (Congratulatory and consolatory payments) Pursuant to the Improper Solicitation and Graft Act, congratulatory and consolatory occasions shall

be limited to weddings and funerals (weddings of the person directly concerned and his/her lineal ascendants and descendants and funerals of his/her spouse and lineal ascendants and descendants of the person directly concerned and his/her spouse).

※ Birthdays, including the first birthday of a newborn and the 60th birthday(both of which are customarily celebrated on a large scale in Korea); a celebration for a founding anniversary; a celebration for the publication of a book; etc., are not categorized as the foregoing congratulatory and consolatory occasions.

– (Gifts) All goods excluding money, securities, food specified under Subparagraph 1, congratulatory and consolatory payments specified under Subparagraph 2, and others of similar types

※ Pursuant to the amended Enforcement Decree of the Improper Solicitation and Graft Act, securities are not included in "gifts" specified in Article 8 (3) 2 of the said Act. As such, it is not permitted to provide securities, such as gift certificates, to public servant, etc., as "gifts" under Article 8 (3) 2 of the said Act.

	Limits on monetary value when providing food and gifts together
Q9	Is it against the law for a university to invite teachers in charge of senior high school students to a meeting for the promotion of diverse college student selection processes and offer them simple souvenirs and meals or snacks?
[A]	In principle, it is prohibited to provide any money, goods, etc., to public servant, etc., performing related duties. However, food or gifts in compliance with the ceiling amounts designated by Presidential Decree for the purpose of facilitating the performance of such duties may be permitted (Article 8 (3) 2 of the Improper Solicitation and Graft Act and Attached Table 1 of the Enforcement Decree of the said Act). The purpose of facilitating the performance of such duties should be recognized by taking into account the nature of the relationship between the two parties (whether the two have a personal friendship), the exact account and time of the acceptance of such food or gifts, how closely the two parties are related in terms of duties, and if the acceptance of such food or gifts is likely to compromise impartiality in performing such duties. Assuming that the provision of souvenirs and food is permitted under Article 8 (3) 2 of the said Act, the total monetary value of food and souvenirs combined should be no more than KRW 50,000, while the total monetary value for each (KRW 30,000 for food and KRW 50,000 for gifts) should be adhered to (KRW 100,000 if gifts are agricultural and fishery products or processed agricultural and fishery products). Refer to (c) under Notes of Attached Table 1 of the Enforcement Decree of the said Act for details.

❖ Limits on monetary value of food, congratulatory and consolatory payments, gifts, etc. (Attached Table 1 of the Enforcement Decree of the Improper Solicitation and Graft Act)

1. Food (meals, beverages, alcoholic beverages, snacks, etc., shared by the provider and the public official, etc.): KRW 30,000
2. Congratulatory and consolatory payments: KRW 50,000 for cash and KRW 100,000 for flower arrangements that substitute cash
3. Gifts: KRW 50,000 for cash, securities, goods excluding food specified in Subparagraph 1 and congratulatory and consolatory payments specified in Subparagraph 2, and others of similar types; and KRW 100,000 for agricultural and fishery products pursuant to Article 2 (1) 1 of the Agricultural and Fishery Product Quality Control Act (hereinafter referred to as "agricultural and fishery products") and for processed agricultural and fishery products pursuant to Article 2 (1) 13 of the said Act (meaning those processed products containing more than 50% of agricultural and fishery products as their raw ingredients or ingredients and hereinafter referred to as "processed agricultural and fishery products")

Notes

a. Each ceiling monetary value specified in Subparagraph 1, in the text and proviso of Subparagraph 2, and in the text and proviso of Subparagraph 3 refers to the total monetary value of all items of each specified type combined.
b. If congratulatory and consolatory payments specified in the text of Subparagraph 2 and flower arrangements specified in the proviso of the said Subparagraph are received together or if a gift specified in the text of Subparagraph 3 and agricultural and fishery products and processed agricultural and fishery products specified in the proviso of the said Subparagraph are received together, the monetary values of the received items of both types should be combined. In such cases, the limit on the total monetary value of all received items should be KRW 100,000, provided that the monetary values specified in the text and proviso of Subparagraph 2 and in the text and proviso of Subparagraph 3 do not exceed the respective limits specified herein.
c. If items of two or more types among food specified in Subparagraph 1,

congratulatory and consolatory payments specified in Subparagraph 2, and gifts specified in Subparagraph 3 are received at once, the monetary values of all items received should be combined. In such cases, the limit on the total monetary value can be set at the highest limit among those specified in Subparagraphs 1 through 3, provided that the total monetary value for each type does not exceed the respective limits specified in Subparagraphs 1 through 3.

Q10	**Whether the provision of congratulatory and consolatory payments for a direct superior at work is permitted** It is hard to distinguish between a case where food worth up to KRW 30,000, congratulatory or consolatory payments up to KRW 50,000, and gifts worth up to KRW 50,000 are permitted and a case where no exchange of money, goods, etc., is allowed. Is a lower-ranking public official fully prohibited from offering a consolatory payment for the funeral of the mother of his/her direct superior who has the authority to rate his/her performance? Or, can the lower-ranking public official offer a consolatory payment not exceeding KRW 50,000 as he/she can be recognized as a duty-related party aiming to facilitate duties performed?
[A]	In principle, it is prohibited to provide any money, goods, etc., to public servant, etc., performing related duties (Article 8 (2) of the Improper Solicitation and Graft Act). However, congratulatory and consolatory payments within the legally specified ceiling amount (KRW 50,000) can be permitted for the purposes of facilitating the performance of such duties, promoting friendship, following formalities, and commemorating congratulatory and consolatory occasions (Article 8 (3) 2 of the said Act and Attached Table 1 of the Enforcement Decree of the said Act). ※ The ceiling amount for congratulatory and consolatory payments in cash is KRW 50,000, and the ceiling monetary value for flower arrangements is KRW 100,000. When offering a combination of the said payments and flower arrangements, the total ceiling amount is KRW 100,000, but the amount of cash still cannot exceed KRW 50,000 (Attached Table 1 of the Enforcement Decree of the Improper Solicitation and Graft Act).

Whether a case fulfills the purpose of facilitating the performance of such duties, promoting friendship, following formalities, or commemorating congratulatory and consolatory occasions should be examined based on the nature of the relationship between the two parties (whether the two have a personal friendship), the exact account and time of the acceptance of such a payment, and how closely the two parties are related in terms of duties. If the acceptance of such a payment is deemed likely to compromise impartiality in performing such duties or if reciprocity or interest between the two parties exists, the case is not recognized to fulfill the purpose of facilitating the performance of such duties, promoting friendship, following formalities, or commemorating congratulatory and consolatory occasions, and no exchange of money, goods, etc., in any amount is permitted.

However, as the provision of congratulatory and consolatory payments in cash is normally considered as mutual aid and a time-honored tradition of Korea, and as it is impossible to artificially control the time of a congratulatory or consolatory occasion, it should be reasonable to view that the provision of congratulatory and consolatory payments in cash within the legally specified ceiling amount for a superior at the same institution who is capable of directly influencing personnel reshuffling and performance assessment for the purpose of commemorating congratulatory and consolatory occasions is permissible.

Q11	**Congratulatory and consolatory payments offered under the name of a juridical person** Is it possible for a juridical person to send a flower arrangement (KRW 100,000) under its name and also for its representative to provide a congratulatory payment (KRW 50,000) at his/her own expense? Or should the juridical person and its representative be viewed as the same person and the monetary values of the flower arrangement and the payment be combined? Is it possible for the juridical person's executives and employees to still offer KRW 50,000 each as a congratulatory payment even if a flower arrangement worth KRW 100,000 was sent under the name of the said juridical person?
[A]	The provision of money, goods, etc., worth up to KRW 1 million at one time and up to KRW 3 million per fiscal year is permitted pursuant to the Improper Solicitation and Graft Act, provided that the provider and the public official, etc., are not related to each other in terms of duties (Article 8 (1) and (2) of the said Act). However, the relation of the two parties in terms of duties should be determined by comprehensively examining the details of such duties; the relationship between the two parties; and the exact account of the exchange of money, goods, etc. Public servant, etc., may not accept any money, goods, etc., from a duty-related party, but the acceptance of congratulatory and consolatory payments within the ceiling monetary value for the purposes of facilitating duties performed, promoting friendship, following formalities, and commemorating congratulatory and consolatory occasions is permitted (Article 8 (3) 2 of the said Act).

※ The ceiling amount for congratulatory and consolatory payments in cash is KRW 50,000, and the ceiling monetary value for flower arrangements is KRW 100,000. When offering a combination of the said payments and flower arrangements, the total ceiling amount is KRW 100,000, but the amount of cash still cannot exceed KRW 50,000 (Attached Table 1 of the Enforcement Decree of the Improper Solicitation and Graft Act).

The term "no person" in Article 8 (5) of the said Act, which prohibits the provision of money, goods, etc., to a public official, etc., and his/her spouse, refers to natural persons who can execute such an act of provision, not to juridical persons. As such, it is reasonable to view that money, goods, etc., provided under the name of the said juridical person are offered by its representative unless special circumstances exist, and a congratulatory payment provided under the name of the juridical person and that offered separately by its representative should be combined to verify compliance with the legally specified ceiling amount.

Even when a flower arrangement is sent under the name of the juridical person, executives and employees of the juridical person are still permitted to provide congratulatory payments within the legally specified ceiling amount to public servant, etc., if such payments are recognized to fulfill any of the purposes of facilitating duties performed, promoting friendship, following formalities, and commemorating congratulatory and consolatory occasions.

Q12	**Congratulatory and consolatory payments from a friend who is a duty-related party** A public official at a central ministry and another public official at the ministry's related institution have been close friends for a long time. If the latter offers a congratulatory payment of KRW 200,000 for an important occasion of the former, should the former return the amount exceeding the ceiling monetary value for a congratulatory payment of KRW 50,000? Is it permitted to receive a congratulatory or consolatory payment exceeding KRW 50,000 from another friend who does not work for a related institution?
[A]	If the provider of money, goods, etc., and the public servant, etc., are not related to each other in terms of duties performed, it is permitted by the Improper Solicitation and Graft Act to exchange money, goods, etc., worth up to KRW 1 million at one time and up to KRW 3 million per fiscal year. However, whether the two parties are not related to each other in terms of duties performed should be determined by comprehensively examining the details of their duties; the relationship between the two parties; and the exact account of the exchange of money, goods, etc. If the said two public officials are recognized to perform duties related to each other based on the details of their duties, the relationship between the two, etc., the exchange of a congratulatory payment exceeding KRW 50,000, the ceiling monetary value set forth in Article 8 (3) 2 of the said Act, can be in violation of Article 8 (2) of the said Act. In such a case, the excess amount of KRW 150,000 should be returned. Money, goods, etc., offered to the public official by a friend with no relation to his/her duties shall be permitted, provided that they are within the limits specified in Article 8 (1) of the said Act (up to KRW 1 million at one time and up to KRW 3 million per fiscal year).

	Return of congratulatory and consolatory payments exceeding the ceiling monetary value
Q13	A public official at a local government discovers that he has received a congratulatory payment exceeding the legally specified ceiling amount for his daughter's wedding. What should he do about the excess amount?
[A]	A public official, etc., who receives money, goods, etc., exceeding the legally specified ceiling monetary values specified under Article 8 (3) 2 of the Improper Solicitation and Graft Act from a duty-related party must return the excess amount to the provider without delay in accordance with Article 9 (2) of the said Act. However, if the excess amount of any congratulatory and consolatory payment in cash is dealt with pursuant to Article 9 of the said Act, it will not be subject to the sanctions described in the said Act.

Q14	Flower arrangements offered to elected candidates after local elections
	Is it permitted to send a flower arrangement to an elected candidate after local elections?
[A]	Pursuant to the Improper Solicitation and Graft Act, those banned from accepting prohibited money, goods, etc., are Public Servant, Etc., specified in Subparagraph 2 of Article 2 of the said Act and private persons performing public duties specified in Article 11 (1) of the said Act. As the elected candidates of local elections cannot be viewed as public servant, etc., under Subparagraph 2 of Article 2 of the said Act prior to the date of the initiation of their terms of office pursuant to the Local Public Officials Act, unless special circumstances exist and they are separately categorized as Public Servant, Etc., based on the Improper Solicitation and Graft Act, a flower arrangement offered to a person who is not a public official, etc., is not subject to the sanctions prescribed in the said Act. In principle, once the elected candidate takes office and becomes a public official, etc., he/she cannot accept money, goods, etc., from a duty-related party. However, a flower arrangement within the ceiling monetary value (KRW 100,000 for agricultural and fishery products) offered for the purpose of facilitating duties performed, promoting friendship, or following formalities is permitted (Article 8 (3) 2 of the said Act and Attached Table 1 of the Enforcement Decree of the said Act).

Q15	Purposes of facilitating duties performed, promoting friendship, and following formalities not recognized Is it permitted for a local government to offer meals to the members of the local council in charge of auditing during the period of an audit for administrative affairs?
[A]	In principle, public servant, etc., may not receive money, goods, etc., from a duty-related party (Article 8 (2) of the Improper Solicitation and Graft Act). However, they are permitted to receive food within the legally specified ceiling monetary value (KRW 30,000) for the purpose of facilitating duties performed, promoting friendship, or following formalities (Article 8 (3) 2 of the said Act and Attached Table 1 of the Enforcement Decree of the said Act). Whether a case fulfills any of the purposes of facilitating duties performed, promoting friendship, and following formalities should be determined by comprehensively examining the nature of the relationship between the two parties (whether the two have a personal friendship), the exact account and time of the provision of such meals, how closely the two parties are related in terms of duties, etc. The auditor institution and the auditee institution are assessed to be closely related to each other in terms of duties, and it is reasonable to view that the provision of money, goods, etc., to Public Servant, Etc., in charge of auditing during the period of an audit for administrative affairs is likely to compromise impartiality in performing the relevant duties. Therefore, the provision of meals during the said period cannot be viewed to fulfill the purpose of facilitating duties performed, promoting friendship, or following formalities.

Q16	**Purposes of facilitating duties performed, promoting friendship, and following formalities not recognized** It is understood that public officials are fully prohibited from exchanging food, gifts, and congratulatory and consolatory payments with a party that has a high degree of relation to or interest in the relevant duties performed. Is it against the law to offer a consolatory payment to a public official in charge of authorization and permission who is an old acquaintance and whose father just passed away while the provider's application for authorization is pending?
[A]	If the provider of money, goods, etc., and the public official are recognized to be related to each other in terms of duties performed, the exchange of money, goods, etc., is prohibited in principle. However, it is permitted to receive congratulatory and consolatory payments within the legally specified ceiling monetary value for the purpose of facilitating duties performed, promoting friendship, or following formalities (Article 8 (3) 2 of the said Act). Whether a case fulfills the purpose of facilitating the performance of such duties, promoting friendship, following formalities, or commemorating congratulatory and consolatory occasions should be determined by comprehensively examining the nature of the relationship between the two parties (whether the two have a personal friendship), the exact account and time of the exchange of such a payment, how closely the two parties are related in terms of duties, and whether the exchange of such a payment may compromise impartiality in duties performed. The applicant for authorization and the public official in this case share a high degree of relation to and interest in each other's duties. As such, the provision of a consolatory payment even within the ceiling monetary value is not likely to be permitted.

❖ Examples of gifts prohibited from being provided and accepted regardless of their purposes

- A gift within the legally specified ceiling monetary value offered by the target of an inspection or the target of an unfavorable disposition
- A gift within the legally specified ceiling monetary value from a person who has applied for authorization or permission
- A gift or payment within the legally specified ceiling monetary value offered by the parents of a student to his/her homeroom teacher, etc., with respect to academic records or performance assessment

2 Exceptions to Prohibited Money, goods, Etc.
❸ Money, Goods, Etc., Offered from a Legitimate Source of Authority

	A legitimate source of authority (wash sales)
Q1	A high-ranking public official of a central ministry purchases an artwork of a famous painter at the price of KRW 10 million from the representative of a civic group subsidized by the said ministry. The auction price of the purchased artwork is around KRW 50 million. Is this against the Improper Solicitation and Graft Act?
[A]	The exception specified in Article 8 (3) 3 of the said Act is money, goods, etc., offered from a legitimate source of authority as the payment for debts, etc., incurred by a private transaction (excluding gratuitous transfers of property). If the public official in this case purchases a painting valued at KRW 50 million at the price of KRW 10 million from a duty-related party, the purchase constitutes a wash sale and the price difference cannot be viewed as money, goods, etc., offered from a legitimate source of authority. The public official is subject to criminal punishment (imprisonment with labor for up to three years or a fine of up to KRW 30 million) for receiving money, goods, etc., exceeding KRW 1 million at one time in relation to duties performed (Article 8 (1) and Article 22 (1) 2 of the said Act) and to disciplinary action (Article 21 of the said Act). The representative of the civic group is also subject to criminal punishment (imprisonment with labor for up to three years or a fine

of up to KRW 30 million) for offering money, goods, etc., exceeding KRW 1 million at one time in relation to duties performed (Article 8 (5) and Article 22 (1) 3 of the said Act).

❖ Exception specified in Article 8 (3) 3 of the Improper Solicitation and Graft Act (meaning and extent of a legitimate source of authority)

- The exception specified in Article 8 (3) 3 of the said Act is money, goods, etc., offered from a legitimate source of authority as the payment for debts, etc., incurred by a private transaction (excluding gratuitous transfers of property).
- The term "legitimate" means "reasonable and acceptable according to the law", while "the source of authority" means "the legal grounds that justifies a certain act".
- As the said Act explicitly states "a legitimate source of authority", both the existence of a source of authority and its legitimacy must be reviewed

  ※ The legitimacy should be determined by examining the background (i.e. purpose and motivation) of the provision of money, goods, etc.; the details and characteristics of duties performed; the relationship between the two parties; whether the provision of money, goods, etc., is permitted by pertinent acts, subordinate statutes, and standards; etc.

  – The existence of a source of authority alone does not constitute its legitimacy, and the legitimacy of a source of authority should be reviewed separately.

Q2	Incentives offered based on contracts Is it a violation of the Improper Solicitation and Graft Act if a public official of a public institution subscribes to an IP TV service under the name of the public institution and receives a giveaway (department store gift certificates)? The gift certificates are equally offered to all subscribers, including individuals and juridical persons. Does the acceptance of such securities run counter to the said Act?
[A]	When a public institution concludes a contract with a private person as an agent of the private economy on an equal footing, it is possible to define the details of the legal relationship of the two parties at will based on the principle of private autonomy. As such, if the terms and conditions of the contract concluded between the two parties at will are viewed to be reasonable from the perspective of social conventions, if the provider did not include terms and conditions in the contract that are unrelated to the purpose of the contract or substantially unfair using socially unacceptable methods (i.e. an abuse of its superior presence, etc.), and if the said incentives are found to be equally offered to all who become a party to such a contract, the said incentives fall under money, goods, etc., offered from a legitimate source of authority specified in Article 8 (3) 3 of the said Act. In this case, if the said public institution itself selects the recipient of the giveaway based on fair and transparent procedures and standards, not the provider that offers such money, goods, etc., to the public official, etc., in charge of contracting, it will serve the purpose of the said Act.

Sponsoring and supporting public institutions

Q3 A local government body plans to hold a local festival. Can it be sponsored and supported by a private company within its jurisdiction under the Improper Solicitation and Graft Act?

[A] If Public Servant, Etc., demand and engage in the sponsoring and supporting, it is reasonable to view such an act to run counter to the said Act. However, if it is permitted by other acts and subordinate statutes such as the Act on Collection and Use of Donations, it can also be permitted by the Improper Solicitation and Graft Act (Article 8 (3) 8 of the said Act). If it is not permitted by other acts or subordinate statutes but satisfies procedural and substantive conditions, the case can fall under the acceptance of money, goods, etc., from a legitimate source of authority (Article 8 (3) 3 of the said Act).

- Procedural conditions: The sponsorship and support should be reflected in the project plan in accordance with internal regulations and procedures of a public institution, and contracts should be concluded with sponsors and supporters following transparent procedures.
- Substantive conditions: The details of the concluded contract must not be one-sided, and the contract must include reciprocity (a benefit in return) to match the details and scope of the sponsorship and support.

The inclusion of the foregoing benefit in return needs to be determined by examining the background (motivation, etc.) of the provision of money, goods, etc.; details of the money, goods, etc., offered; details of the benefits attained by the provider in return; whether the balance of objective values between the benefits attained by the two parties is secured; etc.

❖ Criteria for determining whether donations, sponsorship, support, etc., are in violation of the law

- If donations, sponsorship, support, etc., for a public institution are permitted by other acts and subordinate statutes such as the Act on Collection and Use of Donations, they fall under exceptions specified in Article 8 (3) 8 of the Improper Solicitation and Graft Act and are permitted.
- If donations, sponsorship, support, etc., are not permitted by other acts and subordinate statutes but are recognized to be from a legitimate source of authority by satisfying the procedural and substantive conditions, they are permitted in accordance with Article 8 (3) 3 of the said Act.
  - (Procedural conditions) The sponsorship and support should be reflected in the project plan in accordance with internal regulations and procedures of a public institution, and contracts should be concluded with donors, sponsors, and supporters following transparent procedures.
  - (Substantive conditions) The details of the concluded contract must not be one-sided, and the contract must include reciprocity (a benefit in return) to match the details and scope of the donation, sponsorship, support, etc.
- In particular, the inclusion of the benefit in return is important. It needs to be determined by examining the background (motivation, etc.) of the provision of money, goods, etc.; details of the money, goods, etc., offered; details of the benefits attained by the provider in return; whether the balance of objective values between the benefits attained by the two parties is secured; etc.

2 Exceptions to Prohibited Money, Goods, Etc. ❹ Money, Goods, Etc., Offered by Relatives of Public Servant, Etc.

	Money, goods, etc., offered by relatives recognized as related to relevant duties
Q1	In principle, the exchange of money, goods, etc., between relatives of Public Servant, Etc., and such Public Servant, Etc., even when they are related in terms of duties performed, is not subject to the Improper Solicitation and Graft Act. If a parent is a high-ranking public official of a local government body and his/her child is a staff member of a facility management corporation affiliated with the said local government body, is the exchange of money, goods, etc., between the two still not subject to the said Act?
[A]	Public Servant, Etc., are prohibited from accepting money, goods, etc., in relation to their duties (Article 8 (2) of the Improper Solicitation and Graft Act). If relatives of such Public Servant, Etc., (referring to relatives defined in Article 777 of the Civil Act) provide money, goods, etc., to such Public Servant, Etc., the money, goods, etc., provided fall under the exception specified in Article 8 (3) 4 of the said Act. However, it should be reviewed further to determine whether the case is a violation of other acts and subordinate statutes, such as bribery under the Criminal Act.

❖ Relatives pursuant to Article 777 of the Civil Act refer to blood relatives within the eighth-degree of relationship, affinity relatives within the fourth-degree of relationship, and spouses.

- Blood relatives include both natural blood relatives (lineal and collateral blood relatives) and legal blood relatives (adopted blood relatives).
- Spouses herein refer to legally married spouses, not common-law spouses.

2 Exceptions to Prohibited Money, Goods, Etc
❺ Money, Goods, Etc., Offered Based on Criteria of Organizations and Friendly Relationships

	Money, Goods, Etc., Offered Based on Criteria of Organizations and Friendly Relationships
Q1	A mutual aid society of a local city government staffed by about 1,000 public officials collects KRW 3,000 per public official every time one of the public officials retires and offers the collected money, which amounts to slightly over KRW 3 million, to him/her as a gift. Does this violate the law?
[A]	Money, goods, etc., provided to the members of employees' mutual aid societies, clubs, alumni associations, hometown associations, friendship groups, etc., related to Public Servant, Etc., by the said organizations based on their criteria fall under the exceptions specified in the Improper Solicitation and Graft Act (Article 8 (3) 5 of the said Act), and thus their exchange can be permitted. Such an organization must have continued to exist with a long-term purpose of its own regardless of changes in its membership; must have been equipped with an internal decision-making organ and a representative who is an official executive organ; must have operated as an independent entity regardless of its membership based on internal regulations or standards such as articles of association, bylaws, and rules; and must have provided money, goods, etc., consisting of membership fees collected from all its members, not contributions by only some of its members, based on its criteria.

This case should be more specifically reviewed to determine whether the money, goods, etc., offered meet the foregoing conditions. If the foregoing conditions are not met, the said mutual aid society must take steps to operate in a manner that meets the foregoing conditions to conform to the said Act.

Q2	**Offering gifts purchased with the public funds of a gathering without any regulations** The head and seven staff members of a division at a public institution formed a friendly luncheon gathering without any regulations and contribute KRW 100,000 each month per person, which is directly deducted from their salaries, to pay for meals. Is it against the Improper Solicitation and Graft Act for the staff members to purchase a gift worth about KRW 200,000 for their division head using the public funds of the gathering?
[A]	Pursuant to the said Act, Public Servant, Etc., may not accept money, goods, etc., worth more than KRW 1 million at one time and more than KRW 3 million per fiscal year from the same person regardless of their relation to and pretext regarding the duties they perform (Article 8 (1) of the said Act) and are prohibited from accepting money, goods, etc., in any amount in relation to their duties (Article 8 (2) of the said Act). However, individual cases recognized to fall under Article 8 (3) of the said Act are permitted as exceptions. If the provider of money, goods, etc., and the public official are recognized to be related to each other in terms of duties performed, the exchange of any money, goods, etc., is prohibited in principle, and it should be reviewed whether the case falls under Article 8 (3) of the said Act to be recognized as an exception. Money, goods, etc., provided to the members of employees' mutual aid societies, clubs, alumni associations, hometown associations, friendship groups, etc., related to Public Servant, Etc., by the said organizations based on their criteria fall under the exceptions specified in the Improper Solicitation and Graft Act (Article 8 (3) 5 of the said Act), and thus their exchange can be permitted. However, as the said gathering has no preset regulations, it cannot be viewed to fulfill the conditions specified in Article 8 (3) 5 of the said Act.

Q3	Money, goods, etc., exceeding KRW 1 million in amount offered to public officials experiencing difficult situations If five public officials contribute KRW 210,000 each and deliver the collected money to their colleague who is experiencing a difficult situation, is it against the Improper Solicitation and Graft Act?
[A]	Pursuant to Article (1) and (2) of the said Act, Public Servant, Etc., may not accept money, goods, etc., worth more than KRW 1 million at one time and more than KRW 3 million per fiscal year from the same person even if they are unrelated to their duties and are prohibited from accepting any money, goods, etc., in any amount in relation to their duties. However, individual cases recognized to fall under Article 8 (3) of the said Act are permitted as exceptions. If the said collected money in this case falls under the category of money, goods, etc., provided to Public Servant, Etc., experiencing difficult situations due to diseases, disasters, etc., by those who share long-term continued friendly relationships with such Public Servant, Etc., then its provision is permitted under Article 8 (3) 5 of the said Act.

	Money, goods, etc., offered to public officials experiencing difficult situations
Q4	Public officials of a local public corporation plan to contribute a certain amount each to help out their colleague whose child has been hospitalized for an extended period of time. The said colleague is Grade 5 and the public officials planning to collect money are from Grades 1 through 9 in accordance with Korea's civil service personnel system. The total contributions will stand at about KRW 1.3 million. Can this case be viewed as an exception permitted under the Improper Solicitation and Graft Act?
[A]	The provision of money, goods, etc., to Public Servant, Etc., experiencing difficult situations due to diseases, disasters, etc., by those who share long-term continued friendly relationships with such Public Servant, Etc., such as the members of the same friendly gatherings, is permitted under Article 8 (3) 5 of the said Act. Difficult situations herein refer to those of not only the Public Servant, Etc., themselves but also their relatives who depend on the said Public Servant, Etc., for their livelihood.

❖ Long-term and continued friendly relationships and difficult situations due to diseases, disasters, etc.

- (Long-term and continued friendly relationships) It is necessary to determine whether a "special" friendly relationship exists by comprehensively examining the motivation of the relationship and the period and frequency of exchanges and contacts.
  - "Those who share long-term continued friendly relationships with such

Public Servant, Etc., such as the members of the same friendly gatherings" means the subjects of such relationships are not limited to the actual members of the said gatherings but encompass all who share long-term continued friendly relationships of a similar degree with Public Servant, Etc.

- Hometown acquaintances, superiors and juniors from schools and workplaces, etc., cannot be viewed to have formed long-term continued friendly relationships simply because they share certain ties.

● (Difficult situations) Difficult situations herein refer to those of not only the Public Servant, Etc., themselves but also their relatives who depend on the said Public Servant, Etc., for their livelihood.

※ Reasons other than diseases, disasters, etc., such as investments in stocks and support for children studying abroad are not permitted.

2 Exceptions to Prohibited Money, Goods, Etc. ❻ Money, Goods, Etc., Offered at Official Events

Q1	Money, goods, etc., offered by those other than the organizer (1) If a public institution invites journalists of certain press organizations to an event staged overseas and provides transportation (airfare), accommodations, meals, etc., is it against the Improper Solicitation and Graft Act? The public institution plans to invite journalists of two press organizations.
[A]	Public Servant, Etc., performing relevant duties are prohibited from accepting money, goods, etc., in principle. However, it can be permitted when conditions under Article 8 (3) 6 of the said Act (money, goods, etc., provided by an organizer of an official event, etc.) are met. ▸ Whether the occasion is an "official event" shall be determined by comprehensively examining 1) the purpose and details of the event, 2) the participants of the event, 3) whether it is open to all or a certain group, 4) the costs incurred, and 5) whether internal approval was gained for the planning and operation of the event. ▸ Whether the occasion is within a "normally accepted range" shall be determined by comprehensively examining 1) events of similar types, 2) the venue and purpose of the event, 3) the

extent and status of the participants, 4) internal standards and the capacity to bear the expenses incurred, 5) whether it is inevitable to stage the event at the venue considering its purpose and details, and 6) whether the expenses incurred are dealt with through normal procedures.

- The term "money, goods, etc., provided uniformly" excludes money, goods, etc., provided to specific individuals or groups only. However, it also does not mean money, goods, etc., evenly distributed to all participants in a literal manner. They can be differentiated in accordance with the roles played by the participants to a rational extent.

As for this case, it should be reviewed first whether the organizer of the event is providing money, goods, etc., to the participants. Money, goods, etc., provided to the participants by those other than the organizer cannot be viewed to fall under Article 8 (3) 6 of the said Act. In addition, it should be reviewed if the event is open to all and sufficiently official to ensure as many as possible take part in the event. If participants are limited, it should be examined whether the organizer limited the extent of participants for a valid reason and tried to include those from diverse groups suited to represent relevant fields based on rational criteria. If the event is found to have greatly limited its participants by including only a small number of those from a certain group, etc., it is highly unlikely to be recognized as an official event.

Q2	**Money, goods, etc., offered by those other than the organizer (2)** A Korean company was invited to take part in an event held by an overseas association. The company plans to invite a press corps composed of some of the reporters in charge of the company affairs to the event and provide support for them throughout the duration of the event. Support worth KRW 4-5 million per person will be provided to cover round-trip airfare, accommodations, meals, local transportation expenses, tour expenses, etc. Is this against the Improper Solicitation and Graft Act?
[A]	It is prohibited to provide money, goods, etc., to Public Servant, Etc., performing relevant duties in principle. However, if the said event fulfills conditions for an official event, etc., it can be recognized as an exception under Article 8 (3) 6 of the said Act. ▸ Whether the occasion is an "official event" shall be determined by comprehensively examining 1) the purpose and details of the event, 2) the participants of the event, 3) whether it is open to all or a certain group, 4) the costs incurred, and 5) whether internal approval was gained for the planning and operation of the event. ▸ Whether the occasion is within a "normally accepted range" shall be determined by comprehensively examining 1) events of similar types, 2) the venue and purpose of the event, 3) the extent and status of the participants, 4) internal standards and the capacity to bear the expenses incurred, 5) whether it is inevitable to stage the event at the venue considering its purpose and details, and 6) whether the expenses incurred are dealt with through normal procedures.

- The term “money, goods, etc., provided uniformly” excludes money, goods, etc., provided to specific individuals or groups only. However, it also does not mean money, goods, etc., evenly distributed to all participants in a literal manner. They can be differentiated in accordance with the roles played by the participants to a rational extent.

In this case, money, goods, etc., provided to Public Servant, Etc., by those other than the organizer of the event are deemed difficult to be viewed as falling under Article 8 (3) 6 of the said Act.

Q3	**Legally acceptable selection of participants** About 25 representatives and staff members of an association, public officials from central ministries, etc., gather together up to three times a year and hold a group meeting for the following year's projects for one night and two days. Does the limit on the monetary value for food (KRW 30,000) apply to one meal or all meals combined throughout the meeting (four meals and snacks)? Also, as the meeting is an annual event requiring the collection of expert opinions, the extent of participants is by nature limited in accordance with the characteristics of the project to be conducted the following year. Can the said meeting still be recognized as an official event?
[A]	Food and beverages provided to Public Servant, Etc., within the legally specified ceiling monetary value (KRW 30,000) for the purpose of facilitating the performance of duties, promoting friendship, or following formalities can be permitted under Article 8 (3) 2 of the Improper Solicitation and Graft Act. If the meeting lasts from the time for breakfast past the time for lunch or from the time for lunch past the time for dinner and thus food and beverages are provided to the participants at acceptable hours, the said ceiling monetary value applies to each meal provided. However, if two or more meals are provided on the same day and such meals demonstrate temporal or spatial proximity or temporal continuity, such meals can be assessed as one round of treatment, and, in such cases, the ceiling monetary value for all meals combined should be KRW 30,000. Transportation, accommodation, food and beverages, etc., provided to all participants "uniformly" in a "normally accepted range" by an organizer of an "official event" related to the duties of Public

Servant, Etc., can be permitted as an exception under Article 8 (3) 6 of the said Act.

- Whether the occasion is an "official event" shall be determined by comprehensively examining 1) the purpose and details of the event, 2) the participants of the event, 3) whether it is open to all or a certain group, 4) the costs incurred, and 5) whether internal approval was gained for the planning and operation of the event.
- Whether the occasion is within a "normally accepted range" shall be determined by comprehensively examining 1) events of similar types, 2) the venue and purpose of the event, 3) the extent and status of the participants, 4) internal standards and the capacity to bear the expenses incurred, 5) whether it is inevitable to stage the event at the venue considering its purpose and details, and 6) whether the expenses incurred are dealt with through normal procedures.
- The term "money, goods, etc., provided uniformly" excludes money, goods, etc., provided to specific individuals or groups only. However, it also does not mean money, goods, etc., evenly distributed to all participants in a literal manner. They can be differentiated in accordance with the roles played by the participants to a rational extent.

When selecting participants, the organizer should ensure an extensive opportunity for all those wishing to take part in the event. If participants are limited, the organizer must be able to present a valid reason for limiting the extent of participants to experts of relevant fields in accordance with the characteristics and purpose of the event and try to include those from diverse groups suited to represent relevant fields based on rational criteria. As such, it is required to employ a fair method of selection, such as rotations and lotteries, or allow those wishing to participate to screen their representatives on their own.

Q4	**Within a normally accepted range** A production plant currently under construction will be completed by next month. The completion ceremony is scheduled to take place, to which those related to the company's business will be invited (investors, executives and employees of partner companies and client companies, public officials of government offices, public officials of central government organizations and public institutions, journalists of press organizations, staff members of schools and research institutes, etc.). Can meals and souvenirs be provided to the invited guests who are subject to the Improper Solicitation and Graft Act as they are to the other guests? If food and beverages can be provided within a normally accepted range, what exactly would the normally accepted range be?
[A]	Transportation, accommodation, food and beverages, etc., provided to all participants "uniformly" in a "normally accepted range" by an organizer of an "official event" related to the duties of Public Servant, Etc., can be permitted as an exception under Article 8 (3) 6 of the said Act. ▸ Whether the occasion is an "official event" shall be determined by comprehensively examining 1) the purpose and details of the event, 2) the participants of the event, 3) whether it is open to all or a certain group, 4) the costs incurred, and 5) whether internal approval was gained for the planning and operation of the event. ▸ Whether the occasion is within a "normally accepted range" shall be determined by comprehensively examining 1) events of similar types, 2) the venue and purpose of the event, 3) the

extent and status of the participants, 4) internal standards and the capacity to bear the expenses incurred, 5) whether it is inevitable to stage the event at the venue considering its purpose and details, and 6) whether the expenses incurred are dealt with through normal procedures.

- The term "money, goods, etc., provided uniformly" excludes money, goods, etc., provided to specific individuals or groups only. However, it also does not mean money, goods, etc., evenly distributed to all participants in a literal manner. They can be differentiated in accordance with the roles played by the participants to a rational extent.

The normally accepted range specified in Article 8 (3) 6 of the said Act refers to the range of money, goods, etc., deemed to be reasonable in consideration of the purpose of the event and to be likely to be offered at events of identical and similar types.

Souvenirs and promotional articles designed to be distributed to many and unspecified persons may be permitted under Article 8 (3) 7 of the said Act. The term "many and unspecified persons" herein does not simply refer to the number of people but means that the recipients are not specified and thus randomness in the selection of recipients is ensured. Whether money, goods, etc., offered fall under the category of souvenirs, promotional articles, etc., must be determined by comprehensively examining the existence of the company's logo or name, the purpose of the production of such articles, their monetary value and quantity, etc.

Q5	**Money, goods, etc., provided uniformly** An event is scheduled to be held targeting many and unspecified medical staff members, and invitations will be sent to medical staff members across the nation. About 150 physicians, nurses, and public officials categorized as Public Servant, Etc., will be attending the event. As the event will take place in Seoul, transportation expenses, set at around actual expenses based on estimation, will be given to those coming from non-Seoul areas. Is it permitted under the Improper Solicitation and Graft Act?
[A]	Under Article 8 (3) 6 of the said Act, money, goods, etc., provided uniformly in a normally accepted range by an organizer of an official event related to the duties of a public official, etc., shall not constitute prohibited money, goods, etc. ▸ Whether the occasion is an "official event" shall be determined by comprehensively examining 1) the purpose and details of the event, 2) the participants of the event, 3) whether it is open to all or a certain group, 4) the costs incurred, and 5) whether internal approval was gained for the planning and operation of the event. ▸ Whether the occasion is within a "normally accepted range" shall be determined by comprehensively examining 1) events of similar types, 2) the venue and purpose of the event, 3) the extent and status of the participants, 4) internal standards and the capacity to bear the expenses incurred, 5) whether it is inevitable to stage the event at the venue considering its purpose and details, and 6) whether the expenses incurred are dealt with through normal procedures.

- The term “money, goods, etc., provided uniformly” excludes money, goods, etc., provided to specific individuals or groups only. However, it also does not mean money, goods, etc., evenly distributed to all participants in a literal manner. They can be differentiated in accordance with the roles played by the participants to a rational extent.

As for the “uniform provision of money, goods, etc.,” specified above, it is permitted to differentiate the money, goods, etc., offered in terms of quantity, amount, etc., in accordance with the roles played by the participants to a rational extent. However, it is not permitted to provide them to specific individuals or groups only. It is deemed reasonable to categorize this case as the “uniform provision of money, goods, etc.,” as conveniences such as transportation and accommodations are provided in a differentiated and rational manner in accordance with the traveling distances of participants. Also, as the said Act specifies transportation, accommodations, etc., as acceptable money, goods, etc., it is viewed possible to receive monetary compensation for the said expenses spent based on preset criteria upon the submission of documentary evidence such as receipts, although, in principle, it is not permitted to provide cash equivalents to the monetary value of conveniences offered.

2 Exceptions to Prohibited Money, Goods, Etc. ❼ Souvenirs and Promotional Articles Distributed to Many and Unspecified Persons

	Souvenirs and promotional articles
Q1	If a private-sector partner company that supplies goods to a public institution sends promotional articles (i.e. mouse pads marked with the company's logo) with promotional materials by post, is the public institution permitted to accept the promotional articles?
[A]	Souvenirs and promotional articles to be distributed to many and unspecified persons fall under Article 8 (3) 7 of the Improper Solicitation and Graft Act and can be permitted for exchange. The term "many and unspecified persons" herein does not simply refer to the number of people but means that the recipients are not specified and thus randomness in the selection of recipients is ensured. Whether this case fulfills the said condition should be determined by comprehensively examining the existence of the company's logo or name, the purpose of the production of such goods, their monetary value and quantity, etc.

❖ Extent of souvenirs and promotional articles

- Whether goods fall under the category of souvenirs and promotional articles should be determined by comprehensively examining the existence of the company's logo or name, the purpose of the production of such goods, their monetary value and quantity, etc.
- No restrictions on the monetary values of souvenirs and promotional articles exist, but they should be moderate to be acceptable based on social conventions.

	Sponsoring and supporting souvenirs and promotional articles
Q2	A medical institution subject to the Improper Solicitation and Graft Act plans to accept diaries produced by a private company for promotional purposes and marked with the company's name and distribute them to its patients. Can this case be permitted under Article 8 (3) 7 of the said Act (souvenirs and promotional articles to be distributed to many and unspecified persons)?
[A]	The said Act prohibits Public Servant, Etc., specified in Subparagraph 2 of Article 2 of the said Act and private persons performing public duties specified under Article 11 of the said Act from accepting money, goods, etc. If the company provides souvenirs and promotional articles for its own promotion to patients of the said medical institution, who are not Public Servant, Etc., defined in the said Act, it will not violate the said Act unless special circumstances exist. However, if it is a case of a duty-related party sponsoring and supporting souvenirs and promotional articles to the medical institution, which is a public institution under the said Act, it should be reviewed whether Public Servant, Etc., engaged in such sponsoring and supporting; whether the said articles fall under the category of money, goods, etc., offered from a legitimate source of authority; etc. (Article 8 (3) 3 of the said Act).

Q3	**Money, goods, etc., offered through contests and lotteries (1)** A company, which imports and supplies medical devices to domestic hospitals, plans to hold a sweepstakes for its clients. Its clients include 30 national and public hospitals, university hospitals, private hospitals, and clinics across the nation. The first prize of KRW 1 million will be given to one recipient, the second prize of KRW 500,000 each will be given to two recipients, and the third prize of KRW 300,000 each will be given to six recipients. Does this event violate the Improper Solicitation and Graft Act?
[A]	Public Servant, Etc., may be permitted to accept rewards, prizes, etc., offered through contests and lotteries (Article 8 (3) 7 of the said Act), provided that the said contests and lotteries are open to many and unspecified persons to enter and apply for. An event which is open to only Public Servant, Etc., performing related duties to enter and apply for or used as an indirect route to offer prohibited money, goods, etc., is not viewed to fall under Article 8 (3) 7 of the said Act. Also, when such a company offers money, goods, etc., to a public institution through the means of a sweepstakes, etc., it will be in line with the purpose of the said Act if the said public institution, instead of the said company, selects the recipients itself in compliance with fair, transparent standards and procedures.

	Money, goods, etc., offered through contests and lotteries (2)
Q4	If a public official visits a large retailer on the weekend, applies for a sweepstakes held by an electronics company, and wins a TV worth KRW 3 million, does it violate the Improper Solicitation and Graft Act?
[A]	The said public official won a sweepstakes open to many and unspecified persons to apply for while taking part in an event for a new product release. As such, the TV worth KRW 3 million offered as a giveaway falls under the exceptions to prohibited money, goods, etc., and is not subject to the sanctions specified in the said Act (Article 8 (3) 7 of the said Act).

❖ Rewards and prizes received through contests and lotteries

- Rewards, prizes, etc., received through contests and lotteries in a fair manner are included in the exceptions.
  - It is permitted to receive rewards and prizes through contests and lotteries that are open to many and unspecified persons to enter and apply for.

2 Exceptions to Prohibited Money, Goods, Etc. ❽ Money, Goods, Etc., Permitted Based on Acts, Subordinate Statutes, and Socially Accepted Rules

Q1	Money, goods, etc., permitted by other acts and subordinate statutes (Libraries Act)
	Is it against the law to receive books to be stocked in a library within a social welfare center from the center's partner company for free?
[A]	If the money, goods, etc., provided to the library within the social welfare center are based on Article 9 of the Libraries Act, the provision may be permitted pursuant to Article 8 (3) 8 of the Improper Solicitation and Graft Act.

❖ Exception under Article 8 (3) 8 of the Improper Solicitation and Graft Act

- Money, goods, etc., permitted by other acts and subordinate statutes or by socially accepted rules are permitted pursuant to Article 8 (3) 8 of the said Act.

❖ Money, goods, etc., acceptable pursuant to other acts and subordinate statutes

● Contributions under the Political Funds Act; child home-care allowances and fostering allowances under the Child Care Act; convalescent care support and disaster-relief money under the Public Officials Pension Act;

financial benefits permitted under the Medical Service Act; donated money, goods, etc., under the Libraries Act; etc.

- School rules enacted based on Article 6 of the Higher Education Act and Article 4 of the Enforcement Decree of the said Act, as well as lower-level regulations delegated by such school rules, are included in acts and subordinate statutes.

❖ Libraries Act

Article 9 (Donation of Money, etc.) (1) In order to support the establishment and operation of a library and its facilities and materials, any person may donate money or other property to the library.

Q2	Money, goods, etc., permitted by acts and subordinate statutes (Elementary and Secondary Education Act) The parents of a high school student staying at the school's dormitory wish to donate chairs for all students living in the dormitory. Does it violate the Improper Solicitation and Graft Act?
[A]	The case can be viewed as a donation and sponsorship for schools of different levels, which are categorized as public institutions pursuant to the said Act. If a school development fund is created and the donation of chairs is processed through the said fund as specified in Articles 30-2, 31, 32, 33, etc., of the Elementary and Secondary Education Act, it will be recognized as the provision of money, goods, etc., permitted based on other acts and subordinate statutes under Article 8 (3) 8 of the Improper Solicitation and Graft Act and excluded from prohibited money, goods, etc.

❖ Elementary and Secondary Education Act

Article 30-2 (Establishment of School Accounting) (1) School accounting shall be established in national or public elementary, middle, high and special schools.

(2) Revenues for the school accounting shall be as follows:

1. Payments transferred from the general accounting of the State and the special accounting for educational expenses of local governments;
2. Expenses borne by students' parents after deliberation by each School Governance Committee under Article 32 (1);
3. Payments transferred from the school development fund under Article 33;

Article 31 (Establishment of School Governance Committees) Elementary schools, middle schools, high schools and special schools shall organize and operate School Governance Committees to enhance the operational autonomy of schools and to conduct various and creative education that meets the circumstances and

characteristics of a region.

Article 32 (Duties) (3) School Governance Committees shall deliberate and pass resolutions on matters relating to the creation, administration and use of the school development fund under Article 33.

Article 33 (School Development Fund) (1) Any School Governance Committee referred to in Article 31 may create a school development fund.
(2) Matters necessary for the methods of creating and operating the school development fund referred to in paragraph (1) shall be prescribed by Presidential Decree.

Q3	Money, goods, etc., permitted by acts and subordinate statutes (Medical Service Act) If a pharmaceutical company provides food worth KRW 50,000 to a university hospital professor during a product presentation, is it against the law?
[A]	The provision of money, goods, etc., to Public Servant, Etc., is permitted if it is in compliance with other acts, subordinate statutes, and standards (Article 8 (3) 8 of the Improper Solicitation and Graft Act). If the money, goods, etc., provided by the said pharmaceutical company conform to other acts and subordinate statutes, such as Article 23-3 (1) of the Medical Service Act and Article 16-2 and Attached Table 2-3 of the Enforcement Rules of the said Act, then they may be permitted.

❖ Medical Service Act

Article 23-3 (Prohibition against Gaining Improper Financial Benefits, etc.) (1) Any medical personnel, founder of a medical institution (including a representative of a corporation, director, or other person who engages therein; hereafter the same shall apply in this Article), and any person working for a medical institution shall not receive money, articles, favor, labor, entertainment and other financial benefits (hereinafter referred to as "financial benefits, etc") provided for the promotion of sale, such as selection of drugs, induction to prescribe drugs and maintenance of transactions, from a drug supplier referred to in Article 47 (2) of the Pharmaceutical Affairs Act, or cause any medical institution to receive them: Provided, That this shall not apply to financial benefits, etc. to the extent prescribed by Ordinance of Ministry of Health and Welfare, including the provision of a sample, support for a conference, support for a clinical trial, product showcase, price discount according to price settlement methods and post market surveillance.

❖ Enforcement Rules of the Medical Service Act

Article 16-2 (Extent of Financial Benefits, Etc., Permitted) "Financial benefits, etc., to the extent prescribed by the Ordinance of the Ministry of Health and Welfare" specified in provisos in Article 23-3 (1) and (2) of the Medical Service Act are as described in Attached Table 2-3.

[Attached Table 2-3]

Extent of Financial Benefits, Etc., Permitted

(with respect to Article 16-2 of the Enforcement Rules)

Acts permitted	Details
4. Product presentation	1. Actual transportation expenses, souvenirs worth no more than KRW 50,000 in total, accommodations, and food and beverages (worth no more than KRW 100,000 in total at one time with taxes and service charges excluded) to each participant at a product presentation that falls under any of the categories described in the following Subparagraphs a. A product presentation organized by the business operator to provide information on medicine and medical supplies handled to physicians, dentists, and Korean medicine doctors of diverse medical institutions in Korea b. Any of the following events organized by the business operator for diverse medical institutions 1) A product presentation organized for health and medical services personnel (as specified under Subparagraph 3 of Article 3 of the Framework Act on Health and Medical Services) of such medical institutions to provide information on medical devices of the business operator 2) Education and training sessions staged to help health and medical services personnel and those responsible for medical procedures and diagnoses of such medical institutions obtain and improve techniques regarding medical devices of the business operator (omitted) * A product presentation hereof refers to those organized solely for the purpose of providing information on medicine, medical supplies, and medical devices and does not include those organized to support food and beverages for gatherings of health and medical services personnel, etc.

Q4	Money, goods, etc., permitted by acts and subordinate statutes (regarding expenses paid by recipients of public services) In order for importers in Korea to import specific products from overseas, they have to undergo inspections performed by our institution as specified by law. The equipment and facilities of overseas manufacturers are often used during inspections, and thus, if the applicant requests the use of inspection facilities of overseas manufacturers, overseas inspections are conducted. Is it permitted by the Improper Solicitation and Graft Act for the applicant to pay for overseas business trip expenses (airfare, meals, accommodations, etc.) in addition to inspection fees (overseas business trip expenses to be paid by applicants of inspections are specified in the pertinent public notice)?
[A]	If money, goods, etc., offered to Public Servant, Etc., are permitted by other acts, subordinate statutes, and standards, they may be excluded from prohibited money, goods, etc., under Article 8 (3) 8 of the Improper Solicitation and Graft Act. The said overseas business trip expenses are deemed possible to be paid by the applicant pursuant to the said Act based on acts, subordinate statutes, and standards specifying the extent of such expenses to be paid by private-sector recipients of public services in relation to relevant duties. The said overseas business trip expenses are deemed possible to be paid by the applicant pursuant to the said Act based on acts, subordinate statutes, and standards specifying the extent of such expenses to be paid by private-sector recipients of public services in relation to relevant duties.

❖ High-Pressure Gas Safety Control Act (an example of expenses paid by recipients of public services)

Article 34 (Fees, etc.) (2) Any of the following persons shall pay service charges or education tuition, as prescribed by the Minister of Trade, Industry and Energy:

3. Any person who intends to undergo a regular inspection of facilities for the manufacture, storage, sale or import of high-pressure gas under Article 16-2 (1);

❖ Inspection fees and education fees regarding high-pressure gas facilities, etc.

7. The following among fees related to inspections, supervision, and education should be individually paid by the applicant.

c. Expenses for an overseas inspection performed upon request by the applicant

Q5	Money, goods, etc., offered by a foreign government If a foreign government invites our public officials, college professors, journalists, and representatives of civic groups at its own expense and provides cultural experience programs, etc., to promote the country, does it violate the Improper Solicitation and Graft Act?
[A]	The provision of support for overseas business trip expenses by foreign governments, international organizations, overseas institutions and groups established for the public good, and other overseas organizations of a similar status for the purpose of promoting international exchange is permitted based on socially accepted rules (Article 8 (3) 8 of the said Act).

❖ Money, goods, etc., permitted based on socially accepted rules

- Money, goods, etc., permitted based on socially accepted rules refer to money, goods, etc., acceptable from the perspective of law and order or social ethics and underlying conventions.
- Whether money, goods, etc., given can be permitted based on socially accepted rules is determined by comprehensively considering how closely related the two parties are in terms of duties performed, the relationship between the two parties, what is exchanged and what its monetary value is, when and where it was exchanged, the background of its exchange, etc.
- The term "acts that do not run counter to socially accepted rules" refers to acts that may be accepted from the perspective of law and order or social ethics and underlying conventions, and 1) acts with justifiable

motivations or purposes, 2) acts committed through reasonable means or methods, 3) acts recognized to have maintained the balance between protected legal interests and infringed legal interests, 4) acts recognized for their urgent nature, and 5) acts of a supplementary nature that cannot substitute others are considered justifiable (Supreme Court of Korea; August 20, 2004; Adjudication 2003-do-4732).

	Money, goods, etc., provided to all guests uniformly at congratulatory and consolatory occasions
Q6	Can Public Servant, Etc., receive congratulatory or consolatory payments within the legally specified ceiling monetary value from guests visiting on such occasions and offer food that exceeds the legally specified ceiling monetary value?
[A]	As offering food to guests visiting on congratulatory and consolatory occasions is Korea's tradition, and as it does not target specific public guests, etc., only, food offered uniformly to all, even if it exceeds the ceiling monetary value, is permitted based on socially accepted rules pursuant to Article 8 (3) 8 of the Improper Solicitation and Graft Act unless special circumstances exist.

Q7	Bottled water, beverages, etc., provided to public officials of an institution in charge of auditing and supervising Does it violate the Improper Solicitation and Graft Act for an auditee institution to offer bottled water and other beverages to auditing officers at the venue of auditing?
[A]	Public Servant, Etc., may not receive any money, goods, etc., from those related to their duties in principle, and even food and gifts within the ceiling monetary values set forth by Presidential Decree cannot be permitted if their purposes are not recognized as facilitating such duties, promoting friendship, or following formalities (i.e. auditing, supervision, assessment, etc.). However, it is deemed possible to permit the provision of water and beverages to the auditing officers in amounts that may facilitate their activities but do not compromise impartiality in the performance of their duties based on socially accepted rules (Article 8 (3) 8 of the said Act).

	Provision of parking coupons
Q8	Does it violate the Improper Solicitation and Graft Act to provide parking coupons to public officials, journalists, etc., who visit for their duties?
[A]	Subparagraph 3 of Article 2 of the said Act defines the term "money, goods, etc.," as (a) any and all financial interests including money, securities, real estate, goods, complimentary accommodations, memberships to clubs and facilities, admission tickets for venues and performances, discount coupons, invitation tickets, entertainment tickets, and licenses and permissions to use real estate; (b) offering entertainment including food and beverages, alcoholic beverages, and golf or offering convenience such as transportation and accommodations; and (c) other tangible and intangible financial benefits such as a release from a debt, employment, and the provision of rights and interests. It is reasonable to view parking coupons as falling under money, goods, etc., in Subparagraph 3 of Article 2 of the said Act, and thus, in principle, they cannot be provided to Public Servant, Etc., performing relevant duties (Article 8 (2) of the said Act). A one-time provision of parking coupons may be allowed based on socially accepted rules only when it is deemed unlikely to compromise impartiality in performing such duties after reviewing the overall circumstances (the relationship between the two parties, the exact account of the acceptance of parking coupons, etc.) pursuant to Article 8 (3) 8 of the said Act. However, the continued provision of free parking coupons over an extended period of time or for purposes other than relevant duties cannot be permitted unless otherwise specified in acts and subordinate statutes, etc., as it is likely to compromise the impartial performance of duties.

Q9	Rewards for public servant, etc. Is it against the law for a private juridical person, which implements a project funded by a local government body, to provide rewards (including prize money) to public officials of the said government body?
[A]	Public Servant, Etc., may not receive any money, goods, etc., from those related to their duties (Article 8 (2) of the Improper Solicitation and Graft Act), but exceptions can be made for those cases that fall under Article 8 (3) of the said Act. Rewards for Public Servant, Etc., are permitted only as prescribed in pertinent acts, subordinate statutes, and standards to the extent of money, goods, etc., permitted by other acts, subordinate statutes, and standards as specified under Article 8 (3) 8 of the said Act. Permission for other rewards for Public Servant, Etc., needs to be further reviewed based on socially accepted rules. For other rewards for Public Servant, Etc., to be permitted based on socially accepted rules, they must be acceptable from the perspectives of law and order and social ethics and conventions and must be unlikely to compromise impartiality in the duties performed of Public Servant, Etc.

	Money, goods, etc., permitted on Teachers' Day
Q10	What are the gifts allowed for homeroom teachers to accept on Teachers' Day? Is a handwritten letter from a student against the law?
[A]	As teachers, who regularly perform assessments of and provide guidance to students, are related to students in terms of duties performed, they are prohibited from accepting money, goods, etc., in principle. Considering the relationship between the two parties, the provision of money, goods, etc., to teachers by students cannot be viewed as an act aimed at facilitating the performance of relevant duties or promoting friendship and thus cannot be permitted under Article 8 (2) of the Improper Solicitation and Graft Act. However, carnations publicly presented to teachers by student representatives, etc., in celebration of Teachers' Day may be permitted based on socially accepted rules (Article 8 (3) 8 of the said Act), as well as letters and cards handwritten by students as long as they are not excessive.

IV

Reporting and Disposition of Prohibited Money, goods, Etc., and Disciplinary Action and Penalties for Their Acceptance

1. Important Provisions and Notes
2. Cases

1. Important Provisions and Notes

Article 9 (Reporting and Disposal of Prohibited Money, Goods, etc.) Article 21~24 (Disciplinary Action and Penalties for Their Acceptance)

Article 9 (Reporting and Disposal of Prohibited Money, Goods, etc.) (1) A public servant, etc. shall report in writing to the head of the relevant institution, without delay, in any of the following cases:

1. Where the public servant, etc. receives prohibited money, goods, etc., or receives a promise or an expression of intention to offer them;
2. Where the public servant, etc. becomes aware that his/her spouse received prohibited money, goods, etc., or a promise or an expression of intention to offer them.

(2) If a public servant, etc. receives prohibited money, goods, etc., or a promise or an expression of intention to offer them, or if a public servant, etc. becomes aware that his/her spouse received prohibited money, goods, etc. or a promise or an expression of intention to offer them, the public servant, etc. shall return them or have them returned, without delay, to the provider, manifest an intention to reject them, or have such intension manifested: Provided, That where the received money, goods, etc. falls under any of the following cases, the public servant, etc. shall deliver them or have them delivered to the head of the relevant institution:

1. Where they are subject to loss, decay, deterioration, etc.;
2. Where the provider of the relevant money, goods, etc. is unknown;
3. Any other situation where it is difficult to return the money, goods, etc. to the provider.

Article 21 (Disciplinary Action) The head of a relevant institution, etc. shall take disciplinary action against any public servant, etc. who violates this Act or an order issued pursuant to this Act.

Article 22 (Penalty Provisions) (1) Any of the following persons shall be subject to imprisonment with labor for not more than three years or a fine not exceeding 30 million won:

1. A public servant, etc. (including private persons performing public duties under Article 11) in violation of Article 8 (1): Provided, That the foregoing shall not apply if a public servant, etc. reported, returned, delivered, or expressed an intention to reject prohibited money, goods, etc., pursuant to Article 9 (1), (2) or (6);
2. A public servant, etc. (including private persons performing public duties under Article 11) who fails to report pursuant to Article 9 (1) 2 or Article 9 (6), although he/she is aware that his/her spouse received, requested, or promised to receive prohibited money, goods, etc. specified in Article 8 (1), in violation of Article 8 (4): Provided, That the foregoing shall not apply if a public servant, etc. or his/her spouse returned, delivered, or expressed an intention to reject prohibited money, goods, etc. pursuant to Article 9 (2);
3. A person who offers, promises to offer, or expresses an intention to offer prohibited money, goods, etc., specified in Article 8 (1), to a public servant, etc. (including private persons performing public duties under Article 11) or his/her spouse, in violation of Article 8 (5);

Article 23 (Imposition of Administrative Fines) (5) Any of the following persons shall be subject to an administrative fine of two to five times the monetary value of the money, goods, etc. related to the violation: Provided, That no administrative fine shall be imposed if criminal punishment (including confiscation and collection) is imposed under Article 22 (1) 1through 3, the Criminal Act, or any other Act; if criminal punishment is imposed after an administrative fine is imposed, the imposition of the administrative fine shall be revoked:

1. A public servant, etc. who violates Article 8 (2) (including private persons performing public duties under Article 11): Provided, That the foregoing shall not apply if the public servant, etc. reported, returned, delivered, or expressed an intention to reject prohibited money, goods, etc. pursuant to Article 9 (1), (2) or (6);
3. A person who offers, promises to offer, or expresses an intention to offer prohibited money, goods, etc., specified in Article 8 (2), to a public servant, etc. (including private persons performing public duties under Article 11) or his/her spouse, in violation of Article 8 (5).

2. A public servant, etc. (including private persons performing public duties under Article 11) who fails to report pursuant to Article 9 (1) 2 or Article 9 (6), although he/she is aware that his/her spouse received, requested, or promised to receive prohibited money, goods, etc. specified in Article 8 (2), in violation of Article 8 (4): Provided, That the foregoing shall not apply if the public servant, etc. or his/her spouse returned, delivered, or expressed an intention to reject prohibited money, goods, etc. pursuant to Article 9 (2);

(6) Notwithstanding paragraphs (1) through (5), no administrative fine shall be imposed after any resolution is passed to impose disciplinary additional charges under the State Public Officials Act, the Local Public Officials Act, or any other Act; after any administrative fine is imposed, no resolution shall be passed to impose any disciplinary additional charges.

(7) The head of a relevant institution shall notify a competent court, having jurisdiction over cases of administrative fines under the Non-Contentious Case Procedure Act, of a violation committed by those subject to the administrative fines set forth in paragraphs (1) through (5).

Article 24 (Joint Penalty Provisions) If a representative of a juridical person or an organization; or an agent, an employee or any other worker employed by a juridical person, an organization, or an individual, commits, in connection with the affairs of the juridical person, the organization, or the individual, any of the violations set forth in: Article 22 (1) 3, excluding where the provider of the money, goods, etc. is a public servant, etc. (including private persons performing public duties to whom Article 8 applies mutatis mutandis pursuant to Article 11); Article 23 (2); Article 23 (3); or Article 23 (5) 3, excluding where the provider of the money, goods, etc. is a public servant, etc. (including private persons performing public duties to whom Article 8 applies mutatis mutandis pursuant to Article 11), not only shall the violator be punished but the juridical person, the organization, or the individual shall also be subject to the fines or administrative fines specified in relevant provisions: Provided, That the foregoing shall not apply if the juridical person, the organization, or the individual was not neglect in paying due attention to and supervising the relevant affairs, in order to prevent such violation.

1 Reporting and Returning of Prohibited Money, Goods, Etc.,

- Obligation to report prohibited money, goods, etc.
  - A public official, etc., is obligated to report the acceptance of prohibited money, goods, etc., by himself/herself or his/her spouse to the head of his/her institution in written form (including electronic form) without delay.

    ※ Information to be included: Personal information of the reporter; purpose and reasons for reporting; personal information of the provider of money, goods, etc.; details and monetary values of money, goods, etc., received; whether the money, goods, etc., received were returned; etc. (Article 13 (3) of the Improper Solicitation and Graft Act).
  - The acceptance of money, goods, etc., may be reported to supervisory institutions, the Board of Audit and Inspection of Korea, investigation agencies, and the Anti-Corruption & Civil Rights Commission, as well as the institution to which the reporter belongs.
- Obligation to return or deliver prohibited money, goods, etc.
  - A public official, etc., is obligated to return or deliver money, goods, etc., accepted by himself/herself "without delay".
  - Upon becoming aware of the acceptance of money, goods, etc., by his/her spouse, the public official, etc., must have his/her spouse return the accepted money, goods, etc., or have his/her spouse clearly express his/her will of refusal without delay.
  - However, if the accepted money, goods, etc., are likely to decay, deteriorate, etc., they must be delivered to the head of the institution to which the public official, etc. belongs.

※ Delivery of money, goods, etc.: When the accepted money, goods, etc., are likely to become lost, decay, deteriorate, etc.; when the provider of such money, goods, etc., is unknown; and when it is difficult to return such money, goods, etc., for other reasons

- Time for reporting and returning or delivering
  - Reporting and returning should be carried out "without delay", and "without delay" means "without being put off for unnecessary reasons".
  - If reporting cannot be carried out due to a justifiable reason, it should be reported immediately after the termination of such a reason.

    ※ Whether the reporting and returning or delivering of money, goods, etc., are executed "without delay" should be determined by examining the details of each case individually.

- Effect of reporting and returning or delivering
  - The public official, etc., who reports and returns or delivers the accepted money, goods, etc., "without delay" pursuant to Article 9 (1) and (2) or (6) of the Improper Solicitation and Graft Act becomes exempt from the sanctions specified in the said Act (necessary exemption).

    ※ The exemption from the sanctions specified in the said Act depends on whether the reporting and returning or delivering of the accepted money, goods, etc., are executed "without delay".

    ▪ Article 22 (Penalty Provisions) of the Improper Solicitation and Graft Act (1) Any of the following persons shall be subject to imprisonment with labor for up to three years or a fine not exceeding KRW 30 million won.

    1. A public official, etc., (including private persons performing public duties under Article 11) in violation of Article 8 (1), provided that the foregoing shall not apply if a public official, etc., reports, returns or delivers, or expresses an intention to reject prohibited money, goods, etc., pursuant to Article 9 (1), (2) or (6)

- If a public official, etc., reports the acceptance of money, goods, etc., voluntarily but belatedly, the sanctions shall be mitigated (arbitrary mitigation).
  - Article 15 (Protection of and Rewards to Reporters, Etc.) of the said Act (3) Criminal punishment, administrative fines, disciplinary actions, and other administrative dispositions imposed on a violation of this Act may be mitigated or remitted if the violator voluntarily reports his/her violation or if a violation of this Act, committed by the reporting person, etc., is discovered as a result of his or her report, etc.

[2] Disciplinary Action

- The head of a relevant institution, etc., shall take disciplinary action against any public official, etc., who violates this Act or an order issued pursuant to this Act (Article 21 of the Improper Solicitation and Graft Act).
  - "Take disciplinary action" herein means "to go forward with disciplinary action procedures when a cause of disciplinary action is found pertaining to a public official, etc."
- The head of a relevant institution shall prepare detailed criteria based on the types of violations, degrees of violations, severity of negligence, etc. (Article 43 of the Enforcement Decree of the said Act).
- The public official, etc., even after he/she accepts money, goods, etc., such as an excess honorarium for an off-site lecture, etc., shall be exempt from such disciplinary action if he/she reports and returns or delivers such money, goods, etc.
  - The foregoing measure is aimed at protecting the public official, etc., from liability that may arise from following the preset procedures of reporting, etc.

3 Criminal Punishment (imprisonment with labor for up to three years or a fine of up to KRW 30 million)

- A public official, etc., who accepts, demands, or agrees to receive money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year from the same person
  - The public official, etc., becomes exempt from the sanctions specified in the Improper Solicitation and Graft Act if he/she reports the money, goods, etc., without delay; returns or delivers such money, goods, etc.; or manifests his/her intention of refusal.
- A public official, etc., who is aware of the fact that his/her spouse has accepted, demanded, or agreed to receive money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year in connection with duties performed by the said public official, etc., but fails to report the fact
  - A public official, etc., or his/her spouse who returns or delivers or manifests his/her will of refusal of money, goods, etc., without delay is exempt from the sanctions specified in the Improper Solicitation and Graft Act.
- The person who provides, promises to provide, or manifests his/her intention to provide money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year to a public official, etc., or his/her spouse

4 Imposition and Revocation of Administrative Fines

- Exchange of prohibited money, goods, etc. (subject to the imposition of an administrative fine of two to five times the monetary value of the money, goods, etc., related to the violation)
  - A public official, etc., who accepts, demands, or agrees to receive money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year
  - A public official, etc., who is aware of the fact that his/her spouse has accepted, demanded, or agreed to receive money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year in connection with duties performed by the said public official, etc., but fails to report the fact
  - The person who provides, promises to provide, or manifests his/her intention to provide money, goods, etc., worth up to KRW 1 million at one time to a public official, etc., or his/her spouse
- (Notification of imposition of administrative fines) The head of a relevant institution shall notify a competent court that has jurisdiction over the case of an administrative fine under the Non-Contentious Case Procedure Act of a violation committed by the person subject to the administrative fine.

  ※ Improper Solicitation and Graft Act Article 23 (Imposition of Administrative Fines) (7) The head of a relevant institution shall notify a competent court that has jurisdiction over the case of an administrative fine under the Non-Contentious Case Procedure Act of a violation committed by the person subject to the administrative fine set forth in Paragraphs 1 through 5.

- A competent court that has jurisdiction imposes the administrative fine in the form of a judgment (ruling) following the notification by the head of a relevant institution of a violation committed.

  ※ Non-Contentious Case Procedure Act Article 17 (Form of Judgment) (1) Each judgment shall be rendered by a ruling.

- The head of a relevant institution may notify a competent court of a violation committed by not only its public official, etc., but also a civilian who makes an improper solicitation or provides money, goods, etc. The head of a public institution may also notify a competent court of a violation committed by a public official, etc., of another public institution if he/she makes an improper solicitation or provides money, goods, etc.

● (Revocation of administrative fines)) If the violator is imposed with criminal punishment following the imposition of an administrative fine, the administrative fine shall be revoked (provisos under Article 23 (1), (2), (3), and (5) of the Improper Solicitation and Graft Act).

- Criminal punishment may be imposed on cases already imposed with administrative fines in accordance with the said Act and other acts such as the Criminal Act.

  ※ (Example) A public official, etc., is first imposed with an administrative fine due to the acceptance of money, goods, etc., worth no more than KRW 1 million but again receives criminal punishment pursuant to the Criminal Act after it is discovered that money, goods, etc., were given as part of a quid pro quo arrangement. Another public official, etc., receives criminal punishment for accepting money, goods, etc., exceeding KRW 3 million in one fiscal year.

[5] Joint Penalty Provisions

- If a representative, an agent, an employee, or a worker of a juridical person, etc., violates Article 22 (1) 3, Article 23 (5) 3, Article 23 (2), or Article 23 (3) of the Improper Solicitation and Graft Act with respect to affairs of the said juridical person, etc., the juridical person, etc., shall be imposed with fines or administrative fines, in addition to the imposition of punishment on the violator (Article 24 of the said Act).
  - The foregoing shall not apply when the juridical person, etc., was not negligent in paying due attention to and supervising relevant affairs in order to prevent such a commitment of violation.

    ※ The joint penalty provisions shall not apply when the provider of money, goods, etc., is a public official, etc.

2. Cases

1 Reporting and Disposition of Prohibited Money, Goods, Etc.

Q1	"Without delay" A public official receives money from a duty-related party. After about two months, the said public official becomes concerned about the possibility of an internal investigation, etc., and thus reports and returns the accepted money. Will the public official be exempt from the sanctions specified in the Improper Solicitation and Graft Act?
[A]	A public official, etc., is obligated to report to the head of his/her institution in written form without delay if he/she receives prohibited money, goods, etc., or is given a promise or an expression of intention to offer them. The said public official, etc., must also return prohibited money, goods, etc., if accepted, without delay and manifest his/her will of refusal of such money, goods, etc., when the provider of such money, goods, etc., promises to offer or manifests his/her intention to offer such money, goods, etc. (Article 9 (1) and (2) of the said Act). As the said public official, etc., keeps the money for two months, he/she cannot be viewed as having reported and returned it without delay. If he/she cannot present a justifiable reason for failing to report and return the money without delay, he/she is unlikely to be exempt from the sanctions.

However, as the public official, etc., voluntarily reports and returns the money, albeit belatedly, the sanctions may be mitigated or remitted pursuant to the said Act (Article 15 (3) of the said Act).

❖ Time for reporting and returning or delivering

- Reporting and returning should be carried out "without delay", and "without delay" means "without being put off for unnecessary reasons".
- If reporting cannot be carried out due to a justifiable reason, it should be reported immediately after the termination of such a reason.

※ Whether the reporting and returning or delivering of money, goods, etc., are executed "without delay" should be determined by examining the details of each case individually.

	Returning prohibited money, goods, etc.
Q2	A public official in the position of bureau head at a central administrative agency has recently been bereaved of his/her father and, five days after his/her father's funeral, realizes that KRW 2 million consolatory payment was made by an executive of a related institution. How should the public official respond to this?
[A]	In principle, a public official, etc., who receives money, goods, etc., exceeding KRW 1 million at one time, even if they are not related to his/her duties or are offered as a donation, sponsorship, gratuitous transfer of property, etc., is subject to criminal punishment (imprisonment with labor for up to three years or a fine of up to KRW 30 million) (Article 8 (1) and the main text of Article 22 (1) 1 of the Improper Solicitation and Graft Act). However, if the public official, etc., reports the acceptance of prohibited money, goods, etc., to the head of his/her institution without delay or returns the foregoing money, goods, etc., to the provider without delay, he/she is exempt from the legally specified sanctions (proviso under Article 22 (1) 1 of the said Act). The public official in this case discovers the receipt of prohibited money, goods, etc., five days after the funeral, and, if he/she immediately reports and returns the said money, goods, etc., pursuant to the said Act upon this discovery, he/she shall be exempt from the legally specified sanctions.

	Whether failure to report is subject to disciplinary action
Q3	Article 9 (1) of the Improper Solicitation and Graft Act mandates a public official to both report and return prohibited money, goods, etc., when he/she receives such money, goods, etc., or is given a promise or an expression of intention to offer them. If a public official, etc., returns or manifests his/her will of refusal of such money, goods, etc., but fails to report his/her acceptance of such money, goods, etc., is he/she subject to the legally specified sanctions?
[A]	A public official, etc., is obligated to report to the head of his/her institution in written form without delay when he/she receives prohibited money, goods, etc., or is given a promise or an expression of intention to offer them (Article 9 (1) of the said Act). Also, a public official, etc., is obligated to return or manifest his/her intention to refuse prohibited money, goods, etc., without delay when the provider of such money, goods, etc., offers, promises to offer, or manifests his/her will to offer such money, goods, etc. (Article 9 (2) of the said Act). The head of a relevant institution, etc., shall take disciplinary action when a public official, etc., commits a violation of this Act or an order issued pursuant to this Act (Article 21 of the said Act). As such, a public official, etc., who receives prohibited money, goods, etc., or is given a promise or an expression of intention to offer them and fails to report such a fact to the head of his/her institution without delay is subject to disciplinary action in violation of Article 9 (1) of the said Act pursuant to Article 21 of the said Act.

Q4	Reporting prohibited money, goods, etc.,
	A public official of a local government is visited by a person who used to be related to him/her in terms of duties. The person gives the public official a box of beverages worth KRW 5,000. The public official tries to immediately return it, but the provider has already left the site. Is the public official obligated to report the incident to the head of the local government pursuant to Article 9 of the Improper Solicitation and Graft Act?
[A]	A public official, etc., is obligated to report the acceptance of prohibited money, goods, etc., to the head of his/her institution in written form without delay (Article 9 (1) of the said Act). If the received box of beverages does not fall under the category of such money, goods, etc., specified in the said Act, it does not incur the obligation to report. However, whether the received money, goods, etc., fall under the category of prohibited money, goods, etc., should be determined by comprehensively examining the overall circumstances including the details of duties performed; the relationship between the two parties; the background and time of the acceptance of money, goods, etc.; whether the money, goods, etc., offered comply with the legally specified ceiling monetary values; etc.

2 Imposition of Administrative Fines and Joint Penalty Provisions

	Notification of the imposition of administrative fines
Q1	A civil petitioner who requests a local government to purchase his/her land provides money, goods, etc., (KRW 100,000 in cash) to a public official in charge, and the public official in charge reports this fact and returns the cash pursuant to Article 9 of the Improper Solicitation and Graft Act. Does this case require the notification of the imposition of an administrative fine? Or should it be closed as the cash was returned?
[A]	A public official, etc., is obligated to report the acceptance of prohibited money, goods, etc., to the head of his/her institution in written form without delay (Article 9 (1) of the said Act) and to return such money, goods, etc., to the provider without delay (Article 9 (2) of the said Act). A public official, etc., in violation of Article 8 (2) of the said Act is imposed with an administrative fine. However, if he/she reports, returns or delivers, or manifests his/her intention to refuse such money, goods, etc., pursuant to Article 9 (1) and (2) or (6) of the said Act, he/she becomes exempt from the imposition of an administrative fine (Article 23 (5) 1 of the said Act). The person who provides prohibited money, goods, etc., under Article 8 (2) of the said Act in violation of Article 8 (5) of the said Act is subject to the imposition of an administrative fine of two to five times the monetary value of the money, goods, etc., related to

the violation (Article 23 (5) 3 of the said Act). The head of the relevant institution shall notify a competent court that has jurisdiction over the case of an administrative fine under the Non-Contentious Case Procedure Act of a violation committed by the person subject to the administrative fine set forth in Article 23 (1) through (5) of the said Act (Article 23 (7) of the said Act).

Q2	**Notification for the imposition of an administrative fine for an incident disclosed by the relevant institution itself** If an incident and the commitment of a violation thereof subject to the imposition of an administrative fine under the Improper Solicitation and Graft Act is disclosed as a result of an audit conducted by the relevant institution itself (not by the reporting, etc., of a violation under Article 13 of the said Act), does it require a notification to a competent court for the imposition of an administrative fine regardless of disciplinary action taken?
[A]	Article 23 (7) of the Improper Solicitation and Graft Act stipulates that the head of a relevant institution shall notify a competent court that has jurisdiction over the case of an administrative fine under the Non-Contentious Case Procedure Act of a violation committed by the person subject to the administrative fine set forth in Paragraphs 1 through 5. It is difficult to view "reporting" under Article 13 of the Improper Solicitation and Graft Act as a prerequisite for the notification for the imposition of an administrative fine. As such, if any violation of the said Act by the person subject to the imposition of an administrative fine is disclosed as a result of an investigation of an incident recognized by an audit conducted by the relevant institution itself, the head of the institution should notify a competent court that has jurisdiction over the case of an administrative fine under the Non-Contentious Case Procedure Act of the violation committed.

Q3	Required forms for the notification for the imposition of administrative fines A civilian tries to provide money to an employee of a public institution in violation of Article 8 (5) of the Improper Solicitation and Graft Act, and the said employee submits a report. The civilian shall be imposed with an administrative fine pursuant to Article 23 (5) 3 of the said Act. The said Act mandates the notification of such a case to a competent court based on the Non-Contentious Case Procedure Act. What are the required forms for the notification?
[A]	The person who provides prohibited money, goods, etc., under Article 8 (2) of the Improper Solicitation and Graft Act to a public official, etc., in violation of Article 8 (5) of the said Act is subject to the imposition of an administrative fine of two to five times the monetary value of the money, goods, etc., related to the violation (Article 23 (5) of the said Act). The head of a relevant institution shall notify a competent court that has jurisdiction over the case of an administrative fine under the Non-Contentious Case Procedure Act of a violation committed by the person subject to the administrative fine set forth in Article 23 (1) through (5) of the Improper Solicitation and Graft Act (Article 23 (7) of the said Act). Refer to the Guidelines on Processing the Reporting of Improper Solicitations and Exchanges of Money, goods, Etc., distributed to each institution for the forms, etc., required for notifying a competent court.

Q4	Exemption of juridical persons from joint penalty provisions When requesting the imposition of an administrative fine to a competent court with the joint penalty provisions applied to a private company and its executives and employees, is an administrative agency required to investigate whether the juridical person was not negligent in paying due attention to and supervising relevant affairs prior to the submission of the request for the imposition of an administrative fine?
[A]	Pursuant to Article 24 of the Improper Solicitation and Graft Act, if a representative of a juridical person or an organization or an agent, employee, or any other worker employed by a juridical person, an organization, or an individual commits, in connection with the affairs of the juridical person, the organization, or the individual, any of the violations set forth in Article 22 (1) 3, Article 23 (2), Article 23 (3), and Article 23 (5) 3 of the said Act, not only shall the violator be punished but also the juridical person, the organization, or the individual shall be subject to the fine or administrative fine specified in relevant provisions, provided that the foregoing shall not apply if the juridical person, the organization, or the individual was not negligent in paying due attention to and supervising relevant affairs in order to prevent such violations. Based on the foregoing, the imposition and exemption of the joint penalty provisions are deemed to require a close examination of whether the juridical person, the organization, or the individual was not negligent in paying due attention to and supervising relevant affairs, which is viewed to be a matter of judgment by the competent court.

❖ Joint penalty provisions

- If a representative, an agent, an employee, or a worker of a juridical person, etc., violates Article 22 (1) 3, Article 23 (5) 3, Article 23 (2), or Article 23 (3) of the Improper Solicitation and Graft Act with respect to affairs of the said juridical person, etc., the juridical person, etc., shall be imposed with fines or administrative fines, in addition to the imposition of punishment on the violator (Article 24 of the said Act).
  - The foregoing shall not apply when the juridical person, etc., was not negligent in paying due attention to and supervising relevant affairs in order to prevent such a commitment of violation.

    ※ The joint penalty provisions shall not apply when the provider of money, goods, etc., is a public official, etc.

Q5	Exemption from joint penalty provisions Pursuant to Article 24 of the Improper Solicitation and Graft Act, the joint penalty provisions shall not apply when the provider of money, goods, etc., is a public official, etc. Will the joint penalty provisions still apply when an organization consisting of Public Servant, Etc., is the provider of money, goods, etc.?
[A]	In principle, the object of the legally specified sanctions for violating the said Act by providing prohibited money, goods, etc., shall be the actual violator. Pursuant to the joint penalty provisions under Article 24 of the said Act, a juridical person may be subject to the sanctions if it is found to have been negligent in paying due attention to or supervising relevant affairs in order to prevent such a commitment of violation by a representative, an agent, an employee, or a worker of a juridical person. If the provider of money, goods, etc., can be recognized as a public official, etc., the joint penalty provisions shall not apply.

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Compilation of Authoritative Interpretations of the Improper Solicitation and Graft Act

V

Outside Lectures, Etc.

1. Important Provisions and Notes
2. Cases

1. Important Provisions and Notes

Article 10 (Restriction on the Acceptance of Honoraria for Outside Lectures, etc.), Article 23 (4) (Imposition of Administrative Fines)

Article 10 (Restriction on the Acceptance of Honoraria for Outside Lectures, etc.) (1) No public servant, etc. shall accept money exceeding the limits specified by Presidential Decree as an honorarium for a lecture, presentation, or contribution related to his/her duties or requested based on de facto influence arising from his/her position or responsibilities (hereinafter referred to as "outside lecture, etc") at a training course, promotional event, forum, seminar, public hearing, or any other meeting.

(2) If a public servant, etc. conducts an outside lecture, etc., he/she shall report, in advance, in writing, the details of the request for the outside lecture, etc., to the head of the relevant institution, as prescribed by Presidential Decree: Provided, That the foregoing shall not apply if the request for the outside lecture, etc. is made by the State or a local government.

(3) If it is impractical to make a report on the outside lecture, etc. in advance, as prescribed in the main sentence of paragraph (2), the public servant, etc. may report in writing within two days from the day when the outside lecture, etc. is finished.

(4) If the head of a relevant institution deems an outside lecture, etc., reported by a public servant, etc. pursuant to paragraph (2), may hinder fair performance of duties, the head of the relevant institution may restrict the outside lecture, etc.

(5) If a public servant, etc. received an honorarium exceeding the limits described in paragraph (1), he/she shall report to the head of the relevant institution, etc. and return, without delay, the excess amount to the provider, as prescribed by Presidential Decree.

Article 23 (Imposition of Administrative Fines) (4) A public servant, etc. who fails to report and return pursuant to Article 10 (5) shall be subject to an administrative fine not exceeding five million won.

Articles 25 (Maximum Amounts of Honoraria for outside lectures, Etc., Acceptance of Which Is Prohibited) and 26 (Report of outside lectures, Etc.) of the Enforcement Decree of the Act

Article 25 (Maximum Amounts of Honoraria for outside lectures, Etc., Acceptance of Which Is Prohibited) Limits specified by Presidential Decree in Article 10 (1) of the Act shall be as described in Attached Table 2.

Article 26 (Report of outside lectures, Etc.) (1) A public official, etc., intending to report outside lectures, etc., prescribed in Article 10 (1) of the Act (hereinafter referred to as "outside lectures, etc.") pursuant to the main text of Article 10 (2) of the Act shall submit to the head of a relevant institution documents specifying the following.

1. Name, department, position, and contact information of the reporting person
2. Date, time, duration, and venue of the off-site lecture, etc.
3. Subject of the off-site lecture, etc.
4. Total amount of the honorarium and detailed statement (applicable only when an honorarium is accepted)
5. Name and contact information of the person (institution) requesting the off-site lecture, etc., and name and contact information of the person in charge of overall affairs regarding the off-site lecture, etc.

(2) If information such as the details and total amount of the honorarium is unavailable when reporting under the preceding Paragraph 1, the report should be submitted without such information and be supplemented within five days from the date on which such information became available.

Article 27 (Methods of Reporting, Etc., of Excess Honorarium) (1) If a public official, etc., received any honorarium exceeding the limits prescribed in Article 10 (1) of the Act (hereinafter referred to as "excess honorarium"), he/she shall report the following information to the head of a relevant institution in written form pursuant to Article 10 (5) of the Act within two days from the date on which the receipt of the excess honorarium was recognized.

1. Matters to be reported under Article 26 (1) herein
2. The amount of the excess honorarium and whether the excess honorarium was returned

(2) Upon receiving the report made under the preceding Paragraph 1, the head of the relevant institution shall confirm the report regarding the public official, etc., who has not returned the excess honorarium, calculate the amount of the excess honorarium to be returned, and notify the said amount to the said public official, etc., within seven days.
(3) Upon receiving the notification made under the preceding Paragraph 2, the public official, etc., shall return the excess honorarium (the remainder of the excess honorarium in case the reporting person has already partially returned the excess honorarium) to the provider and notify the head of the relevant institution about the return.

[Attached Table 2] 〈amended on January 17, 2018〉

Ceiling Amounts of Honoraria for Outside Lectures, Etc.
(with respect to Article 25 herein)

1. Ceiling Amounts of Honoraria for Public Servant, Etc.
   a. Public Servant, Etc., under Subparagraph 2 (a) and (b) of Article 2 herein (excluding principals and school personnel of schools of different levels under Subparagraph 2 (c) of Article 2 herein and Public Servant, Etc., under Subparagraph 2 (d) of Article 2 herein): KRW 400,000
   b. Public Servant, Etc., under Subparagraph 2 (c) and (d) of Article 2 herein: KRW 1 million
   c. Notwithstanding the preceding (a) and (b), the ceiling amounts of honoraria for outside lectures, etc., provided by international organizations, foreign governments, overseas universities, overseas research institutes, overseas academic associations, and other overseas institutions of similar status shall follow the criteria set by the provider.
2. Application Criteria
   a. The said ceiling amounts specified in (a) and (b) under the preceding Subparagraph 1 are per hour for lectures, etc., and per article for contributions.
   b. The total amount of an honorarium for an off-site lecture, etc., exceeding an hour may not surpass 150% of the ceiling amount for an hour for Public Servant, Etc., specified in (a) under Subparagraph 1 regardless of total hours of the said lecture, etc.

c. The ceiling amounts specified in (a) and (b) under the preceding Subparagraph 1 include all types of honoraria provided to Public Servant, Etc., regarding outside lectures, etc., including lecture fees, payments for article contributions, and appearance fees.

d. Notwithstanding the foregoing (c), if Public Servant, Etc., are not provided travel expenses such as expenses for transportation, accommodations, meals, etc., by their institutions, expenses for transportation, accommodations, and meals provided based on an estimate of actual amounts within limits specified in regulations applied to different public institutions, such as the Regulations on Travel Expenses of Public Officials, shall not be included in honoraria specified in the preceding Subparagraph 1.

1 Criteria for Determining the Extent of Outside Lectures, Etc.

- Outside lectures, etc., governed by Article 10 of the Improper Solicitation and Graft Act, refer to courses, lectures, article contributions, etc., given for educational and promotional events, forums, seminars, and public hearings and for other conferences, etc., which are requested to a public official, etc., based on their relevance with his/her duties performed or his/her influence substantively originating from his/her position, etc.
- It must be requested to a public servant, etc., based on its relevance with his/her duties performed or his/her influence substantively originating from his/her position, etc., to be recognized as an off-site lecture, etc.
  - The foregoing "duties" mean "the entirety of affairs related to the position of the public servant, etc., and handled by the public servant, etc."
    ※ Duties encompass duties taken charge of pursuant to acts, subordinate statutes, and standards, acts closely related with such

duties, duties and acts handled customarily and substantively, and duties and acts that may support and influence those in charge of decision-making.

- A lecture must take the form of an event designed to deliver opinions and knowledge to many, such as educational and promotional events, forums, seminars, public hearings, or the form of a conference.
- Article contribution refers to the contribution of an article written to be printed in newspapers, magazines, etc., to deliver opinions and knowledge to many.
- Commissioned services and consultations that do not target many or do not take the form of a conference do not fall under the category of outside lectures, etc., governed by Article 10 of the said Act.

※ Remunerations for commissioned services and consultations that do not fall under the category of outside lectures, etc., are regulated by Article 8 (Prohibition of Receipt of Money, goods, Etc.) of the said Act. It is necessary to separately review whether remunerations from such commissioned services and consultations constitute money, goods, etc., offered from a legitimate source of authority and can be recognized as an exception under Article 8 (3) 3 of the said Act.

[2] Advance Reporting and Restriction on Outside Lectures, Etc.

- When requested to give an off-site lecture, etc., a public official, etc., is obligated to report the detailed information about the requested off-site lecture, etc., to the head of his/her institution in written form in advance.
  - All outside lectures, etc., including those given without any remuneration, must be reported in advance, except those requested by central and local

government bodies.

- The advance reporting of an off-site lecture, etc., means an advance notification, not a requirement for attaining prior approval of the head of the relevant institution.
- If it is not convenient to report in advance, the public official, etc., must report in written form within two days from the date of the completion of an off-site lecture, etc.

  ※ If information such as a detailed statement and the total amount of the honorarium is not available prior to the requested off-site lecture, etc., the public official, etc., must report other types of information required first and additionally submit a detailed statement or the total amount of the honorarium within five days from the date of the attainment of such information.
- The head of the relevant institution may prevent a public official, etc., from giving the reported off-site lecture, etc., viewed to be likely to compromise impartiality in the performance of duties.

❖ Central and local government bodies that do not require advance reporting

1) National Assembly, courts, Constitutional Court of Korea, National Election Commission, Board of Audit and Inspection of Korea, National Human Rights Commission of Korea, and national institutions such as central administrative agencies and their affiliated institutions and local governments

① Constitutional institutions: National Assembly, courts, Constitutional Court of Korea, National Election Commission, and Board of Audit and Inspection of Korea

② Central administrative agencies: Central administrative agencies under the Government Organization Act and other administrative agencies under

individual acts such as the National Human Rights Commission of Korea

※ National preschools; national elementary, middle, and high schools; and national universities are governed by the Ministry of Education.

2) Local governments and Offices of Education

① Local governments: Upper-level local autonomy (1 special metropolitan city, 6 metropolitan cities, 1 special self-governing city, 8 provinces, and 1 special self-governing province) and lower-level local autonomy

② . Offices of Education: 17 cities and provinces of upper-level autonomy

※ Public preschools; public elementary, middle, and high schools; and public universities are governed by local governments and local Offices of Education.

3 Reporting and Returning of an Honorarium Exceeding the Legally Specified Ceiling Amounts

- Public Servant, Etc., are obligated to report upon receiving honoraria exceeding the legally specified ceiling amounts in written form to the heads of their institutions and return them to the providers without delay.
  - Public officials who receive honoraria exceeding the legally specified ceiling amounts and fail to report and return them are subject to the imposition of an administrative fine of up to KRW 5 million.

2. Cases

1 Whether Falling under the Category of Outside Lectures, Etc.

Q1	Whether emceeing at a public hearing, meeting, etc., falls under the category of outside lectures, etc. Can emceeing at a public hearing, meeting, etc., or giving a video lecture online be considered giving an off-site lecture, etc.?
[A]	Pursuant to the Improper Solicitation and Graft Act, outside lectures, etc., refer to courses, lectures, article contributions, etc., given for educational and promotional events, forums, seminars, and public hearings and for other conferences, etc., which are requested to a public official, etc., based on their relevance with his/her duties performed or his/her influence substantively originating from his/her position, etc. It must take the form of an event designed to deliver opinions and knowledge to many, such as educational and promotional events, forums, seminars, public hearings, or the form of a conference. As such, emceeing at a public hearing, meeting, etc., falls under the category of outside lectures, etc., as it takes the form of an event designed to deliver opinions and knowledge to many or the form of a conference. However, those cases that cannot be viewed to be delivering

opinions and knowledge to many (i.e. an announcer emceeing a program at a local festival in accordance with a script) do not fall under the category of outside lectures, etc.

An online lecture falls under the category of outside lectures, etc., under Article 10 of the said Act as it is aimed at delivering opinions and knowledge to many via online media.

❖ "Lecture" defined in Article 10 of the Improper Solicitation and Graft Act

- An off-site lecture, etc., must be requested to a public servant, etc., based on its relevance with his/her duties performed or his/her influence substantively originating from his/her position, etc.
- A lecture must take the form of an event designed to deliver opinions and knowledge to many, such as educational and promotional events, forums, seminars, public hearings, or the form of a conference.

Q2	Whether contests fall under the category of outside lectures, etc. If a public official of a public institution takes part in a contest organized by an association and presents his/her achievements regarding his/her duties to many, can it be considered an off-site lecture, etc.?
[A]	Pursuant to the Improper Solicitation and Graft Act, outside lectures, etc., refer to courses, lectures, article contributions, etc., given for educational and promotional events, forums, seminars, and public hearings and for other conferences, etc., which are requested to a public official, etc., based on their relevance with his/her duties performed or his/her influence substantively originating from his/her position, etc. If a public official applied to enter a contest on his/her own, it cannot be viewed that he/she was requested by an outside organization, and thus it does not constitute an off-site lecture, etc., defined in Article 10 of the said Act.

Q3	Whether provisions of outside lectures, etc., apply to a non-standing director of a public service-related organization If an employee of a private company serves as a non-standing director of a public service-related organization, is he/she subject to provisions of outside lectures, etc., under Article 10 of the Improper Solicitation and Graft Act?
[A]	If the said organization falls under the category of public service-related organizations defined in Subparagraph 1 (b) of Article 2 of the said Act, its executives and staff members (including non-standing directors) are Public Servant, Etc., defined in Subparagraph 2 (b) of Article 2 of the said Act and governed by the said Act. If an employee of a private company concurrently holds a post of a public official, etc., he/she shall be subject to the said Act when giving an off-site lecture, etc., requested based on its relevance with his/her duties as a public official, etc., or his/her influence substantively originating from his/her position, etc.

❖ Executives and staff members of a public service-related organization established under Article 3-2 of the Public Service Ethics Act are subject to the Improper Solicitation and Graft Act. Executives refer to both standing and non-standing directors and auditors

Q4	Whether participation in a meeting of a committee based on acts and subordinate statutes falls under the category of outside lectures, etc. An executive of a public institution serves as a member of a technology advisory committee established pursuant to Article 6 of the Construction Technology Promotion Act, etc. If he/she attends a meeting of the committee as its member, does it fall under the category of outside lectures, etc., in Article 10 of the Improper Solicitation and Graft Act?
[A]	Pursuant to the Improper Solicitation and Graft Act, outside lectures, etc., refer to courses, lectures, article contributions, etc., given for educational and promotional events, forums, seminars, and public hearings and for other conferences, etc., which are requested to a public official, etc., based on their relevance with his/her duties performed or his/her influence substantively originating from his/her position, etc. Participation in a meeting of a committee established under acts and subordinate statutes as its member is a performance of duties given to the member of the said committee under acts and subordinate statues and thus cannot constitute an off-site lecture, etc.

Examples of Committees Established Pursuant to Acts and Subordinate Statutes

❖ **Act on Acquisition of and Compensation for Land, etc. for Public Works Projects**

Article 52 (Central Land Tribunal) (1) The Central Land Tribunal shall consist of not

more than 20 members, including one Chairperson, and the members in the number prescribed by Presidential Decree from among its members shall be permanent.

(4) Permanent members of the Central Land Tribunal shall be appointed by the President on the recommendation of the Minister of Land, Infrastructure and Transport from among the following persons: 〈Amended by Act No. 11690, Mar. 23, 2013〉

1. Persons who have served as judges, prosecutors or lawyers for at least 15 years;
2. Persons who have taught jurisprudence or public administration science as associate professors or higher in universities or colleges for at least five years;
3. Persons who have served for at least two years as the public officials of Grade Ⅲ in the administrative agencies or the public officials in general service who belong to the Senior Civil Service Corps.

❖ Administrative Appeals Act

Article 7 (Composition of Administrative Appeals Commissions) (1) An administrative appeals commission (excluding the Central Administrative Appeals Commission; hereafter the same shall apply in this Article) shall be comprised of not more than 50 members, including one chairperson

(3) Notwithstanding paragraph (2), where an administrative appeals commission is established under the jurisdiction of a Mayor/Do Governor pursuant to Article 6 (3), a member of the commission who is not a public official may be designated as the chairperson of the commission as prescribed by ordinance of the relevant local government. In such cases, the chairperson shall serve as a non-standing member.

(4) The administrative agency with which an administrative appeals commission is affiliated, shall commission a member of the relevant administrative appeals commission from among the following persons, taking gender into consideration, or shall nominate a member of such commission from among public officials of the administrative agency: 〈Amended by Act No. 14146, Mar. 29, 2016〉

1. A person who has experience in practices for at least five years after being qualified as an attorneys-at-law;
2. A person who holds or held the position of assistant professor or higher at a school under paragraphs (1) through (6) of Article 2 of the Higher Education Act;

3. A person who served as a public official of Grade IV or higher or a public official belonging to the Senior Civil Service Corps;
4. A person who has work experience for at least five years in relevant fields after acquiring a doctoral degree;
5. A person who has abundant knowledge and experience in administrative appeals.

❖ Construction Technology Promotion Act

Article 6 (Consultative Committee on Technology) (1) A contracting authority may establish a consultative committee on technology to respond to requests from the relevant contracting authority for technological consultation with regard to the adequacy of design, execution, etc.

(2) Necessary matters concerning composition, functioning, operation, etc. of the consultative committee on technology under paragraph (1), shall be determined by the relevant contracting authority in conformity with the standards prescribed by Presidential Decree.

Q5	Whether participation in a commissioned service constitutes an outside lectures, etc. A staff member of a public service-related organization is privately commissioned to write a section of a report by an outside national research institute over the period of one month for the remuneration of KRW 4 million. Does this fall under the category of outside lectures, etc., and need to be reported?
[A]	Pursuant to the Improper Solicitation and Graft Act, outside lectures, etc., refer to courses, lectures, article contributions, etc., given for educational and promotional events, forums, seminars, and public hearings and for other conferences, etc., which are requested to a public official, etc., based on their relevance with his/her duties performed or his/her influence substantively originating from his/her position, etc. Article contribution refers to the contribution of an article written to be printed in newspapers, magazines, etc., to deliver opinions and knowledge to many. Unless the creation of the said report takes the form of an event designed to deliver opinions and knowledge to many or the form of a conference designed to exchange opinions, information, etc., or unless the said staff member contributes the content to a newspaper, magazine, etc., to deliver opinions and knowledge to many, it shall not constitute an off-site lecture, etc., under Article 10 of the said Act. If the creation of the said report is not categorized as an off-site lecture, etc., the honorarium thereof shall be governed as general money, goods, etc., under Article 8 of the said Act. The honorarium thereof may be permitted under Article 8 (3) 3 of the said Act if it

is viewed to be money, goods, etc., offered from a legitimate source of authority.

Its legitimacy must be determined based on whether the honorarium is provided in compliance with pertinent acts, subordinate statutes, and standards, the characteristics of duties performed by the recipient, the recipient's expertise, the characteristics and purpose of the recipient's institution, etc.

It is viewed as necessary to separately examine whether it is in violation of the code of conduct applied to each institution for a member of a public service-related organization to create a report for an outside national research institute and receive an honorarium thereof.

Q6	**Application of regulations on outside lectures, etc., to private persons performing public duties** Article 10 of the Improper Solicitation and Graft Act stipulates provisions on outside lectures, etc., and Article 11 of the same Act deals with private persons performing public duties. However, Article 11 of the said Act stipulates that Articles 5 through 9 shall apply mutatis mutandis to the performance of public duties by those falling under the category of private persons performing public duties, while Article 8 (3) of the said Act specifies that an honorarium for an off-site lecture, etc., described in Article 10 or any of the related money, goods, etc., shall not constitute prohibited money, goods, etc., under Paragraphs 1 or 2. Should the provisions regarding outside lectures, etc., be deemed applicable to private persons performing public duties?
[A]	Articles 5 through 9 of the said Act shall apply mutatis mutandis to the performance of public duties by private persons performing public duties, and thus provisions regarding outside lectures, etc., under Article 10 of the said Act are not applicable. Article 10 of the said Act shall not apply to private persons performing public duties who give lectures and contribute articles at the request for outside lectures, etc.

❖Improper Solicitation and Graft Act

Article 11 (Restriction on Actions related to Public Duties by Private Persons Performing Public Duties) (1) Articles 5 through 9 shall apply mutatis mutandis to the performance of public duties by any of the following persons (hereinafter referred to as "private person performing public duties"):

Q7	Application of regulations on outside lectures, etc., to a public official, etc., also serving as a lecturer If a public official is allowed to take charge of an undergraduate or graduate course at a university for an entire semester and receives lecture fees, is he/she obligated to report it as an off-site lecture, etc., and comply with the ceiling amounts for honoraria for outside lectures, etc., pursuant to the Improper Solicitation and Graft Act?
[A]	If a public official teaches a regular course as a part-time lecturer at a university or college or gives lectures on a continual basis over a period exceeding one month, he/she is obligated to gain approval of the head of his/her institution for holding multiple posts regardless of remunerations and the frequency of monthly lectures (Chapter 11 of the Established Rules on State Public Officials Service and Disciplinary Action). Giving such continual lectures is a performance of an additional job and cannot be viewed as an off-site lecture, etc., under Article 10 of the said Act. It should be regulated by Article 8 (Prohibition of Receipt of Money, goods, Etc.) of the said Act. If the remuneration for giving such continual lectures is recognized as "money, goods, etc., offered from a legitimate source of authority" under Article 8 (3) 3 of the said Act, it shall be permitted as an exception. Whether it is offered from a legitimate source of authority shall be determined by comprehensively examining whether it is permitted by pertinent acts, subordinate statutes, and standards, the characteristics of duties performed by the public official, his/her expertise, the characteristics and purpose of his/her institution, etc.

❖ Chapter 11 of the Established Rules on State Public Officials Service and Disciplinary Action

3. Permission for outside lectures, Etc., and Public Service Management

a. Permission for holding concurrent offices pursuant to Article 26 of the State Public Officials Public Service Regulations

(1) A public official who teaches a regular course as a part-time lecturer, or an adjunct professor, at a university or college and gives lectures over a period exceeding one month (regardless of remunerations and the frequency of lectures per month) shall obtain permission from the head of his/her institution in advance for holding concurrent offices.

* The same shall apply to broadcast lectures and online lectures (including the act of recording lectures).

Q8	Whether a lecture for an industrial-academic cooperation organization of a university constitutes an off-site lecture, etc. A project group under an industrial-academic cooperation organization of a university is operating an educational program for local residents and plans to ask a professor at the same university to give a lecture for the program. Does this constitute an off-site lecture, etc., to which the ceiling amounts of honoraria are applied?
[A]	The ceiling amount provisions for outside lectures, etc., under Article 10 of the Improper Solicitation and Graft Act are aimed at preventing the possibility of excessive honoraria offered to Public Servant, Etc., by outside institutions being abused as potential bribery and compromising impartiality in the performance of duties. Although the said industrial-academic cooperation organization was established as an independent juridical person, it is still affiliated with the university and the project group is governed by the industrial-academic cooperation organization. As such, a lecture given by a professor of the same university for the program cannot be viewed as an off-site lecture, etc., and the ceiling amount provisions of the said Act shall not apply. The requested lecture does not have to be reported in advance, and the remuneration amount of the lecture fee can be set based on the university's internal regulations.

	Whether a lecture given as an alumnus constitutes an off-site lecture, etc.
Q9	A public official of a central administrative agency was asked to give a lecture as an alumnus/alumna at his/her high school unrelated to his/her duties to offer helpful advice to young students. Can this be viewed as an off-site lecture, etc.?
[A]	Unless it is a lecture requested based on its relation to duties performed by the public official, etc., or his/her influence substantively originating from his/her position, etc., it does not constitute an off-site lecture, etc., under the Improper Solicitation and Graft Act. Pursuant to Article 10 of the said Act, outside lectures, etc., refer to courses, lectures, article contributions, etc., given for educational and promotional events, forums, seminars, and public hearings and for other conferences, etc., which are requested to a public official, etc., based on their relevance with his/her duties performed or his/her influence substantively originating from his/her position, etc.

Q10	Whether a thesis examination, advice in writing, etc., constitute outside lectures, etc. A professor of law at a national university frequently receives requests for thesis examinations, etc., by email and post. Does a thesis examination fall under the category of outside lectures, etc., that have to be reported? Does the provision of legal advice in writing also constitute an off-site lecture, etc.?
[A]	An off-site lecture, etc., pursuant to Article 10 of the Improper Solicitation and Graft Act must take the form of an event designed to deliver opinions and knowledge to many or the form of a conference. As such, a thesis examination and legal advice in writing that do not target many and do not take the form of a conference do not fall under the category of outside lectures, etc.

Q11	Whether authoring a book on the humanities constitutes article contribution A professor at a university is authoring a book on the humanities. What is the ceiling amount for the remuneration for writing pursuant to the Improper Solicitation and Graft Act?
[A]	Pursuant to Article 10 of the Improper Solicitation and Graft Act, outside lectures, etc., refer to courses, lectures, article contributions, etc., given for educational and promotional events, forums, seminars, and public hearings and for other conferences, etc., which are requested to a public official, etc., based on their relevance with his/her duties performed or his/her influence substantively originating from his/her position, etc. As authoring the book in this case does not take the form of an event for delivering opinions and knowledge to many, the form of a conference, or the form of article contribution of contributing a written article to be printed in newspapers and magazines to deliver opinions and knowledge to many, it does not constitute an off-site lecture, etc., under Article 10 of the said Act. An honorarium for an activity that is not categorized as an off-site lecture, etc., shall be governed as general money, goods, etc., under Article 8 of the said Act. If the honorarium is set at an acceptable amount for the act performed, it shall fall under the category of money, goods, etc., offered from a legitimate source of authority and can be permitted pursuant to Article 8 (3) 3 of the said Act. Whether the honorarium is set at an acceptable amount shall be determined by comprehensively examining whether the honorarium is provided in compliance with pertinent acts, subordinate statutes, and standards; the characteristics of duties performed by the public official; his/her expertise; the characteristics and purpose of his/her institution; etc.

Q12	Whether posting articles on a company' s blog constitutes article contribution For a corporate blog, journalists and professors in respective fields are commissioned as writers to contribute articles once or twice a month, and remunerations are provided to them. Does writing for a corporate blog constitute an off-site lecture, etc.?
[A]	Article contribution, falling under the category of outside lectures, etc., pursuant to the Improper Solicitation and Graft Act, refers to the contribution of an article written to be printed in newspapers, magazines, etc., to deliver opinions and knowledge to many. If articles written by the said journalists and professors do not fall under the foregoing, they cannot be viewed as outside lectures, etc. In this case, remunerations offered shall be governed as general money, goods, etc., under Article 8 of the said Act. If the remuneration is set at an acceptable amount for the act performed, it shall fall under money, goods, etc., offered from a legitimate source of authority and can be permitted pursuant to Article 8 (3) 3 of the said Act. Whether it is offered from a legitimate source of authority shall be determined by comprehensively examining whether it is permitted by pertinent acts, subordinate statutes, and standards; the characteristics of duties performed by the public official; his/her expertise; the characteristics and purpose of his/her institution; whether the provision of the fee constitutes a normal private transaction practice; etc.

❖ Relationship between Articles 8 (Prohibition of Receipt of Money, goods, Etc.) and 10 (Restriction on the Acceptance of Honoraria for outside lectures, Etc.) of the Improper Solicitation and Graft Act

- Article 8 of the said Act regulates the acceptance of money, goods, etc., in a direct manner by Public Servant, Etc.; their spouses; and private persons performing public duties.
- Article 10 of the said Act regulates the acceptance of money, goods, etc., in an indirect manner by Public Servant, Etc., in the form of honoraria for outside lectures, etc.
- As Article 10 of the said Act is a special provision of Article 8 of the said Act, money, goods, etc., that are not categorized as honoraria for outside lectures, etc., shall be governed as general types of money, goods, etc., under Article 8 of the said Act.

	Contribution of a script for a documentary
Q13	If a broadcasting station asks a professor with expertise in history to write a script for a history-themed documentary, which the said station is producing, does it fall under the category of an off-site lecture, etc.?
[A]	"Contribution" categorized as outside lectures, etc., under the Improper Solicitation and Graft Act refers to the act of writing an article to be printed in newspapers, magazines, etc., to deliver opinions and knowledge for many and unspecified persons. As a script for a documentary production will not be printed in newspapers, magazines, etc., it does not fall under the category of such a contribution.

2 Advance Reporting of and Ceiling Amounts of Honoraria for Outside Lectures, Etc.

Q1	Obligation to report outside lectures, etc., in advance and exemption from the obligation Pursuant to Article 10 of the Improper Solicitation and Graft Act, outside lectures, etc., do not have to be reported in advance if the request for an off-site lecture, etc., is made by a central or local government body. As national universities and national university hospitals are governed by the relevant Offices of Education, is the request for an off-site lecture, etc., made by any of these institutions also exempt from the obligation to be reported in advance?
[A]	A public official, etc., has to report any off-site lecture, etc., to be carried out by him/her in advance in written form. However, if the request for such an off-site lecture, etc., is made by a central or local government body, the advance reporting can be omitted (Article 10 (2) of the Improper Solicitation and Graft Act). The following is a list of national institutions and local governments at which Public Servant, Etc., may give outside lectures, etc., without reporting in advance under the said Act. National universities and national university hospitals in this case are defined as public service-related organizations under Article 3-2 of the Public Service Ethics Act and thus do not fall under the category of central and local government bodies under Article 10

(2) of the Improper Solicitation and Graft Act.

❖ Central and local government bodies that do not require advance reporting

1) National Assembly, courts, Constitutional Court of Korea, National Election Commission, Board of Audit and Inspection of Korea, National Human Rights Commission of Korea, and national institutions such as central administrative agencies and their affiliated institutions and local governments

1. Constitutional institutions: National Assembly, courts, Constitutional Court of Korea, National Election Commission, and Board of Audit and Inspection of Korea
2. Central administrative agencies: Central administrative agencies under the Government Organization Act and other administrative agencies under individual acts such as the National Human Rights Commission of Korea

* National preschools; national elementary, middle, and high schools; and national universities are governed by the Ministry of Education.

2) Local governments and Offices of Education

1. Local governments: Upper-level local autonomy (1 special metropolitan city, 6 metropolitan cities, 1 special self-governing city, 8 provinces, and 1 special self-governing province) and lower-level local autonomy
2. Offices of Education: 17 cities and provinces of upper-level autonomy

* Public preschools; public elementary, middle, and high schools; and public universities are governed by local governments and local Offices of Education.

Q2	Sanctions for negligence in reporting outside lectures, etc., in advance What are the penalties for failing to report outside lectures, etc., in advance? Do free lectures have to be reported as well?
[A]	When requested to give an off-site lecture, etc., a public official, etc., is obligated to report it in advance regardless of whether remunerations are offered (except for those requested by central and local government bodies). If it is inconvenient to report it in advance, the public official, etc., must report it in written form within two days from the date of completion of the off-site lecture, etc. The written report of an off-site lecture, etc., to be submitted to the head of his/her institution shall contain the name of the reporting public official, etc.; his/her division, position, and contact information; the venue, date, duration, and theme of the off-site lecture, etc.; the total amount of an honorarium received and its detailed statement; the name of the person (institution) that requested the off-site lecture, etc.; and the name and contact information of the person in charge of affairs regarding the off-site lecture, etc. If information such as a detailed statement and the total amount of the honorarium is not available at the time of the advance reporting, the public official, etc., must report other types of information required first and additionally submit a detailed statement or the total amount of the honorarium within five days from the date of the attainment of such information. Any violation of reporting outside lectures, etc., in advance may be subject to disciplinary action under Article 21 of the Improper Solicitation and Graft Act.

❖ Reporting outside lectures, etc., in advance and pertinent restrictions

- When requested to give an off-site lecture, etc., the public official, etc., is obligated to report the details, etc., of the off-site lecture, etc., in advance to the head of his/her institution in written form.
- An off-site lecture, etc., must be reported in advance regardless of whether remunerations are offered, except for those requested by central and local government bodies.
- The advance reporting of an off-site lecture, etc., means an advance notification, not a requirement for attaining prior approval of the head of the relevant institution.
- If it is inconvenient to report it in advance, the public official, etc., must report the off-site lecture, etc., in written form within two days from the date of the completion of the off-site lecture, etc.

	Restriction on the frequency of outside lectures, etc., and criteria for defining one round of lecture
Q3	Is there a restriction on the frequency, etc., of outside lectures, etc., under the Improper Solicitation and Graft Act? If a staff member of a public service-related organization is requested to give two three-hour lectures on the same day, one in the morning and the other in the afternoon, how should the honorarium be calculated pursuant to the said Act? The two lectures are on the same subject but with different audiences.
[A]	The Improper Solicitation and Graft Act does not restrict the frequency of outside lectures, etc. However, the head of the relevant institution may restrict outside lectures, etc., reported by Public Servant, Etc., if they are deemed to be likely to compromise impartiality in the performance of duties (Article 10 (4) of the said Act). Also, as the code of conduct of each individual institution may restrict the frequency, etc., of outside lectures, etc., it should be separately reviewed whether an off-site lecture, etc., is in violation of the code of conduct of the relevant institution. If the themes, subjects, or targets of two lectures do not overlap, each should be viewed as one round of lecture. As such, the lecture in the morning and the one in the afternoon in this case can be counted as one lecture each. As for an off-site lecture, etc., exceeding one hour, the total honorarium paid to a staff member of a public institution cannot surpass 150% of the legally specified ceiling amount regardless of excess hours. Therefore, the said staff member in this case can receive up to KRW 600,000 (KRW 400,000 + KRW 200,000) per lecture.

With the lecture in the morning and the one in the afternoon counted as two separate lectures, the said staff member of a public institution shall receive KRW 600,000 for the former and another KRW 600,000 for the latter.

❖ Ceiling amounts of honoraria for outside lectures, etc.

- When determining the ceiling amounts of honoraria for two or more outside lectures, etc., it is first reviewed whether they should be regarded as constituting one round of off-site lecture, etc., or several rounds based on the theme, subject, targets, etc., of each lecture.

❖ Ceiling amounts of honoraria for outside lectures, etc. (with respect to Article 25 of the Enforcement Decree of the Improper Solicitation and Graft Act)

	Public officials and heads, executives, and employees of public service-related organizations and public institutions under the Act on the Management of Public Institutions (Subparagraph 2 (a) and (b) of Article 2 of the Improper Solicitation and Graft Act)	Heads and faculty members of schools of different levels; executives and employees of educational foundations; and representatives, executives, and employees of press organizations (Subparagraph 2 (c) and (d) of Article 2 of the Improper Solicitation and Graft Act)
Ceiling amount for an hour	KRW 400,000	KRW 1 million
Restriction on the total amount	150% of the ceiling amount for an hour	No restriction

※ The ceiling amount of KRW 1 million for an hour (with no restriction on the total amount) shall apply when a public official, etc., under Subparagraph 2 (a) and (b) of Article 2 of the said Act also falls under the category of heads and faculty members of schools of different levels under Subparagraph 2 (c) of Article 2 of the said Act and members of press organizations under Subparagraph 2 (d) of Article 2 of the said Act.

Q4	**How to report outside lectures, etc.** A public institution makes it a rule for its public officials to obtain an official letter of request when reporting any off-site activities (outside lectures, seminars, etc.) in advance. Is it compulsory to receive an official letter of request from the requesting institution when reporting an off-site lecture, etc., in advance? Can it be substituted with other documentary evidence (email, pamphlets, etc.)? Does the report have to be submitted to the head of a relevant institution? Can it be reported to the head of a relevant division instead?
[A]	Public Servant, Etc., are obligated to report the details, etc., of outside lectures, etc., to the heads of their institutions in written form. However, the Improper Solicitation and Graft Act and the Enforcement Decree of the said Act do not stipulate that an official letter of request for such an off-site lecture, etc., is required for submission when reporting such an off-site lecture, etc., in advance. The need to submit an official letter of request should be determined in accordance with policy-based judgments or the guidelines for the reporting of improper solicitations and the exchange of money, goods, etc., of each individual institution. If authority is delegated to the head of the relevant division or the solicitation prevention officer based on the institution's internal authority delegation regulations, the report can be made to the said division head or solicitation prevention officer. The head of a public institution shall also report in accordance with the institution's internal authority delegation regulations when requested to give an off-site lecture, etc.

Q5	**Calculation of the ceiling amount of an honorarium for an off-site lecture, etc., exceeding one hour** The ceiling amount of an honorarium for an off-site lecture, etc., for an hour for a faculty member of a private school is said to be KRW 1 million, with no restriction on the total amount for an off-site lecture, etc., exceeding one hour. Does this mean that the total honorarium for an off-site lecture, etc., which lasted for one and a half hours, can be KRW 2 million? Or is the total amount prohibited from surpassing KRW 1 million regardless of the actual length of the off-site lecture, etc.?
[A]	The ceiling amount for an off-site lecture, etc., for an hour by a public official, etc., under Subparagraph 2 (c) or (d) of Article 2 of the Improper Solicitation and Graft Act is KRW 1 million pursuant to Attached Table 2 of the Enforcement Decree of the said Act with no restriction on the total amount under the said Act. If the said faculty member of a private school gave a lecture for one and a half hours, he/she may receive up to KRW 2 million. However, the ceiling amount provisions are aimed at defining the ceiling not to be surpassed and thus do not prohibit individual institutions from setting the amount lower than the ceiling based on their internal criteria.

Q6	**Criteria for honoraria when travel expenses are not given by the institution that the public servant, etc., belongs to** According to the criteria for the ceiling amounts of honoraria for outside lectures, etc., if Public Servant, Etc., are not given travel expenses such as expenses for transportation, accommodations, meals, etc., by their institutions, expenses for transportation, accommodations, and meals provided based on an estimate of actual amounts within limits specified in regulations applied to different public institutions, such as the Regulations on Travel Expenses of Public Officials, shall not be included in honoraria. Do the foregoing regulations refer to the regulations of the institution of the public official, etc., invited as an off-site lecturer or the regulations of the requesting institution?
[A]	Subparagraph 2 (c) of Attached Table 2 of the Enforcement Decree of the Improper Solicitation and Graft Act stipulates that the ceiling amounts described in Subparagraph 1 (a) and (b) of Attached Table 2 of the Enforcement Decree of the said Act shall include the entirety of an honorarium provided to a public official, etc., with respect to an off-site lecture, etc., by the provider of the honorarium for the off-site lecture, etc., regardless of its pretext. Subparagraph 2 (d) of Attached Table 2 of the Enforcement Decree of the said Act specifies that, if Public Servant, Etc., are not given travel expenses such as expenses for transportation, accommodations, meals, etc., by their institutions, expenses for transportation, accommodations, and meals provided based on an estimate of actual amounts within limits specified in regulations applied to different public institutions, such as the Regulations on Travel Expenses of Public Officials, shall not be included in honoraria.

If a public official, etc., requested to give an off-site lecture, etc., does not receive travel expenses from his/her institution, the requesting institution may provide expenses for transportation, accommodation, meals, etc., pursuant to their internal regulations at an amount set based on an estimate of actual expenses. Any money, goods, etc., with monetary value that exceed the foregoing shall be considered as part of the honorarium for the off-site lecture, etc., regardless of their pretext.

Q7	**Time for the application of the ceiling amounts of honoraria** Our institution's code of conduct is currently undergoing a revision and still does not reflect the Enforcement Decree of the Improper Solicitation and Graft Act amended in January 2018. As such, the ceiling amounts for outside lectures, etc., specified in our code of conduct have yet to be updated. If an off-site lecture was given before the revision of the code of conduct but the related honorarium will be given after its revision, should the ceiling amounts after its revision be applied?
[A]	Article 10 (1) of the Improper Solicitation and Graft Act stipulates that Public Servant, Etc., may not receive an honorarium that exceeds the amounts designated by Presidential Decree for any off-site lecture, etc. As such, if the off-site lecture does not violate the said Act and the Enforcement Decree of the said Act, it will not be subject to the sanctions specified therein. The foregoing case requires a separate review of the auditing officer, etc., of the said institution. However, in general, the criteria legally effective as of the day of the off-site lecture, etc., given should be applied to honoraria for the said off-site lecture, etc.

❖ Restrictions for the violation of the limitations for honoraria for outside lectures, etc.

	Outside lectures, etc.	Honoraria exceeding the ceiling amounts	
Obligations of Public Servant, Etc.	Obligation to report in advance	Obligation to report	Obligation to return
Restrictions for violation	Disciplinary action	Disciplinary action if any of the obligation is unfulfilled	
		Imposition of an administrative fine if both obligations are unfulfilled	

	Whether honoraria paid by overseas institutions are subject to the ceiling amount provisions
Q8	I work as a professor at a private university in Korea. I am scheduled to give a lecture for foreign public officials upon the invitation of an overseas institution and university. Am I subject to the provisions regarding the ceiling amounts of honoraria?
[A]	Professors of private universities fall under Public Servant, Etc., subject to the provisions regarding the ceiling amounts of honoraria (Subparagraph 2 (c) of Article 2 of the Improper Solicitation and Graft Act) and thus are subject to Attached Table 2 of the Enforcement Decree of the said Act. However, Subparagraph 1 (c) of the same Table specifies that "the ceiling amounts of honoraria for outside lectures, etc., paid by international organizations, foreign governments, overseas universities, overseas research institutes, overseas academic societies, and other overseas organizations of the same or similar status shall conform to the criteria of those who pay the said honoraria." Therefore, any honoraria received for lectures given upon the invitation of overseas organizations or universities should be in compliance with the criteria set by the said organizations or universities.

Q9	**The ceiling amounts of honoraria for professors of university hospitals** I am a full professor at a national university's medical school and a physician at a university hospital. As you know, a full professor at a national university retains the status of a faculty member pursuant to the Higher Education Act. As the university hospital that I work for is designated a public service-related organization, I believe I am categorized as a staff member of a public service-related organization. What are the criteria that I should meet in terms of honoraria for outside lectures?
[A]	Attached Table 2 of the Enforcement Decree of the Improper Solicitation and Graft Act specifies the ceiling amounts of honoraria for outside lectures, etc. The ceiling amount for a faculty member is KRW 1 million per hour and that for a staff member of a public service-related organization is KRW 400,000 per hour. However, pursuant to Subparagraph 1 (a) of the said Table, those staff members of public service-related organizations who concurrently serve as university faculty members are exempt from the application of the ceiling amount of KRW 400,000. As such, in this case, the ceiling amount for university faculty members is applied, which is KRW 1 million per hour. There is no limitation with regard to the total amount of honoraria.

Q10	Whether the ceiling amounts of honoraria are before or after tax I am a public official working at a local government body. I have been requested to give an off-site lecture with an honorarium of KRW 400,000. The organization that has requested my lecture asked me whether it should consider the said amount as being before or after tax.
[A]	The ceiling amounts of honoraria for outside lectures, etc., specified in Attached Table 2 of the Enforcement Decree of the Improper Solicitation and Graft Act are before tax as actual amounts paid to Public Servant, Etc., become the yardstick for judgment. If a total of KRW 400,000 is offered as an honorarium for the said lecture before tax with a 10% tax (KRW 40,000), then the amount received by the public official will total KRW 360,000, which is allowed by the said Act. However, if a total of KRW 440,000 is offered (with KRW 40,000 to be paid as tax in addition to KRW 400,000), the actual amount paid to the public official totals KRW 440,000, which exceeds the ceiling amount specified in the said Act.

Q11	Whether honoraria exceeding KRW 3 million per fiscal year is permitted Article 8 (1) of the Improper Solicitation and Graft Act specifies that no Public Servant, Etc., may accept any money, goods, etc., exceeding KRW 3 million per fiscal year. Pursuant to Article 8 (3) of the same Act, an honorarium for an off-site lecture, etc., described in Article 10 of the said Act shall not fall under prohibited money, goods, etc., as prescribed in Article 8 (1) and (2) of the said Act. Is it possible for staff members of organizations subject to the said Act to receive honoraria for outside lectures exceeding KRW 3 million in amount per fiscal year based on Article 8 (3) of the said Act?
[A]	Public Servant, Etc., may not accept money, goods, etc., exceeding KRW 1 million at one time or KRW 3 million per fiscal year from the same person and may not receive any money and goods related to their duties (Article 8 (1) and (2) of the Improper Solicitation and Graft Act). However, honoraria for outside lectures, etc., described in Article 10 of the said Act do not fall under the category of prohibited money, goods, etc., as specified in Article 8 (1) and (2) of the said Act (Article 8 (3) of the Act). As such, if the amount of an honorarium for an off-site lecture does not exceed that specified in Attached Table 2 of the Enforcement Decree of the said Act, it will not constitute a violation of the said Act even when the amount at one time surpasses KRW 1 million and the total amount per fiscal year surpasses KRW 3 million.

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Compilation of Authoritative Interpretations of the Improper Solicitation and Graft Act

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