

# ACRC Korea Transparency Newsletter (September 2021)

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## **ACRC says 92.9% of public servants now “support the Improper Solicitation and Graft Act”, an increase from earlier stage of Act’s implementation**

*- Release of survey results on people’s awareness of Improper Solicitation and Graft Act on occasion of 5th anniversary of Act -*

(29th Sep. 2021, ACRC)

A recent awareness survey on the Improper Solicitation and Graft Act showed that 92.9% of public servants, etc. and 87.5% of ordinary citizens support the Act. This rate is an increase by 7.4%p and 2.2%p, respectively, compared to the year 2016 when the Act was enacted.

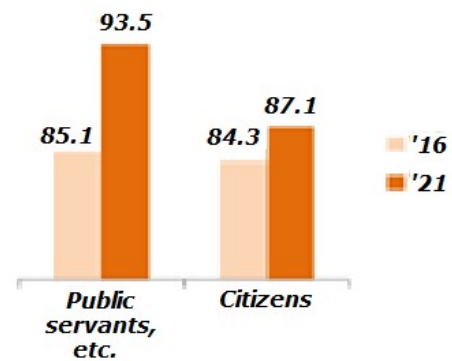
On the occasion of the 5th anniversary of the implementation of the Act, the Anti-Corruption and Civil Rights Commission (Chairperson : Jeon Hyun-hui, hereinafter ACRC) conducted an awareness survey on public servants, etc. and citizens and released the results, in order to see the implications of the Act and the changes it has made on overall society.

### **Summary of survey**

- **Purpose** : To find out the implications of the Improper Solicitation and Graft Act on public servants and ordinary citizens and the changes in their perceptions of it
- **Target** : A total of 2,003 people [800 citizens, 350 public officials, 200 executives and employees of public service-related institutions, 303 teachers and staff of primary and secondary schools and colleges, 150 executives and employees of media companies, and 200 people in affected occupations]
- **Duration** : July 22 ~ August 9, 2021 (by Hankook Research)

In relation to the implementation of the Improper Solicitation and Graft Act, the survey showed that 92.9% of public servants, etc. and 87.5% of citizens “support the Act.” Especially, in the case of public servants, etc., the support rate has increased by 7.4%p compared to the year 2016 when the Act was first implemented.

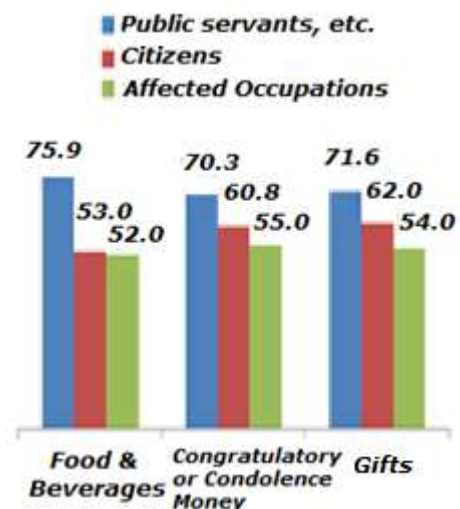
Regarding the implications of the Act on society, 93.5% of public servants, etc. and 87.1% of citizens answered that “it has had positive effects.” The rate of public servants, etc., in particular, has increased by 8.4%p from 2016.



*<Percentage of respondents who said that the Act has had positive effects on society (%)>*

Also, 85.7% of public servants, etc. and 81.3% of citizens answered that they have come to “perceive routinely offered favors, entertainment, and gifts as inappropriate acts.” Especially, the rate of public servants, etc. has increased by as much as 16.7%p compared to the year 2016.

Regarding the allowed value of food and beverages, congratulatory or condolence money, gifts, etc. prescribed in the Act, more than half of the respondents said it is “appropriate.” In the case of gifts, in particular, 71.6% of public servants, etc., 62.0% of citizens, and 54.0% of affected occupations answered that the limited value was appropriate.



*<Percentage of respondents who said that the limited value is appropriate (%)>*

\* Food and beverages : KRW 30,000(USD 25), Congratulatory or condolence money : KRW 50,000(USD 40), Gifts: KRW 50,000(USD 40)

ACRC Director-General of Anti-Corruption Bureau Han Sam-seok said, “The results show that the support of citizens and public servants, etc. for the Improper Solicitation and Graft Act has significantly increased compared to the year 2016 when the Act was first implemented.” He added that “the number of reports on the violation of the Act has decreased every year, meaning that the results seem to reflect the strong support and high level of awareness on the compliance of the law by the people and public servants, etc.”

He continued, “Based on this awareness survey results, the ACRC will make efforts to consistently monitor the effects of the implementation of the Improper Solicitation and Graft Act and actively uncover and improve the areas that need institutional improvement such as corruption-prone areas, so that this Act can be firmly settled as rules of integrity and ethics for public servants.”

**ACRC to strictly manage public servants' speculation  
in real estate using nonpublic information,  
in accordance with the Act on the Prevention of  
Conflict of Interest Related to Duties of Public Servants**

*- Pre-announcement of legislation of Enforcement Decree of  
Act on the Prevention of Conflict of Interest Related to Duties of  
Public Servants (September 10 ~ October 20) -*

(10th Sep. 2021, ACRC)

Conflict of interest situations of public servants will be managed and prevented. Such situations include public servants' speculation in real estate using inside information, performing public duties in an unfair manner using private relations such as family members, and making a negotiated contract with family members of high-ranking public officials.

The Anti-Corruption and Civil Rights Commission (Chairperson : Jeon Hyun-hui, hereinafter ACRC) pre-announced the Enforcement Decree of the Act on the Prevention of Conflict of Interest Related to Duties of Public Servants(hereinafter the Act on the Prevention of Conflict of Interest) for 40 days from September 10 to October 20.

The Act on the Prevention of Conflict of Interest was enacted eight years after the ACRC submitted the bill to the 19th National Assembly in 2013. In accordance with the promulgation of the Act on May 18 this year, it will be enforced starting May 19 next year.

In order to prevent public servants from seeking unfair private interest and to ensure the fair performance of their duties, the Act contains 10 standards of behavior such as obligations to report and avoid persons with private interests, report possession and purchase of real estate, and restrictions on employment of family members of high-ranking officials and making negotiated contracts with them.

Obligations to report and submit	Restricted and prohibited activities
1 Report, apply for avoidance or recusal of persons with private interests	1 Restriction on duty-related outside activities
2 Report possession and purchase of real estate related to duties of public organizations	2 Restriction on employment of family members
3 Submit details of activities in private sector of high-ranking officials	3 Restriction on making negotiated contracts
4 Report any transactions with duty-related parties	4 Prohibition of private use of goods belonging to public agencies and making profits from such use
5 Report any private contact with retired officials	5 Prohibition of use of duty-related confidential information

The Enforcement Decree of the Act on the Prevention of Conflict of Interest stipulates detailed regulations commissioned by the Act and needed to enforce it, in order to effectively implement the obligations of reporting and submission and to impose restrictions and prohibitions.

Under the Act, a public servant who works for a public organization that directly deals with real estate or manages real estate development such as housing site development and district designation must report to the head of his/her organization any possession or purchase of real estate in the district by the public servant, his/her spouse, or any lineal descendant/ascendant or spouse's lineal descendant/ascendant living with the public servant, within 14 days from the day that he/she comes to know of the purchase and possession.

The Enforcement Decree designates 16 metropolitan city and development corporations, including Korea Land and Housing Corporation, Saemangeum Development Corporation, and Seoul Housing & Communities Corporation, as public organizations that directly deal with real estate.

Also, it categorizes the real estate development duties, such as housing site development and district designation, of public organizations, as projects of public housing, industrial complex development, urban regeneration, port redevelopment, and station area development, and provides the underlying clauses and provisions.

Accordingly, public servants of not only public organizations that directly deal with real estate, but also those that carry out real estate development projects such as central administrative agencies, local governments, and public-related organizations are also obliged to report. In turn, this is expected to strictly manage the real estate speculation of public servants using inside, nonpublic information.

**< Examples of real estate possession/purchase reports  
under the Act on the Prevention of Conflict of Interest >**

- ◆ Mr. A, who works for a state-owned enterprise that mainly deals with real estate development, realized that he owned property in a “public housing project” district of which the operator is the company, and reported the fact to the official in charge of preventing conflicts of interest in the company.
- ◆ Ms. B, who works for a local government, came to know that her mother owned property in an “urban regeneration project” district that the local government approved, and reported the fact to the official in charge of preventing conflicts of interest in the government.

In addition to persons with private interests prescribed in the Act on the Prevention of Conflict of Interest, those who can effectively influence the fair performance of public duties have also been added as persons with private interests. These include 1) a superior who leads/supervises public servants; 2) one who has made a monetary transaction exceeding the allowed value under the Improper Solicitation and Graft Act (excluding transactions with relatives); and 3) one who deliberated/resolved a public servant's issue as a non-standing commissioner.

Furthermore, even if a public servant's duty-related party is not a prescribed person with private interests, when the official in charge of preventing conflicts of interest judges that it is difficult for the public servant to perform fair public duty because he/she has a close relationship with the duty-related party in terms of academic, relative, religious, or working ties or as a close colleague who was employed at the same time, the public servant is obliged to report the fact to the head of the organization and apply for avoidance.

**< Examples of person with private interests reports  
under the Act on the Prevention of Conflict of Interest >**

- ◆ Last year, Lawyer C worked for a public organization as a non-standing commissioner and deliberated/resolved legal violations of Company X. When Lawyer C was hired by a law firm this year and defended Company X regarding its legal violations, a public servant of the public organization reported Lawyer C as a person with private interests and applied for recusal.
- ◆ Applicant D requested for a construction approval. A public servant in charge of the approval found out that Applicant D was his middle-school friend with whom he still had a close relationship, so he requested the official in charge of preventing conflicts of interest to check whether he should avoid his duty or not. Following the decision of the official, the public servant reported the situation and applied for avoidance.



In addition, the Act on the Prevention of Conflict of Interest commissioned the Enforcement Decree to restrict public organizations from making negotiated contracts with corporate bodies of which the representative is a high-ranking official of the public organization or the spouse of the official, and to stipulate the exceptional cases. The exceptional cases are confined to when a specific person's technique is needed or when there is only one producer of a certain product without any competitors.

Moreover, the ACRC specified the report's range and contents regarding the report of transaction with a duty-related party, submission of a high-ranking official's activities in the private sector, and report of private contact with a retired official. The ACRC also systemized the report and processing procedures so that anyone can easily understand the obligations of the Act and report its violations in a convenient way.

ACRC Chairperson Jeon Hyun-hui stated, "The ACRC is going to collect a variety of opinions from citizens and competent agencies during the pre-announcement of legislation in order for the Act on the Prevention of Conflict of Interest and the Enforcement Decree of the Act to have an effective institutional foundation." She also added, "We will continue to make efforts for the Act to be settled so that it can guarantee the fair performance of public duties by public servants, restore trust in the public sector, and further, raise the status of Korea in the world as a country of integrity."

- ☐ **The Act on the Prevention of Conflict of Interest Related to Duties of Public Servants contains 10 standards of behavior – 5 obligations on report/submission and 5 restrictions/prohibitions – to fundamentally prevent public servants from seeking improper private interests that may occur while performing public duties.**

**< 5 obligations on report/submission >**

**① Report/avoidance/recusal of a person with private interests & relevant measures (Articles 5 & 7)**

- When a public servant performs any one of 16 types of public duties to persons with private interests (including agents), the public servant shall report the fact to the head of the organization he/she belongs to and avoid the duty.

**② Report of possession/purchase of real estate related to public organization's duties (Article 6)**

- A public servant who works for a public organization that directly deals with real estate shall report any possession or purchase of property related to public duties by the public servant, his/her spouse, his/her lineal descendant/ascendant (or the spouse's lineal descendant/ascendant) living with the public servant.

\* Even if a public servant does not work for a public organization that directly deals with real estate, if he/she performs public duties related to real estate development such as housing district development or district designation, he/she has the same obligation to report.

**③ Report of transactions with a duty-related party (Article 9)**

- When a public servant, his/her spouse or lineal descendant/ascendant (including those of the spouse) living with the public servant engages in any private monetary or real estate transactions with a duty-related party, the public servant shall report it.

**④ Report of private contact with a retired public servant (Article 15)**

- When a public servant plays golf, travels, engages in gambling activities with a duty-related party who is a retired official (confined to those within two years of retirement) of the organization he/she belongs to, the public servant shall report it.

**⑤ Submission of detailed activities in the private sector by high-ranking public officials (Article 8)**

- A high-ranking public official shall submit detailed statements of his/her activities in the private sector for the past three years preceding the date of the commencement of his/her office. The head of the organization he/she belongs to may disclose such statements to the public.

**< 5 restrictions and prohibitions >**

**⑥ Restriction on employment of family members (Article 11)**

- A public organization (including its affiliated agencies and subsidiary companies) is prohibited from employing family members of high-ranking public officials, unless they are employed through a competitive procedure such as open recruitment.

**⑦ Restriction on making negotiated contracts (Article 12)**

- A public organization (including its affiliated agencies and subsidiary

companies) is prohibited from making negotiated contracts(except for unavoidable reasons such as when there is only one producer) with high-ranking officials, their spouse, or their lineal descendant/ascendant (including spouse's descendant/ascendant living with the official).

**⑧ Restriction on duty-related outside activities (Article 10)**

- Outside activities that would damage the impartiality in performing public duties such as receiving payment for providing duty-related knowledge or information shall be fundamentally prohibited.

**⑨ Prohibition of private use of goods belonging to public organizations and making profits from such use (Article 13)**

- A public official shall be prohibited from privately using goods, vehicles, buildings, land and facilities, etc. owned or rented by public organizations, benefiting from such use, or allowing a third party to do so.

**⑩ Prohibition of use of confidential or nonpublic information obtained in performing public duties (Article 14 & 27)**

- If a public official uses duty-related confidential or nonpublic information for personal profit, he/she shall be subject to imprisonment with labor no more than seven years or a fine not exceeding KRW 70 million(USD 59,000), and the profit shall be confiscated and collected.

\* This standard shall also apply to those who have not exceeded three years since retirement, and a third party who gained profit using the duty-related confidential or non-disclosed information shall be punished likewise.

## **ACRC Announced Major Achievements of the Protection of Public Interest Reporters Act for the Last 10 years**

- *The ACRC widely increased the number of laws applicable for public interest report from initial 180 laws to 471*
- *The ACRC greatly strengthened protection of reporters by introducing proxy reporting to allow people to report through a lawyer, and by creating the legal basis for the charges for compelling compliance*

(30th Sep. 2021, ACRC)

Marking the 10<sup>th</sup> anniversary of the Protection of Public Interest Reporters Act, the Anti-Corruption and Civil Rights Commission (Chairperson : Jeon Hyun-hui, hereinafter ACRC) announced major achievements of the law at 2:00 PM 30<sup>th</sup> September at the Central Government Complex.

The Protection of Public Interest Reporters Act took effect on 30<sup>th</sup> September 2011 to encourage public interest reports by protecting and supporting public interest reporters who reported the acts detrimental to the health and safety of the people, the environment, etc.; and also to identify and prevent the acts detrimental to the public interest in an effective manner.

For the past 10 years, the ACRC has expanded the scope of reporter protection and enhanced its reporter protection mechanism with seven times of revision of the law. First, it increased the number of laws applicable for public interest report from initial 180 laws to 471.

\* The number of applicable laws: 180 laws (in 2011) → 279 laws (in 2016) → 284 laws (in 2018) → 467 laws (in 2020) → 471 laws (in 2021)

Also, it introduced the system of proxy reporting, so that reporters can make reports through lawyers without disclosing their name. Furthermore, the punishment has been strengthened for those who disclosed the identity of reporters or who gave disadvantageous measures to the reporters.

Violations	Original Law	Revised Law (May 2018)
Disclosing identity of reporters, and/or disclosing the content of report before the completion of investigation	Imprisonment for not more than 3 years / fine not exceeding 30 million KRW(USD 25,000)	Imprisonment for not more than 5 years / fine not exceeding 50 million KRW(USD 42,000)
Dismissing and/or releasing reporters from their position, and/or not complying with decision to take protective measures	Imprisonment for not more than 2 years / fine not exceeding 20 million KRW(USD 17,000)	Imprisonment for not more than 2 years / fine not exceeding 30 million KRW(USD 25,000)
Disciplinary punishing reporters, obstructing report, and/or coercing cancellation of report	Imprisonment for not more than 1 year / fine not exceeding 1 million KRW(USD 850)	Imprisonment for not more than 2 years / fine not exceeding 20 million KRW(USD 17,000)

Along with this, if anyone is not compliant with the decision to take protective measures of the ACRC, the ACRC can impose charges for compelling compliance\*. Also, it created a legal basis for the ACRC to request for the reduction of and exemption from responsibility of reporters who received disciplinary punishment or administrative disposition due to the illegal acts identified in relation with the report.

\* Charge for compelling compliance: it can be repeatedly imposed up to twice a year until protective measures are implemented, and the amount shall be less than 30 million KRW(about 25,000 USD) each time.

Thanks to the stronger protection system for public interest reporters and higher awareness of the system, the number of reporter protection provided dramatically improved.

The ACRC has been active in protecting public interest reporters by 1) requesting reinstatement of reporters, 2) requesting disciplinary punishment and prosecution of the people who violated their duty to maintain confidentiality of public interest reporters, 3) taking protective measures for personal safety of reporters, and 4) asking for the reduction of and exemption from responsibility of the reporters.

For the first five years (2011~2015) after introducing the system, only 20 cases of reporter protection were accepted. However, in the following five years (2016~2020), the decisions for taking protection were made for 123 cases, up by 6 times.

In a press briefing, Chairperson Jeon Hyun-hui of the ACRC said, “public interest report and reporter protection system have encouraged citizens’ voluntary reporting. They have efficiently identified and prevented acts detrimental to the public interest in the blind spot of public authorities.”

She stated, “even though the ACRC increased the number of laws applicable to the public interest report to 471, there are many opinions that the scope should be expanded further. Also, there is room for improvement, such as punishment of the people who track down or instruct to track down reporters,” adding “the ACRC will continue its efforts to improve the reporter protection system, so that anyone can report without fear.”

**ACRC protects the rights of 196,400 people  
through resolution of civil complaints  
since Moon Administration took office**

- *With a 94.7% recommendation acceptance rate by public organizations, ACRC achieved its all-time high performance in protecting people's rights*
- *21 central government agencies, including Ministry of Trade, Industry, and Energy and Ministry of Economy and Finance, accepted 100% of ACRC's recommendations*

(2nd Sep. 2021, ACRC)

Since the Moon Administration took office, the Anti-Corruption and Civil Rights Commission (Chairperson : Jeon Hyun-hui, hereinafter ACRC) has protected the rights of 196,400 people by resolving 9,750 civil complaints through recommendations for redress, opinion statements, settlement, and mediation of grievance complaints.

In particular, the number of recommendations for redress and opinion statements issued to 285 public organizations by the end of last year was 1,924, of which 1,822 cases were accepted, reaching an acceptance rate of 94.7%. This was the ACRC's best performance in protecting the people's rights since its launch.

The ACRC reported the "current status of recommendation acceptance to resolve civil complaints" to President Moon Jae-in at the Cabinet meeting on March 2 this year. President Moon ordered the ACRC "to closely examine any non-acceptance cases by public organizations that had valid ACRC recommendations and thereby caused grievance to citizens."



Accordingly, the ACRC came up with measures to raise the acceptance rate and closely examined 248 cases with non-accepted civil complaints on 111 public organizations.

As a result of the examination, public organizations recognized the validity of the recommendations and accepted another 88 recommendations, resulting in 197 public organizations (69.1%) out of the total 285 organizations accepting all recommendations. Among central government agencies, 21 agencies accepted 100% of the ACRC recommendations, including the Ministry of Trade, Industry, and Energy, Ministry of Economy and Finance, Ministry of Education, and Ministry of Justice.

Even though most of the organizations accepted the recommendations, 38 organizations still have non-accepted complaints (57 cases). The reasons for non-acceptance were largely due to laws and regulations (25 cases, 43.9%); influence, impartiality, and lack of budget (22 cases, 38.6%); and different outcomes of the internal deliberation commission (10 cases, 17.5%).

The ACRC has actively communicated with public organizations by signing MOUs and holding acceptance cooperative meetings to form a consensus on the protection of the people's rights and has resolved a lot of civil grievances through active administrative efforts and cooperation with other organizations.

As an example, Mr. K, a bus driver, filed a civil complaint to the ACRC, insisting that "I have been unfairly cracked down five times for violating a designated highway lane that was not easy to identify." The ACRC made a recommendation for redress to the National Police Agency to cancel the fine and penalty point imposed against violations of the place

mentioned. Accordingly, the National Police Agency decided to cancel all 19,830 violation cases that were cracked down for the same reason, even if complaints weren't filed on them, and it is now proceeding a follow-up process such as the return of fines.

The National Tax Service actively accepted 12 out of 24 non-accepted cases by re-deliberating them from the perspective of a third party at the taxpayer protection commission established in the head and local tax offices. Accordingly, approximately KRW 760 million(USD 640,000) of tax was canceled and refunded.

The ACRC will make continuous efforts to help public organizations follow its recommendations by reorganizing its civil service evaluation system so that central government agencies can be included as the targets of the acceptance rate evaluation and by providing the legal ground to disclose the non-acceptance cases.

Chairperson Jeon Hyun-hui said, "The two reports at Cabinet meetings served as an opportunity to raise the awareness of public organizations on the ever-increasing importance of the resolution of civil complaints. It is very meaningful that the ACRC and other relevant administrative agencies have started to actively protect the people's rights through cooperation under such shared awareness." She added that "the ACRC will make more efforts to raise the acceptance rates of public organizations and local governments that are closely related to the daily lives of the people."

## **Burden of ‘brokerage compensation of houses’ will be significantly decreased following ACRC’s recommendations for institutional improvement**

*- Ministry of Land, Infrastructure and Transport reflected ACRC’s recommendations for institutional improvement in pre-announcement draft of legislation of Enforcement Decree & Regulation of the Licensed Real Estate Agents Act -*

(14th Sep. 2021, ACRC)

A significant decrease in brokerage compensation of houses and enhanced protection of consumers against incidents in real estate transaction is expected as early as this October.

The Anti-Corruption and Civil Rights Commission (Chairperson : Jeon Hyun-hui, hereinafter ACRC) revealed that the pre-announcement of legislation of the revised Enforcement Decree and Enforcement Regulation of the “Licensed Real Estate Agents Act,” which reflects considerable parts of the “institutional improvements on brokerage compensations and services in real estate transaction” recommended by the ACRC in February is expected to ease the people’s burden of brokerage compensation.

As the demand for improvement on the brokerage compensation system has increased, due to reasons including the recent rise of house prices in the metropolitan area, the ACRC held online discussions and collected opinions in February via its online platform, People’s Idea Box, and recommended institutional improvements “to ease the people’s burden of brokerage fees and minimize complaints” to the Ministry of Land, Infrastructure and Transport (hereinafter MoLIT) and local governments.

\* In the results of the opinions collected via People's Idea Box, 53% of the 2,478 participants answered that current brokerage compensations are overburdensome due to soaring real estate prices (Answered by 1,233 people working in the real estate industry and 1,245 ordinary citizens, between November 2 ~13, 2020)

Following recommendations from the ACRC, MoLIT made a pre-announcement of legislation of the revised Enforcement Decree and Enforcement Regulation of the "Licensed Real Estate Agents Act" on September 2~3, after conducting commissioned research and discussions.

The pre-announcement draft stipulates lowered caps on brokerage compensations in real estate transactions (0.9%→0.7% for sales, 0.8%→0.6% for lease), setting the maximum rate for each range of transaction price in the Enforcement Decree and decided within the ranges by enforcement decree. But considering local situations, they can be settled within the range of the maximum rates for each range of transaction prices with a 1/1000 adjustment of the real transaction amount.

Moreover, the draft includes measures to protect consumers and prevent conflicts such as increased guarantees of indemnification of losses and obligations to confirm and explain the object of brokerage and to specify the rights regarding the object of brokerage.

The pre-announced draft of MoLIT reflects most recommendations made by the ACRC, including the ease of the maximum brokerage rates; subdividing the high-price range where the top brokerage rate is currently applied; and solutions to prevent the reversal (lease > sales) of brokerage rates for the houses valued at more than KRW 600 million(USD 505,000) and less than KRW 900 million(USD 760,000), with expectations that the financial burden of the people due to expensive brokerage fees will be substantially mitigated.

Furthermore, other recommendations by the ACRC for the protection of consumers were also reflected such as the increased guarantees of indemnification of losses and the obligation of hanging up the business license in a brokerage office.

But for the recommendations that were not reflected in the revised draft such as burden of brokerage fee when a transaction is ultimately cancelled, the ACRC will actively consult with MoLIT and continue to improve on them.

Also, since most of the metropolitan governments submitted their implementation plans to revise relevant enforcement decree after the revision of the law by MoLIT, it is also expected that the burden of brokerage fees of tenants would be significantly eased, especially for the residentially vulnerable groups of the low-income class, young adults, and newlyweds.

\* 13 (Busan, Daegu, Incheon, etc.) out of the 17 metropolitan governments have submitted their implementation plans

The ACRC recommends institutional improvements on preventing corruption and handling public complaints to approximately 1,500 organizations, including central administrative agencies, local governments, and public organizations. Since the new administration took office in May 2017, the ACRC has made 216 recommendations for institutional improvement, and its acceptance rate is as high as 98.7%.

Yang Jongsam, Director-General of the Institutional Improvement Bureau of the ACRC said, “Thanks to the coordination of relevant agencies such as MoLIT, it is expected that the people’s financial burden of brokerage compensation will soon be eased.” He also added that “the ACRC will continue to actively find and improve on unreasonable systems that cause inconveniences and financial burden to the people.”