Introduction to Major Anti-Corruption Policies of Korea

May 2015



ACRC Anti-Corruption & Civil Rights Commission Korea

CONTENTS–

Chapter 1 Introduction ····· 1

1. The Concept and Types of Corruption ····· 3

1.1 The Concept of Corruption ····· 3

1.2 The Types of Corruption ····· 6

2. The Causes and Effects of Corruption ····· 9

2.1 The Causes of Corruption ····· 9

2.2 The Effects of Corruption ····· 12

3. The Importance of Corruption Prevention and Major Policy Measures ····· 14

Chapter 2 Diagnosing the Level and Risks of Corruption ····· 17

1. Diagnosing the Level of Corruption ····· 19

1.1 The Types of Data for Corruption Measurement ····· 19

1.2 The Types of Subjective Soft Data ····· 21

1.3 Best Practice: ACRC's Integrity Assessment ····· 27

2. Assessing Anti-Corruption Systems ····· 33

2.1 The Significance of Assessing Anti-Corruption Systems ····· 33

2.2 Best Practice: SAINT Workshop of the Netherlands ····· 35

2.3 Best Practice: ACRC's Anti-Corruption Initiatives Assessment (AIA) ····· 37

3. Identifying and Improving Legal/Institutional Factors Causing Corruption ···· 43

3.1 The Importance of Identifying and Improving Legal/Institutional Factors Causing Corruption ····· 43

3.2 Best Practice: Hong Kong Assignment Studies ····· 44

3.3 Best Practice: ACRC's Corruption Impact Assessment and Institutional Improvement ····· 46

Chapter 3 Protection and Rewards of Whistleblowers ····· 53

1. The Significance of Public Interest Whistleblowers Protection ····· 55

1.1 The Concept and Cases of Public Interest Whistleblowing ····· 55

1.2 The Significance of Public Interest Whistleblowing and Whistleblower Protection Regime ····· 58

2. The Trend of International Community and the Status of Legislation in Each Country ····· 64

2.1 The International Trends ····· 64

2.2 The Status of Legislation in Each Country ····· 67

2.3 The Current Status of Legislation in Korea ····· 71

3. The Coverage and Requirements of the Protected Reports ····· 75

3.1 Protected Whistleblowers (under Law) ····· 75

3.2 Content of the Protected Whistleblowing Reports ····· 77

3.3 The Whistleblower's Duty of Making Report in Good Faith ····· 89

3.4 Where to Make a Report ····· 92

4. Protection for Whistleblowers and Others in Working Environment ····· 97

4.1 Coverage of Protection ····· 97

4.2 Protection Agency ····· 99

4.3 Types of Prohibited Punitive Measures or Discrimination ····· 103

4.4 Burden of Proof ····· 106

4.5 Immunity from Violation of Confidentiality ····· 109

4.6 Protective Measures ····· 110

4.7 Temporary Relief ····· 120

4.8 Punishment of the Person Who Took Disadvantageous Actions ····· 121

4.9 Settlement ····· 124

CONTENTS–

5. Special Protection for Person Outside Employment Relationship ····· 127

5.1 Guarantee of Confidentiality ····· 127

5.2 Physical Protection ····· 131

5.3 Special Protective Measure during Investigation and Criminal Proceedings ····· 135

5.4 Mitigation of Culpability ····· 136

5.5 Exemption from Compensation Liability ····· 138

5.6 Protection Against Other Types of Administrative or Economic Disadvantages ····· 138

5.7 Medical and Legal Assistance ····· 140

6. Incentives for Whistleblowers ····· 141

6.1 The False Claims Act (FCA) of the United States ····· 141

6.2 Dodd-Frank Wall Street Reform & Consumer Protection Act of 2010 ·· 145

6.3 The ACRC Act of Korea ····· 147

6.4 The Act on the Protection of Public Interest Whistleblowers of Korea · 157

7. Summary ····· 164

7.1 Comparison of Relevant Laws in Different Countries ····· 164

7.2 Key Characteristic of Legislation and Report Handling Process of Korea ····· 178

Chapter 4 Code of Conduct for Public Officials ····· 189

1. What Is Code of Conduct? ····· 191

1.1 Measure of Internal and External Control ····· 191

1.2 Code of Conduct as External Control Measure ····· 192

2. Code of Conduct in Major Countries and Private Companies ····· 197
2.1 OECD's 12 Principles for Managing Ethics in the Public Service ····· 197
2.2 UN's International Code of Conduct for Public Officials ····· 200
2.3 European Council's Model Code of Conduct for Public Officials ····· 203
2.4 Codes of Conduct in Major Countries ····· 208
2.5 Private Companies' Codes of Conduct ····· 232
3. Korea's Code of Conduct, Cases, and Comparison with Other Codes ····· 239
3.1 History and Background of Korea's Code of Conduct ····· 239
3.2 Major Content and Cases of Code of Conduct for Public Officials ····· 241
3.3 Major Data Regarding the Code of Conduct for Public Officials ····· 261

References ····· 263

Appendix 1 CPIA Governance Rating Questionnaire ····· 267

Appendix 2 Transparency International Bribe Payers Survey Questionnaire ·· 268

Appendix 3 2014 Survey on the Integrity of Public Organizations ····· 270

Appendix 4 Hong Kong ICAC Assignment Studies ····· 279

Chapter 1. Introduction

1. The Concept and Types of Corruption ····· 3
2. The Causes and Effects of Corruption ····· 9
3. The Importance of Corruption Prevention and Major Policy Measures ····· 12



1. The Concept and Types of Corruption



Goals	• To understand the concept of corruption • To explore the legal basis against corruption • To understand the types of corruption

1.1 The Concept of Corruption

The term "corruption" derived from Latin roots: "cor" meaning "together" and "rupt" meaning "to be ruined." As the origin of the word suggests, corruption is very dangerous in that it can destroy an organization, society and even a country where it takes place (Korea Independent Commission Against Corruption (KICAC), 2006). Corruption is defined in many ways, but in general, it is defined as the "misuse or abuse of public authority or position for private gain" (Lambsdorff, 2007) or "all kinds of misconduct through which one makes, or helps others make social or material gains such as wealth, status or opportunities in an illegal or undue manner." (KICAC, 2006)

It is not an overstatement that corruption has become a transnational issue – not just confined to individual nations – at a time when people and goods are increasingly moving across borders with globalization. A number of international organizations, global non-profit organizations and many parts of the international community are now making efforts to prevent and reduce corruption. And as part of the efforts, these organizations are placing an emphasis on the need for their member countries to join non-binding international conventions against corruption. The leading examples are the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the *United Nations Convention against Corruption* (UNCAC). The OECD Convention was adopted in 1997 and took effect in 1999. The Convention prohibits businesses based in the member countries from providing financial or non-financial benefits of any sort to overseas government officials when doing business abroad, and in case of the violation, those businesses are subject to punishment as stated by the domestic law (OECD, 2011).

The UNCAC was agreed to in December 2000, adopted in October 2003, and took effect in December 2005.[1] The UNCAC defines corruption as the followings and stresses that the signatories must outlaw these acts (United Nations, 2004a).

- Bribery of government officials, embezzlement of public funds, trading in influence, misuse and abuse of public offices, illicit enrichment, private sector bribery and embezzlement, money laundering, obstruction of justice

The Council of Europe enacted the *Civil Law Convention on Corruption* in the early 2000s, which took effect in 2003. The EU Convention defines corruption as the following:[2]

- Requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe

However, unlike academic definitions of corruption or the one commonly accepted by the international community, the laws enforcing the crackdown on and punishment against corrupt conduct vary by country (USAid, 2009). Recently, individual laws to curb and punish corruption have been passed, but many countries have prohibited corruption in the criminal law and other laws even before anti-corruption laws were enacted. In Korea, corruption is illegal under the *Criminal Act*, the *Public Service Ethics Act* (1981) and the *Act on Combating Bribery of Foreign Public Officials in International Business Transactions* (1998). In addition, the *Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission* (ACRC Act, 2001) also prohibits corruption. In the U.K., the *Corrupt and Illegal Practices Prevention Act* was enacted as early as in 1883. The U.S. does not have a specific law against corruption, and the *Crimes and Criminal Procedure Code* defines corrupt conduct. The *Foreign Corrupt Practices Act* (1977) and the *International Anti-Corruption and Good Governance Act* (2000) also prohibit corruption of any kind. Japan also has the laws outlawing corruption, including the *Penal Code*, the *National Public Service Ethics Law* (2000) and the *Unfair Competition Prevention Law* (2005).[3]

1) http://www.unodc.org/unodc/en/treaties/CAC/
2) http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm
3) For more information about anti-corruption laws of each country, refer to the official website of the International Association of Anti-Corruption Authorities (http://www.iaaca.org/).

Since the legal definitions of corrupt conduct vary by country depending on the realm, situation and perpetrator, it is not easy to organize them in a clear manner. What is noteworthy here is the fact that the definitions in the fundamental or special laws against corruption are more comprehensive and general than those in the criminal law and other laws. The Article 3 of the *Corrupt and Illegal Practices Prevention Act* of the U.K. defines corruption as the following (Kim Ahn-Tae, 2005):

- The expression "corrupt practice" as used in this Act means any of the following offences; namely, treating and undue influence, as defined by this Act, and bribery, personation, as defined by the enactments set forth in Part III of the Third Schedule to this Act, and aiding, abetting, counseling, and procuring the commission of the offence of personation, and every offence which is a corrupt practice within the meaning of this Act shall be a corrupt practice within the meaning of the *Parliamentary Elections Act*, 1868.

In the case of Korea, the Section 4 of the Article 2 of the ACRC Act defines act of corruption as the followings:

- The act of a public organization employee to seek illegitimate gains for himself/herself or for any third party by abusing his/her position or authority, or violating Acts and subordinate statutes in connection with his/her duties; or
- The act of causing financial damage to a public organization in violation of Acts and subordinate statutes, when it is in the process of executing its budget, or acquiring, managing or disposing of its property, or entering into and executing a contract to which it is a party; or
- The act of forcing, recommending, suggesting or encouraging someone to engage in or conceal the acts provided for by the above subparagraphs

Under the Korean law, an act is corrupt when a public official of any kind misuses or abuses his/her position or authority to seek financial or non-financial gains for himself/herself or a third party. This definition is not very different from what constitutes corrupt practices in foreign laws. But the ACRC Act does not stipulate the punishment; Punishments for corrupt conduct by public officials are established in the *Criminal Act* (1949), the *Act*

on the Aggravated Punishment, Etc. of Specific Crimes (1966), and the *Act on Special Cases Concerning Forfeiture for Offenses of Public Officials* (1995). Despite the existence of other laws, the ACRC Act was enacted to specify the qualifications, reward and protection of the whistleblower as defined by the Act.

Recently there are those who argue that the anti-corruption law, which primarily addresses corrupt practices conducted by public officials, must be expanded to the private sector. Some maintain that the current anti-corruption law covering the public sector is sufficient, since actual corruption cases often involve public officials, either directly or indirectly. However, there has been an increasing interest in the notion that the scope of perpetrators of corruption must be expanded to reflect the reality where corruption in the private sector – with no involvement of public officials – is getting more serious, and incurs as much socioeconomic costs.

1.2 The Types of Corruption

Corruption is categorized into many different types depending on its scale, method and sector of occurrence. The following is the most frequently used categorization, based on the scale of corruption (Rohwer, 2009; United Nations, 2004b).

- Grand corruption: Higher level officials – politicians in particular – are often involved and the scale of corruption is very large. The majority of political and power-related corruption cases fall into this category.
- Petty corruption: This type of corruption frequently takes place on a daily basis and usually involves low and mid-level public officials. The scale of corruption is relatively smaller.

Corruption can be categorized according to the method. Typically, it has the following four categories (Andvig et. al., 2000):[4)]

- Bribery: The parties involved engage in monetary transactions, and misuse and abuse the position and authority.

4) For more information about cases and categorization based on the methods of corruption, refer to the United Nations (2004b).

- Embezzlement: The person in charge of executing resources dishonestly misuses them.
- Fraud: A public official commits a financial crime to seek private gains by manipulating or distorting information, facts or specific knowledge, using the methods of trickery, swindle and deceit.
- Extortion: A person obtains gains through coercion or physical intimidation.

Corruption can also be divided into different categories from the above, depending on the sector of occurrence (Heidenheimer, 1989).

- Public office-centered corruption: A public official abuses his/her public position for private gains.
- Public interest-centered corruption: A public official undermines public interest in the process of performing his/her duty.
- Market-centered corruption: Ordinary economic agents pay the public officials in charge of formulating and managing the government's economic policy and programs in exchange of privileges.

The primary reason why the type of corruption must be classified from a policy perspective is that vulnerable areas for corruption vary by organization and country, and that precisely understanding the vulnerability leads to solutions. Countries with widespread corruption have high levels of corruption of almost any kind. When corruption is rampant in an organization, it typically takes place across the hierarchy and functions. In this case, categorizing corruption may not be very useful. However, given the fact that different types of corruption may have significantly different impacts on an organization, society or country, and that anti-corruption measures targeting corruption types with large negative impacts are more effective in addressing the problem, it is worth classifying and measuring the gravity of corruption cases even when it is prevalent.

When a specific type of corruption is widespread in an organization or country, categorizing the types of corruption may bring the most significant benefits. In some cases, sophisticated political maneuvering and considerable financial resources are needed to prevent and eradicate corruption. Thus, the finite resources must be used in a more effective way to tackle the corruption issue. To this end, it is important to understand the sector, function and type of corruption that is serious and frequently occurring, and to focus anti-corruption activities on those areas.



Discussions and Exercise

- Explore the public's perception and legal basis against corrupt practices, and discuss the appropriateness of the laws.
- Explore anti-corruption laws in different countries, and discuss whether the current laws are sufficient for prevention and eradication of corruption.
- Check whether your country has joined international conventions against corruption. If not, discuss the reasons.
- Find out the type of corruption that is most widespread in different countries and organizations, and discuss other types of corruption that are not mentioned in this material.

2. The Causes and Effects of Corruption



Goals	• To understand the causes of corruption • To understand the effects of corruption

2.1 The Causes of Corruption

It is not far-fetched to say that corruption has always been around us since the beginning of human history. Although the type of corruption varies depending on time and country, the fact that corruption has persisted over a long period of time suggests that a number of factors play a role in corruption. The complex and covert nature of corrupt practices is often cited as a major cause that makes it difficult to address corruption.

There are a wide range of causes of corruption. Corruption is largely driven by three factors: political and administrative factors, economic factors, and sociocultural factors (Pellegrini and Gerlagh, 2008; Rose-Ackerman, 1999). This categorization includes very specific sub-factors that cause corruption.

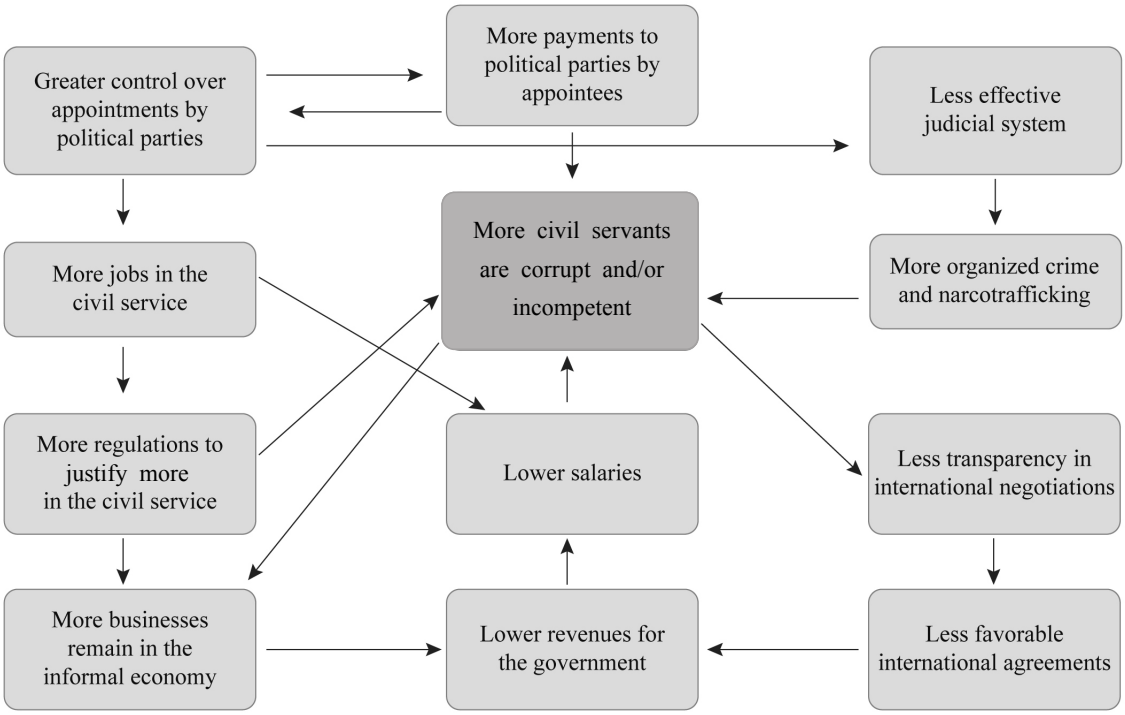
(1) Political and Administrative Factors

Under this category, corruption is mainly attributable to the political scheme and system, administrative institutions, procedures and structure. The primary sub-factors are as follows:

- Low levels of democracy
- Absence of leadership at the national level to fight corruption
- Lack of accountability and transparency in government operation and management
- Unchecked government agencies and excessive authority and discretion given to public officials
- Weak internal controls
- Structural problems with the personnel system
- Low salaries for public officials

Political and administrative factors can be categorized into as above for convenience's sake, but in actual corruption cases, it is not easy to clearly identify a single cause because a number of factors are at play. For instance, in an undemocratic country, a lack of a check-and-balance system in and out of the government often leads to a low level of accountability and transparency. A government with weak internal controls is more likely to leave the errors in personnel or financial management uncorrected, which creates an environment conducive to corruption. The following [Figure I-1] suggests the complex links among various factors causing corruption.

[Figure I-1] Links between causes of corruption



Source: Coob and Gonzalez, 2005: 6; McCusker, 2006: 5

(2) Economic Factors

This section deals with economic factors that cause corruption, such as market structure and the economy. There are many economic causes of corruption, and the primary sub-factors are as follows:

- Economic underdevelopment
- Unequal income distribution

- Excessive regulation of the market
- Closed economy

In general, corruption is more likely to occur when a country's economy is underdeveloped, income distribution is unequal, government regulation of the market is strong, and the economy is closed. Economic factors are not a direct cause of corruption. In fact, the above-mentioned economic structure and conditions undermine the efforts to prevent or control corruption. For example, an underdeveloped country is often undemocratic, lacks a check-and-balance system to curb corruption, and the public is not very aware of corruption as the average level of education is low. Excessive government regulation on the market is another indirect cause of corruption, where the authority and power to regulate the market are misused or abused by public officials.

(3) Sociocultural Factors

This category focuses on social structure and cultural characteristics as a fundamental cause of corruption. The same as in the aforementioned categories, there are many sociocultural causes of corruption, and the primary sub-factors are as follows:

- Tolerance toward corruption
- Nepotistic culture
- Paternalistic practices
- Underdeveloped civil society

Sociocultural factors are also closely linked to one another. For instance, a country tends to be more tolerant toward corruption when nepotism or paternalism is dominant, which often fuels corruption.

In a study by Huberts (1998) of 257 experts in a number of countries on the causes of integrity violations committed by public officials in higher and lower income countries, the norms and values of politicians and public servants were cited as the most important variable, followed by a lack of control, supervision and auditing, and interrelationships between politics and business (or the "iron triangle" of politics-state-business).

<Table I-1> Causes of corruption in the public sector

	Important cause			
	Higher income country		Lower income country	
Factors	**%**	**rank**	**%**	**rank**
Norms and values of politicians and public servants	88.4	1	98.4	1
Lack of control, supervision, auditing	87.2	2	93.3	2
Interrelationships – business, politics, state	86.6	3	92.9	3
Values and norms concerning government/state	84.6	4	79.7	11
Public sector culture (values/norms)	83.3	5	76.8	12
Lack of commitment of leadership	82.2	6	90.2	5
Misorganization and mismanagement	80.7	7	91.9	4
Increasing strength of organized crime	79.3	8	90.0	7
Norms and values [in] private and public [life]	78.0	9	73.7	14
Increasing significance of lobbying	76.5	10	72.9	15
Interrelationships – politics and administration	67.0	11	86.4	9
Social inequality	66.7	12	90.2	6
Low salaries in the public sector	56.9	16	87.1	8
Economic problems (inflation/recession)	62.2	14	85.2	10
(n)	(190)		(67)	

Source: Huberts, 1998: 215; McCusker, 2006: 5;

2.2 The Effects of Corruption

The negative effects of corruption have been confirmed numerous times by research and empirical evidence. For instance, Enron, a once world-renowned energy company based in the U.S., went bankrupt in 2001, when accounting frauds perpetrated by the company were made public by a whistleblower. One of the most compelling explanations for the Asian financial crisis in 1997 is that it is partly attributable to endemic corruption in the countries hit by the crisis. And few would disagree that the Arab Spring broke out in late 2010 not least because of systemic corruption by the elites, which led to the collapse of regimes in Tunisia, Egypt and Libya. One of the main underlying causes of the Occupy the Wall Street movement that started in New York city in 2011 was the greed of U.S. investment companies, triggering a financial crisis across the globe. As demonstrated by these examples, corruption determines the fate of an organization and even a country, and it can also have a tremendous impact on the global economic system.

The following is the detrimental effects caused by corruption when it occurs in different sectors, namely, the government (state), market and society.

- Government (State)
  - Democracy is undermined.
  - The quality of policy deteriorates.
  - The number of less competent public servants increases.
  - Government money is wasted and spent in an inefficient way.
  - The government loses confidence and legitimacy.
- Market
  - Economic growth declines.
  - Foreign direct investment shrinks.
  - Entrepreneurship declines.
  - Resource allocation is distorted.
- Society
  - Human capital growth is undermined.
  - Social inequality is aggravated.
  - Social justice and equity is compromised.
  - Distrust in a society increases.



Discussions and Exercise

- Discuss how significant each factor of corruption is in your country.
- Discuss other contributors to corruption that are not mentioned in this material.
- Discuss the negative effects of corruption on an organization in actual cases.

3. The Importance of Corruption Prevention and Major Policy Measures



Goals	• To understand the relative importance of prevention, detection and punishment in addressing corruption

Responses to corruption are largely categorized into two: preventing corruption and punishment against corruption after its occurrence. The former is about ex ante prevention, and the latter about ex post punishment. When taking into account the complexity of many corruption cases, neither approach is sufficient alone to address corruption. So every country in the world uses both approaches in fighting corruption, although their relative significance differs.

Ex ante prevention measures usually include education, public campaigns and institutional improvements. Ex post punishment measures focus on law enforcement. In countries with higher levels of corruption, efforts for both ex ante prevention and ex post punishment are negligible, while countries with higher levels of integrity make effective use of both strategies. When urgent measures are needed to address corruption, the focus is placed on detection and punishment by reinforcing law enforcement and punishment. Proper punishment against and detection of corruption changes the incentive system for potential perpetrators and shows that they have more to lose than to gain if they are involved in corruption cases, thereby contributing to curbing corruption.

However, it is not easy to ensure the effectiveness of ex post punishment measures. This is especially so in countries where corruption is rampant. In most countries, law enforcement for corruption issues involves multiple agencies, including anti-corruption agencies, the prosecution and police, and audit agencies. Close cooperation among these agencies is absolutely critical to ensure the effectiveness of law enforcement. But in most corruption-prone countries, law enforcement agencies themselves are corrupt, and cooperation and collaboration among the agencies are not in place, so it is not feasible to expect for ex post punishment measures to be effective.

By contrast, ex ante prevention measures are fundamental solutions to curbing corruption.

Given the fact that corruption is committed by individuals, what is most important in prevention measures is changing the values and awareness of each individual (Rose-Ackerman, 1999). In prevention efforts, the emphasis is usually placed on education programs and campaigns targeting members of organizations and society. This is why most anti-corruption agencies are promoting corruption prevention by running education programs and public campaigns. However, it takes quite a long time for these strategies to bring actual benefits, because it is not easy to change the awareness and values of individuals in a short period of time. To prevent corruption in a more effective way, in-depth and meticulous strategies must be in place along with education and campaign programs.

Effective responses to corruption require the following process: Measuring and diagnosing the accurate level of corruption → Identifying the corruption-prone functions, areas and sectors → Implementing appropriate response measures → Monitoring and implementing further measures for improvement. This process is necessary in every corruption case, because different organizations have different causes of corruption. Of course, some factors such as low salaries for public officials can cause corruption throughout many organizations. But each corruption case has distinct characteristics depending on the function, mission, powers, working conditions, and institutional system for the operations and management of the organization. Thus, effective prevention of corruption committed by public officials requires as a prerequisite the assessment and diagnosis of the level and causes of corruption in an organization. This enables analyses from many different perspectives about all possible causes of corruption: inadequate laws and institutions, a lack of transparency and accountability in the operations and management of the organization, problems with the organization's culture, or excessive powers given to the organization and an absence of internal/external control systems for a check and balance.



Discussions and Exercise

- Explore policies for corruption prevention and punishment in each country, and discuss the effectiveness of those policies.
- Discuss the kind of institutions that are most likely to cause corruption and how to make improvements.

Chapter 2. Diagnosing the Level and Risks of Corruption

1. Diagnosing the Level of Corruption ····· 19
2. Assessing Anti-Corruption Systems ····· 33
3. Identifying and Improving Legal/Institutional Factors Causing Corruption ····· 43



1. Diagnosing the Level of Corruption



Goals	• To understand why diagnose the level of corruption • To understand the structure and specific measurement items of the model for measuring corruption • To propose anti-corruption strategies and policies based on the results of corruption measurement

1.1 The Types of Data for Corruption Measurement

The first step to fight corruption is to identify the seriousness of corruption that is taking place in a government or country. To get an accurate picture of the corruption level, a scientific and systematic diagnosis of corruption is a prerequisite.

Measuring the level of corruption requires information about the number of corruption cases over a specific period of time, the sector of occurrence, the number of perpetrators, and the amount of bribery payments. In addition, social and economic costs incurred by corruption must also be measured to identify the actual and potential risks (UNODC, 2004). However, it is not an easy task at all to measure how many corruption cases occur and how serious they are. Actually, it is deemed almost impossible to measure the accurate scale of corruption cases. And the reason lies in the very nature of corruption: secrecy. This is why it is incredibly hard to obtain accurate information and data about corruption cases (Johnson and Kpundeh, 2002; Kufmann et. al., 2006; Rohwer, 2009; Treisman, 2000).

The corruption level of a country is usually measured by two types of data. The first type is objective hard data, or statistics about corruption cases primarily collected and published by the government. Hard data has significance in that it is objective data about actual corruption cases, but it is not sufficient to fully understand the scale or seriousness of corruption. This is because no matter how strict the law enforcement efforts are, it is impossible for the authorities to detect every single corruption case. So at times, the corruption cases detected through law enforcement activities are called the “tip of the iceberg.” The stricter and more effective law enforcement is, the more corruption cases are made known to the public. Conversely, fewer corruption cases go undetected with

loose law enforcement. This means that it is the law enforcement capacity of a country that determines the relative accuracy of corruption measurement based on hard data. Due to these intrinsic limitations, it is hard to get an accurate picture by comparing corruption levels among different countries based on the hard data.

The other type of corruption measurement that is more commonly used to address the limitations of hard data is surveys of the public and experts. Surveys – or perception surveys to be more accurate – are aimed at investigating the respondents' awareness of corruption, and the data gained from surveys is called subjective soft data. Soft data is different from objective data and is mainly gained through surveys, so there is inevitably a gap between the reality and the perception. This kind of gap occurs not just because the respondents give different answers depending on the way the questionnaire is organized, but also because the perception of the respondents could be affected by the situation at the time of the survey; for example, if a major corruption scandal breaks out, the respondents may have an exaggerated perception about the corruption level compared to the actual seriousness of the issue. Moreover, surveys are prone to errors depending on how the questionnaire is organized and how the respondents are sampled. And these errors undermine the reliability and validity of the survey.

Both objective hard data and subjective soft data have limitations in terms of validity in measurement. But subjective soft data is relatively more useful for comparisons between countries. If surveys have a high level of reliability and validity, soft data obtained through those surveys can be used for comparisons between countries. However, hard data, such as corruption statistics, are not suitable for comparisons, since it is difficult to acquire the necessary data from each country and the effectiveness of law enforcement varies too widely among different countries. This is why subjective soft data gained primarily through surveys accounts for most of the data used to compare corruption levels between countries.

Since both types of data have their own strengths and weaknesses, it is advisable to use both methodologies to measure the actual level of corruption more accurately (Kufmann et. al., 2006). However, from a technical perspective, it is not that easy to measure corruption by using the two different types of data. For instance, objective hard data is designed to measure corruption by looking at the number of corruption cases, while subjective soft data obtained through surveys typically uses scores like the Likert scale. So the coherence

issue arises as to units of measurement and how much weight should be given to each category of the data. In particular, as mentioned earlier, when comparing corruption levels between countries by using both types of data, validity in measurement can be especially put in question because the effectiveness of law enforcement and perceptions of survey respondents may vary greatly in different countries.

1.2 The Types of Subjective Soft Data

A number of agencies and countries are measuring corruption and conducting surveys in many different ways. Some surveys consist of several items, while others have a significant number of question items. Transparency International (TI)'s Global Corruption Barometer is a leading example for the former case, and the Integrity Index produced by Global Integrity and the Integrity Assessment conducted by the Korean Anti-Corruption and Civil Rights Commission (ACRC) are ones for the latter case. In some surveys, the level of corruption is measured along with other items, while other surveys are conducted solely to measure corruption. The Global Competitiveness Index by the World Economic Forum is one of the leading examples of the former case. And the purpose of TI's Bribe Payers Index and Global Corruption Barometer, and the World Bank's Control of Corruption is solely to measure corruption. Some agencies measure corruption by compiling data from other surveys and applying their own methodology, while other agencies conduct surveys of their own. TI's Corruption Perceptions Index (CPI) is a case in point for the former category, and Global Integrity's Global Integrity Index and ACRC's Integrity Assessment are ones for the latter category. And the respondents surveyed and scope of each survey vary depending on the agency.[5)]

TI's CPI is the most widely known and most frequently cited index among many corruption indices. Started in 1995, the CPI indicates the perceptions of the public about the public sector corruption in each country. The CPI is not the result of TI's own survey; instead, TI compiles corruption data from many different sources – which the agency calls "data sources" – and applies its own methodology to produce the index. The 2012 CPI measured corruption levels in 176 countries, and as shown in <Table II-1>, 13 types of data sources

5) Transparency International (TI) has a database about tools used for corruption assessment across the world. And the agency provides a search service for necessary tools depending on the purpose, focus, sector and institution, methodology type, and region and country of the assessment. For more information about TI's corruption assessment database, refer to http://gateway.transparency.org/tools.

were used. The number of data sources available varies by country, and TI measures corruption for countries with at least 3 kinds of data sources (Saisana and Saltelli, 2012). So the CPI can be categorized as a "composite index based on subjective soft data."

<Table II-1> 2012 CPI Sources of Information

Source	Number of Countries
1. African Deveopment Bank Governance Ratings(AFDB)	53
2. Bertelsmann Foundation Sustainable Governance Indicators(BF-SGI)	31
3. Bertelsmann Foundation Transformation Index(BF-BTI)	128
4. Economist Intelligence Unit Country Risk Ratings(EIU)	138
5. Freedom House Nations in Transit(FH)	29
6. Global Insight Country Risk Ratings(GI)	175
7. IMD World competitiveness Yearbook(IMD)	59
8. Political and Economic Risk Consultancy Asian Intelligence(PERC)	16
9. Political Risk Services International Country Risk Guide(ICRG)	140
10. Transparency International Bribe Payers Survey(TI)	29
11. World Bank - Country Performance and Institutional Assessment(WB)	67
12. World Economic Forum Executive Opinion Survey(WEF)	147
13. World Justice Project Rule of Law Index(WJP)	97

Source: Saisana and Saltelli, 2012.

As demonstrated in <Table II-2>, the data sources used in producing the CPI vary in survey items and the number of respondents depending on the agency. The surveys are mainly conducted of business executives and experts who are relatively more informed about the corruption level of their countries. The survey items include a wide range of questions: how effective anti-corruption policies are in each country; whether law enforcement agencies abuse power; whether the government has an auditing system; how much information is made public by the government; and how transparent and accountable the government is in its operations and management. The number of items surveyed also varies depending on the agency.

<Table II-2> Specifics of CPI Data Sources

Number	1	2	3
Abbreviation	**AFDB**	**BF-SGI**	**BF-BTI**
Source	African Development Bank Governance Rating	Bertelsmann Foundation	Bertelsmann Foundation
Name	Staff Guidance Note on the Governance Rating of the Bank's Country Performance Assessment	Sustainable Governance Indicator	Bertelsmann Transformation Index
Compiled published	2009	2011	2012
Internet	http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Operational%20guidance%20Note%20Assessing%20Governance%20EN.pdf	http://www.sgi-network.org/pdf/SGI11_Brochure_EN.pdf	www.bertelsmann-transformation-index.de/en
Who was surveyed?	Country teams, experts inside and outside the bank	Network of local correspondents and experts inside and outside the organization	Network of local correspondents and experts inside and outside the organization
Subject asked	Refer to Appendix 1		①Prosecution of office abuse ②Anti-corruption policy
Number of replies	Not applicable	Not applicable	Not applicable
Coverage	53 countries	31 OECD countries	128 countries

Number	4	5	6
Abbreviation	**CPIA**	**EIU**	**FH**
Source	World Bank	Economist Intelligence Unit	Freedom House
Name	Country Policy and Institutional Assessment	Country Risk Service and Country Forecast	Nations in Transit
Compiled published	2011	2007	2012
Internet	http://www.worldbank.org/ida/IRAI/2011/CPIAcriteria2011final.pdf	www.eiu.com	http://www.freedomhouse.org/report/nations-transit-2012/methodology
Who was surveyed?	Country teams, experts inside and outside the bank	Expert staff assessment	Assessment by experts originating or resident in the respective country.
Subject asked	① the accountability of the executive and other top officials to effective oversight institutions ② access of civil society to timely and reliable information on public affairs and public policies, including fiscal information ③ state capture by narrow vested interests ④ integrity in the management of public resources, including aid and natural resource revenues.	The misuse of public office for private (or political party) gain	Look at public perceptions of corruption, the business interests of top policy makers, laws on financial disclosure and conflict of interest, and the efficacy of anti-corruption initiatives
Number of replies	Not applicable	Not applicable	Not applicable
Coverage	77 countries	166 countries	29 countries

Number	7	8	9	10
Abbreviation	**GI**	**IMD**	**TI**	**PERC**
Source	Global Insight, formerly World Makers Research Centre	IMD International, Switzerland, World Competitiveness Center	Transparency International Bribe Payers Survey	Political & Economic Risk Consultancy
Name	Country Risk Ratings	IMD World competitiveness Yearbook	Bribe Payers Index	Asian Intelligence Newsletter
Compiled published	2007	2012	2011	2013
Internet	http://www.globalinsight.com	http://www.imd.org/research/publications/wcy/index.cfm	http://bpi.transparency.org/bpi2011/in_detail/	http://www.asiarisk.com/library7.pdf
Who was surveyed?	Expert staff assessment	The Executive Opinion Survey is sent to executives in top-and middle management in all of the economies covered by the WCY	Business executives	Middle and Senior expatriate managers working in Asia
Subject asked	The likelihood of encountering corrupt officials, ranging from petty bureaucratic corruption to grand political corruption	Transparency of government policy is satisfactory	Refer to Appendix 2	Refer to Corruption Survey for 2013
Number of replies	Not applicable	4210	More than 3,000	More than 2,000
Coverage	203 countries	59 countries	29 countries	16 countries

Number	11	12	13
Abbreviation	**ICRG**	**WEF**	**WJP**
Source	Political Risk Services International Country Risk Guide	World Economic Forum	World Justice Project Rule of Law Index
Name	International Country Risk Guide	Executive Opinion Survey	Rule of Law Index
Compiled published	2012	2012	2012
Internet	http://www.prsgroup.com/PDFS/icrgmethodology.pdf	http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf	http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf
Who was surveyed?	Expert staff assessment	Business executives	Experts and The general public
Subject asked	The most common form of corruption met directly by business is financial corruption in the form of demands for special payments and bribes connected with import and export licenses, exchange controls, tax assessments, police protection, or loans.		'Absence of Corruption' : The index considers three forms of corruption: bribery, improper influence by public or private interests, and misappropriation of public funds or other resources.
Number of replies	Not applicable	average of 100 respondents per country	more than 97,000
Coverage	140 countries	147 countries	97 countries

1.3 Best Practice: ACRC's Integrity Assessment

TI's CPI, which assesses corruption in around 170 countries every year is very useful in raising awareness of corruption, and allows for cross-sectional comparisons that help understand the status of corruption by country and longitudinal comparisons over time. However, data like the CPI does not provide enough information about where and why corruption occurs, and is not sufficient to establish anti-corruption strategies to prevent corruption, which is the most important aim of corruption assessments. So many countries have been developing and using their own corruption assessment tools to address the limitations of these kinds of data. Developed in 1999 by the Korean government and conducted every year by the ACRC (the successor of the Korea Independent Commission Against Corruption or the KICAC) since 2002, the Integrity Assessment has gone through many improvements and is now being recognized as an outstanding model assessing corruption levels and corruption-prone areas in all public institutions including the government. The excellence of ACRC's Integrity Assessment has been globally recognized, and it won the first place in the anti-corruption category of the UN Public Service Awards in 2012. The Integrity Assessment model is also used by Indonesia, Bhutan, Mongolia and Thailand.

The Integrity Assessment was first conducted in 2002 and measures corruption in 348 work areas of 71 organizations. The Assessment expanded to include 2,495 work areas in 627 public institutions (including central and local governments) in 2012. The ACRC is also working on improving the objectiveness in sampling process of the Integrity Assessment by assessing External Integrity, Internal Integrity and Policy Customer Evaluation, and conducting surveys targeting public service users and public officials – who have direct experiences with the service provided by the target organization – experts, public institution employees, duty-related parties and local residents. The Integrity Assessment has become a comprehensive survey, with the number of respondents increasing from 30,639 in 2002 to 160,845 in 2012 (ACRC, 2013a).

ACRC's Integrity Assessment mainly consists of the following three categories (ACRC, 2013a).

- External Integrity: Assesses integrity of public services from the perspective of the service users and public officials, and consists of the Corruption Index (measuring

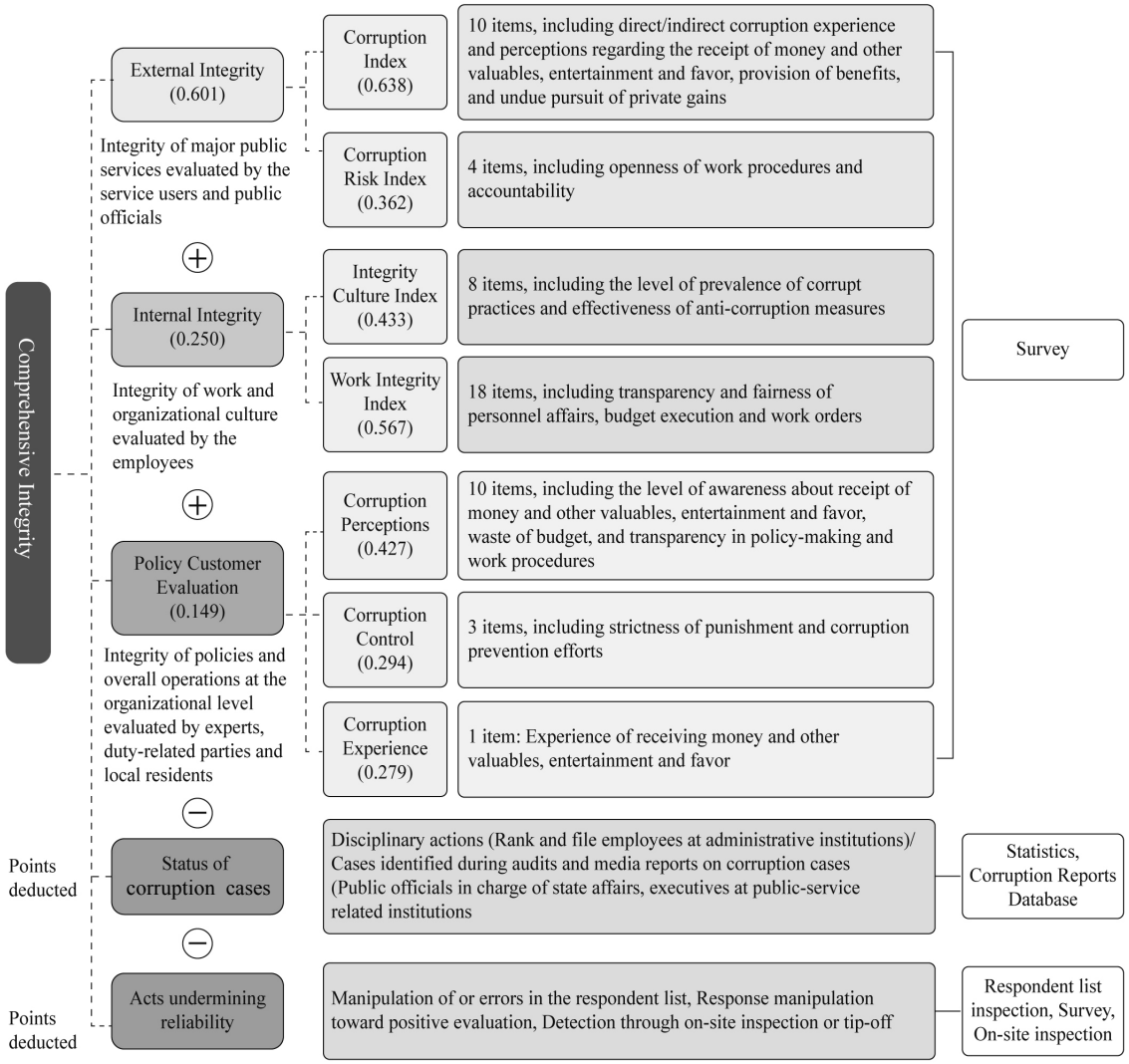
direct/indirect corruption experience and perceptions regarding the receipt of money and other valuables, entertainment and favor, provision of benefits, and undue pursuit of private gains) and the Corruption Risk Index (measuring openness of work procedures and accountability).

- Internal Integrity: Assesses integrity of the work and culture of public organizations from the perspective of the employees, and consists of Integrity Culture Index (measuring the level of prevalence of corrupt practices and effectiveness of anti-corruption measures) and Work Integrity Index (measuring transparency and fairness of personnel affairs, budget execution and work orders).
- Policy Customer Evaluation: Assesses integrity of policies and overall operations at the organizational level from the perspective of experts, duty-related parties, and local residents, and consists of Corruption Perceptions (measuring the level of awareness about receipt of money and other valuables, entertainment and favor, waste of budget, and transparency in policy-making and work procedures), Corruption Control (measuring strictness of punishment and corruption prevention efforts) and Corruption Experience (measuring experience of receiving money and other valuables, entertainment and favor).

The three components of the Integrity Assessment are measured through surveys, so the Assessment falls into the category of subjective soft data. The ACRC uses corruption statistics, cases identified during audits and media reports when assessing integrity of public organizations in an effort to address the limitations of subjective soft data mentioned earlier. Comprehensive Integrity is calculated by combining External Integrity, Internal Integrity and Policy Customer Evaluation. The Comprehensive Integrity points are deducted based on the status of corruption cases in an organization (disciplinary actions, cases identified during audits and media reports on corruption cases). Apart from the aforementioned items, the ACRC also deducts points from Comprehensive Integrity by carrying out rigorous monitoring about acts of any kind of the target organization that undermine reliability during the assessment period (ACRC, 2013a).

The following figure is the components of ACRC's Integrity Assessment as mentioned above.

[Figure II-1] Components of ACRC's Integrity Assessment



Source: ACRC (2013a: 25)

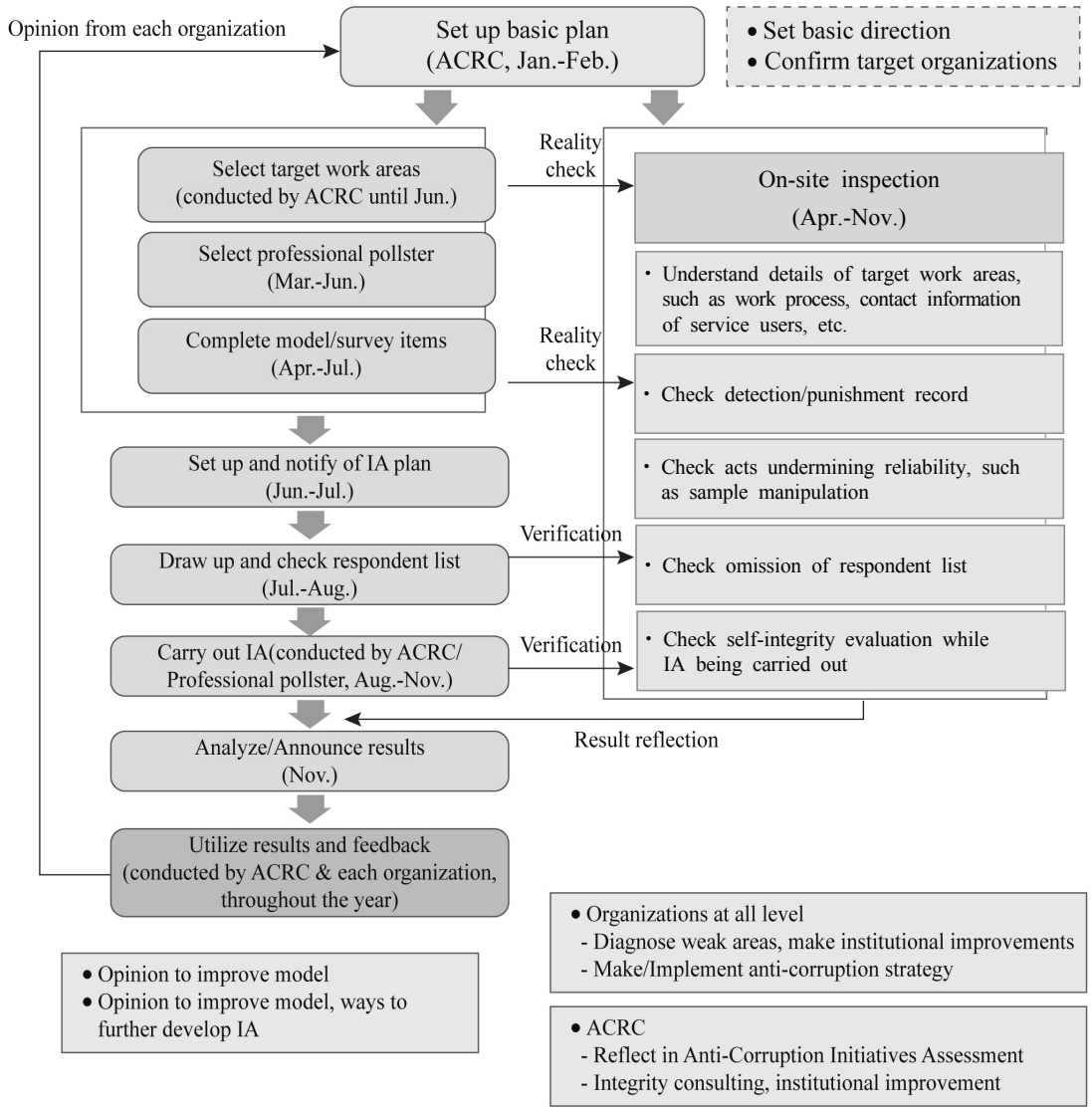
As [Figure II-1] shows, Comprehensive Integrity consists of 3 assessment areas (External Integrity, Internal Integrity, Policy Customer Evaluation) → 7 assessment sub-areas (Corruption Index, Corruption Risk Index, Integrity Culture Index, Work Integrity Index, Corruption Perceptions, Corruption Control, Corruption Experience) → 51 assessment sub-items, and in the actual assessment, they are materialized into 51 survey items.[6] Each survey item is given different weights, assuming that each of them carries different levels of significance. And the weights are determined by the Delphi method, soliciting opinions from the academia, experts, civic organizations and the organizations surveyed (ACRC a, 2013).

6) Refer to Appendix 3 for the questionnaires used in ACRC's Integrity Assessment.

The External Integrity category assesses integrity of task areas related to the function and mission of the organization surveyed. So the specific survey items of External Integrity differ among organizations. Actually, it is not easy to measure integrity of all task areas in all public institutions, since their legal mandates and tasks span a wide spectrum. The ACRC selects primary service functions and corruption-prone task areas of the organization assessed, and measures integrity of each area (ACRC a, 2013).

ACRC's Integrity Assessment goes on throughout the year. The ACRC establishes a basic plan for the Integrity Assessment in January or February every year, and selects the task areas to be assessed by June. The actual assessment is implemented not by the ACRC, but by an independent pollster, which is determined through an open tender at some point from March to June. Until November, when the Assessment is completed and the results are published, the ACRC monitors on a continuous basis whether the selected pollster carries out the Assessment in a fair and objective manner. After selecting the pollster, the ACRC confirms the plan for the Integrity Assessment in June or July and notifies the organization to be assessed of its plan. The ACRC creates and confirms the respondent list during July and August, and the actual Assessment takes place from August to November. After the Assessment in November and December, the ACRC uses the results to evaluate the appropriateness of the assessment model and establishes measures for corruption assessment and system improvements in corruption-prone institutions and sectors (ACRC, 2013a). The procedures of the Integrity Assessment are demonstrated in [Figure II-2].

[Figure II-2] ACRC's Integrity Assessment Procedures



Source: ACRC (2013a: 84)

When compared to corruption assessment models used by other countries, ACRC's Integrity Assessment is very comprehensive and in-depth in terms of the scope and content. And the assessment process and procedures are designed in a very systematic and scientific way. The most important aim of ACRC's Integrity Assessment is to identify corruption-prone areas and causes of corruption in different public institutions. The results of the Assessment provide useful information for improving anti-corruption measures and related institutions, and also allow for customized counseling for corruption prevention at the request of corruption-prone institutions.



Discussions and Exercise

- Explore the kind of data available to understand the level of corruption in your country, and discuss the strengths and weaknesses of each type of data.
- Explore whether there is any corruption diagnosis tool in your country, and discuss its appropriateness.
- Devise a diagnosis tool to assess the level of corruption in your organization, and design the procedures.
- Discuss how to analyze and make use of the corruption assessment data.

2. Assessing Anti-Corruption Systems



Goals	• To understand the need for assessing anti-corruption systems • To design a tool to assess anti-corruption systems • To understand the ways to utilize the results of anti-corruption system assessments

2.1 The Significance of Assessing Anti-Corruption Systems

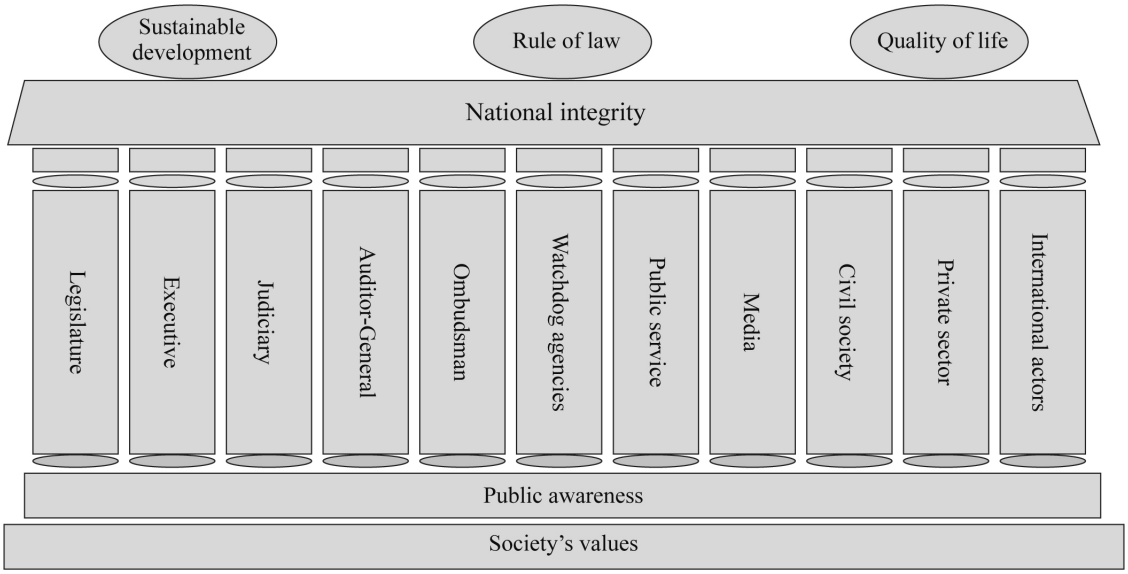
Corruption prevention requires the establishment of an effective national integrity system (NIS). The NIS can be defined as a combination of institutions, laws, procedures, practices and attitudes that ensure the integrity of the state in exercising power (Griffith University and Transparency International Australia, 2005). However, the components of the NIS are not necessarily confined to the public sector; and the NIS is a comprehensive concept that encompasses the roles and functions of actors in the private sector, including civil society and the media (Pope, 2000).

The NIS in a broad sense is composed of the following 11 pillars (Pope, 2000).

- Role of the legislature
- Role of the executive branch
- Independent judiciary system
- National audit system
- Ombudsman system
- Independent anti-corruption agency
- Administrative services for public interest
- Independent and free press
- Civil society
- Private companies
- International actors

As [Figure II-3] shows, national integrity improves, if each component of the NIS is well established upon robust social values and public awareness of integrity, which in turn facilitates the rule of law, sustained development and improved quality of life.

[Figure II-3] Pillars of the NIS



Source: Pope (2000: 35)

This conceptual framework constitutes the basis for the assessment reports published by Transparency International (TI) about the NIS of each country.[7] TI grades the effectiveness of the 11 pillars for NIS assessments by country. TI's assessment helps understand the strengths and weakness of the NIS and set reform agenda for further improvements.

However, the scope of TI's NIS assessment, which includes the state and society, is too broad to suggest specific measures to bring actual improvements for the NIS. Moreover, it is not easy to suggest realistic measures to improve national integrity that goes beyond the public sector to include the media, civil society and other actors in the private sector.

So the focus should be placed on the factors that can actually contribute to improving integrity. To come up with effective measures, the sector or organization to be improved must be made clear and concrete action plans for improvements must be in place. Given the fact that corruption often occurs in the public sector and that the government holds a large amount of responsibility for NIS reform, it makes sense to start with the government. To establish concrete action plans, a wide range of potential causes of corruption, or factors that might be related to corruption risks must be considered.

7) To see TI's NIS reports by country, refer to http://archive.transparency.org/policy_research/nis/nis_reports_by_country.

At the moment, not many countries assess the NIS or anti-corruption system with the focus on the government. Thus, the SAINT workshop implemented by the Dutch government or Anti-Corruption Initiatives Assessment conducted by Korea's ACRC may well serve as best practices.

2.2 Best Practice: SAINT Workshop of the Netherlands

The Netherlands has the Self-Assessment Integrity (SAINT) tool developed by three agencies – namely, the National Office for Promoting Ethics and Integrity in the Public Sector, the Integrity Office of the Municipality of Amsterdam, and the Netherlands Court of Audit – to help government agencies conduct assessments of their own to identify factors that undermine integrity and to make improvements (BIOS, 2003). SAINT is not a tool to actually assess integrity or anti-corruption systems of public institutions. The BIOS (Bureau Integriteitsbevordering Openbare Sector: the National Integrity Office) holds a one-day workshop for the agencies interested in the SAINT program, and helps them identify their problems and solutions by running a pilot test.

The SAINT workshop consists of four modules in total in the morning and afternoon sessions. Module 1 for the morning session is about analyzing factors and risks of potential corruption in the tasks and functions of the agency. In the afternoon session, the participants write a report for policy suggestions that includes an action plan to address factors and risks of corruption. <Table II-3> shows the specific content of each module.

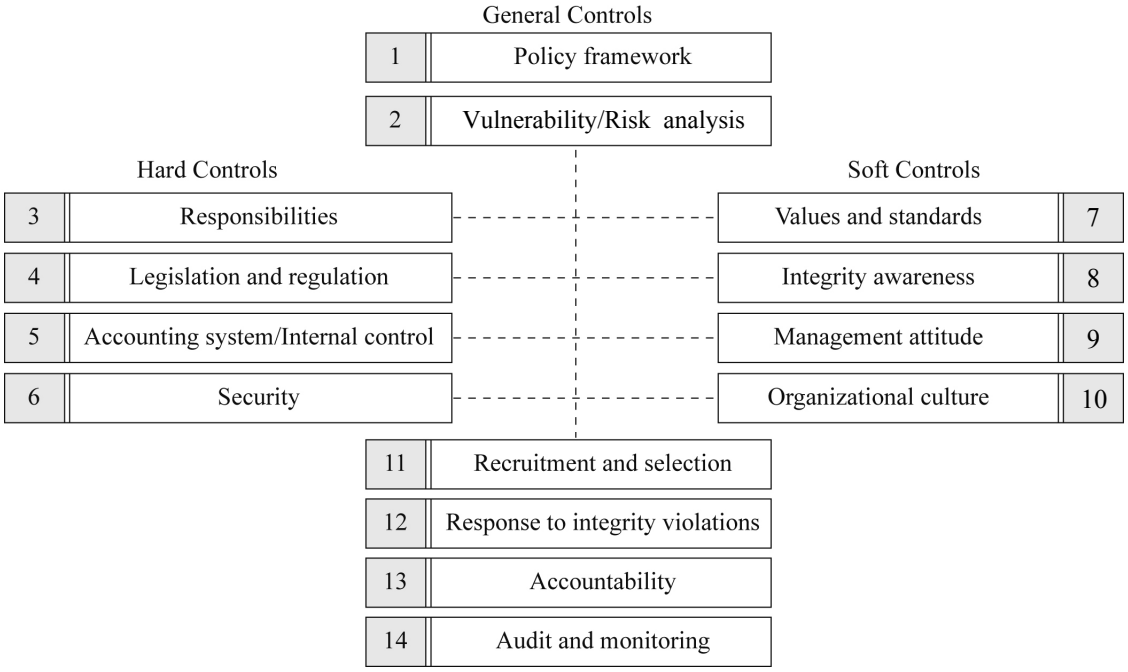
<Table II-3> Modules of the SAINT Workshop

Session	Module	Process Step
Morning	Module 1	a. Analysis of processes b. Selection of the most vulnerable processes c. Analysis of the integrity risks of the most vulnerable processes d. Selection of the main risks
Afternoon	Module 2	Assessment of the maturity of the integrity management system
	Module 3	a. Formulation of a general management report and action plan b. Preparation of a concrete management report and action plan
	Module 4	Evaluation of the workshop

Source: Benner and de Hann (2008)

The participants are required to identify the most corruption-prone tasks, or areas with the highest likelihood of compromised integrity in terms of public services and internal control system, and have to assess the causes – whether the problem arises due to the system, institution, rules, organizational culture, awareness of individuals, work conditions, or a combination of a number of factors. The causes of corruption analyzed by SAINT are illustrated in [Figure II-4]. The participants identify areas for improvement in their organization's integrity system based on the assessment results and establish a viable action plan and policy suggestions (Benner and de Haan, 2008).

[Figure II-4] SAINT's Analysis on the Types of Factors for Corruption



Source: Benner and de Hann (2008)

As the components and content of the SAINT workshop demonstrate, SAINT is a diagnosis tool designed to prevent corruption by assessing work procedures, rules and organizational culture of public institutions rather than focusing on detection of and punishment for corruption cases. This program is aimed at conducting a systematic and holistic assessment of an entire organization based on a pilot test and providing much-needed and urgent improvements. Plus, the BIOS is also committed to raising awareness about integrity of the employees and managers at public institutions.

2.3 Best Practice: ACRC's Anti-Corruption Initiatives Assessment (AIA)

Under the law, the ACRC is mandated to conduct the Anti-Corruption Initiatives Assessment (AIA) on public institutions every year from 2002. The AIA assesses the appropriateness and effectiveness of anti-corruption initiatives implemented by public institutions. It is aimed at encouraging public agencies to step up their efforts for increased integrity and sharing best practices and experiences regarding anti-corruption activities. The AIA is different from the aforementioned Integrity Assessment of the ACRC in terms of the system, method and items of assessment: While the Integrity Assessment is designed to measure the level and cause of corruption, the AIA is focused on evaluating each public institution's efforts for integrity (ACRC, 2013b).

As illustrated in <Table II-4>, the content of the 2013 AIA consists of 2 categories: will and efforts for anti-corruption and anti-corruption outcomes. The former category accounts for 90 percent of the evaluation and has 5 sub-categories, each of which has multiple criteria for assessment. The method of assessment differs depending on the nature of each criterion and includes quantitative evaluation, qualitative evaluation by independent experts and survey (ACRC, 2013b).

- Establishment of anti-corruption infrastructure: Establishment of an integrity incentive system; Internal cooperation regarding enhancing integrity; Achievements and outcomes of internal inspection; Stronger punishment for corruption; and Establishment of an assessment system for anti-corruption measures in affiliated organizations.
- Enhancement of policy transparency and confidence: Transparency and fairness in administrative procedures; Voluntary disclosure of information; Openness about the breakdown of business expenses; Corporate credit card monitoring system; and Introduction and operation of integrity ombudsmen.
- Eradication and improvement of corruption-causing factors: Implementation of recommendations for institutional improvement; Implementation of recommendations made by the Corruption Impact Assessment; Voluntary implementation of anti-corruption activities; Self-evaluation system on administrative rules; Excellence in voluntary anti-corruption initiatives; and Concentrated efforts to improve corruption-prone areas.
- Improvement of integrity awareness and culture in the public-service sector: Anti-corruption efforts and will of the heads of public institutions; Initiatives by high-ranking officials; Policies for integrity leadership of high-ranking officials; Training and deployment of integrity instructors within the organization; Compulsory integrity

education for public officials; Integrity education for high-ranking officials; Support for anti-corruption initiatives of other agencies; and Cooperation in spreading anti-corruption best practices.

- Facilitation of corruption prevention and whistleblowing: Implementation of recommendations regarding the system to prevent codes of conduct violations; Self-evaluation of codes of conduct violations; Protection of whistleblowers; and Cooperation in operating the whistleblower protection system.

The second assessment category of the AIA is anti-corruption outcomes, accounting for 10 percent of the evaluation. This category has 2 sub-categories as below, and 4 criteria for assessment.

- Improved integrity: Comprehensive Integrity score measured by the ACRC; Level of improvement in integrity; and Level of improvement in corruption perceptions.
- Statistics on corrupt officials: Number of corruption cases in the organization.

The AIA consists of 30 assessment criteria in the will and efforts for anti-corruption category and 4 in the anti-corruption outcomes category. The weights given to each criterion varies depending on its relative importance. Along with the two assessment categories of the AIA, the ACRC evaluates the level of cooperation of the target organizations to improve the effectiveness of anti-corruption measures implemented by the Commission, and deducts points if they do not cooperate in a meaningful way.

- Level of cooperation in pursuing anti-corruption measures (Points deducted): Compliance with the assessment criteria and guidelines for public institutions; Level of cooperation in addressing reported corruption cases; Compliance with the whistleblower protection system; Whistleblower protection and reward system management; Restrictions on employing those dismissed due to misconduct; and Management of statistics on corrupt officials.

<Table II-4> Assessment Criteria and Weights of ACRC's 2013 AIA

A. Will and Efforts for Anti-Corruption (0.90)

Assessment Category	Tasks	Assessment Criteria	Notes
1 Establishment of anti-corruption infrastructure (0.15)	1-1. Establishing integrity incentive system and reinforcing internal cooperation (0.20, and 0.30 for central and public institutions)	① Establishment of an integrity incentive system (60)	Quantitative
		② Internal cooperation regarding enhancing integrity (40)	Qualitative (Independent)
	1-2. Promoting internal inspection (0.30, and 0.40 for central and public institutions)	③ Achievements of internal inspection(50)	Qualitative (Independent)
		④ Statistics of internal inspection(50)	Quantitative
	1-3. Reinforcing punishment for corruption (0.20, and 0.30 for central and public institutions)	⑤ Stronger punishment for corrupt officials (100)	Quantitative
	1-4. Improving integrity levels of affiliated organizations (0.30, and additional points for central and public institutions)	⑥ Establishment of an assessment system for anti-corruption measures in affiliated organizations (100) ※ Central agencies of group Ⅲ and public institutions of group Ⅳ, Ⅴ are excluded	Qualitative (Independent)
2 Enhancement of policy transparency and confidence (0.15)	2-1. Transparency in administrative procedures and fairness in policy implementation (0.40)	⑦ Transparency and fairness (20)	Survey
		⑧ Voluntary disclosure of information (80)	Qualitative (Independent)
	2-2. Openness about the breakdown of business and other expenses (0.40)	⑨ Openness about the breakdown of business expenses (80)	Qualitative
		⑩ Establishment of a corporate credit card monitoring system (20)	(Independent)
	2-3. Establishing integrity ombudsmen (0.20)	⑪ Introduction of the system (60)	Quantitative
		⑫ Achievements (40)	
3 Eradication and improvement of corruption-causing factors (0.35)	3-1. Implementing recommendations for institutional improvement (0.25)	⑬ Implementation of recommendations (100)	Quantitative
	3-2. Implementing recommendations made by the Corruption Impact Assessment (0.25)	⑭ Implementation of improvement recommendations (70 for central agencies/100 for local governments and education offices/ 100 for public agencies)	Quantitative
		⑮ Achievements in voluntary anti-corruption activities (20 for central agencies)	Qualitative (Independent)
		⑯ Establishment of a self-evaluation system on administrative rules	Quantitative

Assessment Category	Tasks	Assessment Criteria	Notes
	3-3. Implementing voluntary anti-corruption initiatives (0.25)	⑰ Excellence in voluntary anti-corruption initiatives (100) ※ Achievements of central agencies of Group Ⅲ and public institutions of GroupⅤ are partially reflected.	Qualitative (Independent)
	3-4. Improvements in corruption-prone areas (0.25)	⑱ Concentrated efforts to improve corruption-prone areas (100)	Qualitative (Independent)
4 Improvement of integrity awareness and culture in the public-service sector (0.20)	4-1. Anti-corruption efforts and will of the heads and high-ranking officials of public organizations (0.20)	⑲ Anti-corruption efforts and will of the heads of public institutions (40)	Survey
		⑳ Initiatives by high-ranking officials (30)	Survey
		㉑ Policies for integrity leadership of high-ranking officials (30)	Qualitative (Independent)
	4-2. Promoting integrity education (0.20)	㉒ Training and deployment of integrity instructors within the organization (40) ※ Central agencies of group Ⅲ and public institutions of group Ⅴ are excluded.	Quantitative
		㉓ compulsory integrity education for public officials (20, and 40 for central agencies of Group III, and public agencies of Group V)	Quantitative
		㉔ Integrity education for high-ranking officials (40, and 60 for central agencies of Group III, and public agencies of Group V)	Quantitative
	4-3. Spreading anti-corruption best practices (0.60)	㉕ Support for anti-corruption initiatives of other agencies (100)	Quantitative
		㉖ Cooperation in spreading anti-corruption best practices (+10)	
5 Facilitation of corruption prevention and whistleblowing (0.15)	5-1. Establishing a system to prevent codes of conduct violations (0.50)	㉗ Implementation of recommendations (50)	Quantitative
		㉘ Outcomes of self-evaluation (50) ※ Achievements of central agencies of Group III, and public agencies of Group V are partially reflected.	
	5-2. Facilitating whistleblowing and protecting whistleblowers (0.50)	㉙ Protection of whistleblowers (70)	Quantitative
		㉚ Cooperation in operating the whistleblower protection system (30)	

* The numbers in the parentheses of the Assessment Category column represent the weights given to each category when assuming the total is 1 (Also applied in the sections below).

** The numbers in the parentheses of the Tasks column represent the weights given to each task when assuming the total is 1 (Also applied in the sections below).

B. Anti-Corruption Outcomes (0.10)

Assessment Category	Tasks	Assessment Criteria	Notes
[1] Improved integrity (0.30)	1. Improvement of Integrity Level	㉛ Comprehensive Integrity (10)	Survey
		㉜ Level of improvement in integrity (60)	Quantitative
		㉝ Level of improvement in corruption perceptions (30)	Survey
[2] Corrupt officials (0.70)	1. Preventing corruption among public officials	㉞ Statistics on corrupt officials (100)	Statistics

C. Level of Cooperation in Pursuing Anti-Corruption Measures (Points Deducted)

Assessment Category	Task	Assessment Criteria	Notes
[1] Cooperation in pursuing anti-corruption measures	1. Cooperation in pursuing anti-corruption measures	㉟ Compliance with the assessment criteria and guidelines for public institutions	Quantitative
		㊱ Level of cooperation in addressing corruption cases	
		㊲ Compliance with the public interest whistleblower protection system	
		㊳ Corruption whistleblower protection and reward system management	
		㊴ Restrictions on employing those dismissed due to misconduct	
		㊵ Management of statistics on corrupt officials	

Source: ACRC(2013b)

ACRC's AIA is conducted as illustrated in [Figure II-5]. In February every year, the ACRC establishes the basic plan for the AIA. In March and April, the Commission announces the implementation plan, which includes organizations to be evaluated, evaluation items and methodology. In November, the target organizations submit reports on anti-corruption measures implemented within their organizations. From November to January, the ACRC evaluates quantitative items, and an evaluation panel consisting of independent experts evaluates qualitative items. The results are published in January every year. In 2002, when the AIA was first implemented, 27 government agencies were evaluated. But the number of organizations evaluated by the ACRC increased every year to 225 in 2013 (ACRC, 2013b).

[Figure II-5] Procedures of the AIA conducted by the ACRC

Establish the evaluation plan	• Establish the basic plan for the AIA (ACRC) • Establish anti-corruption agenda and implementation plans (All public institutions)	Feb.
⬇		
Confirm target organizations	• Announces the AIA implementation plan (ACRC) - Target organizations, evaluation items and methodology	Mar..-Apr.
⬇		
Implement anti-corruption measures	• Implement anti-corruption/integrity measures for public institutions (Target organizations)	Year-round
⬇		
Submit reports	• Submit reports on anti-corruption measures implemented within their organizations (Target organizations) • The AIA implemented on each assessment criterion (ACRC and the independent assessment panel)	Nov.
⬇		
Publish the results	• Publish the AIA results for each group of organizations (ACRC)	Jan.

Source: ACRC (2013b: 21)



Discussions and Exercise

- Explore whether there is an NIS assessment tool in your country, and discuss the tool's usefulness.
- Develop a tool to evaluate anti-corruption efforts and initiatives implemented in your organization, and design the procedures.
- Discuss how to analyze and utilize the results of anti-corruption system assessments.

3. Identifying and Improving Legal/Institutional Factors Causing Corruption



Goals	• To understand the importance of improvements in laws and institutions for corruption prevention • To understand the mechanism of corruption prevention through improvements in laws and institutions • To design a tool to assess laws and institutions that are likely to cause corruption • To understand the ways to make use of the outcomes of improvements of laws and institutions

3.1 The Importance of Identifying and Improving Legal/Institutional Factors Causing Corruption

As explained earlier, a systematic response to corruption involves the following: "Assessing and measuring corruption levels → Identifying the causes in corruption-prone functions, sectors, and areas → Implementing customized anti-corruption measures → Monitoring and implementing measures for further improvements." And identifying corruption-prone areas and implementing specific improvement measures are very significant in preventing and addressing corruption. A number of surveys suggest that it is important to improve rules and institutions that cause corruption in curbing and preventing corruption. There is a conceptual difference between improving rules that are likely to cause corruption and improving such institutions, and the latter is a more comprehensive idea.

The focus of improving rules that cause corruption is placed on addressing vague provisions, excessive discretion given to public officials and conflicting laws. It is expected that corruption will be significantly curbed and prevented simply by establishing clear and predictable rules, limiting discretion given to public officials by the law, and sorting out conflicting rules.

On the other hand, improving institutions that cause corruption is more comprehensive than improving such rules. This means that improvements in laws and rules that might cause corruption are not very effective on their own without improvements of the entire

institutions and systems. In other words, the attitudes of law enforcement officials, and the enforcement procedures and structure also need to be modified to prevent corruption and ensure the effectiveness of improvements in rules and institutions.

Identifying and eradicating the legal and institutional factors that cause corruption is important, because the fundamental solution to fighting corruption is prevention, rather than detection and punishment. In addition, repeated and internalized corruption cases often have systemic causes, especially legal and institutional loopholes (OECD-ADB, 2006).

But in reality, actual improvement measures for corruption prevention vary depending on countries and organizations. This is because each government agency has different legal mandates, and the work environment and organizational culture also differ in each agency. Thus, improvements in laws and institutions cannot take place in a one-size-fits-all manner, and careful analyses and reviews about the situation of each agency – namely, laws, rules, the work environment and organizational culture – must be conducted to this end.

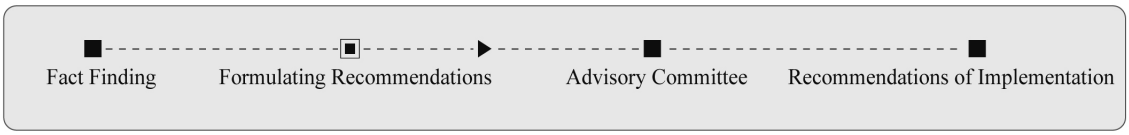
3.2 Best Practice: Hong Kong Assignment Studies

The ICAC (Independent Commission Against Corruption), Hong Kong's anti-corruption agency, has a department in charge of corruption prevention called the CPD (Corruption Prevention Department). One of the most important corruption prevention initiatives of the CPD is Assignment Studies, where the agency identifies and improves the practices and institutions that might cause corruption in public organizations. The CPD is especially focused on law enforcement, the licensing and regulatory system, procurement, contract administration, staff management, and public works.[8)]

[Figure II-6] demonstrates 4 steps of Assignment Studies conducted by the CPD.[9)]

8) http://www.icac.org.hk/en/corruption_prevention_department/ow/index.html.
9) Refer to Appendix 4 to see a short video about ICAC's Assignment Studies.

[Figure II-6] Work Cycle of Assignment Studies Conducted by the ICAC



Source: http://www.icac.org.hk/en/corruption_prevention_department/ow/index.html.

- Fact Finding: Verifies facts based on interviews of public institution employees or stakeholders, record inspection or field inspection.
- Formulating Recommendations: Recommends improvement measures for each agency (or department) about corruption-prone procedures identified through the fact-finding process.
- Advisory Committee: Reviews and deliberates the recommendations of the Corruption Prevention Advisory Committee, consisting of high-ranking government officials, senior experts, and private and public sector executives.
- Recommendations of Implementation: Collaborates with the agency in question to implement recommendations in an effective way, and modifies or explains the recommendation to the officials or departments, if necessary.

The CPD has three principles when suggesting improvement measures to public organizations after Assignment Studies (Lam, 2011).

- Procedural Simplicity: Simplify the procedures for addressing complaints as much as possible, and clarify the standards of approval.
- Transparency: Notify the public of their rights to receive administrative services and file complaints.
- Accountability: Establish a system to hold public officials accountable for their work and responsibilities.

Based on the experiences of its Assignment Studies, the CPD created manuals for corruption prevention in a wide range of areas, including corruption in tertiary education institutions and sports associations, internal control in social enterprises, government funds management and procurement. The department is distributing those manuals to public organizations and the private sector, and helps identify loopholes in task areas by suggesting standard work procedures of each area.[10)]

3.3 Best Practice: ACRC's Corruption Impact Assessment and Institutional Improvement

3.3.1 Corruption Impact Assessment

The Corruption Impact Assessment (CIA) conducted by the ACRC was introduced to eliminate corruption risks from the law-making process based on systematic analyses and reviews. ACRC's CIA is applied not just to new bills but also to proposed amendments. In fact, the CIA targets all of the laws in the country, because even if they do not have any problems when proposed or amended, they might cause corruption in the case of changes in circumstances. The CIA is conducted on laws, administrative rules, ordinances, inside regulations of public-service related organizations. And not just the laws that might cause corruption but also related laws are subject to the Assessment. First introduced in 2006, the CIA was conducted on 9,118 laws in total as of 2012, identifying and eliminating 3,515 corruption-causing factors. As an increasing number of developing countries are paying attention to the CIA, the Commission shared the assessment cases and methodology with the KPK – Indonesia's Corruption Eradication Commission – in 2009, and with Mongolia in 2013 (ACRC, 2013c).

The ACRC defines the objectives of the CIA as the following: (ACRC, 2013c)

- To prevent corruption by eliminating undefined concepts in laws, unclear rules, and unrealistic standards
- To lay the foundation for efficient implementation of anti-corruption policies by systematically analyzing and assessing fundamental causes of corruption in laws and institutions
- To enhance reliability and predictability of policies by setting appropriate standards for discretion when proposing and executing laws and improving transparency in administrative procedures

The procedures of ACRC's CIA differ depending on rules and laws to be evaluated. In the case of bills and proposed amendments, each agency must make a request of the

10) The manual for corruption prevention by sector can be downloaded at http://www.icac.org.hk/en/prevention_and_education/pt/index.html.

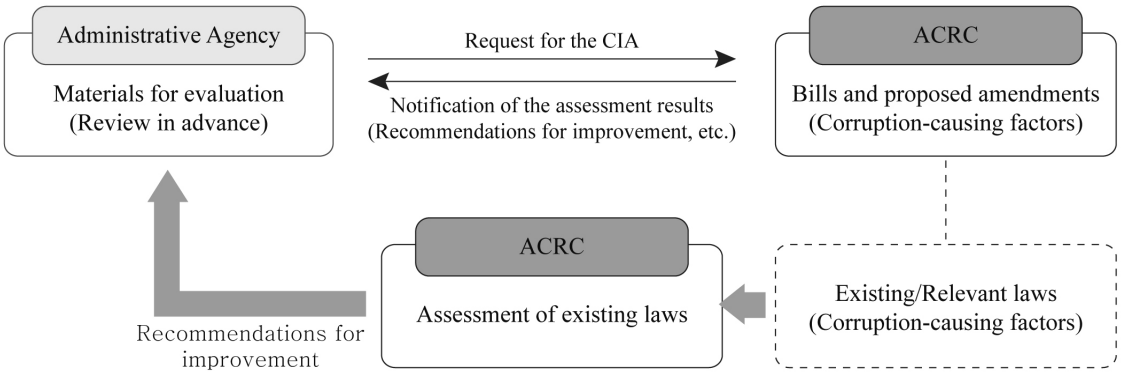
ACRC to conduct the CIA, as they prepare for evaluation materials needed for proposing and assessing the laws and start consulting relevant organizations. The agency must conduct evaluation on the amendments as well as on the provisions that might cause corruption. At the request of the agency, the ACRC conducts the CIA during the pre-announcement period of legislation – usually 40 days – and notifies the evaluation results to the relevant agency after consulting experts with expertise or experiences in the field, if necessary.[11] If the ACRC determines that improvements are needed to the bills or proposed amendments, the administrative agency must reflect the Commission's opinion and make a request of the Ministry of Government Legislation for a statutory examination. The CIA results are referred to the Cabinet/Vice Minister meetings, and the ACRC must monitor whether the relevant agency implements the recommendations, and submit its opinion if necessary (ACRC, 2013c).

As for the CIA for existing laws and rules, it is not conducted at the request of the administrative agency, but when corruption-causing factors are discovered during assessments of the bills and proposed amendments. And sometimes the ACRC decides to conduct the evaluation about corruption cases which made headlines. When the evaluation target is determined, the ACRC can make requests of the administrative and relevant agencies for materials needed for the evaluation. The Commission makes use of its own database about corruption cases, which includes data about disciplinary actions, audits and investigation results, performs on-site/document inspection, and consults independent experts to formulate improvement measures. The ACRC gathers opinions from related organizations, stakeholders and experts about the recommendation before drafting the final version, and notifies the relevant agency in paper form with a period set for implementation of the recommended measures. The relevant agency must modify the law or rule within the notified period; if it goes unmodified, it is subject to strict scrutiny of the ACRC during the CIA (ACRC, 2013c).

The aforementioned procedures of the CIA are illustrated in [Figure II-7].

11) The evaluation results are categorized into 'No modifications needed,' 'Improvements recommended,' and 'Reference opinion.' Refer to Appendix 5 for a format of 'Improvements recommended.'

[Figure II-7] Procedures of the CIA



Source: ACRC (2013c)

The ACRC has 3 assessment criteria for the CIA, each of which has 3 assessment items (ACRC, 2013c).

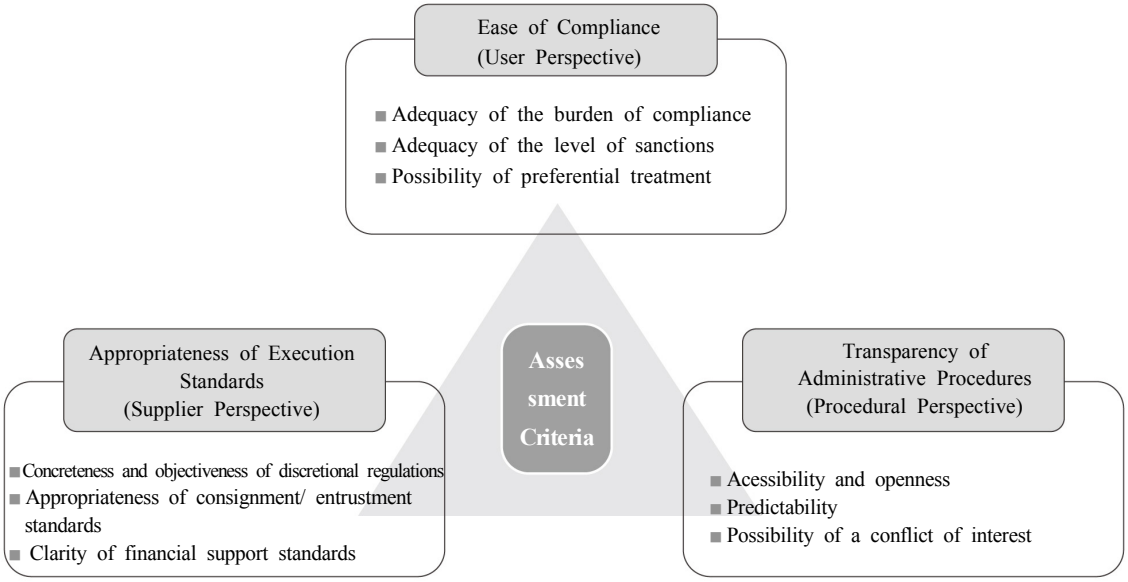
- Ease of compliance (User perspective)
  ① Adequacy of the burden of compliance: Whether or not the level of expense and sacrifice borne by people, businesses and organizations to comply with legal responsibilities is appropriate compared to other laws.
  ② Adequacy of the levels of sanctions: Whether or not the content and level of punishment are appropriate compared to those pursuant to similar laws.
  ③ Possibility of preferential treatment: Possibility of certain class, businesses, groups or individuals enjoying favors or benefits with the application of laws.
- Appropriateness of execution standards (Supplier perspective)
  ① Concreteness and objectiveness of discretional regulations: Whether or not matters related to discretion – the person with discretion, range of discretion, standards for discretion, and procedures of exercising discretion – are clearly and firmly defined, and concretely and objectively specified; Whether or not there are mechanisms to control discretion abuse.
  ② Appropriateness of consignment/entrustment standards: Whether or not the legal basis, conditions as well as the scope and limitations of work are clearly defined; Whether or not there are mechanisms to control consignment and entrustment if necessary, when consigning and entrusting government work to public service-related organizations, local governments, and private associations.
  ③ Clarity of financial support standards: Whether or not the standards for and scope

of the usage of government money are clearly and concretely defined; Whether or not there are mechanisms to control budget waste, when government subsidies, contributions or properties are involved.

- Transparency of administrative procedures (Procedural perspective)
  ① Accessibility and openness: Whether or not people, businesses and organizations are guaranteed an opportunity to participate and have access to related information when the relevant agency exercises discretion or handles its duties.
  ② Predictability: Whether or not required documents and measures as well as the administrative process, processing period, and results are readily available and predictable for public service users.
  ③ Possibility of conflicts of interest: Whether or not there are standards, procedures and control measures to prevent the interference of private interests in implementing public duties.

The assessment criteria for the CIA are illustrated in [Figure II-8].

[Figure II-8] Assessment Items and Criteria for the CIA



Source: ACRC (2013c)

3.3.2 Institutional Improvement

The ACRC has been implementing measures for institutional improvement along with the CIA. The CIA and institutional improvement significantly differ in two ways. First, in terms of the scope, institutional improvement is more comprehensive as they target all kinds of corruption-causing factors, including laws, organizational culture, the work environment, and budget and staff management, while the CIA only applies to bills, proposed amendments and provisions in existing laws that might cause corruption. Second, the CIA is conducted at the request of relevant agencies when proposing or amending rules and laws, while institutional improvement is initiated by the ACRC. Aimed at improving the existing system, institutional improvement is part of ex post measures, while the CIA is an ex ante prevention measure (ACRC, 2013c).

Institutional improvement involves the following steps: "Identifying assignments for improvement → On-site inspection → Preparing for recommendations → Consulting related organizations → Recommending institutional improvement." At the beginning of every year, the ACRC selects assignments for institutional improvement based on the Integrity Assessment, Corruption Perception Survey, media reports, and social issues of the previous year. In addition, when corruption cases reported to the ACRC were caused by an irrational system or its loopholes, the system in question is also included in the assignments for institutional improvement. This means that the ACRC is committed to identifying assignments for institutional improvement throughout the year. After selecting specific assignments for improvement, the ACRC starts on-site inspection, where the Commission conducts interviews with relevant personnel, and collects and analyzes the data. The ACRC holds public hearings, forums, and meetings when necessary. Based on the results of the on-site inspection, the Commission prepares a proposal of recommendations from various angles. Before sending the final version of the recommendation proposal, the Commission consults the relevant agency. The period needed for the aforementioned procedures may differ depending on the nature and content of the assignment, but it usually takes 6-12 months for each assignment (ACRC, 2013c).

<Table II-5> compares ACRC's institutional improvement and the CIA (ACRC, 2013c).

<Table II-5> Comparison of ACRC's Institutional Improvement and the CIA

Category	Institutional Improvement	CIA
Target	• Laws, administrative rules, ordinances, inside regulations of public-service related organizations, etc.	• Laws, administrative rules, ordinances, internal regulations of public-service related organizations, etc.
Items of analysis	• Analyzes all kinds of possible corruption-causing factors, including laws, institutions, organizational culture, the work environment, and budget and staff management.	• 9 assessment criteria including ease of compliance (user perspective), appropriateness of execution standards (supplier perspective), and transparency of administrative procedures (procedural perspective).
Time and period of evaluation	• Selection of annual assignments for intensive improvement (on a regular basis) and assignments related to current issues (on a constant basis); Collection of basic data and on-site inspection; Proposal of recommendations for institutional improvement; Opinion-gathering and consultation with related organizations; Recommendations of institutional improvement • The period needed for the procedures may differ depending on the nature and content of the assignment, but it usually takes 6-12 months for each assignment.	• For bills and proposed amendments, the relevant agency makes a request of the ACRC for the evaluation, as they start consulting related organizations; The assessment is usually completed within 40 days – period of the pre-announcement of legislature • For existing laws, the ACRC decides to conduct the evaluation on corruption-causing factors that are discovered during assessments of the bills and proposed amendments, or on corruption cases which made headlines; There is no set period of evaluation.
Methodology	• Comprehensive analysis on laws, institutions, organizational culture, and the work environment • Contact with and opinion-gathering from stakeholders and relevant officials; Collection of information	• Examination and analysis of rules that might cause corruption based on the materials submitted by the agencies
Expertise needed	• Information-gathering and inspection skills to handle overall administrative procedures including organizational culture and behavior as well as the task in question ※ A task force to be established, if necessary, consisting of the staff sent by related organizations and inspectors	• High analytical skills to evaluate the target agency and relevant laws ※ An advisory organization for the CIA onsisting of professors, researchers and other experts to be established and operated to provide expertise
Level of acceptance	• High (Including policy measures)	• High (Discretion of departments, Examination of rules and laws)
Correlation (In terms of connection with work)	• List of recommendations for institutional improvement → Check whether the recommendations were reflected when evaluating bills and proposed amendments, and submit an opinion, such as "Recommendation for Improvement" (Ex-post management) • Utilized when selecting assignments in evaluating existing laws	• Identify assignments for institutional improvement when evaluating bills, proposed amendments and existing laws → Notify Institutional Improvement Divisions of the assignments which do not have corruption-causing factors in laws but are appropriate to be implemented as assignments



Discussions and Exercise

- Explore whether the laws and institutions under the jurisdiction of your organization have any possibility of causing corruption.
- Design an evaluation procedure to improve the rules and system in your organization.
- Discuss the ways to utilize the evaluation outcomes about laws and institutions that might cause corruption.

Chapter 3. Protection and Rewards of Whistleblowers

1. The Significance of Public Interest Whistleblowers Protection ····· 55
2. The Trend of International Community and the Status of Legislation in Each Country ····· 64
3. The Coverage and Requirements of the Protected Reports ····· 75
4. Protection for Whistleblowers and Others in Working Environment ····· 97
5. Special Protection for Person Outside Employment Relationship ····· 127
6. Incentives for Whistleblowers ····· 141
7. Summary ····· 164



1. The Significance of Public Interest Whistleblowers Protection



Goals	• To understand the concept of public interest whistleblowing and internal public interest whistleblowing • To understand the significance of public interest whistleblowing • To understand the necessity of public interest whistleblowing system • To understand the argument against misconceptions and prejudices about internal public interest whistleblowing

1.1 The Concept and Cases of Public Interest Whistleblowing

1.1.1. The Concept of Public Interest Whistleblowing

Bowei & Duska defines public interest whistleblowing as the act of an employee from profit or non-profit, private or public organizations of informing the public of the behavior of an employer or a supervisor being involved or instructed to do activities that can do harm to the third party, infringe on their human rights, and go against the purpose of the organization. Chiasson and others define it as the act of disclosing suspicious behavior of an organization and the members of the organization. There are two types of public interest whistleblowing. One is internal public interest whistleblowing where they inform the members of an organization of the illegal acts of the organization. The other is external public interest whistleblowing where they turn to the outside of the organization in order to raise their voice on the illegal acts of the organization they belong to. Courtemanche describes it as a voluntary reporting of an organization's illegal or inappropriate acts that are not disclosed to the authorities outside of the organization or to the general public. (Jeong Seongho,2005:23-24).

Internal public interest whistleblowing means a whistleblowing act done by insiders of an organization. But there is no general legal definition of internal public interest whistleblowing as to what it exactly means. International Labor Organization (ILO) defines it as "the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers (International Labor Organization Thesaurus, 2005). In other words, the internal whistleblower, who is one of the members of an organization,

detects and exposes corruption, irregularities, malpractices, waste of budget, and serious danger to the public safety and health occurring in an organization. The members of an organization can include former employees such as those resigned as well as incumbent employees. It is also regarded as internal public interest whistleblowing when they inform the internal channel(the supervisor, auditor, and department related ethics and etc.) as well as the external channel (related public organization, the National Assembly, civic groups, media, etc.). The term whistleblowing was originated from British police who would blow the whistle in order to keep the misconduct of the citizens and their fellow workers in check (Park Heungsik et. al., 2002a:26). As we can see in the case of the Netherlands where they call those who monitor public interest protection bell-ringer, internal public interest whistleblowing has the meaning of 'warning'. (Lee Jimun, 2007:10).

The following requirements should be in place in order for the act of public interest whistleblowing to be qualified for legitimacy (Jeon Suil, 1999: 112-113). First of all, whistleblowing should not be made for the purposes or the interests of an individual. Some blackmail others by threatening to reveal an organization's wrongdoing in order to cover up their own misconduct or to get what they want. In this case, such blackmailing cannot be seen as public interest whistleblowing in a strict sense. Second, public interest whistleblowing should always serve the interest of the public. Practices of irregularity and wrongdoing are subject to whistleblowing when they are expected to cause serious harm to the organization and ultimately to the majority of the people if they go unchecked. Third, whistleblowing should be based on sufficient evidence and supporting material that can prove its factuality. Reporting solely based on rumors or groundless accusations because of personal grudge against certain people is not considered public interest whistleblowing. Fourth, there should be sufficient effort to correct wrongful practices within the organization. There is no exact standard that defines the meaning of sufficient effort, but it is desirable to resolve them within the organization with satisfactory level of corrective measures. Fifth, public interest whistleblowers should work hard to correct irregularity and corruption considering ethics and public interests. Whistleblowing should not be used as a mean of expressing complaint or hostility towards an organization or serving the purpose or the interest of an individual.

1.1.2 Major Cases of Internal Public Interest Whistleblowing

1.1.2.1 Watergate scandal in the United States

The Watergate scandal was a major political scandal that occurred in the United States in 1972 as a result of the break-in at the Democratic National Committee (DNC) headquarters at the Watergate office complex in Washington, D.C., where a group of agents were gathered for the re-election of Richard Milhous Nixon and were caught while attempting to install wiretap device. The scandal was brought to light when William Mark Felt, then FBI Associate Director, informed the Washington Post reporters Bob Woodward and Carl Bernstein, which led to the resignation of former president Nixon. Although it did not draw that much attention at first when it was seen as just ‘breaking and entering,' the scandal took a dramatic turn after a videotape revealing the involvement of the FBI and the White House was exposed. When the United States House Judiciary Committee passed an impeachment resolution, Nixon resigned in August, 1974. It was the only case in history where a U.S. President resigned. The scandal came to an end when President Gerald R. Ford granted a presidential pardon to President Richard Nixon for his role in the scandal although there still was remaining issue with his criminal responsibility. After denying his involvement with reporters for 30 years, Felt admitted to being "Deep Throat," the Watergate scandal's whistleblower, in May, 2005. (Hankyoreh June 1, 2005).

1.1.2.2 ‘The Person of the Year’ chosen in 2002 by 「Time」, an American news magazine

American weekly news magazine 「*Time*」 selected three females who exposed the wrongdoing of the FBI (Federal Bureau of Investigation), Enron Corporation and World Comas as internal public interest whistleblowers and chose them to be the Person of the Year in 2002. An FBI agent Coleen Rowley caused a sensation when she revealed a memo on how the bureau brushed off pleas from her FBI agents asking for expansion of investigation on the suspects that they arrested right before the September 11 terrorists' attack. Cynthia Cooper, the internal auditor of World Com, informed its board that the company had covered up $3.8 billion of losses through the prestidigitation of phony bookkeeping which led the company to file for the biggest bankruptcy in American history only in a month following her whistleblowing.

Sherron Watkins is the Enron vice president who wrote a letter to warn the chairman that the company could go bankrupt because of improper accounting practices when she

found out around $700 million of losses. Enron went bankrupt afterwards. (KICAC, 2005a:87).

1.1.2.3 The Protagonist of the movie 「Insider」, who brought about $246 billion of lawsuit over tobacco.

The movie 'Insider' (1999) has been made based on the following true story. Jeffrey Wigand, the former vice president of a tobacco company, got fired after demanding the cease of production as he found out that the company deliberately added chemicals that could cause lung cancer to make their cigarettes more palatable. Although he had signed Non-Disclosure Agreement (NDA), which could put him in jeopardy of not being able to receive severance payment and being accused by the company, he decided to report it to a broadcasting company after thinking it through for a long period of time. 50 state governments sued the tobacco company for $246 billion following the whistleblowing, which led the WTO to implement the Framework Convention on Tobacco Control and require tobacco makers to put disclaimer and photos that warn consumers of tobacco's harmfulness. (Lee Jimun, 2007:142-143).

1.2 The Significance of Public Interest Whistleblowing and Whistleblower Protection Regime

1.2.1 The Significance of Public Interest Whistleblowing

According to the preamble of the *United Nations Convention against Corruption*, it is crucial to detect, punish, and ultimately prevent corrupt practices or acts of violating public interest that pose danger to health and safety of people. Otherwise, they could undermine democracy, justice, sustainable growth, and the rule of law. As corruption and the violation of public interest are getting increasingly complex and intelligent, administrative organizations find it difficult to respond to them with their monitoring and detection capacity (ACRC, 2013a:1). That is why whistleblowing of corruption and the violation of public interest really matter. Internal whistleblowing, which is done by the insider of an organization, holds more significance for the reasons below.

First of all, internal whistleblowing makes it easier to control corruption and the violation of public interest, reducing the cost. In order to detect and identify corruption and violation

of public interest, which are becoming increasingly clandestine, systematic, and intelligent, it needs information of insiders who are well aware of the internal matters of the organization. Without the insiders' information, it is difficult to detect, punish, and correct the wrongdoing or illegal acts only by securing concrete evidence through external audit or investigation. In addition, by utilizing the existing resources in the organization without additional human and material resources and time, it can significantly reduce the cost of controlling corruption and the violation of public interest.

Secondly, it enables more efficient control through horizontal and voluntary participation. The conventional way of controlling administrative organization is focused on institutional control such as regulations, which forced organizations to comply with orders and regulations at an involuntary, top-down and forceful level. Heteronomous control could lead to demoralization, complacency, and passive responses among the members of an organization, making them to conceal their problems even further. The whistleblowing system is an important measure for an organization to resolve such counter effects on their own, and a low-cost and highly efficient policy designed to prevent acts of violating public interests and corruption by instilling the sense of voluntary whistleblowing in every member of an organization (ACRC, 2008:24-25).

Third, it can enhance people's right to know by disclosing internal information and problems of public organizations that have not been released to the public or those that the public has not had access to (ACRC, 2008:6). It can also result in improving the public interest of a society at large by raising awareness among the public and enabling them to correct corruption and the violation of public interest at their own will. Whistleblowing has its own intrinsic significance in democratic society because it can facilitate the culture and value of transparency across the society by bringing democracy and transparency to the decision-making and execution of a policy in an organization (Lee Jimun, 2007:11-12).

1.2.2 Misconceptions and Prejudices about Internal Whistleblowing

The 2008 OBS TV survey of 200 Korean citizens showed that all 200 respondents said it is "right" to report on corruption, whereas 55 of them responded internal whistleblowing is "not right", indicating that one out of four people still has negative prejudice against internal whistleblowing.

1.2.2.1 Is the internal public interest whistleblowing betrayal ?[1)]

Some argue that internal public interest whistleblowing is a kind of telling tales or snitching, not worth being protected even though it may serve the interest of the public. However telling tales or snitching on someone originally means betraying their colleagues or their workplace to save oneself whereas internal public interest whistleblowing is to choose sacrifice over their own interests in order to alert misconduct or danger to the public. Also, while some argue that it is against the loyalty or fidelity to organizations and colleagues, the duty of public officials is to serve the nation, society, and the people, which overrides the group relationship or fidelity that might be saved by covering up wrongdoings. Especially those in public sector are required to serve the taxpayers as opposed to serving their supervisor or the organization. Therefore, if you find out that your supervisor is condoning or getting involved in corruption, you are under the obligation to reveal it to the public.

> *"An endeavor to keep faithful to a bigger group by not promoting the interest of my immediate group cannot be found in any other animal group. We humans can only be part of such betrayal. In that sense, it may not be a betrayal but an obligation of an intellectual." (Jeong Jaeseung, 2008)*

1.2.2.2 Is it a breach of loyalty?

Some argue that internal public interest whistleblowers are traitors of an organization and they see internal public interest whistleblowing as a typical example of disloyalty to the organization, but the loyalty of public officials means a dedication to the fundamental orders of the constitution and national ideology as opposed to a dedication to a certain organization. Therefore, the loyalty of public officials should serve the general interest of the public and the nation as a whole. In this regard, the royalty of public officials can manifest itself rightly in informing the unsuspicious society on the wrongful activities of their organization, which could pose threat to the nation and the society.

1) From 1 to 4 is the abbreviation from Heungsik Park et. al., 2002a:34-39. 5 is from the Korea Independent Commission Against Corruption, KICAC, 2005:60-61

1.2.2.3 Does it foster internal distrust and undermine unity?

Some argue that protecting employees who make rejection or objection against wrongdoings could lead to the collapse of a hierarchical order. In the U.S., there was also a stiff opposition when the *Whistleblower Protection Act* was enacted for the first time. But it turned out not to be true after the law was passed. If the internal cohesion and order of an organization could be destroyed by the rejection or objection against internal injustice or wrongdoing, they are not worth being protected by a law.

1.2.2.4 Does it demoralize public officials?

The morale of public service sector should be high. However, it does not include the morale of corrupt public officials. If the government cannot protect the public officials who stand up against the danger posed to the safety and health of the people or any internal irregularities that they witness, the morale in a more wholesome sense will be compromised even further. Moreover, it would not even mean a morale if several public officials who blow the whistle on internal irregularity or misconduct could demoralize the public service sector.

1.2.2.5 Does it undermine the discipline of an organization?

No it does not. The organization would be better off without such discipline if it should be protected in such a way. The discipline implemented in an unethical organization would only maximize the irrationality of the organization. The discipline implemented in an ethical organization would maximize the productivity of the organization. Blowing the whistle on corrupt members of a government organization is a more fundamental prerequisite than discipline for building an organization.

There is a British saying that goes “Watch out for the old lady behind the blind.” The old lady who looks over the neighborhood through the blind of her home immediately goes to report on acts that go against the rules of the community when she witnesses them. That prevents the neighbors from committing any wrongdoings in the first place because they could be reported by the old lady at any time.

The same goes for public interest whistleblowing. By being conscious of the fact that “If I did something wrong, I would be punished because the members of a group that I belong to, who knows about such wrongdoing better than anyone else, would report on it” rather than detecting wrongdoings after they have been already committed, it could prevent people from committing wrongdoings in the first place. In this regard, it holds its significance as a preventive measure.

1.2.3. The Purpose and Necessity of Whistleblower Protection Regime

The whistleblower protection regime aims at facilitating whistleblowing by establishing institutional tools that enable everyone to inform corruption or the violation of public interest without fear, preventing corruption or the violation of public interest by providing whistleblowers with legal protection while contributing to fostering a culture of integrity in the society by regulating corruption or the violation of public interest more efficiently.

The protection system is required for the following reasons. First of all, it is necessary to create the culture of reporting and mutual interaction. In every country, widespread perception that whistleblowers are seen as traitors puts them in a difficult position to stay in the organization on their own after whistleblowing. In order to create a culture that acknowledges acts of whistleblowing as a courageous decision in a society, it is essential to introduce institutional measures that protects whistleblowers and to thoroughly enforce them (ACRC, 2008:25).

Second, the role of whistleblowers that monitor and report an act of corruption or the violation of public interest will be diminished considerably if institutional measures that can protect public whistleblowers from various detriments resulting from their whistleblowing activities are not in place or not properly implemented. Therefore, the Protection of Whistleblowers system not only conduces whistleblowers to easily report acts of corruption or the violation of public interest, but it also increases the chance of internal irregularities being disclosed to those outside of the organization, deterring potential wrongdoers from committing any wrongdoings (Mun Yeongsik et. al., 2008:1).

Third, it lays a foundation for a society where every member can lead a life of dignity with sound civil consciousness. It helps individuals protect their conscience and dignity as human beings by fostering an environment where they are not forced to be part of any corruption or misconduct occurring within the organization they belong to or in their lives. Also, people will more easily speak up against irregularities to the outside world in order to correct it and they are not subject to retaliation even if they take such meaningful risks. In addition, it raises the transparency and integrity of an organization and contributes to building a freer and more democratic society by promoting the freedom of expression and free communication. (ACRC, 2013a:1).

Whistleblower Protection **(July 2012) published by the OECD described the significance of the internal public interest whistleblowing as the following:**

The risk of corruption is significantly increased in environments where the reporting of wrongdoing is not supported or protected. Public and private sector employees have access to up-to-date information concerning the practices in their workplace and are usually the first to recognize wrongdoing. However, those who report wrongdoing may be subject to retaliation, such as intimidation, harassment, dismissal or violence by their fellow colleagues or superiors. In many countries, whistleblowing is even associated with treachery or spying.

Whistleblower protection is therefore essential to encourage the reporting of misconduct, fraud and corruption. Providing effective protection for whistleblowers is important in an open organizational culture where employees are not only aware of how to report but also have confidence in the reporting procedures. It also helps businesses prevent and detect bribery in commercial transactions. The protection of whistleblowers from both public and private sectors from retaliation for reporting suspected acts of corruption and other wrongdoing is therefore integral to efforts to combat corruption, safeguard integrity, enhance accountability, and support a clean business environment.



Discussions and Exercise

- Introduce the cases of public interest whistleblowing you know (or your country's cases).
- Discuss positive and negative opinions on internal public interest whistle blowing.
- Discuss why we need public interest whistleblowing.
- Discuss why public interest whistleblowing should be protected

2. The Trend of International Community and the Status of Legislation in Each Country



Goals	• To understand the international trend of whistleblower protection system • To see the status of each country's legislation

2.1 The International Trends

All major international organizations in charge of corruption have recognized the importance of establishing whistleblowerprotection systems. Among them are the *1998 OECD Recommendation on Improving Ethical Conduct in the Public Service* including the *Principles for Managing Ethics in the Public Service* and the *2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service*. The 2003 OECD Recommendation provided guidelines to countries so that they can take measures to provide clear rules and procedures on internal whistle blowing and protect whistleblowers. Also, the *2009 Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions* stipulates the protection of internal whistleblower in both public and private sectors. In addition, whistleblower protection requirements have been introduced in the *United Nations Convention against Corruption*[2], the *Council of Europe Civil and Criminal Law Conventions on Corruption*[3], the *Inter-American Convention against Corruption*,[4] and the *African Union Convention on Preventing and Combating Corruption*. Those provisions provide international legal

2) The Article 16(1) states "Each state party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith on acts of corruption and establishing measures and systems to facilitate the reporting by public officials and the citizens."

3) The European Union considers protecting internal public interest whistleblowers and facilitating them to report on corruption an effective tool to prevent corruption, and expects their role to be played especially in areas such as privatization and public procurement. The Union mandates its member countries to legislate laws on the protection of internal public interest whistleblowers.

4) It is a Convention Against Corruption among countries in the Americas that entered into force in March 1997. The convention states that "The States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen the systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems"

groundwork so that member states can have whistleblower protection laws in place. (OECD, 2012:4)

In addition, the legal interest in the Human Rights Act facilitates the protection of internal whistleblowers especially when whistleblowers are the only ones who can recognize and inform wrongdoing to employers or to the public. For instance, the European Court of Human Rights ruled in 2008 that firing a public official who distributed documents disclosing the political manipulation of legal system violates the Article 10 of the *European Convention on Human Rights*. The Court of Human Rights recently came up with a same ruling where a nurse who was working for a state-run company got fired after suing the employer arguing "they put patients in jeopardy by not providing quality service that they advertised."[5)]

In 2010, the importance of whistleblower protection was reaffirmed at the global level when the G20 Anti-Corruption Working Group recommended the *G20 Guiding Principles for Whistleblower Protection Legislation* to G20 leaders as a reference for enacting and reviewing, as necessary, whistleblower protection systems by the end of 2012. The OECD also developed a Compendium of Best Practices to provide available options in various contexts for decision-makers designing and implementing whistleblower protection systems in line with the *G20 Guiding Principles for Whistleblower Protection Legislation* (OECD, 2012:4).

Especially the Article 33 of the *United Nations Convention Against Corruption* (UNCAC) and the OECD 2003 recommendation advise countries to adopt laws on the protection of whistleblowers,[6)] and countries around the world have legislated such laws both before and after the recommendation (ACRC, 2013:1).

The first OECD guideline is "Are there comprehensive and clear legislations in place to protect employees from retaliation, discriminatory or disciplinary actions along with employees who disclose suspected acts of wrongdoing or corruption to competent authorities in good faith and on reasonable grounds?" Comprehensive and common laws are meaningful as they let same rules and regulations applied to certain types of report on improper activities or employees (OECD, 2011:15).

---

5) Eur. Ct. of H. R., Heinisch v. Germany, application no. 28274/08, 21 July, 2011.
6) Legal protection for whistleblowers grew from 44% to 66% in OECD countries between 2000 and 2009.

The 1997 Lima Declaration Against Corruption of the 8th International Ant-Corruption Conference called upon governments around the world to mobilize their efforts in legislating laws designed to protect internal public interest whistleblowers. Internal public interest report policies have now become main agendas along with the recommendations for international cooperation to countries around the world. (Yoon Gwangjae et. al., 2005: 57-58). There are 10 countries that have acts related to the protection of public interest whistle blowers at a national level as of 2012 such as the United States (*Whistleblower Protection Enhancement Act* and the *False Claims Act*), the United Kingdom (*Public Interest Disclosure Act* of 1998), New Zealand (*Protected Disclosures Act of 2000*), South Africa (*Protected Disclosures Act of 2000*), Japan (*Whistleblower Protection Act*, 2004), Canada (*Public Servants Disclosure Protection Act of 2005*), Romania (*Whistleblower Protection Act of 2004* (Law 571)), Ghana (*Whistleblower Act of 2006* (Act 720)), Jamaica (*Protected Disclosures Act*, 2011), and Korea (*Act on the Protection of Public Interest whistleblowers*, 2011) (Lee Jimun et. al., 2013:90).

Meanwhile, the protection of whistleblowers may also be provided under specific provisions of special laws including the Criminal Act, the Labor Act, or laws regulating public servants. Around 50 countries have laws of anti-corruption, information disclosure, competition, accounting, environmental protection, corporate, and securities that provide whistleblower protection. One example of the Criminal Act that provides whistleblower protection system is the *Criminal Act* of Canada. This Act has a provision to prevent retaliation against employees who provide information regarding crimes. In Mexico, according to the Article 219.1 of the *Federal Criminal Act*, criminal complaints or reports filed by people due to intimidation made by public servants or their agents through physical violence or moral aggression or attempts to hinder the provision of information on crimes imposed to public servants on the violation of management constitute the crime of intimidation. A Labor Act could also provide legal ground to protect whistleblowers. In Germany, basic protection clause enables whistle blowing. At the constitutional level, the legal framework protecting whistleblowers is based on the Article 4 of the *Grundgesetz* (The Fundamental Law of Germany) that stipulates the freedom of conscience, information, and expression. This clause is the basis of the right to petition, in other words, the right to deliver requests or complaints to government agencies. This includes basic protection for whistleblowers as in the case of the provisions of the Labour Act. Recently, the Federal Labour Court has ruled that there should be protection for workers who coordinate with prosecutors or who voluntarily report the violation of fundamental rights to the judiciary. Laws regulating

public servants may also be a legal source of protection for whistleblowers. In Mexico, the Article 8 (XXI) of the *Federal Law on Administrative Liability of Civil Servants* prohibits public servants from conducting the following acts: the acts of hindering presentation of complaints and acts of inflicting disadvantages to people who displayed their complaints. The Article 13 stipulates that those who abuse their authority should be punished. Anti-corruption laws have provisions for whistleblower protection as well. For example, the *French Anti-Corruption Act* stipulates the protection of employees from various sanctions in both public and private sectors. Similarly, the *Russian Federal Law on Combatting Corruption* (Art. 9.4) protects public servants who report corruption of other public servants according to the *Russian Federation Law*. In Korea, the *Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission* (hereinafter the *ACRC Act*) has a protection provision for public interest whistleblowers. The *Dodd-Frank Wall Street Reform and Consumer Protection Act* of the United States protects whistleblowers of information on the violation of the *Securities Act*. At a Constitutional level, the Article 41 of the *Chinese Constitution* provides citizens with opportunities to report illegal activities and prohibits retaliation toward them. However, providing protection to whistleblowers through specific provisions of different laws may constitute a limited protection. (OECD, 2011:6; 17-18). In Korea, the *Act on the Protection of Public Interest Whistleblowers* regulate the private sector, whereas a provision of the ACRC Act applies to the public sector.

2.2 The Status of Legislation in Each Country

2.2.1 The United States

It seems that the whistleblower's rights is based on the First Amendment of the *United States Constitution* which states the freedom of expression and the Fourteenth Amendment that stipulates any person shall not be deprived of life, liberty, or property without due process of law. In other words, anyone who witnesses corrupt acts or violation of public interests has the freedom and the right to express the danger freely and any illegal reprisal against such expression should be prohibited. Under this constitutional base, American legislation on the protection of the rights of whistleblowers exists in various forms of specific laws rather than in the form of general law or universal law. Legal framework of whistleblower protection can be divided into the public and private sectors depending on the areas they report on. whistleblower protection systems on the public institutions'

corruption or acts that damage national budget fall into the category of the public sector. On the other hand, whistleblower protection systems on environment, safety, or fair competition fall into the category of the private sector. The *Civil Service Reform Act* of 1978 or the *Whistleblower Protection Act* of 1989 (revised in 2012)[7] that protect whistleblowers who are federal employees or applicants for public employees along with the *False Claims Act* that protects and rewards whistleblowers who report on the budget waste of the federal government are the main examples of the public sector. In the private sector, there are more than 40 laws in place designed to protect and reward whistleblowers in various areas such as the *Age Discrimination in Employment Act*, the *Toxic Substance Control Act* of 1976, the *Clean Air Act* of 1977, the *Aviation Investment and Reform Act*, the *Sarbanes-Oxley Act* of 2000, the *Energy Reorganization Act of 1974* (revised in 2005), the *Surface Transportation Assistance Act of 1982* (revised in 2007), the *Consumer Product Safety Improvement Act of 2008*, and the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. (Kim Kisun, 2012:4-5).

The existing *Whistleblower Protection Act of 1989* was revised and implemented on December 27, 2012 in order to reinforce the control on the corruption and the budget waste of federal governments, providing enhanced protection to federal public officials. (ACRC, 2013b).

2.2.2 The United Kingdom

The *Public Interest Disclosure Act* 1998 of the United Kingdom was enacted in 1998 and entered into force in July 1999 as a result of self-examination on a series of accidents that had took place between 1980s and the early 1990s. Most of the investigations on the accidents revealed that employees were afraid of sounding the alarm or they raised issues in an inappropriate way or to the persons who are not suitable although they were aware of related dangers beforehand. (Kim Kisun, 2012:82-83). Ignoring public interest whistleblowing in the workplace could lead to a social disaster because employees ignore or turn a blind eye to the possible harm to the public health, safety, or economic loss for fear of any reprisal or disadvantage.

7) Having been revised in 2012, the Act is called *Whistleblower Protection Enhancement Act* of 2012.

It was also because mid-level supervisors or the management dismissed public interest whistle blowing of employees or on-site supervisors. (Lee Geonho, 2000:111-112). The social damage caused by the corruption scandals raised awareness of public interest whistleblowing that it should not be seen as just a disclosure of internal information but should be seen as a serious social issue (Yoon Jongseol, 2003: 59). The Parliament of the United Kingdom enacted the *Public Interest Disclosure Act* that applies to the entire United Kingdom except for the Northern Ireland to protect whistleblowers and to enable them to file a lawsuit against the reprisal they suffered for the disclosure.

Public Interest Disclosure Act is the new name for the revised *Employment Right Act of 1996*. The *Public Interest Disclosure Act* was enacted after adding a number of new provisions or revising existing provisions (Kim Kisun, 2012:83). What sets the act apart from the most from other countries' whistleblower protection systems is that the act protects whistleblowers both in the public and the private sector. In other words, the United Kingdom has one overarching law to protect whistlebowers in both the public and the private sectors instead of separate laws in the two sectors. (Giseon Kim, 2012:84). Another characteristic is that the subject of reports includes the violation of public interest that is currently occurring or is likely to occur as well as that already has been occurred. (Mun Yeongsik et. al., 2008:57). The number of reporting is on the constant rise every year. A total of 157 cases were reported in 1999/2000, 416 in 2000/2001, 1,034 in 2005/2006, exceeding 1,000 cases, and 1,356 in 2006/2007, respectively (Mun Yeongsik et. al., 2008:47).

2.2.3 New Zealand

There is the *Protected Disclosures Act* of 2000 in New Zealand, designed to protect public interest whistleblowers. Having been in force since January 2001, the act protects whistleblower both in the public and the private sectors in order to facilitate the reporting and investigation on matters regarding serious wrongdoings that occurred within or committed by the organization. The Act also aims to promote public interest by protecting employees who report on such wrongdoings in accordance with the act. (Park Heungsik et. al., 2002b:84).

2.2.4 The Republic of South Africa

In April 1999, the discussion on enacting a law to protect whistleblowers began as the National Anti-Corruption Summit raised awareness on the necessity of protecting the internal public interest whistleblowers from disadvantages. The *Protected Disclosures Act* was approved and entered into force by referring to the *Public Interest Disclosure Act* of the United Kingdom on August 7, 2000. The act aims to protect employees from any occupational detriment for reporting on information to be subject of protection in both the private and the public sectors, to provide relief to the occupational detriment suffered by the employees, and to put in place procedures for responsible employees to report on the information concerning the employer's wrongdoing. (Park Heungsik et. al., 2002b:93).

2.2.5 Canada

The *Public Servants Disclosure Protection Act* of Canada was enacted in 2005 and has been in force since April 2007. There had been several failed attempts to enact such law at federal and state levels before the federal act was implemented in 2005. Ensuing suspicions on the government's possible irregularity in 2003 led the country to enact the law as anti-corruption policies have become increasingly necessary (Kim Nayeong, 2008:81). The act proclaims that it is in the public's interest to maintain and enhance public confidence in the integrity of public servants. The act is to implement corruption report procedures in the public sector including the protection for whistleblowers given that the public interest can be achieved by having effective procedures to protect whistleblowing along with a code of conduct for the public sector. The act is characterized by the existence of a special court dedicated to restricting retaliatory acts, the stipulation of report through internal channel, and the fact that the act requires mandatory assessment on achievements made during the first five years of implementation and submission of reports to the Parliament every year. (Lee Jimun et. al., 2013:105).

2.2.6 Japan

In Japan, the *Public Interest Whistleblower Protection Act* was enacted in June 2004 and has been in force since April 2006. In the 2000s, a series of incidents took place such

as the fake food labeling scandal and an automaker's concealing of recalls. Back then, there were reports from internal workers who brought the incidents to light. There are also a growing number of cases ruling that dismissals on the ground of disclosure are invalid. Influenced by the trend, the *Public Interest Whistleblower Protection Act* was enacted to protect employees who blow the whistle on the wrongdoing of a company for the public safety and health (Park Heungsik, 2004:155). It was expected that the act would help prevent the possible damage to consumers. Against the backdrop, the *Public Interest Whistleblower Protection Act* was submitted as a measure to protect employees from any detriment such as dismissal for disclosing information for the sake of public interest. The discussion on the act began in 2002. The fake food labeling scandal and an automaker's concealing of recalls led to the launch of the Review Committee of the Public Interest Whistleblower Protection System to review issues in December 2002. The cabinet meeting finalized the draft of the *Public Interest Disclosure Act* and submitted it to the National Diet in March 2004. After three months of deliberation in the National Diet, the Act was finally passed and proclaimed in June. (Mun Yeongsik et. al., 2008:34).

2.3 The Current Status of Legislation in Korea

The previous *Anti-Corruption Act,* enacted on July 24, 2001 and implemented on January 25, 2002 was the first to introduce whistleblower protection system in Korea. The current ACRC Act (enacted on February 29, 2008 succeeding the Anti-Corruption Act) and the Act on the Protection of Whistleblowers (enacted on March 29, 2011 and entered into force on September 30, 2011) protect whistleblowers or those who assisted them from any occupational detriment such as dismissal and discharge or from any other threat to physical safety. The act also rewards the whistleblowers in order to relieve mental and financial difficulties resulted from damages and commend them for contributing to the public interest. The former addresses the reporting on corrupt acts in the public sector and the latter is to address the violation of public interest in the private sector. The participants ot the thirteenth International Anti-Corruption Conference (IACC) held in Athens, Greece in October 31, 2008 highly commended the well-organized whistleblower protection system of Korea (ACRC, 2009: 239).

2.3.1 The ACRC Act

Public interest whistleblowing has been continuously reported in Korea since the 1990s, contributing to the society in terms of anti-corruption, efficient use of budget, people's right to know, institutional improvement, and democratization. However, internal public interest whistleblowing has also been seen as a treachery within Korean society with the tradition of Confucianism that values loyalty and fidelity and the organizational culture that puts the organization ahead of individuals. The absence of whistleblower protection law left those who reported wrongdoings to be at risk of getting retaliation such as imprisonment, dismissal, and discharge and being cast out of the society. Under this circumstance it was hard to promote internal whistleblowing.

The move to enact whistleblower protection law was led by NGOs starting from the mid-1990s in an attempt to improve such reality. As a result, the *Anti-Corruption Act* which mainly stipulated the establishment of the Korea Independent Commission Against Corruption was passed in the National Congress on June 28, 2001 (renamed into different Korean name in July 2005). On July 24, 2001, the President signed and proclaimed the Act. The act became effective on January 25, 2002 along with the enforcement ordinances. However, criticisms emerged arguing that the protection of whistleblowers was merely a proclamatory provision because of differences in political stance and interests. Retaliatory acts against whistleblowers continued because of limitations in enforcing the law. As a result, whistleblowers and civic groups made requests to correct the system. Coupled with the efforts of the KICAC, the act was revised in July 2005 and August 2007 mainly focusing on protecting and rewarding those who report on corrupt acts. Its enforcement ordinances were also revised in December 2005 and May 2009 to enhance the effectiveness of rewards and financial awards for whistleblowers. Through these revisions, significant improvements were made compared to the first Anti-Corruption Act of 2001 (Lee Jimun, 2011). On February 29, 2008, the Anti-Corruption and Civil Rights Commission (hereinafter the ACRC) was launched under the Prime Minister, integrating the KIACA with the Ombudsman of Korea and the Administrative Appeals Commission due to new administration's organizational merger and abolition measures. The *Anti-Corruption Act* was changed to the ACRC Act, succeeding the content of the former act.

Major Internal Whistleblowing Cases in Korea before the Enactment of the Anti-Corruption Act (Lee Jimun, 2010:135-142)

- Report on audit fraud of the Board of Audit and Inspection of Korea (1990): The halt of audit ordered by the executive of the Board of Audit and Inspection of Korea because of lobbying activities was reported to the media
- Report on illegal investigation of the Defense Security Command (1990): The Security Command's illegal investigation on more than 1,000 civilians including politicians and religious people was made public through a press conference.
- Report on election fraud of the military (1992): Coercion to support the ruling party including open ballot was reported through civic groups.
- Report on election manipulated by the government (1992): Local authority reported that the election of the National Assembly members was marked by the government's influence and plutocracy in order for a ruling party's candidate to be elected.
- Report on wasted budget of the military (1999): The case where the military bought foreign weapon parts hundreds of times more expensive than the manufacturing cost.
- Report on fraudulent construction of an international airport (2000): Fraudulent construction and improper change of design were reported during the investigation of an international airport.

2.3.2 The *Act on the Protection of Public Interest Whistleblowers*

When the former *Anti-Corruption Act* was legislated in 2001, it provided the protection for whistleblowers who report corrupt acts in the public sector. Indeed, the former act made some progress. However, the protection was still far from sufficient for whistleblowers who report acts of violation of the public interests in the private sector which is more closely linked to the lives of the general public. Although laws such as the *Food Sanitation Act*, *Agricultural Products Quality Control Act*, the *Pharmaceutical Affairs Act*, and the *National Health Insurance Act* stipulate what constitutes whistleblowing, there were not enough provisions on the protection of whistleblowers (Kim Sugap and Kim Minwoo, 2009).

In other words, statutory provisions on protection do not specify what constitutes disadvantageous measures, who should be in charge of the protection or how to protect whistleblowers. There are also a lot of laws and regulations that do not even have protection provisions. According to a survey on the 64 laws and regulations with provisions on reporting

and awarding, only 20 of them had protection provisions. The protection provisions were mostly limited to protection of whistleblowers' identities or confidentialities. Even though some laws stipulate measures to protect their personal safety, they do not specify how the measures should be taken (Mun Yeongsik et. al., 2008;39)

The *Act on the Protection of Public Interest Whistleblowers* holds its significance in adopting a well-organized measure to protect and compensate whistleblowers by extending whistleblower protection to private sector and by extending the existing protection on whistleblowing of corruption in the public sector to the actions undermining public safety, environment, consumer interest and fair competition. The move to legislate the Act began as the case for introducing an act to protect public interest whistleblowers in private sector was continuously gaining ground since the legal protection on the whistleblowers had been put in place with the enactment of the Anti-Corruption Law in Korea. Also, the *Public Interest Disclosure Act* of 2004 was passed in order to protect individual life and body, consumer interest, environment and fair competition. Recommendations from experts also followed. (Jang Sutae, 2003.2.27; Kim Seongcheon, 2004.6.22). A series of accidents such as the poor maintenance work of KTX railroad bridge, illegal land-filled waste, illegal discharging of waste water, and distribution of fake sesame oil and contaminated blood also occurred. The government only took follow-up measures when the causes of the various cases of violation of public interests were belatedly found after considerable damages were done to human lives and their properties. This resulted in lowered public confidence toward the government. The damage derived from the government’s failure to effectively manage and supervise such matter only shifted to the people. Moreover, most of the whistleblowers suffered various retaliatory actions and had their identities disclosed without any legal framework. Given this situation, the *Act on the Protection of Public Interest Whistleblowers* was enacted on March 29, 2011 and entered into force on September 30 in the same year.



Discussion and Exercise

- Introduce your country’s whistleblower protection system. If it is not in place yet, introduce plans to implement it if there is any.
- Discuss why whistleblower protection is being expanded at an international level. If it is not in place yet, discuss why it is not.

3. The Coverage and Requirements of the Protected Reports



Goals	• **To explore types of whistleblowers protected** • **To understand content of the protected whistleblowing reports** • **To understand the duty of reporting in good faith** • **To identify types of institutions/organizations to receive whistleblowing reports**

There are mainly three requirements/categories for a whistleblower to be protected: (1) the whistleblowing report should be subject to the protection by the law (the whistleblower who is covered by the law made a report in good faith and the report was submitted to the institutions/organizations prescribed by the law), (2) the person has to suffer illegal personnel affairs, and (3) the prohibited personnel measures imposed on the whistleblower were taken due to the act of whistleblowing.

3.1 Protected Whistleblowers (under Law)

In most of countries, whistleblowers under the whistleblower protection law means workers. The purpose of the whistleblower protection law is to protect workers who made a whistleblowing report according to the legal requirements and suffered retaliation as a result of such whistleblowing. A case in point is *the Whistleblower Protection Enhancement Act of 2012* of the United States. The law provides protection for whistleblowers when federal employees or public officials working for a government controlled corporation or those who support such federal employees or public officials make a disclosure (ACRC,2013a:2). Therefore, the law does not cover state government employees or ordinary citizens. In addition, even federal employees or those who support federal employees' work cannot be protected when they have certain positions or they work for certain federal government agencies under this protection law (Kim Kisun, 2012:7-8).

Canada's *Public Servants Disclosure Protection Act* stipulates that public servants of the federal government are protected whistleblowers. Here public servants include: (1) every person employed in the public sector, (2) every chief executive, and (3) every member

of the Royal Canadian Mounted Police.[8] In relation to this, the public sector means government departments and federal agencies (institutions under government departments, state-owned enterprises, state-controlled enterprises, etc.), but the Armed Forces, the Canadian Security Intelligence Service, and the Communication Security Establishment are excluded. (Kim Kisun, 2012:109)

The scope of protected whistleblowers is more expanded in the *Sarbanes-Oxley Act* of 2002 of the United States, the *Whistleblower Protection Act 2004* of Japan, the *Public Interest Disclosure Act 1998* of the United Kingdom. Under the *Sarbanes-Oxley Act*, employees of publicly traded companies, any contractor or subcontractor, and agent of such company are given whistleblower protection. Japan's *Whistleblower Protection Act* defines protected whistleblowers as workers provided under the *Labor Standards Act*, including part-time workers, dispatched workers, workers of other companies which are in transactions with the business in question, public officials as well as regular workers of the business. UK's *Public Interest Disclosure Act* provides protection only for disclosures made by workers. That is, a person who made a disclosure for the purpose of public interest protection cannot be protected even if he or she suffers reprisal when he or she is not a worker under this Act. Incumbent or retired employees and independent contractors who can be regarded as a worker, agency workers, or vocational trainees are considered workers under the expanded definition (ACRC, 2013a:2-3). Moreover, employees of government agencies and public servants including police officers as well as private sector employees are protected as they are classified as workers under the law. However, even in such cases, they should be working within the organization. The Armed Forces and the employees of the Security Service, the Secret Intelligence Service, the Government Communication Headquarters and the Parliament are not covered by the law (Kim Kisun, 2012:85).

The *Protected Disclosures Act of 2000* of New Zealand is applied to both the public and the private sectors. It adopted a relatively broad range of the protected whistleblower, including former employees, homeworkes of certain kinds under the law, employees seconded

8) The Royal Canadian Mounted Police consists of the federal police and the institutions under the Minister of Public Safety. The Royal Canadian Mounted Police is serving as the National Police Agency for the federal government, while providing police service to state governments under the service agreement except the State of Ontario and the State of Quebec.

to the organization, individuals who are contracted to perform the work of the organization, people who are involved in the management of the organization, and soldiers and employees working at the Ministry of Defense (Park Heungsik et. al., 2002b:85).

The Republic of South Africa's *Protected Disclosures Act of 2000* defines a worker as a person who is not an independent contractor and/or provides support to the employer's business among those who work for others or the state and who are paid or entitled to such payment in return for his/her service. The Act does not make any distinction between the public sector and the private sector (Park Heungsik et. al., 2002b:94).

Meanwhile, in Korea, the ACRC Act and the Whistleblower Protection Act stipulate that "any person" can make a report regardless of whether the whistleblower is an insider or an outsider of the organization. In particular, at the time of the enactment of the *Anti-Corruption Act* in the past, it was originally stipulated that "a person of Korean nationality" could make a report. This led to public concerns that foreigners cannot be protected under the law when they make a public interest disclosure. Therefore, the Act was revised to allow "any person" to make a report including foreigners as well as Koreans.

In addition, the ACRC Act stipulates that in the case that a public organization employee learns an act of corruption or is forced or proposed to commit corruption by another public organization employee, he or she shall report it immediately to any investigative agency, the Board of Audit and Inspection or the Commission, imposing an obligation to report corruption on public officials. The *Public Interest Whistleblower Protection Act* also stipulates that if any public official becomes aware of a violation of the public interest, he or she shall report it to an examination agency, investigative agency, or the ACRC.

3.2 Content of the Protected Whistleblowing Reports

As for the content of the protected disclosures, there are similarities across the world in terms of corruption reports in the public sector. However, many differences can be found for the private sector corruption reports depending on policy priorities of each country. The UK adopts the single general statute system, and its *Public Interest Disclosure Act*

has the widest range of content of the protected disclosures as follows: (1) criminal offence, (2) failure to comply with legal obligation, (3) miscarriage of justice, (4) threat to the health and safety of any individual, (5) damage to the environment, and (6) deliberate concealment of any information falling within any one of the preceding paragraphs. Cases where any one of the aforementioned matter is already taking place or is likely to occur are also covered, and the place of occurrence can be in the UK or elsewhere. Moreover, it does not make any difference whether the laws applied to the protected disclosure are the UK's legislation or that of other countries. In this regard, it is noteworthy that the UK's *Public Interest Disclosure Act* has a relatively wider coverage compared to whistleblower protection laws of other countries (Kim Kisun, 2012:86).

> Examples of errors and negligence over the course of judicial procedures include wrong investigative methods that can be misled into wrong convictions, non-disclosure of evidence to the defendant, perjury, etc. In detail, when there is a possibility of failure of the blood alcohol level tester, this can be subject to rightful report. (Kim Kisun, 2012:86).

Japan also adopts the general statute system, and the *Whistleblower Protection Act* of Japan lists the content of protected disclosure as violations of 441 domestic laws which are related with protection of people's life and safety, consumer interest, environment, fair competition, public health, and other rights and interests (ACRC, 2013a:3).

Under *the Whistleblower Protection Enhancement Act of 2012* of the United States, protected disclosures are regarding (1) a violation of any law, rule, or regulation, (2) gross mismanagement, (3) a gross waste of funds, (4) an abuse of authority, (5) a substantial and specific danger to public health or safety (ACRC, 2013a:4). As for the private sector in the US, approximately 50 federal laws stipulate that violations of those 50 laws can be subject to protected whistleblowing reports.

Canada's *Public Servants Disclosure Act* lists the types of content of disclosures as the wrongdoings in or relating to the public sector. The list of the wrongdoings is as follows: (a) a contravention of any law or regulation, (b) a misuse of public funds or a public asset, (c) a gross mismanagement in the public sector, (d) an act of omission that creates a substantial and specific danger to the life, health, or safety of persons, or to the environment,

other than a danger that is inherent in the performance of the duties or functions of a public servant, (e) a serious breach of a code of conduct for public officials, and (f) knowingly directing or counseling a person to commit a wrongdoing set out in any of paragraphs (a) to (e). However, the Act does not apply to the disclosure of information regarding special operations under the *Security of Information Act* (Kim Kisun, 2012:110).

The *Protected Disclosures Act* of New Zealand is comprehensively applied to both the private and public sectors. Under the Act, protected disclosures shall be related with the issues falling into one of the following categories: (a) an unlawful, corrupt, or irregular use of funds or resources of a public sector organization, (b) an act, omission, or course of conduct that constitutes a serious risk to public health, public safety, or the environment, (c) an act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation and detection of offences and the right to a fair trial, (d) an act, omission or course of conduct that constitutes an offence, and (e) an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, grossly negligent, or that constitutes gross mismanagement (Park Heungsik et. al., 2002b:85).

South Africa's *Protected Disclosures Act* was influenced by the UK's *Public Interest Disclosure Act*, so the content of protected disclosures is very similar to that in the UK which is as follows: (a) that a criminal offence has been committed, or is being committed or is likely to be committed, (b) that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which that person is subject, (c) that a miscarriage of justice has occurred, is occurring, or is likely to occur, (d) that the health or safety of an individual has been, is being, or is likely to be endangered, (e) that working environment has been, is being, or is likely to be damaged, (f) unfair discrimination as stipulated in the *Promotion of Equality and Prevention of Unfair Discrimination Act of 2000*, and (g) that any aforementioned matter has been, is being, or is likely to be deliberately concealed (Park Heungsik et. al., 2002b:94).

So far we have looked into the content of protected disclosures in other countries. Overall, protected disclosures are related with: (1) an offence (violation of laws or regulations), (2) failure to comply with any obligation, (3) (gross) mismanagement, (4) a gross waste

of funds, (5) abuse of authority (public offices), (6) threat to the public health and safety, and (7) deliberate concealment of information regarding a disclosure. Among them, types of disclosures regarding violations of public interests can be listed as the following: (1) an act by a public official of abusing his or her position or authority related to public duty or violating any law or regulation for personal gains of him/herself or a third party, (2) an act of making damage to public funds or property by violating any law or regulation over the course of the execution of a public sector organization, the acquisition, management and disposal of public property, or the signing and implementation of a contract to which a public sector organization is a party, and (3) an act of coercing, recommending, suggesting and persuading the concealment of the aforementioned acts. What is noteworthy is that in the UK or South Africa, a reporting can be made when there is a possibility or likelihood of the acts occurring described in the law.

Under the ACRC Act of Korea, disclosures can be made regarding the acts of corruption and violations of *Code of Conduct for Public Officials*. Here the acts of corruption include: (a) the act of a public organization employee to seek illegitimate gains for himself/herself or for any other third party by abusing his/her position or authority, or violating any law and subordinate statute in connection with his/her duties, (b) the act of causing financial damage to a public organization in violation of any law and subordinate statute, when it is in the process of executing its budget, or acquiring, managing or disposing of its property, or entering into and executing a contract to which it is a party, and (c) the act of forcing, recommending, suggesting or encouraging someone to engage in or conceal the acts provided for by the above subparagraphs (a) and (b). Subparagraph (c) was not included at the time of enacting the initial version of the *Anti-Corruption Act* in the past. However, by adding subparagraph (c), the indirect acts of corruption such as forcing, recommending, suggesting or encouraging corrupt acts as well as direct acts of corruption have been included in the category of corrupt acts. This led to the expansion of the scope of disclosures and whistleblower protection, with the aim of enforcing efforts to root out corruption.

In the cases of violations of *Code of Conduct for Public Officials*, major violation cases are as follows: (1) receiving money, valuables or hospitality from a duty-related party, (2) abusing public position by exercising undue influence in personnel management, engaging

in transactions for personal gains, acting as an agent for a third party, and making illegal solicitation, (3) executing budget for undesignated purposes, and (4) gaining personal benefits from public property.[9]

In regard to the **act of causing financial damage** to a public organization in violation of any law and subordinate statue, when it is in the process of executing its budget, or acquiring, managing, or disposing of its property, or entering into and executing a contract to which it is a party" (the act of damaging public property), not only a public official but also an ordinary citizen in the private sector can commit the act of damaging public property. The act of damaging public property by a private company or an individual who is a party to a contract with a public organization and/or trades and manages public property is considered as an act of corruption. Therefore, an act of corruption committed by a private company both by deceiving a public official and by colluding with a public official can be included as an act of damaging public property (Park Heungsik et. al., 2002a:94-95).

<Example Cases>[10]

1) Fraud of government subsidies

   The manager or a head of a welfare facility makes an overstated claim for the government subsidy by pretending to have paid wages to the workers who are not actually working there, by inflating the number of facility residents, or by reporting operating costs more than it actually is.

2) corruption in public procurement

   A defense company makes undue profits by creating a fake transaction statement with its supplier to overstate the production cost in the process of supplying its product to the Ministry of Defense.

3) False claim to the National Health Insurance

   Hospitals and clinics make false claim to the National Health Insurance in order to receive medial expanses more than the actual cost by filling out medical card falsely or using other illegal measures

※ The ACRC Act does not apply to the cases where an employee of a private company made an internal report of tax evasion of the company or of embezzlement of the corporate funds.

9) Disclosures of violations of *Code of Conduct for Public Officials* are protected, but the whistleblower cannot be given reward or award. However, in case the content of the disclosure is related with both the Code of Conduct violation and an act of corruption at the same time, the whistleblower is also entitled to receiving an award or reward.

10) Through example cases 1-3 are summary of ACRC 2008:12-13.

Major Report Cases under the ACRC Act[11)]

1) Corruption regarding the provision of license/permit of public property (the first report case after the ACRC Act took effect)

- Report details: The permit to use a public medical facility was given to a certain individual for 7 years without paying rent, leading to a financial loss worth KRW 500 million to the government revenue.
- Investigation result: 2 persons were disciplined, and 2 organizations were given warning.
- Note: The whistleblower had raised concern to various administrative institutions 150 times before, and the report was submitted as the first case right after the implementation of the Anti-Corruption Act.

2) Illegal recruitment procedures of public officials (the first whistleblowing case within the organization)

- Report details: At a fire department in city A, a helicopter pilot was illegally employed by fabricating the candidate's career.
- Investigation result: Employment was canceled.

3) Corruption in blood management system of a blood bank

- Report details: A corruption report was made that a blood bank under the Korea National Red Cross provided blood which was tested to be inappropriate to hospitals (for blood transfusion) and pharmaceutical companies (for medicine production).
- Investigation result: It was confirmed that approximately 77,000 cases of inappropriate blood were provided, and 9 people who received the blood transfusion got infected with hepatitis. It was demanded to make necessary corrections, and 16 related people were given warning and/or appropriate personnel measures.
- Ripple effect of the report: A thorough overhaul was made over the blood management system of the country which can have huge impact on the public health.

4) Embezzlement of government subsidies by a research institute conducting the Milan Fashion Project

- Report details: Officials of a fashion and textile research institute participating in the fashion industry development project in local area B embezzled government subsidies offered by the Ministry of Trade, Industry and Energy and local governments by fabricating related documents or by paying wages to fake employees who were not actually working there.
- Investigation result: 1 person was imprisoned, 3 people were criminally charged without imprisonment, and the embezzled money of KRW 968 million was recovered.
- Ripple effect of the report: A nation-wide investigation on the budget execution of large-scale government projects was initiated, and the institutional improvements were promoted.

5) Fabrication of result of bioequivalence test and negligence in supervision and evaluation

- Report details: University A in Seoul fabricated the result of bioequivalence test and reported it to the Korea Food and Drug Agency (KFDA). The KFDA did not thoroughly examine the result, and gave permit to the university to use the drug as generic medicine based on the fabricated test result.
- Investigation result: It was revealed that the institute of the university manipulated the test result and the KFDA failed to verify the authenticity of the result. As a result, requests for investigation and inspection were made to the National Police Agency and the KFDA.
- Ripple effect of the report: all-out investigation and reform began for the permit/license system of medicine and drugs which is directly related with the public health.

6) Bribery of a member of the National Assembly

- Report details: Former legislator A was asked by a coal importer to guarantee the status of the sole-supplier to a state-owned enterprise in 1997. Legislator A received bribes worth KRW 300 million over 30 times. Incumbent legislator B also received bribes worth KRW 30 million from the coal importer through A. The then-President's son C allegedly accepted bribes of KRW 300 million and returned it later.
- Investigation result: Legislator A was imprisoned, three people (B, C and the coal importer) were criminally charged without imprisonment, and KRW 590 million was forfeited.

7) Receipt of hospitality and entertainment by court judges

- Report details: A report was submitted that judges of A district court received hospitality over several times at a bar and/or a pub from lawyers in relation to their duties as a judge.
- Investigation result: The report was proved to be true, and Judge A resigned while another judge B was demoted and transferred to another local jurisdiction. Disciplinary measure was imposed on a public official of the Prosecutors' Office who illegally received hospitality in return for a favorable treatment to lawyers in legal proceedings.
- Ripple effect of the report: Public criticism was raised against corruption in the judicial branch, and the reform movement was promoted led by the Supreme Court in order to prohibit receiving hospitality and entertainment from lawyers.

8) Alleged embezzlement of research funds by a university professor

- Report details: A professor of a national university A allegedly embezzled KRW 100 million from the research fund in the process of conducting research projects contracted out from the Ministry of Health and Welfare and other organizations from 2000 to 2005, by receiving money for wages and incentives for researchers registered for the projects who actually did not work for the projects.
- Investigation result: One person was imprisoned, and KRW 340 million was recovered.

9) Bribery of public officials of a local government

- Report details: A report was made that public official of a local government received bribes and hospitality from a private company in return for awarding the contract for the digital archive DB establishment project in 2006.
- Investigation result: 2 public officials and 2 employees of the company were prosecuted.

10) Illegal receipt of compensation money for disposal of pigs suffering from foot-and-mouth disease

- Report detail: A report was made against the head of a dairy farm in Gyeonggi-do, who allegedly swindle billions of Won by overstating the number of pigs raised in the farm when receiving compensation money from the government for disposing pigs suffering from foot-and-mouth disease in January 2011.
- Investigation result: The head of the farm, public officials in charge and others (15 people) were prosecuted on the charges of illegally receiving KRW 2.82 billion by inflating the number of pigs subject to disposal to 9,566. After the court ruling was released, all of the money illegally paid was recovered.

11) Embezzlement of government research endowment for shipbuilding technology development project

- Report details: Researchers of a technology development company was designated as the main developer for shipbuilding technology by the concerned government agencies. Then they embezzled hundreds of millions of Won from the government research endowment by falsely stating material purchasing expenses that are not related with the project as used for the project.
- Investigation result: It was revealed that the researchers embezzled KRW 1.18 billion over 422 times by manipulating test results, and two public officials received bribes of KRW 2 million from the researchers and conducted forgery of official documents. As a result, 4 people were criminally charged without imprisonment, and the prosecution was delayed for one person.

12) Bribery and embezzlement of former board members of a public corporation

- Report details: It was reported that former board members of a public corporation were managing public funds of KRW 14 billion for land acquisition and construction project, and they embezzled billions of Won by overstating the land purchasing expanses.
- Investigation result: A former board member was criminally charged with detention for embezzling KRW 526.6 million out of the budget for purchasing land, and 3 people were charged without detention for using KRW 183 million for personal uses.

13) Swindle of subsidies of a public health corporation for a clean-business project

- Report detail: The whistleblower argued that some forklift truck operators inflated the load of their trucks in order to embezzle subsidies paid by a public health corporation for a clean-business project.
- Investigation result: It was revealed that 62 companies falsely claimed subsidies of KRW 614 million. 85 people including the owners of the companies and other related people, and 30 legal persons were referred to the Prosecutors' Office for prosecution. 35 people including employees of the public health corporation were disciplined, and the illegally paid subsidies were all recovered.

14) False claim to the compensation money for being designated as the national essential vessel
- Report details: The heads of vessel operators illegally received compensation money of billions of won from the government after their vessels including oil tankers were designated as the national essential vessels from 2008 to 2011, by making more foreign sailors aboard than 6 people which is the legally approved number.
- Investigation result: A total of KRW 1.64 billion were illegally paid to vessel operators for KRW 40 ~ 50 million per ship, and all of the 28 people involved in the fraud were charged without imprisonment.

Korea's *Whistleblower Protection Act* stipulates that violations of public interest are the acts undermining public health and safety, the environment, consumer interest, and fair competition that are subject to administrative measures under the Presidential Decree including penalty, cancelation, and suspension of permit/license, in violation of 180 Acts listed under the *Whistleblower Protection Act*.[12)]

Acts related to the violation of the public interest

1. Agricultural Products Quality Control Act
2. Special Act on the Safety Control of Public Structures
3. Food Sanitation Act
4. Natural Environment Conservation Act
5. Quality Control and Safety Management of Industrial Products Act
6. Wastes Control Act
7. Blood Management Act
8. Medical Service Act
9. Framework Act on Consumers
10. Monopoly Regulation and Fair Trade Act
11. Fair Transactions in Subcontracting Act
12. Other laws defined by Presidential Decree regarding health and safety of the public, environmental protection, protection of consumer interest, promotion of fair competition, etc. (169 laws)

11) Through 1) to 9) are summary of KICAC, 2007b, and through 10) to 14) are summary of ACRC 2013c:340-342.

12) For reference, as of May 31, 2013, there are 1,292 Acts in Korea. Therefore, the 180 Acts under the *Whistleblower Protection Act* account for 14% of the total Act in the country, and the reporters of violations of those 180 Acts and the contributors or cooperators are protected and given reward.

Major examples of violations of public interest (ACRC, 2012a:15-17)

1) Public interest violation that undermines public health

- The act of a person without a medical license practicing medicine or a medical service provider offering other medical services than originally licensed (violation of the Medical Service Act)
- The act of selling food products which can harm individual's health or contain poisonous or unhealthy ingredients. The act of producing, processing, using, cooking, storing, carrying or shelving such food projects for selling (violations of the Food Sanitation Act)
- The act of distributing blood contaminated with HIV/AIDS virus through mismanagement of a blood management organization (violation of the Blood Management Act)
- Related Acts: 45 Acts including the Medical Service Act

2) Public interest violation undermining public safety

- The act of poor supervision of construction or the act of threatening the safety of citizens by causing serious damage to major parts of structures including bridges, tunnels, and railroads during the warranty period in violation of laws related with the construction safety (violation of the Construction Technology Management Act)
- The act by a gasoline seller of selling kerosene, lubricating oil, marine diesel, etc. as fuel for cars or construction machinery (violation of the Petroleum and Petroleum Substitute Fuel Business Act)
- The act of smuggling fake refrigerant gas for car air-conditioners which can cause explosion and supplying it to motor service centers (violation of the High-Pressure Gas Safety Control Act)
- 56 Acts including the Special Act on the Safety Control of Public Structures

3) Public interest violation causing environmental destruction

- The act of installing and operating facilities emitting air pollutants including carbon monoxide without installing equipment to prevent air pollution such as a dust collector (violation of the Clean Air Conservation Act)
- The act of undermining the ecosystem or natural scenery by constructing and extending a building or altering the land shape and quality within the ecosystem/natural scenery conservation area (violation of the Natural Environment Conservation Act)
- The act of illegally dumping thousands of tones of industrial wastes contaminated with poisonous chemicals (violation of the Wastes Control Act)
- 50 Acts including the Natural Environment Conservation Act

4) Public interest violation infringing on consumer interest

- The act by a business owner of not reporting to the head of the concerned central government agency when he or she became aware of the fact that the products provided to consumers have or can have a serious defect posing a threat to the life, safety, or

property of consumers (violation of the Framework Act on Consumers)

- The act by a grain trader of excessively or falsely labeling/advertising regarding the year of production and quality of grain which can lead to deceiving or confusing consumers (violation of the Grain Management Act)
- The act of distributing and falsely labeling the sesame oil of poor quality made from the mixture of Chinese sesame oil and cooking oil as the high-quality sesame oil produced in Korea (violation of the Agricultural Products Quality Control Act)
- 24 Acts including the Framework Act on Consumers

5) Public interest violation undermining fair competition

- The act by a market-dominating enterprise of abusing its dominant status by unilaterally deciding, maintaining or altering the price of goods or services (violation of the Monopoly Regulation and Fair Trade Act)
- The act by a business operator of illegally deciding the amount of contract at the substantially lower level than the market price for compatible goods or services or forcing such unfair contract in the process of contracting out production of goods to its supplier (violation of the Fair Transactions in Subcontracting Act)
- The he Fair Transact by oil companies of colluding to fix LPG prices (violation of the Monopoly Regulation and Fair Trade Act)
- 5 Acts including tactions in Subcontracting Act

Statistics on Implementation of the *Public Interest Whistleblower Protection Act*

Since the implementation of the whistleblower protection system (Sep. 30, 2011), a total of 13,462 reports of public interest violation have been submitted to and handled by the ACRC as of the end of December 2014. By the category of the content of the whistleblowing reports, infringement on public health accounts for the largest proportion with 7,336 cases (54.5%) including production of unhealthy food products and false/exaggerated advertisement and distribution of medicine without license. The following category is safety violations with 2,409 cases (17.9%) including illegal sale of high-pressure gas.

<Table Ⅲ-2> No. of Public Interest Violation Reports by Category (Unit: case, %)

Category	Total	Public Health	Public Safety	Environment	Consumer Interest	Fair Competition	Others
Total	13,462	7,336	2,409	688	700	228	2,101
Percentage	100.0	54.5	17.9	5.1	5.2	1.7	15.6

Among the 13,462 public interest whistleblowing reports received, 9,266 cases were referred to an examination/investigative agency or the concerned public organization, and 3,081 cases were closed as of the end of December 2014. As for the cases referred to the relevant agency, necessary steps including punishment were taken according to the result of investigation except those under investigation or examination as of the end of December 2014. In detail, 173 cases were prosecuted, 311 charged, 104 fined, 301 imposed of penalty surcharge, 230 imposed of negligence fine, and 2,040 cases are taken of other measures.

Major cases of whistleblowing reports under the *Whistleblower Protection Act* (ACRC, 2012c)

1) Poor construction of supporting columns of a railroad bridge

- Report details: A construction company and its contractor failed to install and fixate the bottom mats and the pier connecting prevention blocks to augment the supporting columns of a railroad bridge. And the supervisory company allegedly infringed public interest by not conducting a thorough supervision of the construction project and failing to take necessary measures to correct the situation.
- Measures taken following the report: The investigation revealed that the construction project was poorly carried out, and there was not enough supervision of the construction project, which can lead to a public interest violation. It was concluded that administrative measures including order of correction from the supervisory agency were needed, so the case was referred to the Ministry of Land, Transport and Maritime Affairs.
- Investigation result: The Korea Rail Network Authority conducted the investigation into the case, and it revealed that 1,000 m2 of the bottom mats were not installed, 860 scouring prevention blocks were not connected with chains. As a result, supplementary construction was completed by Feb. 11, 2012, and penalty points ranging from 0.2 ~ 1.6 were imposed on 6 construction companies, and penalty points of 2.0 were given to the field representative and the chief supervisor.

※ Imposition of penalty points for poor construction can cause disadvantages to those who received the penalty points by subtracting points of the candidate construction companies at the PQ (Pre-Qualification) evaluation and the construction ability test for a construction project.

2) Others

① The ACRC received a report that the ground supporting construction to prevent erosion of the river bed was not thoroughly conducted over the course of a railroad bridge supporting construction project along with the Gyeongbu Express Railroad and the Nakdonggang River. The investigation revealed that there was poor construction in the process, and supplementary construction work was carried out to avoid the risk of the collapse of the bridge. It was very difficult to find out such poor construction under the river, and such scrupulous public interest violation could be revealed thanks to an insider's whistleblowing report.

② A disclosure was made to the ACRC that a public health organization turned a blind eye to the risk of the infection of hepatitis B and other types of hepatitis through blood transfusion by delaying the introduction of the state-of-the-art test equipment even after receiving government subsidy of KRW 5.6 billion for purchasing the NAT test equipment which can allow the early detection of hepatitis B virus. The concerned agency conducted

inspection of this case and confirmed the authenticity of the report, and gave warning to the organization. And the test equipment was finally introduced. The disclosure also led to the revision of related laws to make it compulsory to take the hepatitis test.

③ There was a report that a food company illegally produced and distributed pork slices even during the period of suspension of business because of the detection of food poisoning bacteria.

3.3 The Whistleblower's Duty of Making Report in Good Faith

In general, disclosures made with the reasonable belief,[13] on the reasonable ground,[14] or in good faith[15] can be protected under the law.

Under the *Whistleblower Protection Enhancement Act* of the US, employees should be protected if they report the following information in good faith: (a) a violation of any law, rule, or regulation, (b) mismanagement, (c) a gross waste of funds, (d) an abuse of authority, or (e) a substantial and specific danger to public health or safety. Therefore, if the whistleblower made a disclosure even though he or she knew the disclosure was not true, or the disclosure was made without any reasonable belief, they cannot be protected. However, if the whistleblower made a disclosure with reasonable belief, he or she can be protected under the law even though the disclosure does not fall into any one of the above categories from (a) to (e). That is, if the disclosure meets all of the other requirements for protection, it is possible for the whistleblower to be protected. As for the reasonable belief, the disclosure is considered to be made with reasonable belief when a third party who has no relation with the whistleblower can tell that the disclosure falls into one of the above categories. In comparison, a mere subjective view of the whistleblower him/herself cannot be considered as the reasonable belief even if the view is shared by other public officials. (Kim Kisun, 2012:11-12; ACRC, 2013b)

13) Most of whistleblower protection laws covering the private sector including the US's *Whistleblower Protection Enhancement Act* of 2012 and the *Sarbanes-Oxley Act* of 2002

14) The *Whistleblower Protection Act* of Japan

15) The *Protected Disclosures Act* of New Zealand, the *Public Servants Disclosure Act* of Canada, the UK's *Public Interest Disclosure Act*, South Africa's *Protected Disclosures Act*, and the *ACRC Act* and the *Whistleblower Protection Act* of the Republic of Korea required both "with reasonable belief" and "in good faith" for protection.

When a disclosure was submitted that the State of Missouri wasted the budget because the state government dispatched two of its public officials to attend an educational program in the State of Virginia even though there was a similar educational program to be held two weeks later within the State. Under the legal criteria, the US Merit System Protection Board's investigation concluded that it was reasonable for the state government to send off the public officials to an educational program held in a far-off area because there was an urgent necessity of such training. However, there was no ground to conclude that the whistleblower had to check the urgency of such training course before making the report for protection. Therefore, the Board ruled that the related facts known to the whistleblower were enough for a reasonable person to reach the same conclusion. (Kim Kisun, 2012:11).

In addition, the reasonable belief should be substantiated by practical evidence (enough to support the conclusion of the disclosure and to be accepted by any reasonable person) in order to be considered "reasonable." In relation to this, the *Whistleblower Protection Enhancement Act* revised in 2012 provides more detailed criteria to decide the reasonable belief. That is, when a reasonable third party without any relationship with the whistleblower can make an informed decision that the disclosure can be protected under the law, the disclosure shall be protected.

In the UK's *Public Interest Disclosure Act*, the whistleblower should make a disclosure in good faith, the disclosure shall not be made for personal gains, and the whistleblower should make a disclosure only when he or she can reasonably conclude that the information disclosed and his/her argument are true. However, the information does not need to be accurate. Reasonable belief does not refer to the accuracy of the information disclosed but the cases where any reasonable person can have such belief. Therefore, a disclosure can be protected as long as it is based on the reasonable belief. Moreover, unless a disclosure is made to a legal professional, it should be made in good faith. Even if a disclosure was made carelessly or without appropriate level of attention, the disclosure can be considered to be made in good faith in principle if it is not fabricated. However, the Employment Tribunal once ruled that if the whistleblower exaggerated his/her report and submitted it repeatedly without examining the authenticity of the report, such disclosure is in violation of the principle of good faith. Similarly, if the disclosure was made to threaten the employer for a wage increase or for other improper or illegitimate purposes, it can be said that the disclosure was not made in good faith. (Kim Kisun, 2012:87-88;96-97) In Canada, it is stipulated that disclosures in good faith should be protected (Lee Jimun et. al., 2013:98).

The *Protected Disclosures Act* in New Zealand protects the whistleblower who believes that his/her disclosure is or is highly likely to be true on reasonable grounds. In addition, if the whistleblower knowingly makes a false disclosure or makes such disclosure for malicious purposes, he or she cannot be protected under the *Protected Disclosures Act* or the *Human Rights Act of 1933*. (Park Heungsik, etc., 2002b:86; 90) Japan's *Whistleblower Protection Act of 2004* stipulates that a disclosure can be protected only when such disclosure is not made for the purpose of gaining illegal profits, damaging other people, etc (Moon Youngsik, 2008:35).

Under the ACRC Act of Korea, the report should be submitted in a written statement containing the whistleblower's personal information and the purport or reasons for reporting, (Principle of real-name reporting) along with the subject of reporting and evidence of corrupt acts (Duty of submitting evidence). The disclosure can be made by visit, post, fax, and on the internet website. The *Whistleblower Protection Act* also stipulates that a disclosure shall be made in a written statement (including an electronic document) containing the whistleblower's personal information, information on the act undermining public interest along with the person who conducted such acts, the purport and reason for reporting public interest violations. The report should be made on the website, by mail or fax. The report can be made in an oral statement if there are special reasons. Even in this case, the evidence of public interest violations should be submitted. In addition, in the case of an oral report, the person who received the report should write down what he or she was told and then read aloud what was documented. Then, the whistleblower should sign or affix his/her seal on the written report.

Meanwhile, the ACRC Act does not protect when the whistleblower makes a report even though he or she knew or could have known that the report is false. And the *Whistleblower Protection Act* also does not provide protection for public interest whistleblowers when a person makes a disclosure even though he or she knew or could have known that the report was false, or the whistleblower demands money or valuables or special treatment in employment relationship or the report was made for illegal purposes.
These provisions are aimed at prohibiting unreasonable and reckless reports. What's more important is that the whistleblower can be protected even if his or her disclosure proves to be false when he or she made the report in good faith under reasonable belief or on reasonable grounds (ACRC, 2013a:5).

3.4 Where to Make a Report

According to most of legislations, disclosures should be made to designated institutions for whistleblower protection. However, the content or requirements of disclosures can vary depending on the types of institutions to which the report should be submitted. In the US, the *Whistleblower Protection Enhancement Act* does not have any specific limitations except for the case where the information included in a disclosure is the classified informatio n.[16] Therefore, if the whistleblower suffered reprisal including dismissal from the workplace as a result of making a disclosure to the media, he or she can be protected if all the other requirements were met. However, information which is prohibited from being disclosed under the law or considered as state secret regarding national security or diplomacy should be disclosed only to the Special Counsel, the Inspector General of an agency, or the employee designated by the head of the agency to receive such disclosures in order for the whistleblower to be protected (Kim Kisun, 2012:12-13).

The *Public Interest Disclosure Act* of the UK stipulates a wide range of entities to which a disclosure can be made from the employer to administrative or other institutions. However, when a disclosure is made to institutions other than the employer or administrative institutions, more strict requirements should be fulfilled for protection. An employee can make a disclosure under the principle of good faith (a) to his/her employer; or (b) to another person when the disclosure is reasonably believed to be fully or mainly related with the act of a person other than the employer or the matters about which the person other than the employer has liability (Kim Kisun, 2012:88-89).

Secondly, disclosures made over the course of providing and receiving legal advice can be protected under the law. However, in this case, the report is not required to be made in good faith. It is believed to be aimed at allowing it for the whistleblower to safely obtain legal advice that an individual cannot be protected under the Act if he or she does such act for person gains. In addition, this provision serves to protect the whistleblower who sought legal advice from the lawyer working for the trade union. Thirdly, if the employer (a) is an individual appointed by the head of an administrative agency under

16) However, precedents ruled that when the disclosure was submitted to the wrongdoer who committed the act of corruption in the report, when a person whose main duty is investigation and reporting of wrongdoings and he or she made a report to the designated person or institution as part of conducting his/her duty, or other similar cases cannot be protected.

the law; or (b) such an appointee is a member of the organization, a disclosure can be made to the Minister of Crown under the principle of good faith. Fourthly, an employee can make a disclosure in good faith to the person designated by the Secretary of State when the disclosure is reasonably believed to be the matter within the authorities of the designated person and the information and argument regarding the disclosure is true enough. As can be seen in these provisions, if the disclosure is made to a regulatory institution designated by the Minister, there is no requirement that the whistleblower should make a disclosure first to the employer. In comparison, if the disclosure is made to a regulatory institution which is not designated by the Minister, disclosure regulation for exceptional cases is applied and the whistleblower should bear a stricter and heavier burden of proof. The Act provides protection for exceptional cases even though a disclosure is made to a third party, for example the media, other than the employer or designated institutions. Although there is no specific provision mentioning where to make a disclosure, it generally refers to the media. However, disclosures can be protected only when strict requirements are met when the disclosure is made to other institutions than the employer or designated institutions in order to prevent the side effects (Kim Kisun, 2012:89-96).

Canada's *Public Servant Disclosure Act* stipulates that a disclosure can be made to (1) the supervisor or the senior officer designated[17] by the organization, (2) the Public Sector Integrity Commissioner,[18], (3) the Auditor General of Canada in case the disclosure is related with the Integrity Commission, and (4) the public when there is not enough time to make a report to the person designated by (1) to (3) and there are reasonable grounds for the employees to believe that the disclosure is related with the act or the omission that can be considered as falling into any one of the following categories: (a) the act of serious violation of laws and ordinances, or (b) the act of posing imminent risk of substantially and specifically threatening to individual's life, health and safety or the environment. However, the information which is prohibited from disclosure under the Personal Information Protection and Electronic Document Act and other laws cannot be disclosed to the public. The Act applied different criteria and requirements for disclosure depending on where a disclosure can be made (Lee Jimun, etc., 2013:95-96).

17) The head of the agency should designate a supervisor to receive corruption reports committed by employees of the organization in compliance with the authority and duty of the supervisor under the Code of Conduct established by the Financial Committee.

18) A public official is not allowed to report information related with a confidence of the Queen's Privy Council for Canada relevant with the application of Article 39 paragraph 1 of the Canada Evidence Act or information related with the solicitor-client privilege to the Commissioner. If such information is disclosed to the Commissioner, the Commissioner cannot make use of such secret or information.

The *Protected Disclosures Act* of New Zealand prescribes that a report of corrupt acts shall be made according to internal procedures in principle, and there are various reporting procedures established under the law so that such report can be made to the head of agency, the concerned authorities, and members of the Cabinet or the Ombudsman in special cases. However, a whistleblower should make a disclosure under the internal procedures determined by the organization at first. To this end, every public institution has to establish appropriate internal procedures to receive and handle disclosures regarding serious wrongdoings which occur within the organization or which are committed by the organization itself. And in any other special cases, a disclosure can be made not according to internal procedures (Park Heungsik et. al., 2002b:85-87).

South Africa's *Protected Disclosures Act* stipulates that reports of corruption can be disclosed to the legal advisor, and it is considered to make a disclosure to the employer if the whistleblower submits a report to other people than the employer according to the procedures established by the employer. Moreover, it is possible to make a disclosure to the heads of government departments or the Cabinet meeting, and an employee can submit a report of wrongdoing to certain individuals or organizations when the employee believes that there are unfair and illegal acts related with the matters within the authority of the Public Protector, the Auditor General, the certain individuals or organization, or he/she believes that the disclosed information and related statements are true. However, information can be disclosed according to general procedures other than the abovementioned procedures[19] (Park Heungsik et. al., 2002b:94-95).

Under Japan's *Whistleblower Protection Act*, a disclosure can be made to (a) the person who uses services from the employer or the dispatched employees, (b) the person who is designated by those in subparagraph (a), (c) the concerned administrative agency, or (d) the person who needs to receive the disclosure when the wrongdoing in the disclosure has already happened or when the damage from the wrongdoing should be prevented (ACRC, 2013a:6).

19) i) when an employee published the information regarding the employer, and the employee who made such disclosure has reasons to believe that he or she is likely to be subject to disadvantageous measures, ii) when there is no individual or organization that is related with the wrongdoings, and there are reasonable grounds that the evidence for the wrongdoings can be concealed or destroyed if an employee reveals the evidence to the employer, iii) when the employee has already provided the information related with the disclosure to the employer or certain individual or organization, and there has been no measures taken for the disclosure for an appropriate period of time, and iv) when relatively severe disadvantageous measures are imposed on the whistleblower

Meanwhile, the ACRC Act of Korea stipulates as the followings: (1) any person who becomes aware of an act of corruption may report it to the Commission, (2) In the case that a public organization employee learns that an act of corruption has been committed or is forced or proposed to commit corruption by another public organization employee, he or she shall report it immediately to any investigative agency, the Board of Audit and Inspection or the Commission, but (3) the legal protection for whistleblowers shall apply mutatis mutandis to "whether a person reported acts of corruption to the public organization to which he or she belongs, or where a person reported acts of corruption to the public organization supervising the organization, group, or enterprise to which he or she belongs." Therefore, protection can only provided only when a person reported an act of corruption to the ACRC, the public organization to which he or she belongs, or the public organization supervising the organization, group or enterprise to which he or she belongs, and if the whistleblower is a public official, a report to the Board of Audit and Inspection or to any investigative agency can be protected. However, for these cases, only provisions for protection are applied mutandis mutatis, not including reward and award provisions (Kim Kisun, 2012:126-127).

Korea's Whistleblower Protection Act stipulates that whistleblower protection or reward may be offered to a person who reported that a violation of public interest occurred or is likely to occur when the report is submitted to (a) the representative or employer of a person, institution, organization, company, etc. that may violate or has violated the public interest, (b) the administrative agency or supervisory body that has the authority to direct, supervise, regulate or investigate violations of the public interest, (c) investigative agency, (d) the ACRC, (e) a member of the National Assembly, or (f) public organizations including public corporations or public enterprises established by the Acts related with violations of public interest. Compared with the ACRC Act, investigative agency is included as where to report, as well as the representative or employer of a person, institution, organization, company, etc. that may violate or has violated the public interest. The starkest comparison is that the *Public Interest Whistleblower Protection Act* provides protection when a person makes a disclosure to the very organization or company that violates public interest, and the organization or company itself can have an opportunity to correct its wrongdoings with its voluntary efforts. This is somewhat meaningful for whistleblower protection in that an organization or a company which is willing to correct its act of corruption has a low possibility of retaliate against the whistleblower (Kim Kisun, 2012:154).

As discussed above, a report and requirements for reporting vary from country to country, and especially strict provisions are applied in case a disclosure is submitted to the Media, the Legislature, or the Public.

At the time of establishment of the *Public Interest Whistleblower Protection Act*, there was a controversy over whether a disclosure to the Media should be protected. However, it was not included in the legislation.



Discussions and Exercise

- Discuss whether reporters from the outside of an organization should be protected as well as whistleblower within the organization.
- Discuss whether not only the public sector but also the private sector should be the target of disclosure and whether the disclosure for the private sector should be protected.
- Discuss if the disclosure regarding the police, the army or the intelligence agencies should be excluded for protection.
- Share your opinions on imposing obligation of reporting when a public official becomes aware of acts of corruption that can be reported in the course of performing his or her duty, and if it can be mandatory, whether penal provisions for failure to meet such obligation should be in place.
- Discuss whether general provisions for the kinds of corrupt act for disclosure are appropriate, or the list of specific acts that can be subject to disclosure as in the cases of the *Act on the Protection of Public Interest Whistleblowers* of Korea and Japan's *Whistleblower Protection Act*.
- Exchange views on whether protection should be offered when the whistleblower made a report in good faith under the reasonable belief and grounds even though the disclosure proved to be false later.
- Debate whether the anonymous reporting can be allowed.
- Discuss if reporting by proxy can be made possible.
- Share your views on whether protection should be protected for disclosures made to the Media or non-governmental organizations other than public organizations.

※ If your country has the whistleblower protection system, please make sure that your country's system can be discussed for this discussions and exercise section.

4. Protection for Whistleblowers and Others in Working Environment



Goals	• To learn types of relevant individual under protection other than whistleblowers • To learn types of institutions which provide protection for whistleblowers • To learn types of banned practice of giving disadvantages and discriminations against whistleblowers • To learn about burden of proof of disadvantages occurring from whistleblowing • To learn about whether culpability mitigation and exemption can be applied to a case with breach of confidentiality occurring over the course of whistleblowing • To learn about types of protective measures provided to whistleblowers • To learn about provisional remedies for whistleblower suffering disadvantageous measures • To find out types of punishment which can be imposed on a person who took the retaliatory action against whistleblower • To learn about pre-remedy measures by reconciliation

4.1 Coverage of Protection

Laws protecting whistleblowers around the world provide protection for whistleblowers as well as other relevant persons who submitted relevant statements or testimonies during the course of the investigation or litigation process. Some laws also stipulate that a person who refused to conduct illegal act can be ensured protection from reprisals occurring from the disclosure.

In 1989 US government revised the *Whistleblower Protection Act* to ensure protection of 1) act of exercising rights of appeal, complaint or grievance permitted under laws, regulations or directives, 2) testimonies or other legal support to the individual who is exercising the rights stated in 1), 3)act of cooperating or providing information to inspector general and/or special counsel according to relevant laws and regulations, and 4) case of suffering disadvantages during personnel practice due to refusal to follow orders to violate laws and regulations.

Meanwhile, Merit Systems Protection Board (MSPB) decided that if an individual suffered unfair measure because the concerned agency misconceived him/her as a whistleblower, the person can be the subject of above protection laws even if the person is not defined as a whistleblower under the Act. (Kim Kisun, 2012:18-19). According to the U.S.'s diverse laws and regulations regarding whistleblower protection in the private sector, the most basic protection subject is an individual who reported act of breaching the concerned laws, or an individual who testified over the course of legal process regarding the same issue. However, those laws also protect an individual who cooperated with the due process including investigation and litigation against the violations[1], who refused to participate to the act of violation and who opposed to be involved in the violation or opposed to the act, policy and work of violating the relevant laws[2]. Furthermore, quite a number of laws and regulations protect an employee who is expected to disclose, testify and cooperate with legal process[3] (Kim Kisun, 2012:59-61). In Canada, under the Servants Disclosure Act (PSDPA), a person cooperated to relevant investigation and become a victim of reprisals on the ground is entitled to protection. (ACRC, 2013a:8).

The ACRC Act of Korea provides protections, such as guarantee of status, protective custody and/or liability exemption to whistleblowers and other relevant individuals who cooperated during the course of audit, investigation and inspection of the reported matter, by means of testifying and/or submitting related documents. (Kim Kisun, 2012:140).

Protection to cooperator in whistleblowing case

(ACRC, 2008:30)

- Case summary: Auditor of 00 government corporation reported three employees to the prosecutor's office on the charge of malpractice during work. Two other employees cooperated with internal audit process by submitting testimony and other evidence.

1) *Age Discrimination in Employment Act*, *Toxic Substances Control Act of 1976*, *Clean Air Act of 1977*, *Aviation Investment and Reform Act*, *Sarbanes-Oxley Act of 2002, Energy Reorganization Act of 1974, 2005 revision, Surface Transportation Assistance Act of 1982, 2007 revision, Consumer Product Safety Improvement Act of 2008*, etc.

2) *Age Discrimination in Employment Act, Energy Reorganization Act of 1974,* 2005 revision, *Surface Transportation Assistance Act of 1982*, 2007 revision, *Consumer Product Safety Improvement Act of 2008*, etc.

3) *Occupational Safety and Health Act, Toxic Substances Control Act of 1976, Clean Air Act of 1977, Aviation Investment and Reform Act, Energy Reorganization Act of 1974,* 2005 revision, *Surface Transportation Assistance Act of 1982*, 2007 revision, *Consumer Product Safety Improvement Act of 2008*, etc.

However, after the audit, three persons in charge of HR division (board director, HR director, HR vice director) relocated the cooperators' workplace from Seoul headquarters to local branch, degrading their positions, on the ground of them cooperating with the report.

- Results of the corrective measures by ACRC: During investigation, the cooperators' status were restored. However, later it turned out the disadvantages were indeed taken against to their status. Therefore, the board director was fined KRW 5 million for imposing such disadvantages (although request of disciplinary measure was necessary, it was alternated to notification to supervisory agency of personnel material as the agency lacked disciplinary provisions against executive level), and the HR director and HR vice director were fined KRW 250 million each. Also, disciplinary measure on them was requested to their authority.

The ACRC Act sets out separate provisions to apply protection for whistleblowers and for cooperators. However, the *Act on the Protection of Public Interest Whistleblowers* differs from the ACRC Act in that it states protection for whistleblowers and cooperators in one clause. In addition the former Act has significant implications as it expands the definition of cooperators to include persons who testified or submitted materials regarding inspection and litigation on protective measures for the whistleblowers as well as on the whistleblowers and their disclosure. Furthermore, it also protects an individual who has prepared the protected disclosure by collecting evidence of conduct detrimental to public interest.

As stated above, not all nations offer the same type of protection for whistleblowers and cooperators. Yet, given that corrupt acts or public interest violation acts occur mostly in a secretive manner, thereby making it extremely difficult to prove that reprisals took place against the whistleblower and even to prove such fact in legal process, it is necessary to obtain the testimony and cooperation from the witnesses or those who are well aware of such disadvantageous measures. Therefore, it is desirable to include as subject of protection a person who opposed or refused illegal acts and follow such orders, as well as those who cooperated during the course of inspection and litigation regarding the protection of whistleblowing and the whistleblowers (ACRC, 2013a:8).

4.2 Protection Agency

There are two categories of protection agency; the one with only judiciary's involvement and the other with judiciary and the administration's involvement.

In the U.K. and Japan, a whistleblower is required to file a suit to employment tribunals and courts respectively to make a legal case of disadvantageous practice occurred under employment relationship. (ACRC, 2013a:8). In the UK, the complaint should be filed within three months from the day of wrongful dismissal or other types of damages taken place, (if the commission or omission of such act causing damages continued, the last date of the practice). In case lawsuit could not be made within the period due to compelling reasons, it should be filed by the date when employment tribunal judges it to be possible. (Kim Kisun, 2012:100-101). No independent organization dedicated to the work of status protection exists in the UK, but they have the Public Servant Personnel Committee in charge of resolving complaints of public officers, to complement the reporting process system. (Yoon JongSeol, et al., 2003:60). In South Africa, whistleblowers can apply for remedies to employment tribunals or district courts (Park Heungsik, et al., 2002b:96-97), and in New Zealand, they can file an appeal in accordance with the *Employment Contracts Act*. (Park Heungsik, et al., 2002b:89).

In the US, according to its *Whistleblower Protection Act* (WPA), the Office of Special Counsel (OSC) recommends corrective practice following an application from a whistleblower. If, however, the concerned agency refuses to comply with the recommendation, the protection is provided based on the MSPB's decision after OSC's application. If the special counsel closes the case or does not take any measure for longer than 120 days after the application, the reporter can apply for protection to the MSPB by him/herself. However, if the MSPB dismisses the application, the whistleblower can file an appeal to the U.S. Court of Appeal for the Federal Circuit (ACRC, 2013a:8-9).

The **OSC** is an independent agency under the administration and is in charge of preventing retaliatory actions taken against public interest whistleblowers. Therefore, when a prohibited personnel practice occurs in violation of Merit System Protection, the OSC provides protection to the disadvantaged federal agency employee and cooperators. It also provides a channel to report such activities. Once OSC receives the report, it reviews and transfers the case to the Attorney General or the head of the federal institution. The 5-year term special counsel of OSC is nominated by the president in consensus with the senate. The counsel is not allowed to have a concurrent office in principle and can be dismissed by president only on the ground of incompetency, negligence of duties and illegal activities. The Merit System Protection Committee (MSPC) is composed of three members of 7 year term, appointed by the president with senate's consent. They are also not allowed to have a concurrent office in principle. They can be dismissed by the president only on reasons of incompetency, negligence of duties and illegal activities. The president, with the consent of the senate, appoints one of them as the chair of the committee and another as the vice chair. (Kim Kisun, 2012 : 21)

Under the whistleblowers protection acts in private sector, there are largely two types of protection agencies under relevant laws and regulations: 1) a case where direct request for protection to the judiciary is allowed, and 2) a case where it is required to initially apply for protection to a federal administrative agency, and then appeal, if necessary, the decision to the Court of Appeal for the Federal Circuit. The Department of Labor is designated as a protection agency for the half of the latter cases, where initial application to administrative agency is required. Also, the Equal Employment Opportunity Commission as well as Federal Administrative Agency for Illegal Act Control (Secretary of Department of Defense) are designated as the primary protection agency. The Federal Credit Union Act is one of the representative laws that allow direct protection request to the judiciary. Other Acts that regulate initial request for protection to federal administrative agency and then to the U. S. Court of Appeal for the Federal Circuit include the *Toxic Substances Control Act*, the *Clean Air Act*, *Aviation Investment and Reform Act* (AIRA), *Sarbanes-Oxley Act* (SOA), *Energy Reorganization Act* (ERA), *Surface Transportation Assistance Act* (STAA), and *Consumer Product Safety Enhancement Act* (CPSE). Also, the *Occupational Safety and Health Act* (OSHA) stipulates that the application for protection should be made to the Secretary of Labor. Instead of making direct decision on the matter, the Secretary orders, if deems necessary, a suit to be filed to federal district court against the person who implemented the disadvantageous practice. Then the federal district court decides whether the protection can be applied to the concerned complaint. One issue with this system is it lacks an appealing process for the protected individual, if the secretary decides not to file an action. Under the *Age Discrimination in Employment Act* (ADEA), the concerned individual can make protection request to the Equal Opportunity Employment Commission (EOEC) and if the commission does not pursue legal action against the offender, the protection subject can directly file a civil suit to the offender.

Recent legislations are enhancing the rights of whistleblowers giving them the right to purse protection request to federal district court, if a federal administrative agency with primary protection power fails to make a decision on the protection request from a whistleblower even after some period passed. A case in point is the SOA. When a primary protection agency does not make any decision on the remedy measure, under the law, the applicant can request protection to a federal district court 180 days after the Secretary of Labor receives such request. The period can vary depending laws; for example it is 1 year under the ERA and 210 days under the STAA and CPSE. Also, in this case, the

federal district court will consider it as the first appeal by the protected subject. Therefore, all the trial process starts from the very beginning such as fact finding. Exclusion period of protection request shows most difference between laws. It has a variety of duration limitations including within 30, 90, and 180 days after suffering retaliatory act including dismissal. Recently revised or newly enacted acts tend to extend the exclusion period, which can be understood as a way of protection enhancement for whistleblowers (Kim Kisun, 2012:61-64).

In Canada, under the *Public Servant Disclosure Protection Act* (PSDPA), a whistleblower can request protection to the Public Sector Integrity Commissioner within 60 days (or in case of unavoidable situation, within period that the commissioner recognizes to be appropriate) after the person acknowledges reprisals had been taken against him/her due to the disclosure or cooperation with related investigation. However, in this case, the person cannot commence process under other laws, regulations or collective agreement. When the commissioner deems the application has reasonable ground, and makes application to the Public Servants Disclosure Protection Tribunal, the tribunal decides on whether to apply the protection (Lee Jimun, et al., 2013:101).

The Office of the Public Sector Integrity Commission (**OPSIC**), established in 2007 following the effectuation of PSDPA, is an independent parliamentary institution, which reviews and inspects corrupt activities occurred in public sector of the federal state based on reports from citizens and/or public servants. The institution reviews requests of protection against retaliatory measures carried out by former and current public officials, conducts investigation on the issue if necessary and recommends remedy for such matter to the chief of concerned public agency. The OPSIC submits annual reports to the parliament regarding its activities and every case of corrupt act discovered must be reported to the parliament. The commissioner is appointed by the resolution of the Senate and House of Commons and reports directly to the parliament. The commissioner will not be dismissed for a term of seven years unless any misconduct occurs. Whenever a reason for dismissal takes place, the Governor in Council can dismiss him/her by parliamentary hearing process. Re-appointment is allowed for not more than seven year term.

Canada has an independent quasi-judiciary institution, the **Public Servants Disclosure Protection Tribunal**. It is composed of a Chairperson and two-six judge members appointed by Governor in Council. All the judges are must be either a judge of federal court or of state supreme court. They serve for a seven-year term. When the Commissioner of OPSIC makes an application, the Tribunal makes decisions regarding the protection of the whistleblowers, and makes an order of taking disciplinary action to any person who took the reprisal, if necessary.

Depending on the complexity of a case, the Chairperson usually assigns one judge to deal with the case, but sometimes assigns a panel composed of three judges. The Tribunal does not interfere with disclosure process but deals with cases where a reprisal has been taken and when remedy for the matter is requested by the OPSIC. (Lee, Jimun, et al., 2013:94-95).

In Korea, whistleblower can request protection to the ACRC or to file a suit to a court in accordance with the ACRC Act and the *Act on the Protection of Public Interest Whistleblowers*, respectively. Even if the protection request is refused by the ACRC, the individual can still file a lawsuit to the court (ACRC, 2013a:9).

It is difficult to rate and assess whistleblower protection agencies collectively, as they are related to each nations' administrative and judicial remedy measures. However, given that filing a suit to judiciary is a costly and time-consuming process, it is observed to be desirable to have effective whistleblower protection agency within the administration (ACRC, 2013a:9).

4.3 Types of Prohibited Punitive Measures or Discrimination

Laws on whistleblower protection around the world prohibit taking a retaliatory action against whistleblower on the ground of the disclosure. Yet they differ in the types of banned practices as well as whether those types are clearly stated in relevant laws. The US's *Whistleblower Protection Enhancement Act* (WPEA) and Korea's *Act on the Protection of Public Interest Whistleblowers* are among those with most clear and detailed clauses regarding the banned practices. To effectively protect those who make protected disclosures, it is desirable to have detailed regulations on what types of conducts against whistleblowers are banned (ACRC, 2013a:9).

Types of prohibited disadvantages and discriminations set out in relevant laws in many countries are as follows: The US WPEA prohibits for any employee with authority to take or fail to take, or threaten to take or fail to take 11 types of personnel action including removal from the position on the ground of the protected disclosure. The 11 types of personnel actions are: 1) appointment, 2) promotion, 3) removal, suspension, reduction in grade, reduction in pay, furlough, or other disciplinary or corrective action 4) detail,

transfer or reassignment, 5) reinstatement, 6) restoration, 7) reemployment 8) performance evaluation 9) a decision concerning pay, benefits, or awards or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance, evaluation, or other action referred to in 1) to 11), 10) a decision to order psychiatric testing or examination and 11) any other significant change in duties, responsibilities, or working conditions (Kim Kisun, 2012:13-14).

> Passive personnel practices or the omission can be a prohibited personnel practice, such as failing to take personnel action such as appointment, promotion, rewarding because of protected disclosure. There was a case where an individual who has a history of reporting wrongdoings applied to a public position. The concerned agency cancelled the position opening and did not fill the vacancy. The federal circuit court found this was a type of prohibited personnel practice. Also, performance improvement plan can be an act of threatening to carry out prohibited personnel practice as it can lead to demotion or dismissal. (Kim Kisun, 2013:15)

Japan's *Whistleblower Protection Act* regulates the following acts as the banned personnel practices: 1) dismissal, 2) demotion, a salary cut or any other disadvantageous treatment 3) cancellation of a worker dispatch and 4) replacement of dispatched worker or any other disadvantageous treatment (ACRC, 2013a:10).

According to U.K.'s *Public Interest Disclosure Act*, a whistleblower is entitled not to be unfairly dismissed or not to receive detriments by measures taken or intentionally failed to be taken by his/her employer. The latter regulation is to provide protection when the whistleblower underwent detrimental treatment which does not lead to a dismissal or when a contract worker suffer a detriment such as termination of employee contract. As the UK's Act does not state in detail types or range of detrimental treatments, specific types of such damages are established by judicial precedents. Detrimental treatment by action recognized by precedents include taking disciplinary measures against the whistleblower, cutting duty, threatening, opening job position currently taken by the concerned person, withdrawing promise to offer permanent position and disclosing the person's identity. Also failing to investigate the reported matter and failing to inform the whstleblower of development of the investigation process were recognized as detrimental treatment by omission (Kim Kisun, 2012:97-100).

Canada's Public Servants Disclosure Protection Act set the following actions as retaliation

: 1) a disciplinary measure 2) demotion 3) termination of employment including discharge or dismissal 4) any measure adversely affecting the employment or working condition and 5) a threat to take any measures referred to in 1) to 4) (Lee Jimun, et. al., 2013:99).

New Zealand does not provide the relevant detrimental information in detail. There are cases only where the retaliation includes dismissal or measures other than dismissal taken during the course of personal appeal (Park Heungsik, et. al., 2002b:89). In South Africa, 1) a disciplinary measure, 2) dismissal, suspension, demotion, harassment or threats 3) workplace transfer regardless of the person's will to do so 4) refusal to accept request of transfer or promotion, 5) unfavorable changes of employment or retirement conditions 6) any measures adversely affecting the employee or refusal to provide proper treatment 7) refusal to designate employment, duty or workplace 8) a threat to take any measures of items from 1) through 7), and 9) a measure adversely affecting other employment, duty, and working environment including employment opportunity and duty safety (Park, Heungsik, et. al., 2002b:96).

Korea's ACRC Act only mentions, "no person shall be subjected to any disadvantage to his/her position or any discrimination in his/her working conditions, including disciplinary measure etc." However, enforcement decree of the Act sets out the criteria of penalty and specifies the types of disadvantageous and discriminatory practices on working condition, which are 1) removal, dismissal, or any other personnel action equivalent to the loss of status at work 2) suspension, demotion, restriction on promotion, or any other disciplinary action 3) reassignment, transfer, or any other personnel action equivalent to them and 4) discrimination in pay, bullying, denial of duties, or any other discrimination in working conditions (Kim Kisun, 2012:130).

The *Act on the Proteciton of Public Interest Whistleblowers* states 9 types of retaliatory action, as in the ACRC Act. It can be classified into 2 types. One is disadvantageous measures which can occur under employment relationship and the other is measures adversely affecting economical and administrative conditions of whistleblower. The disadvantageous practices include: 1) removal from office, release from office, dismissal or any other unfavorable personnel action equivalent to the loss of status at work; 2) disciplinary action, suspension from office, reduction in pay, demotion, restriction on promotion and any other unfair personnel actions; 3) work reassignment, transfer, denial of duties, rearrangement

of duties or any other personnel actions that are against the whistleblower's will; 4) discrimination in the performance evaluation, peer review, etc. and subsequent discrimination in the payment of wages, bonuses, etc.; 5) cancellation of education, training or other self-development opportunities; the restriction or removal of budget, work force or other available resources; the suspension of access to security information or classified information; the cancellation of authorization to handle security information or classified information; or any other discrimination or measure detrimental to the working conditions of the whistleblower; 6) putting the whistleblower's name on a black list as well as disclosing such a blacklist, bullying, use of violence and abusive language toward the whistleblower, or any other action that causes psychological or physical harm to the whistleblower; 7) unfair audit or inspection of the whistleblower's work as well as the disclosure of the results of such an audit or inspection; 8) cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower; and 9) termination of a contract for goods or services, or any other measure that causes economic disadvantages to the whistleblower.

The ACRC Act and the *Public Interest Whisteblower Protection Act* differ in that the former define disadvantageous measures generally, citing representative examples, but the latter lists the specific types of such retaliatory acts. Each has its own strengths and weakness in that the ACRC Act lacks specific examples although it provides comprehensive coverage, but the latter has specific examples but lacks a clause for comprehensive coverage (Kim Kisun, 2013:157-158).

4.4 Burden of Proof

In most cases, whistleblowers have relevantly hard time proving that disadvantage they suffered was indeed caused by their whistleblowing. Access to relevant personnel affairs information is often limited and they also have difficulty in bearing the burden of the expensive cost incurred during the course of seeking administrative or judicial remedy. Therefore, to provide enough protection, the burden of proof needs to be eased. Such exemplary legislation cases can be found mainly in the U.S. and Korea (ACRC, 2013a:11).

The U.S' *Whistleblowers Protection Act* (WPA) prohibits taking or failing to take, or threatening to take or to fail to take actions against whistleblowers "because of any

disclosure." The WPA regulates that there should be a correlation between prohibited practice and disclosure. It means that if the protected disclosure was indeed a contributing factor to the concerned measure taken against the subject, it shall be deemed as a banned personnel practice. The whistleblower only needs to prove that disclosure was a contributing factor in the disadvantageous measures. On the other hand, the concerned agency needs to demonstrate by "clear and convincing evidence" that the same action would have been taken to the person in the absence of whistleblowing. The Merit System Protection Board (MSPB) defines three elements as " clear and convincing evidence": 1) whether there is a legitimate ground for such personnel measure being taken 2) the existence and levels of motivation of employees involved in the concerned measure to retaliate and 3) history of taking such measures to other employees who were not a whistleblower. (Kim Kisun, 2012:18 ; 26).

The *Whistleblower Protection Act* (established in 1989, revised in 2012) of US eased the burden of proof on relations between personnel practice against a whistleblower and the disclosure. it was "preponderance of evidence" in the statutory predecessor[4] but alternated to “clear and convincing evidence” in the revised version. That is, in case where the disclosure is recognized to be a "contributing factor, it is deemed as retaliatory act related to the whistleblowing unless the concerned agency demonstrates "clear and convincing evidence" that it would take the same personnel measure against the whistleblower without the disclosure. (ACRC, 2013b).

In light of the 1989 *Whistleblower Protection Act* which eased burden of proof on whistleblower and toughens that of employer, the SOA of the U.S. and other recently enacted or revised whistleblower protection acts also adopted "clear and convincing evidence" principle following the 1989 Act's footstep. However, OSHA, TSCA, CAA lack clauses on the burden of proof, thereby applying precedents of federal supreme court to relevant cases[5]. Other acts including AIR-21, SOA, ERA, STAA, and CPSEA share the same burden of proof rules as the *Whistleblower Protection Act* (Kim Kisun, 2012:64-65).

---

4) *Civil Service Reform Act of 1978*

5) Mt. Healthy City Board of Ed. v. Doyle, 429 U.S. 274, 286-87 (1997) judgment states that when a whistleblower can demonstrate that the whistleblowing act was "a primary or predominate motivating factor" of disadvantageous personnel practice, the burden of proof goes to the employer. For such, the employer must demonstrate based on a "preponderance of the evidence" that he/she would have taken the same measure even if there was no protected act occurred.

In the U.K., under the *Public Interest Disclosure Act* (PIDA), once a lawsuit is filed to the Employment Tribunal regarding disadvantageous measure which is not dismissal taken to a regular employee or such act taken to a contract laborer who is not a regular employee, the employer must offer explanation for the commission or omission of such acts which caused damage. In case of unfair dismissal, if the duration of employment is 1 year or longer, the burden of proof lies on the employer's shoulder and if less than 1 year, it lies on that of the employee (Kim Kisun, 2012:102).

In Korea, there is a presumption of disadvantage provision regarding the burden of proof. The ACRC Act prescribes that when a whistleblower requests restoration to the ACRC or file a suit for restoration to the court after making a protected disclosure in accordance with the Act and suffering from disadvantageous measure taken to his/her status, work conditions, or other financial or administrative conditions, it shall be presumed that the person suffered retaliatory treatment related to the concerned disclosure. That means, if a whistleblower establishes the fact that he/she made a protected disclosure in accordance with the Act and later received (or is expected to receive) measures adversely affecting their status such as removal and dismissal, discrimination in his/her working conditions, or administrative and financial disadvantages such as cancellation of authorization or permission, and termination of contract, it will be presumed that such disadvantages occurred due to the disclosure if otherwise proven by the agent who denies such practice. Therefore, this rule can effectively thicken the layer of protection for whistleblowers. (Kim Kisun, 2013:138).

The above clause was not set out at the time of enactment of the initial *Anti-Corruption Act*, but the **burden of proof** provision was later added in the revision of the Act as civil organizations had continuously demanded that "when a whistleblower claims to suffer from disadvantageous act on his/her status, the concerned agency must demonstrate that the measure was not taken on the basis of disclosure".

After the effectuation of *Anti-Corruption Act*, there was a relevant case where a legal dispute arouse between a mayor of OO city and a whistleblower. The latter had difficulty proving that the disadvantage he/she had suffered was caused by his/her act of disclosure, because most of relevant evidence was in the OO city and witnesses were public servants of the city. The above clause bears significance in this type of case, as it imposes the burden of proof on the agency in case the disadvantaged whistleblower requests corrective orders to the ACRC or the court. Given that it is much more difficult for a whistleblower to obtain information and/or

evidence than for the agency that the individual belongs to, it is highly unlikely that the victim can prove the disadvantage he/she suffered. Therefore, such clarification stating that the burden of proof goes to the concerned agency can be highly evaluated, as it does not largely breach the general principle of the burden of proof during litigation. (Lee Jimun, 2011).

The *Public Interest Whistleblower Protection Act* prescribes that disadvantageous measures shall be presumed to be taken due to public interest reports in the following cases: 1) an act was taken to find out the identity of public interest reporter or to interfere the report or compel the person to cancel the report; 2) an act was taken to implement disadvantageous measures to the reporter within 2 years after the disclosure; 3) an act was taken to carry out disadvantageous measures even after receiving recommendation of prohibiting banned practices by the ACRC regarding the case where such disadvantage is expected. Therefore, the regulation is observed to ease the burden of proof of the public interest reporters. However, the range of presumption of disadvantageous measures is limited compared to that of ACRC Act, which prescribes when a whistleblower makes a request to the ACRC or file a suit to the court for restoration of his/her status, the person shall be presumed to have suffered disadvantageous practice. (Kim Kisun, 2013:169).

4.5 Immunity from Violation of Confidentiality

Several whistleblower protection laws stipulate that even if the disclosed content is designated as confidential by the agency to which the disclosure was made, the agency is prohibited from taking disadvantageous measures against the whistleblower. According to the US WPA, a person is entitled to protection even if he/she disclosed information which is prohibited from disclosure by law or treated secret of national security or foreign affairs by the president, as long as he/she reported to 1) the Special Counsel, 2) Inspector General of an agency or 3) the employee designated by the head of the agency to receive such disclosures (ACRC, 2013a:12).

Also, the UK PIDA prescribes that any provision in an agreement is void in so far as it purports to preclude the worker from making a protected disclosure (ACRC, 2013a:12). In addition a whistleblower can still afford protection even if the disclosure was made in breach of confidentiality owed by the employer. However, when the reporting itself constitutes a crime, it is not considered as a legitimate disclosure even if the content

is subject for disclosure. A case in point is whistleblowing act that violates the *Official Secrets Act*. However if the report was made lawfully based on due process in accordance with the Act, then it is considered a protected disclosure (Kim Kisun, 2012:86-87).

The ACRC Act and the *Act on the Protection of Public Interest Whistleblower* of Korea provide immunity from violation of confidentiality. The ACRC regulates that if a disclosure was made in accordance with the Act, it is not deemed to have violated his/her official duty to maintain confidentiality despite other laws and regulations, a collective agreement, and the rules of employment, etc. This rule is based on the perception that information on corrupt practices cannot be classified information worthy of protection. Also, it is observed that the clause purports to prevent an attempt to discourage disclosure of corrupt practices by indiscreetly inserting confidentiality obligation into a collective agreement or the rules of employment (Kim Kisun, 2012:139).

The *Public Interest Whistleblower Protection Act* also sets out that even where classified information connected to the person's duties is included in the details of the report, he/she shall not be deemed to have violated his/her official duty to maintain confidentiality according to other laws and regulations, a collective agreement, or the rules of employment. Also, the Act states that where provisions of a collective agreement, employment contract, or supply contract prohibit or restrict a public interest report, such provisions shall be invalidated. This clause bears significance as it is a new regulation not included in the ACRC Act but was established to enhance protection of whistleblowers (Kim Kisun, 2012:170-171).

Although countries differ in judicial systems and their policy priority, corrupt practices and conducts detrimental to public interest are not likely to be worthy of social protection. Furthermore, when the scope of confidential information in public or private sector is not defined or too broad, it is likely to damage the purpose of whistleblower protection laws. Therefore, it is desirable to have special rules in place that can protect whistleblowers from gag orders (ACRC, 2013a:12).

4.6 Protective Measures

Protection agency of each nation can be classified into two types; first one is an agency involved with the judiciary, and the other is one with involvement from both the judiciary

and the administration. This difference leads to the different types of remedies provided to whistleblowers who suffered disadvantageous practice.

According to the *Whistleblower Protection Act* (WPA) of the U.S. (enacted in 1989, revised in 2012), the corrective orders imposed by the Merit System Protection Board (MSPB), a primary protection agency under the Act, include: 1) placement, as nearly as possible, in the position the individual would have been in had the prohibited personnel practice not occurred; 2) payment of back pay, related benefits, medical costs incurred, travel expenses and any other reasonable and foreseeable consequential damages; and 3) compensation for attorney's fees (ACRC, 2013a:13). The Special Counsel can request MSPB to take a corrective action, if the institution to which the report was made, fails to follow the order within reasonable period. Then the MSPB takes the measure, if deemed necessary (Kim Kisun, 2012:25). The subjects for corrective actions include damages occurred, expanded, or extended due to investigations on whistleblowers stemmed from retaliation, and this rule helps prevent abusive impact of investigation on the whistleblower (ACRC, 2013b). It further offers a preferential treatment to whistleblower over the course of personnel management. That is, because there exists a possibility that the whistleblower may experience implicit and unfair treatments if he/she continues to work in the same organization, the rule provides rights to request relocation of workplace (Lee Jimun, 2005: 133).

In the U.S., corrective orders for whistleblower in private sector are diverse depending on each laws, but most laws guarantee protections such as reinstatement, reengagement to workplace and/or back pay of the unpaid wage by the time reinstatement takes place as basic remedy measures. The OSHA, established relatively before than other laws only provides status reinstatement, reengagement and payment of unpaid wage as remedies. The remedies under this Act follow an order of federal district court on the lawsuit against the accused person for causing the disadvantages. The TSCA, CCA, AIRA, ERA, and CPSEA also set out compensation for litigation cost including expenses for an attorney as a remedy for the complainant. The SOA and STAA further regulate to order compensation for special damage caused by discrimination, stating examples of the expenses such as cost incurred by hiring attorney, expert's testimony, and by the litigation. Meanwhile most laws including TSCA, CAA, AIRA, SOA, ERA, STAA, and CPSEA contain compensatory damages as an additional remedy measure. Certain Acts prescribe clauses on punitive damages. For example, the TSCA stipulates punitive damages and STAA sets the criteria for the amount of punitive damages within $250,000 as a remedy. Also there is a regulation

set to ensure effectiveness of such remedy measures ordered by protection agency, a federal administrative institution. According to the regulation, a civil suit can be filed to the federal district court against the person who failed to carry out the imposed corrective order. This, however, again can be divided into two types; one gives power to file the lawsuit only to the protection agency, but the other type offers the rights both to protection agency and the person who disclosed the information. The TSCA and STAA limit the subject of filing of the suit to the Secretary of Labor, while the CAA, AIRA, SOA, ERA, and CPSEA also allow the person who applied for protection to file the lawsuit to obtain effectiveness of the given order (Kim Kisun, 2012:66-69).

According to the UK's *Public Interest Disclosure Act* (PIDA), the Employment Tribunal can order reinstatement and reengagement to protect unfairly dismissed whistleblowers if they wish to do so. If the Tribunal fails to decide on a remedy order, it is required to order damage compensation. The amount of damage compensation is determined by the sum of the basic compensation and compensatory award (ACRC, 2013a:13).

Reinstatement order includes the amount of pay expected to have been offered, had the dismissal not taken to the person, from the time of dismissal to the time of restoration of status. It also includes all rights and benefits that need to be restored such as rights based on seniority and pension, as well as other benefits that the person would have acquired with improvement of employment conditions without the dismissal.

Even when the whistleblower is reinstated or reengaged to the work thanks to the remedy measure, if a part of the remedy is not implemented, the Employment Tribunal can order the employer to pay **compensation** caused by failing to carry out the order. Also, if reinstatement or re-engagement does not take place despite the order, the Tribunal can order payment of damage compensation caused by unfair dismissal and additional compensation worth of the amount of the person's wage for from 26 weeks up to 52 weeks.

The basic amount of compensation is 1.5 weeks of wage for those over 40 years old, 1 week's wage for age band between 22 to under 41, and for others, 0.5 week's wage per every year of work. If the worker worked longer than 20 years, the amount will be calculated for the 20 years. The amount of compensatory award should include cost incurred by the dismissal and the lost benefits that would have been paid without the dismissal. While damage compensation for unfair dismissal in general case has an upper limit, there is no limit for person who was unfairly dismissed due to whistleblowing (Kim Kisun, 2012:103-105).

When a whistleblower who is a regular employee suffers damage other than dismissal or if a whistleblower who is not a regular employee but a contract worker experiences such damage, an order can be made against the employer to compensate the damage. In this case, the amount of compensation is regulated to be based on the level of retaliatory practice and of damage the whistleblower suffered (cost incurred due to the retaliation, loss of benefits that would have been provided without the retaliation) (ACRC, 2013a:13).

Under the Canadian *Public Servant Disclosure Protection Act* (PSDPA), the Public Servant Disclosure Protection Tribunal can, provided that the whistleblower is judged to have experienced from retaliation, order any of the following six types of measures to appropriate chief executive or any person acting on their behalf to take remedial measures; 1) return the complainant to his or her original public position, 2)reinstate or pay compensation in lieu of reinstatement, 3) compensation in an amount not greater than the amount that is the remuneration that would, but for the retaliation, have been paid to the complainant, 4) rescind any measure or action, including any disciplinary action, and pay compensation in an amount not greater than the amount that is equivalent to any financial or other penalty imposed on the reporter, 5) an amount equal to any expenses and any other financial losses incurred by the act of reporting as a direct result of the retaliation, and 6) compensate by an amount of not more than $10,000, for any pain and suffering that the complainant experienced as a result of the retaliation (ACRC, 2013a:14).

In South Africa, if a person made a protected disclosure or if the person requested protection based on the assumption that he/she would be in danger of receiving unfavorable treatment due to the disclosure, and the request can be reasonable enough to be accepted, the person shall be relocated to other position in the same or different region. If the person is hired by a government institution, he/she shall be relocated to other government agency, and the employment conditions applied to the new job should not be unfavorable for the person than the previous one (Park Heungsik, et. al., 2002b:97).

The detailed information on New Zealand was not available.

The *Whistleblower Protection Act* of Japan stipulates a protective measure that if an unfavorable measure such as dismissal or termination of employment contract was imposed to a public interest reporter as a result of whistleblowing, it can be invalidated or prohibited. For example, Article 3 of the Act invalidates dismissal order taken by employer on the

ground that the whistleblower made protected disclosure, and Article 4 invalidates termination of dispatched worker contract by the employer of the dispatch agency under the reason of making public interest report. Also, Article 5 prescribes that employer must not take unfavorable practice such as demotion, wage cut or others against the concerned worker because he/she made such report. When the reporter is a dispatched worker, the employer of the workplace is prohibited from requesting change of worker to the employer of dispatch agency, or conducting other disadvantageous measures in retaliation. The disadvantageous treatment is not invalidated but prohibited because the content of such treatment includes not only legal actions but also factual actions (Kim SeongCheon, 2005:84).

Under the ACRC Act of Korea, when any person who is subjected to any disadvantage against his/her position or any discrimination in his/her working conditions or is expected to be subjected to such disadvantage or discrimination on the grounds of the reporting, he/she may request the ACRC to take measures necessary to revoke the disadvantageous disposition taken against him/her, transfer him/her to any other office, withhold the disciplinary action against him/her, and guarantee his/her position and to take other necessary measures for him/her. When the ACRC receives a request of remedial measures, the Commission shall investigate whether the alleged disadvantages against the complainant are indeed caused by the reporting, in a manner of requesting the requester or reference persons to present themselves, state opinions, and submit statements, requesting the requester, reference persons, or related agencies to submit relevant materials, and inquiring relevant facts or information. To obtain effectiveness of investigation by the ACRC, the revised Act regulates that penalty of not greater than KRW 10 million can be imposed to a person who disobeys and does not cooperate with the investigation. The ACRC is required to conduct investigation and make decision within 60 days after receiving request of guarantee of public position. However, the period can be extended once by less than 30 days if deems necessary. If the request of public interest reporter is concluded to be reasonable after the investigation, the ACRC can request to the head of the relevant organization, group or the enterprise the reporter belongs to, to take necessary measures such as proper treatment or reinstatement. In this case, the person who received a request for guarantee of public position should follow the order unless a justifiable reason exists to contrary.

In case where any public official who has filed a report requests the Commission to take measures concerning the personnel affairs involving the shift of job, transfer, occupancy, secondment, etc., the Commission may, when the request is deemed reasonable, request

the Minister of Public Administration and Security or the head of a relevant institution to take necessary measures. In such cases, the Minister of Public Administration and Security or the head of a relevant institution should give preferential consideration to the request and notify the Commission of the result accordingly.

Out of 120 requests for guarantee of public position, the Commission ordered reinstatement, employment intermediation, mitigation of culpability, and personnel reshuffle to 37 cases (30.8%). In addition, there were 17 cases of request dismissal, 34 withdrawal, 28 closed, and 8 cases under investigation. Among the 37 guarantee of position cases, reinstatement was done in 28 cases, personnel reshuffle in 5, employment intermediation and culpability mitigation in 2 cases respectively (ACRC, 2013c:366, ACRC, 2012b:270).

<Table Ⅲ-3> Request for Guarantee of Public Position under Anti-Corruption Act

(Unit : Number of Case)

Year	Guarantee of Position					Dismissed	Withdrawal	Closed	Under investigation
	Reinstatement	Employment Intermediation	Mitigation of Culpability	Personnel Shuffle	Sub total				
'02	2	1	-	1	4	-	-	-	-
'03	-	-	-	-	-	2	-	-	-
'04	1	-	-	1	2	-	2	-	-
'05	1	-	-	2	3	8	7	2	-
'06	1	1	1	-	3	5	3	1	-
'07	5	-	1	1	7	2	5	1	-
'08	5	-	-	-	5	-	11	2	-
'09	3	-	-	-	3	-	4	5	-
'10	3	-	-	-	3	-	1	5	-
'11	6	-	-	-	6	-	-	5	-
'12	7	-	-	-	7	-	1	11	-
'13	5	-	-	-	5	1	1	13	-
'14[6]	2	-	-	-	2	-	-	8	6
Total	41	2	2	5	50	18	35	53	6

The <table Ⅲ-4> below shows the statistics of preventive measures taken by the Commission. The measures were taken as the reporters consulted with the ACRC via phone or other channels, before requesting protection in writing while expressing concern that they might suffer from disadvantageous treatment due to the disclosure (ACRC, 2013c:368, ACRC, 2012b:272).

6) Based on the end of Dec. 2014 statistics

<Table Ⅲ-4> Prevention of Disadvantageous Practice under the ACRC Act

Year	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	Total
Case	-	6	6	3	3	4	6	9	12	4				53

As shown above, the number of total preventive measures taken was 53, 4.4 cases on annual average. The number increased for the first 5 years since the launch of the ACRC in 2008, with an annual average of 6.2 and total of 31 cases. However, recent statistics displayed decreasing tendency on the number.

Implementation of Protective Measures Cases

1) Transfer measure (ACRC, 2008:29)
- Content of Request : A whistleblower reported that malpractice on per diem allowance was taking place in an affiliated institution of the Ministry of 00 where the person belonged. The person requested personnel reshuffle protection, claiming that he may be ostracized by his colleagues and experience unfavorable treatment regarding his public position.
- Results : Given that the requester had difficulty working in the concerned institution, the ACRC took measures for the person to be dispatched to another institution. Afterward, in negotiation with the Ministry of Government and Administrative Affairs (currently the Ministry of Public Administration and Security), the Commission helped him completely move to and work at another agency.

2) Imposition of penalty, request of disciplinary measure and notification of materials on personnel affairs (ACRC, 2008:30)
- Content of Request: Auditor of OO government corporation, with help of two workers in the institution, uncovered the fact that three employees were conducting illegal practices and therefore reported them to the prosecutor's office. After that, other three persons in charge (Board director, HR director, HR vice director) took measures against the audit cooperators by relocating their workplace from Seoul headquarters to local branches, degrading their positions. The Commission requested reinstatement of the two people to the institution.
- Results : The Commission imposed KRW 5 million to the board director who took reprisal action against the cooperators (although a request for disciplinary measure was also necessary, it was not possible as the corporation lacked regulation imposing disciplinary action on executives. Instead, materials on personnel affairs were notified to the relevant authorities, which was the Financial Supervisory Service) and KRW 2.5 million was imposed each on HR director and HR vice director. However, no additional protective measure was taken as the cooperators were reinstated during the investigation.

3) Request of personnel reshuffle, imposition of penalty, request of disciplinary measure (ACRC, 2008:30)

- Content of request : A public interest reporter disclosed that public servants of a public health center in charge of cancer screening and health examination for women, were committing an act of corruption by providing free health examinations to city public officials and their family members, which in fact only had to be provided for people under protection of minimum living standards. The reporter requested guarantee of public position on the ground of suffering psychological harm and discrimination in performance evaluation. The person also requested personnel reshuffle measure so that he can be relocated to another city or province based on his current state of mental distress he experiences working in the current work place.
- Result : Given that there was unfavorable performance evaluation against the reporter and the distress he received was caused by reprisal practice of the head of health center in OO city, the Commission requested the Ministry of Government and Administrative Affairs to take personnel reshuffle measure. The Commission also imposed penalty of KRW 5 million and requested disciplinary officer to take disciplinary measure on the head of the health center.

4) Reinstatement measure (ACRC, 2012b:273)

- A public interest reporter was an employee of OOO parking lot service and one day he found out that vehicles belonged to OO enterprise were parked without receiving permission nor paying for the fixed monthly fees. The person reported an allegation of fee embezzlement to OO audit division. Later he was unfairly relocated to another OO parking lot, which was located far away from his residence with much worse working conditions, despite the fact that he was suffering from chronic illness. The reporter requested reinstatement measure to be taken on his situation. The Commission confirmed the reported matter from relevant officials in the accused agency, and provided information about reporter protection program. The Commission also sent an official document requesting cooperation to the HR division of a related department. As a result, the person was reinstated to OO parking lot near his residence.

5) Other case (ACRC, 2012b:273)

The person who requested protection previously reported corrupt practices of a military commander. The practices ranged from embezzling and misusing budget set for unit management, using military equipment and official vehicle for private purposes, and to accepting bribery such as golf club, glasses and paintings. The accused person, tracked the reporter by leading questions to soldiers pointed as cooperators and forced them to make false statements favorable to him. As a result, the public interest reporter and cooperators who participated in the investigation of the Commission complaint were under distress and requested protection as disadvantageous treatment on their position and discrimination on working conditions were expected to take place. The Commission sent an official document requesting cooperation for protective measures to the audit office of the reported institution. The military headquarters took personnel measures by separating the accused commander from the reporter.

6) Prevention of disadvantageous action case (ACRC, 2012b:273)

The requester previously reported corrupt practices done by a faculty member of OO college, who was embezzling the research budget by issuing forged tax invoices to business partners and then receiving kickbacks from them. The accused person ordered the requester to vacate his position in the laboratory by certain date and time. As such, the requester asked the ACRC to help him continue his research in the laboratory and to protect him from further unfavorable treatment.

After conducting an interview with the requester, fact confirmation and material investigation, the Commission judged that the reported content had reasonable ground. Therefore, the Commission took measures to help the requester continue his work in the laboratory and be protected from further disadvantage by consulting with the head of OO division of the university and by informing the university about reporter protection program.

Under the *Public Interest Whistleblower Protection Act* of Korea, no one is allowed to take disadvantageous measures against public interest reporter on the ground of the report and, if the reporter suffers such mistreatment (including the case that he/she reported after suffering from unfavorable treatment during the course of preparing the report such as collecting evidence of practice detrimental to public interest), the person can apply for necessary measures to be taken for him/her. Also if there is a clear ground for the person to be concerned about disadvantageous treatment due to the public interest report (including act of preparation for the report such as collecting evidence on such detriments), the person has the right to apply for prohibition of the unfavorable practice to the ACRC. The Act has a broader range of protected subjects compared to the protection program under the ACRC Act, as it allows application for prohibition of disadvantageous practice or for protection measure implementation even for the person who were preparing to make a public interest report.

In regard to the exclusion period of protection application, such application should be made within 3 months from the date when unfair treatment took place (if the treatment was on a continual term, the last date of such actions). If the public interest reporter could not request protection measures within 3 months by reason of a natural disaster, war, incident, or other force majeure, he/she may request the same within 14 days (in the case of a request for protective measures from abroad, referring to 30 days) from the date such a reason ceases to exist (Kim Kisun, 2012:158-159). It is noteworthy that the exclusion period is not provided in case of protective measures under the ACRC, but the *Public Interest Whistleblower Protection Act* regulates the period following suit of the rights for remedy in general procedures (Kim Kisun, 2012:158-159).

The ACRC, upon receiving request for protective measures or prohibition of disadvantageous practice, is required to investigate whether certain measure was indeed a disadvantageous practice by requesting to submit related materials, hear statements, and submit statements from the reporter, the person who took the prohibited measure or reference person, and requesting to submit materials from the relevant agency, organization and/or corporation. To secure effectiveness of the ACRC's investigation, the Act regulates to impose penalty not more than KRW 30 million on the person who fails to comply with the investigation process.

The ACRC decides to take protective measures if it is deemed that a whistleblower did suffer from disadvantageous actions on the ground of his report. The protective measure orders include; 1) reinstatement, 2) payment of wage, etc.(including interests) which was unpaid or paid in a discriminatory manner, and 3) cancellation or prohibition of other disadvantageous practices taken to the reporter. In regards to application for prohibition of disadvantageous practices which purport to be preventive of such measures, if deems necessary, the Commission needs to make recommendation to prohibit such measures from occurring. The reporter and the person who took the disadvantageous act can file an administrative litigation within 30 days after receiving the Commission's decisions of protective measure, dismissal or rejection in writing. If the concerned person fails to file an administrative lawsuit, the decision will be confirmed. Contrary to the ACRC Act which has no clause regarding the way of refusing the decision of the Commission, the *Public Interest Whistleblower Protection Act* has clear regulations on the issue.

Also, the Act stipulates that where a public interest reporter, etc. requests for the employer or the person who has the authority of personnel management to take personnel measures, such as a change of occupation, transfer to and from another office, detached service, the requested person should consider public interest reporter's request preferentially if he/she deems the details of such request appropriate. This rules purport to help the reporters to overcome difficulties facing their life by changing the work environment, if they de facto have hard time maintaining the life as it was before the disclosure (Kim Kisun, 2012:172).

The statistics on the protective measures show that a total of 23 protective measure requests (8 accepted, 8 dismissed, 2 rejected, 3 closed and 2 under investigation) and 4 prohibition

requests (1 accepted, 2 dismissed, 1 rejected) of disadvantageous practice measures were made by the end of Dec. 2014 from the launch of the program.

Protective Measure Case (ACRC, 2012c)

The ACRC decided to take protective measures for a person whose job was dismissed and suspended on the ground that the person leaked information regarding incident of broken parts of train, to outsiders. As a result, the agency the reporter belonged to withdrew the disciplinary measure taken and restored the reporter's public position by paying his wage which includes interests to the date of cancellation of the disadvantageous measures.

4.7 Temporary Relief

It usually takes significant period of time to complete a process of remedying disadvantageous actions taken previously. Therefore, regulation for provisional remedy measures is necessary to complement the process (ACRC, 2013a:14).

In accordance with the *Whistleblower Protection Act* (WPA) of the U.S., the Special Counsel can apply for the suspension of personnel practice for 45 days to a member of MSPB if there is a reasonable ground to consider it as prohibited personnel practice (PPP). In this case, the member is required to make decision on the matter within 3 working days upon the receipt of such application, and to order the suspension except in case where the suspension is found not to be appropriate. If necessary, the period of suspension execution can be extended (ACRC, 2013a:14).

In other whistleblower protection laws applied to private sector which include the *Sarbanes-Oxley Act* (SOX), when a whistleblower applies for protection on the ground of mistreatment he/she faced due to the disclosure, the Secretary of Labor can exercise preliminary order to a person who took the retaliatory measure before making the final decision on the matter. Even if the person who received such order appeals for a review of the final order which says to implement remedy to the court of appeal, the execution of the final order will not be suspended (ACRC, 2013a:15).
The *Public Interest Disclosure Act* (PIDA) of the UK allows an unfairly dismissed employee to apply for preliminary measure to the Employment Tribunal within 7 days after the

effective dismissal. The tribunal, when the claims from the complainant found reasonable, can order to take preliminary measure such as provisional reinstatement, re-engagement, or persistence of employment contract before dismissal took place, etc. (Kim Kisun, 2012:105-107). Canada does not provide preliminary measure based on the court's order, but does have a clause stating that the process under other laws/regulations or group agreement cannot be initiated regarding the practice the applicant claims to be retaliatory action (Lee Jimun, et. al., 2013:101).

The ACRC Act of Korea, although it displays different features from preliminary order, introduces regulation to prevent disadvantageous actions. The Act permits the Commission to order prohibiting disadvantageous practice against the reporter or cooperators, even when the disadvantageous or discriminatory measure "is expected to" take place. When the person who received such order fails to comply, he/she can be imposed with penalty of not greater than KRW 10 million. The *Act on the Protection of Public Interest Whistleblower* has a clause of recommending the prohibition of the disadvantageous measures (ACRC, 2013a:15).

4.8 Punishment of the Person Who Took Disadvantageous Actions

To eradicate retaliatory practice against whistleblowers, it is necessary to obtain ways to prevent reprisals from the first place by punishing those who took the disadvantageous measures as well as by removing disadvantages taken against whistleblowers (ACRC, 2013a:15).

Under the WPA of U.S, the Special Counsel decides whether disciplinary measure needs to be taken against the person who took PPP and who deliberately fails to comply with the orders from MSPB (Merit System Protection Board) and then submits the decision to MSPB. In such case, the MSPB can order disciplinary measure including removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand or civil penalty of $1000 or less (ACRC, 2013a:15). The civil penalty can be imposed with other disciplinary measure (ACRC, 2013b). The administrative appeal on the decision is not allowed but it can only be appealed to the federal court of appeal (ACRC, 2013a:15-16).

Under the PSDPA of Canada, the Public Servant Disclosure Protection Tribunal can, by order, require the Governor in Council, the employer or the appropriate chief executive, or any person acting on their behalf, to take disciplinary action against any person named in the application who was determined by it to have practiced the reprisal actions. The tribunal can designate specific disciplinary measures including termination of employment or revocation of appointment. The person who received disciplinary action by order of the tribunal may not initiate other legal appealing measures under other laws, regulations or a collective agreement in respect of the disciplinary action (ACRC, 2013a:16).

The ACRC Act of Korea prescribes that when any person, who has practiced any disadvantageous or discriminatory actions against public position or working conditions of the whistleblower, fails to implement measures requested by the ACRC, it is punishable by imprisonment not exceeding 1 year or by penalty not more than KRW 10 million. When the *Anti-Corruption Act* was enacted in the past, the level of punishment was not tough enough. It only set out requests of disciplinary action or imposition of fine against the person who took reprisal actions. Due to the limitation on preventing retaliatory action it contains, later a new clause for punishment was established. Now, the person who conducts disadvantageous actions against whistleblower's public position or working conditions can be fined with KRW 10 million or less. The person who fails to carry out guarantee of public position request from the ACRC to resolve such reprisal, also can be fined with KRW 10 million or less. Furthermore, the ACRC has power to request disciplinary officer to take necessary measures who took the reprisal actions.

A total of 16 penalty cases were decided for violation of protection regarding guarantee of public position; 2 cases in 2002, 4 in 2004, 1 in 2006, 2 in 2007, 3 in 2009, 1 in 2010, 1 in 2012, and 2 in 2013. The total amount of penalty imposed was KRW 76.5 million, KRW 4.22 million on average per case.

<Table Ⅲ-5> Penalty Imposed Against Person Who Violated Protection Rules under the ACRC Act

(unit : KRW 10,000)

Total	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
6,750 (16 cases)	850 (2)	-	1,500 (4)	-	150 (1)	1,200 (2)	-	1,600 (3)	350 (1)	-	350 (1)	750 (2)	

Penalty Imposition Cases

(ACRC, 2008:29-31)

1) Penalty Imposition and Reinstatement

- Content of Request: The requester previously reported that during the course of establishing a sports complex of OO city, design expenses paid was unreasonably excessive. The requester was relocated from the city headquarters to a community service center after making the report, which was degradation of his position. He requested reinstatement to the Commission.
- Result: The Commission imposed penalty of KRW 5 million to the head of the local government who took the reprisal action and requested reinstatement of the reporter's position. The head of local government appealed to penalty imposition. After a trial, the court confirmed the payment of the KRW 5 million by the head of local government. After the confirmation, the reporter was reinstated to his original position in the headquarters.

2) Penalty Imposition and Reinstatement

- Content of Request : A corrupt practice took place when a public servant of the fire department of OO metropolitan city, was employed via special recruitment process by documenting false career experiences regarding work in a public position. The requester reported such matter but faced a disciplinary action of 1 month of salary cut on the ground that he complained and reported the case to an outside institution. The person requested reinstatement and personnel reshuffle to the Commission.
- Result : During the course of investigating whether the disciplinary action was taken as reprisal, the Appeals Commission of the city restored the situation by invalidating the salary cut. The ACRC imposed KRW 3.5 million of penalty on the head of the organization the requester belongs to on the ground of practicing disadvantageous action.

To ensure effectiveness of the protective measure, the *Act on the Protection of Public Interest Whistleblowers* stipulates the following: 1) a person who took disadvantageous measures such as dismissal, release from office, discharge, or other disadvantageous measures against a person's social position equivalent to the loss of social position shall be punished by imprisonment for not more than 2 years or by a fine not exceeding KRW 20 million; 2) a person who fails to implement a decision for protective measures ordered by the ACRC or protective measures confirmed by filing an administrative litigation shall be punished by imprisonment for not more than 2 years or by a fine not exceeding KRW 20 million; 3) A person who took disadvantageous measures in employment relationship other than those in 1) and measures adversely affecting the reporter's economic and administrative conditions shall be punished by imprisonment for not more than 1 year

or by a fine not exceeding KRW 10 million; and 4) when the ACRC took the protective measure, the Commission can also request disciplinary officer to take disciplinary action on the person who implemented the reprisal actions.

The Act also prohibits anyone from interfering with public interest report or coercing the reporter to cancel the report. If anyone violates such regulation, the person is publishable by imprisonment for not more than 1 year or by fine not exceeding KRW 10 million. This legislation gives consideration that the action of a person who interferes with public interest report or coerces the reporter to withdraw the report, may lead to a reprisal practice against the reporter (Kim Kisun, 2012:.172)

4.9 Settlement

The disadvantageous actions taken against public interest reporters are often discernible as it is shown in the cases of unfair dismissal or disciplinary actions. Yet quite a number of unfavorable treatments against the person are sometimes hard to tell because the actions are taken implicitly as in the case of reporters suffering from implicit discrimination or being ostracized by colleagues. Also, despite the fact that unfair dismissal or disciplinary actions can be publishable by laws and be given remedy, the possibility of disadvantageous treatment still remains in the working environment even after necessary restoration is implemented. Furthermore, the ground for disciplinary action taken against the person is unlikely to be clarified for whistleblowers in the private sector. As remedy request under the labor laws is based on the judicial decision, the measure is often not a useful tool for a whistleblower who wishes to remain at the current workplace by secretly resolving the issue, because the process costs significant amount of time and money. Given all the above stated issues, preventive measures including arbitration or conciliation program is as important as post remedy measure to provide practical protection for public interest reporters. Therefore, it would be worth taking a look at the Advisory, Conciliation Arbitration Service (ACAS) of the UK, a system that helps prevention of disputes, albeit it is a system that prevents direct labor disputes such as unfair dismissal. In the UK, the ACAS is a system to prevent possible disadvantageous measures that may be taken against the person who reported acts detrimental to public interest. Established on January 1st in 1976, the Service is an organization in charge of provisional arbitration that interferes labor disputes with the consent of the concerned parties. The Service classifies types of disputes based

on subject, which are individual disputes and collective disputes and offer arbitration or mediation service even to individual disputes. It does not, however, have classification of interest disputes and right disputes. Most individual disputes are of unfair dismissal and the Service shows significantly high success rate in mediation and arbitration, thanks to the ACAS's active promotion, training and services provided to the reporter and the reported subjects (Moon Yeong Sik, et. al., 2008:110-111).

In Canada, Public Sector Integrity Commissioner can assign a conciliator to mediate dispute during investigation on protection request. The arbitration for protection can be implemented when both the requester and the person with power to implement the remedy consent to do so, and the arbitration for disciplinary measure is possible when the person who took the reprisal action and the person with authority to take disciplinary action both agree. The Commissioner has authority to decide whether to approve or reject the conditions of the concerned arbitration. When the Commissioner approves, the request for protection is dismissed, and the execution of the approved arbitration will depend on the decision made by the federal court following application from the parties involved in the arbitration or by the commissioner (Lee Jimun, et. al., 2013:104).

According to Korea's *Public Interest Whitsleblower Protection Act*, when the ACRC receives a request for protective measures, it may recommend conciliation or make a proposal for conciliation on protective measures and a claim for damages upon request or ex officio until it makes a decision for protective measures, decision of dismissal or decision of rejection. If the concerned persons accept the conciliation proposal, all the involved persons and all of the members of the Commission involved in the conciliation are required to sign their names and affix their seals on the protocol. In this case, the conciliation protocol shall be deemed to have effected between the persons concerned. The protocol has the same force as a consent judgment under the *Civil Procedure Act*. In this case, however, the conditions that violate the purpose of the Act should not be included in the proposal, and the ACRC must sufficiently consider opinions from the concerned people when drafting the conciliation protocol. Introduction of conciliatory measure in the Act is another significant difference from the ACRC Act. The rule was introduced under the consideration that the optimum protection is to help the whistleblower maintain the life as it was before the disclosure by restoring his/her work or public position. In that regard, it may not be a best countermeasure to depend on only punishment of the person who took disadvantageous measures against whistleblowers. In particular, this clause is meaningful that the legal

arrangement with public interest reporter can be quickly stabilized as the conciliation system ensures immediate resolution of the dispute. On the other hand, protection measure by the ACRC may take significant time to resolve the matter if the measure is appealed at the court by means of administrative litigation (Kim Kisun, 2012:164).



Discussion and Exercise

- Discuss the scope of protected subjects in addition to whistleblowers.
- Discuss protection provided by independent body as in the cases of the U.S., Canada and the Korea, or the case with protection by the judiciary.
- Discuss the necessity of a dedicated agency dealing with complaint and protection measures.
- Discuss the necessity of establishing a dedicated tribunal as in the case of Canada.
- Discuss types and/or levels of disadvantageous action taken against whistleblowers.
- Discuss, between whistleblower and his/her employer, who has the burden of proving whether disadvantages actions were taken due to whistleblowing or not, provided that such disadvantages measure took place.
- Discuss the necessity of immunity from breach of confidentiality during the course of whistleblowing, and whether limitations should be placed on the level of immunity depending on which institution is subjected for disclosure.
- Discuss levels of protective measures preventing disadvantageous actions, and the necessity of providing priority on personnel reshuffle process in addition to reinstatement, and of damage compensation.
- Discuss the necessity of preliminary measures for whistleblowers.
- Discuss the necessity of punishment imposition on the person who took disadvantage measure and the level of relevant punishment.
- Discuss the necessity of conciliation system as a part of preventive measure to provide remedy.

※ If your country of origin has whistleblower protection system, include the content to the discussions above. Also have discussions on whether protection should be provided to external public interest reporters as well as internal whistleblowers.

5. Special Protection for Person Outside Employment Relationship



Goals	• To learn about guarantee of confidentiality for whistleblowers • To learn about personal protection provided to whistleblowers • To learn about special protection for whistleblowers provided during investigation and criminal procedure to guarantee confidentiality • To learn about mitigation of culpability when a whistleblower was found to have committed act of crime in connection with the reporting • To learn about immunity from civil and criminal proceedings • To learn about measures to protect whistleblowers from administrative and economic disadvantages in addition to disadvantages measure taken against the person's public position

Although countries do not usually have special protective measures in place under their whistleblower protection laws, some of them do provide such protections in addition to protective measures applied in employment relationship. This special protections include guarantee of confidentiality to protect whistleblower's personal profile and security, protection during investigation and criminal procedure and mitigation of criminal punishment or disciplinary actions taken against whistleblowers. These special measures can often be found under the laws of Korea.

5.1 Guarantee of Confidentiality

Keeping confidentiality of whistleblower's personal profile is a very important first step for effective protection, because reprisal would not occur if there is no specific target to blame. While it is difficult to guarantee the complete anonymity, when a person with intention to retaliate tries to track a whistleblower by narrowing candidate lists of who has access to the reported matter, having the anonymity system in place is much more helpful to prevent reprisal actions than otherwise (Kim Kisun, 2012:136-137).

In the U.S.'s case, the Special Counsel is prohibited from disclosing whistleblower's personal profile without the person's consent unless the exceptional situation defined under the law applies to the case. In Canada, each government institution is required to keep a

secret on the identify of persons involved in whistleblowing, namely the whistleblower, witness, and persons alleged to be responsible for wrongdoings, etc., while encouraging the relevant institution to establish a process that can guarantee the anonymity of the persons involved. Canada further regulates that in exception to cases where the identity disclosure is required or permitted under the law, the Public Sector Integrity Commissioner, his/her proxy, and all other persons who follow the order of the commissioner must not reveal any information they became aware of doing their work in accordance with the PSDPA. However, there is no mention of punishment for those who fail to comply with the provision (Lee Jimun, et. al., 2013:100).

Under New Zealand's *Protected Disclosure Act* (PDA), anyone who received report of protected disclosure is required to do his/her best to protect the information that can be used to confirm the whistleblower's identity. However, this does not apply when the person who received the report reasonably judges that it is necessary to reveal the information on the following grounds: 1) to effectively investigate the allegation, 2) to prevent serious threats to public health, public security and environment, and 3) disclosing the information is essential in regard to principles of natural justice. (Park Heungsik, et. al., 2002b:89-90).

Under Korea's ACRC Act, any employee of the investigative agency to which the matters was reported is prohibited from disclosing or suggesting the identity of the whistleblower and persons who cooperate with inspection, investigation, or examination on reporting without his/her consent. Even when the expression suggesting the identity of the person was indirect, if it leads to specify the identity of a public interest reporter based on the general motivation of the expression, the action can be recognized as an act of revealing the identity. When whistleblower's identity was reveled in regard to dealing with the reported matter without the person's consent, the ACRC should find out details of such incident. If an employee is found to be responsible for disclosing or suggesting the identity, thus violating the guarantee of confidentiality regulation, the Commission can take necessary steps such as requesting disciplinary officer to take disciplinary action against the responsible person. Furthermore, the ACRC Act states that no one is allowed to inform personal matters concerning any reporting person to a third party, knowing that the reporting person (including his family and cohabitant) is protected by police station or due process of civil and criminal procedures. Anyone who violates the rule is publishable by imprisonment not more than 3 years or a fine not exceeding KRW 10 million. This rule did not exist when the previous

Anti-Corruption Act was enacted, but later established, in the respect that guarantee of confidentiality can be one of the core element in protection of persons reporting corrupt practices. (Korea Independent Commission Against Corruption, KICAC 2006:. 374-376). However, proceedings for the criminal penalty do not necessarily require reports from the ACRC (Kim Kisun, 2012:137).

There have been a total of 9 cases of request to confirm whether the identity of reporting person was disclosed. Among them, disciplinary and other measures were taken to 3 cases against responsible person for identity disclosure, and 5 cases were closed (1 case in 2007 was cancelled by the requester as it was irreverent case to corruption report, and 4 cases closed because the relevant violations could not be confirmed), and 1 case is under investigation.

<Table Ⅲ-6> Confirmation of Identity Disclosure Violation Requests under the ACRC Act

(Unit : Case)

Year	Total	Accepted		Dismissed	Closed	Under Investigation
		Disciplinary measure	Criminal Prosecution			
Total	19	7	-	-	9	3
2005	1	1	-	-	-	-
2006	1	1	-	-	-	-
2007	1	-	-	-	1	-
2008	-	-	-	-	-	-
2009	-	-	-	-	-	-
2010	1	1	-	-	-	-
2011	-	-	-	-	-	-
2012	6	1	-	-	5	-
2013	3	2	-	-	1	-
2014	6	1	-	-	2	3

Cases of Guarantee of Confidentiality

1) Violation of identity protection cases
The requester, a former employee of OO corporation, Ltd, found out employees of OO management office under Ministry of OO had been violating the code of conduct. He reported the matter to the E-people, an online petition board under the government, but later lost his job as his identity as the reporter was revealed. Therefore, he requested to

investigate the details of how his identity was disclosed, and asked for disciplinary actions to be taken against those who made the revelation. The ACRC investigated and found that 4 persons were involved with the violation. They sent documents containing the reporting person's identity to a third party with no working connection, and leaked the content of the reported matter. Furthermore, they even printed out the reported matter and gave access to relevant people from the complainant's company for the documents in a meeting. The ACRC judged that these conducts were indeed violations of guarantee of confidentiality and requested the Ministry of OO for disciplinary measures. (ACRC, 2011:453).

2) Request for attention case

The requester previously consulted with internal ombudsman, complaining the boss's misconduct such as ordering to falsify business trip and misusing budget. During the course of special internal audit process on the matter, the requester's identity was revealed. He claimed that he suffered mistreatment on his public position as well as working conditions, thereby asking the ACRC to take measure regarding the identity disclosure. The ACRC notified the agency of such fact and requested to pay more attention in complying with guarantee of confidentiality, as the agency neglected its obligation to keep the secret of the requester's identity. (ACRC 2008:33).

The *Act on the Protection of Public Interest Whistleblowers* also prescribes that no person is allowed to disclose or inform the details or other information that may suggest the identity of public interest reporters to other person knowing that he/she is a public interest reporter. Anyone who violates the rule is punished by imprisonment for not more than 3 years or penalty not exceeding KRW 30 million, and the ACRC can request the competent disciplinary officer to take disciplinary measure on the responsible person. The Act further regulates that no person working with the agency which receives a public interest report is allowed to disclose the details of the report including personal information of the accused, before any conduct detrimental to public interest is found as a result of investigation of the report. Anyone who violates this clause also can be subject to punishment by imprisonment for 3 years or less, or penalty of KRW 30 million or less. These rules purport to prevent possibility of defamation of the accused person caused by false or unclear reports (Kim Kisun, 2012:155).

<Table Ⅲ-7> Confirmation for Violation of Guarantee of Confidentiality under the *Public Interest Whistleblower Protection Act*[7)]

Year	Total	Accepted		Dismissed	Closed	Under Investigation
		Disciplinary measure	Criminal Procedure			
2011	-	-	-	-	-	-
2012	3	-	-	-	3	-
Total	3	-	-	-	3	-

Based on Sep. 30 2011~Oct. 2012 data

Case of Violation of Guarantee of Anonymity (ACRC, 2012a:51)

Mr. A, who was a staff of OO restaurant, requesting anonymity, made an online report to △△ district office that his employer was violating the Food Sanitation Act by using ingredients containing meats from sick animals.

A public servant B, who was in charge of receiving and sorting petitions, sent the report via internal e-mail to his senior officer C to find out which division was dealing with the subject, and then B requested relevant information to the responsible division.

Several days later the senior officer C came across with Mr. D, who was the owner of the OO restaurant at their high school reunion. Mr. C, under influence of alcohol, informed D that A made public interest report about D's restaurant. On the next day, D criticized A for making the report in front of all restaurant staff. Mr. A couldn't stand the humiliation and resigned.

Mr. A filed a complaint to the ACRC that D knew about the public report and requested measures to be taken to the person who violated regulation on guarantee of confidentiality.

After conducting investigation, the ACRC found that B disclosed the reported matter to C even though his duty was not relevant to the report. The Commission also confirmed that C did inform the matter to D. Based on the confirmed facts, the Commission reported B and C to law enforcement and requested the △△ district office to take disciplinary measure to them.

5.2 Physical Protection

Personal protection service for whistleblowers might be regulated under criminal laws or other relevant laws. However, there is few cases of whistleblower protection laws or

7) Summary of ACRC, 2013c:403

legislation providing direct protective measures for a reporting person, his/her family members or cohabitant when their life and physical safety are threatened due to the report (ACRC, 2013:17).

With regard to the issue, the *ACRC Act* and the *Public Interest Whistleblower Protection Act* do provide personal security protection for involved persons. According to the ACRC Act, reporting person may request the Commission to take protective measures for personal safety in cases where their reporting becomes a source of a sense of insecurity to themselves, their relatives, or their cohabitants. In such case, the Commission, if deemed necessary, requests the Commissioner General of the National Police Agency, the Commissioner of the competent Regional Police Agency and the head of the competent police station to take relevant protective measures. After consulting with the ACRC, the authorities mentioned above should take measures to protect the concerned people in accordance with Article 7 of the *Presidential Decree of the Act on Protection of Specific Informants, etc.*, which are specified in the followings;

Types of Physical Protection

1. Protection in a specific facility for a designated duration
2. Security guard for a designated duration
3. Escort on the way to attend and return home as a testifier or witness
4. Regular patrol around the residence
5. Other necessary measures to protect the personal safety of the whistleblower

The Commissioner General of the National Police Agency, the Commissioner of the competent Regional Police Agency and the head of the competent police station can terminate the protection service when the duration, requested by the ACRC, expires or if the protective measure is deemed unnecessary any longer. The ACRC should notify the result of personal protection request or the termination of protection measure to the concerned persons without delay.

A total of 25 requests for personal protection have been made. Among them 18 cases (72%) were accepted and enjoyed protection service, but 2 cases were rejected and 5

closed. It is worth noting that all the 16 cases, requested after the launch of the ACRC in 2008, were approved.

<Table Ⅲ-8> Request for Physical Protection under the ACRC Act

(Unit : Case)

Year	Subtotal	Accepted		Rejected	Closed
		Under protection	Terminated		
2002-2007	9	-	4	2	3
2008	2	-	2	-	-
2009	2	-	2	-	-
2010	3	-	3	-	-
2011	-	-	-	-	-
2012	2	2	-	-	-
2013	4	2	-	-	2
2014	3	3	-	-	-
Total	25	7	11	2	5

Cases of Physical Protection

1) The requester made a report on a chairman of the board of a social welfare foundation, alleging him of embezzling government subsidy. The requester claimed that after his identity was revealed, he was threatened or sometimes appeased by involved persons. He also said other employees of the company he belonged to, put a tail on him and even threatened his family members. Therefore, he requested personal protection measure saying he was in danger of excessive distress and suffering from physical harm. The investigation by the ACRC found that the person indeed suffered from several times of threats and intimidations against him and judged that there was a possibility he might experience real harm. Based on the decision, the Chairman requested the head of competent police station to provide personal protective measure. (ACRC, 2011:454)

2) The requester asked for personal protection, claiming that his security was in danger when his identity was revealed on the media after he reported three cases of corrupt acts including waste of budget. The ACRC judged that there was a possibility for him to face systemic harmful action by a relevant agency as he was not a public servant, and he was in need of protective measure as the reported cases were still ongoing. The Commission, therefore, made an emergency request of personal protection to the head of the competent police station (ACRC, 2008:36).

3) The requester previously cooperated with a corruption report related to the construction work of OO military unit, by providing statement during the investigation. The requester claimed that he was assaulted by the person against whom the report was made, and said he and his daughter were in danger of experiencing harmful action, thus requesting the protection. It was confirmed that the requester had doctor's diagnosis that he was injured from assaults by the accused person, which required six weeks of treatment. Also, he was diagnosed that he was in need of regular counseling with doctor due to mental distress he suffered from the fear of threat. Therefore, the Commission requested the head of jurisdictional police station to take personal protective measure for him and his daughter (ACRC, 2008:37).

4) The requester previously reported acts of illegal logging but his identity as the reporter was disclosed. After that he suffered from abusive language and threats by the accused person, making him fear for his security. As a result, the requester asked for personal protection measure to the ACRC. The chief of jurisdictional police station, upon receiving the request from the Commission, took the protective measure by enhancing patrol around the requester's residence. (ACRC, 2012c)

The *Public Interest Whistleblower Protection Act* also provides that where it is evident that a public interest reporter, his/her relative or cohabitant has suffered or is likely to suffer serious harm to his/her life or body due to a public interest report, he/she may request the Commission to take necessary measures for his/her personal protection. In such cases, where the Commission deems it necessary, it may request the chief of a competent police station to take measures for his/her personal protection. If there is not enough time to wait for the Commission to make decision as it is an emergent case, the Chairman of ACRC can request personal protection measure to the head of police station.

The chief of competent police station requested to take measures for personal protection by the ACRC must take the measure, after consulting with the Commission, in accordance with Article 7 of the *Presidential Decree of the Act on Protection of Specific Informants, etc*. The ACRC should notify the result of the request to the reporting person without delay. When the chief of the police station deems that the personal protection is not necessary any longer, he/she can terminate the protection after consulting with the ACRC. The Commission must inform such termination to the requester and persons who were subject of the protection. Also in case the duration of protective measure expires, the Commission must inform such fact of the concerned persons.

<Table Ⅲ-9> Request of Physical Protection under the *Public Interest Whistleblower Protection Act* (As of Oct. 2012.10)[8)]

(Unit : Case)

Year	Subtotal	Accepted		Dismissed	Closed	Under Investigation
		Under Protection	Terminated			
2011	-	-	-	-	-	-
2012	3	1	-	-	2	-
Total	3	-	1	-	2	-

5.3 Special Protective Measure during Investigation and Criminal Proceedings

As in the case of personal protection case, few legislation provides special protective measure to whistleblower or cooperators during the course of relevant investigation and/or criminal procedures. However, such case can be found in the ACRC Act and the *Act on the Protection of Public Interest Whistleblowers* of Korea (ACRC, 2013a:17).

The ACRC prescribes that in case where there is a substantial reason to acknowledge that a reporting person suffers, or may suffer, damage on the grounds of his/her reporting, the provisions of 9 through 12 of the Act on Specific Crime Informants, etc. (ASCI) will apply mutatis mutandis to the investigation and the criminal procedures pertaining to the relevant reporting. By doing so, the regulation helps minimize incidents of identity disclosure of the reporting person.

According to the ASCI, when any retaliation is likely to be taken against the reporting person, cooperators or his/her relatives, he/she may not note all or part of information which verifies the identity of himself/herself, (personal profiles such as a name, age, address or occupation) (Article 7). Also, the access to identity management card is limited (Article 9). When a judge examines an informant as a witness, the judge may issue an order to record the processes as films in video tapes or other types and the recordings can be used as evidence (Article 10). In case there is possibility of a whistleblower and/or his/her relatives experiencing any retaliation, the court may request the accused or audiences to leave the court, examine witnesses in places other than open court (Article 11) and change the trial date or trial method (concentrated trial) (Article 12).

8) ACRC, 2013c:403. Currently the protections are terminated.

The *Public Interest Whistleblower Protection Act* also sets out that where there exists a reasonable ground to believe that a public interest reporter, or his/her relative or cohabitant may be harmed or is likely to be harmed due to a public interest report, the provisions of Articles 7, 9 through 12 of the Act on Protection of Specific Crime Informants, etc., will apply mutatis mutandis to the investigation and the criminal procedures.

5.4 Mitigation of Culpability

Under the *ACRC Act* and the *Public Interest Whistleblower Protection Act*, when a criminal act of a public interest reporter is found in connection with a report, the relevant punishment as a result of the action may be mitigated and/or remitted (ACRC, 2013a:18).

According to the *ACRC Act*, when a reporting person's crime was found in connection to the reported matter by the act of reporting under the Act, the punishment can be mitigated or remitted, and this applies mutatis mutandis to any disciplinary measure taken by a public organization. The cooperators also can be provided with the same legal protection. This clause takes into consideration the fact that there are cases where reporting persons cannot actively resist the corrupt practices taking place in a customary and systemic manner in the organization he/she belong to and that the person may inevitably be involved such practice. Therefore, when criminal act by the reporting person is found in connection to the reported matter, the law enforcement or the judiciary may need to mitigate or remit the punishment against the person, based on the levels of unwillingness of the person when participating in the crime, of penitence, and of contribution of the reporting act made to finding and/or punishing the corrupt actions (Kim Kisun, 2012:139-140). Also, during the disciplinary process, or the administrative or judiciary appeal process against the imposed disciplinary measure on the reporter, relevant authorities including the competent government agency, the ACRC and the judiciary need to ponder upon whether the level of disciplinary disposition does not go against the purpose of the mitigation of culpability provision. There were punishment exemption or mitigation cases, one in 2006 and another in 2007 (ACRC, 2012b:270), and the details of the cases are as follows:

Case Study (ACRC, 2008:31)

1) Suspension of indictment disposition by applying liability reduction/exemption
- Case Summary: The requester reported malpractice of a OO Water Office worker, alleging that the accused worker had been imposing less water charge than it should be in exchange for bribery every month, thus wasting government budget. The requester asked for protective measure when his act of crime was uncovered in connection to the reported matter.
- Result: The ACRC, based on the mitigation of culpability clause, requested prosecutor's office to take protective measure for the person. The requester received suspension of indictment.

2) Non-prosecution disposition by applying cooperator protection clause
- Case summary: The requester previously cooperated with an investigation on corrupt practices committed by public servants responsible for authorization and license work in OO city. When the requester's act of crime was uncovered during the investigation, he requested protection from expected criminal penalty as well as disciplinary actions he might be imposed by the institution he belonged to.
- Result: The Commission requested the competent police station, prosecutor's office and the institution he belonged to, to take protective measure for him on the ground of the provision under the *ACRC Act* which regulates protective measures for public interest reporters. As a result, the requester received a disposition of non-prosecution.

The *Public Interest Whistleblower Protection Act* also provides that where a public interest reporter and involved persons are found to be involved in a crime in connection with a public interest report, the punishment can be mitigated or remitted. It further says where disciplinary action is taken against a public interest reporter as an illegal act of the person was found in connection with the report, the Commission may request the competent disciplinary officer to mitigate or remit the disciplinary measures. In such cases, the person so requested is required to comply with the request unless there exists a justifiable ground. There was one case of mitigation of culpability as explained in the following: (ACRC, 2012c).

Four individuals voluntarily reported that they illegally manipulated, following the order from their company, an auto chimney monitoring system to fake pollutant emission level at its waste incinerator. The ACRC decided to reduce their culpability on the violation of the Clean Air Preservation Act. The jurisdictional police station transferred their opinion of non-prosecution disposition to the prosecutor's office.

Recent Development (ACRC, 2013d:12-13)

The ACRC is pursuing to expand the coverage of culpability mitigation to include administrative measures under the *Public Interest Whistleblower Protection Act*. Currently the law does not provide clear basis to protect the reporting person from administrative disciplinary measures, provided that his/her action detriment to the public interest is found. As such, it is hard to protect the voluntary reporters from administrative disciplinary measures. In one case, an industrial technical personnel serving alternative military service, reported to the Nuclear Safety and Security Commission and to the Ministry of Labor, that his field of work was excessively exposed to radiation. During the investigation process, the requester was found to have violated the *Military Service Act* and thus imposed with 440 days of extension of the service. Despite his actions, it was hard to provide protection from the disciplinary measure as there was no protective provision applicable to his situation.

5.5 Exemption from Compensation Liability

The *Public Interest Whistleblower Protection Act* prescribes that even where a person reported suffers a loss due to a public interest report, he/she is not allowed to claim damages against the reporter. It is understood that the new protection clause, which is not in the *ACRC Act*, purports to prevent malicious use of civil suit to retaliate to whistleblowers (Kim Kisun, 2012:171).

New Zealand's *Protected Disclosure Act* (PDA) provides immunities from criminal and civil proceedings. A person who made protected disclosure or person who referred the disclosure to responsible department for investigation is immune from any criminal and civil proceedings or warnings (Park Heungsik, et. al., 2002b:89).

5.6 Protection Against Other Types of Administrative or Economic Disadvantages

The *ACRC Act* and the *Public Interest Whistleblower Protection Act* of Korea allow anyone, in addition to insiders of a reported organization, to make public interest reports. This means that those laws protect reporters, based on the their request to the ACRC, not only from retaliatory actions that can take place in employment relationship, but also from the other administrative disadvantages such as cancellation of approval or permit as well as economic disadvantages including cancellation of commodity or service contract (ACRC, 2013a:18).

Under the *ACRC Act*, when any person subjected to administrative and economic disadvantages incurred by the revocation of the authorization and permission and the termination of any contract, on the grounds of his/her reporting, the person can request the Commission to take measures necessary to temporarily maintain the effects of the previous state, so that the person reinstate his/her administrative and economic advantages to the original state or make corrections. Upon receiving the request for corrective measure, the ACRC should carry out investigations to find out whether the disadvantageous actions took place due to the person's reporting. By doing so, the ACRC should request the complainant or expert witness for presenting themselves before the Commission to state their opinions, or for submitting their written statement. The Commission can also request to the concerned person or to the relevant institution to submit materials that are deemed to be related to the investigation, and can inquiry about facts or information of the concerned persons and the institution. When a request for the corrective measure is deemed reasonable based on investigation results, the Commission can request the head of the relevant institution or organization, and company to which the requester belongs, to take appropriate measures. In such cases, the requested authorities is required to comply with the request from the Commission unless a justifiable reason exists to the contrary. The person who fails to comply with the request of the Commission to remove the economic and administrative disadvantages will be fined not exceeding KW 10 million.

Protection from Retaliatory Administrative Measures

(Lee Jimun, 2007:103-104)

- Case Summary - The requester filed a petition saying that he was suffering from disadvantageous measures by the local government because he previously made a public interest report about the local government. The person alleged that the local government wasted national fund by deliberately purchasing a concrete mixer truck in a relatively higher price.
- Content of Disadvantageous Practice -The requester was running a business of collecting and selling quartzite after obtaining authorization for his quartzite collection plan. He also tried to sell aggregates, the byproducts of his mining process. However, the local government took the administrative measure banning him from taking out the produced aggregates on the ground that he was not approved for aggregate collection.
- Results of Protective Measure - After analyzing samples from the complainant's mining lot, the entire byproduct from the collection was found to be quartzite. Therefore, the ACRC explained to a responsible administrative institution, that the requester would not violate the authorized conditions, even if he were to sell them. Also, the Commission protected the requester from reprisal practice by requesting to the concerned local government to withdraw the disadvantageous measures.

The *Public Interest Whistleblower Protection Act* sets out types of disadvantageous practice as: 1) the cancellation of approval or a permit, or other acts that give administrative disadvantage, and 2) the cancellation of a commodity or service contract, or other measures that give economic disadvantage. When a public interest reporter experiences such disadvantage, he or she can request the ACRC to take protective measures. The ACRC may recommend necessary protective measures as maintaining the validity of approval, permit or contract within a fixed period not exceeding 30 days, to the person who has taken the disadvantageous acts.

5.7 Medical and Legal Assistance

In 2010, the ACRC signed a memorandum of understanding with the Korea NeuroPsychiatric Association on medical aid, to provide free physiatrist treatment for public interest reporters experiencing mental distress after reporting. Also, the Commission established and implemented "Guidelines on Medical and Legal Aid for Whistleblowers". The Commission also provides legal aid such as legal representative for whistleblowers based on the existing MOU with the Korean Bar Association. There was an actual case of the Commission providing assistance with medical expenses when a whistleblower requested medical aid. He said that he was suffering from extreme stress and insomnia due to threats and harassment he was experiencing by the person against whom the report was made. Therefore, the introduction of these aid systems bears significance as it established a foundation to further advance the protection system (ACRC, 2013c:365).



Discussion and Exercise

- Discuss the necessity of guarantee of confidentiality for whistleblowers and of punishment in the violation of the regulation.
- Discuss the necessity of personal protection program and special protection program during criminal and civil proceedings found in laws of Korea.
- Discuss the necessity of mitigation of culpability rule, as in the case of Korean laws, which is applied when a criminal action committed by a whistleblower was detected in connection with the reported matter.
- Discuss whether providing whistleblowers the immunity from criminal and civil proceedings is appropriate.
- Discuss the necessity of protection for whistleblowers from administrative and economic disadvantages in addition to disadvantages on their social positions.

6. Incentives for Whistleblowers



Goals	• To explore types of rewards for whistleblowers • To explore types of awards for whistleblowers

Even if a protection system for whistleblowers is in place, in reality it takes a long time for the whistleblower to finally receive protection and in the process, he/she often has to suffer enormous mental and financial difficulties. Given this reality, it is fair to say that providing financial rewards is a valid alternative that could give the whistleblower real protection (ACRC, 2013a:19). It could encourage public interest whistleblowing and help prevent and eradicate corruption and public interest violations by partially compensating for the damages the whistleblower could suffer (ACRC, 2008:40).

However, it is rare that whistleblowers are rewarded under the law. The *False Claims Act* and *Dodd-Frank Wall Street Reform and Consumer Protection Act* (2010) of the United States and the *Act on Anti-corruption and the Establishment and Operation of the Anti-corruption & Civil Rights Commission* (the *ACRC Act*) and the *Act on the Protection of Public Interest Whistleblowers* of the Republic of Korea are some of the rare examples where rewards for whistleblowers are stipulated in the law (ACRC, 2013a:19).

6.1 The *False Claims Act* (FCA) of the United States[1)]

The *False Claims Act* is a law enacted as a tool to combat fraud against the US government where persons or companies involved in government programs gain unfair profits through false or fraudulent claim. The person who files legal actions and recovers damages on behalf of the government stands to receive a portion of the recovered damages as monetary rewards. Under this law, any person who gains unjust enrichment from the government through false claims in the process of carrying out contracts is liable for ① a civil penalty of between $5,000 and $ 10,000[2)], ② treble the damages the US government suffered

1) Kim Kisun, 2012:27-57.
2) The 2009 amendment made it possible to adjust the amount of the civil penalty imposed on the false claimer for inflation. Before the adjustment, the penalty was fixed but the amendment allowed adjustment in accordance with the *Federal Civil Penalties Inflation*

and ③ the litigation costs. There are cases where the government itself files actions against the false claimer but private individuals are also allowed to file such actions on behalf of the government so that the chances of detecting frauds can be increased. Such lawsuits filed by private individuals are called qui tam suits. The government may participate in the lawsuit filed by a private individual as a party to the suit. In this case, if the individual wins the suit, the individual will be rewarded with 15 to 25% of the recovered damages or the settlement amount. When a private individual conducts the suit without the government's involvement, the person will receive an amount the court considers reasonable in the range of 25 to 30% of the recovered damages or the settlement amount. Whether or not the US government conducted the suit, in the event that the plaintiff is found to have planned or led the false claiming, the court may reduce the amount of the rewards otherwise payable to the plaintiff. If the plaintiff is criminally convicted for his/her role in the false claims, he/she will be excluded from the proceedings of the suit and cannot receive any amount of rewards. Separately from the rewards, the expenses the court considers necessary for the conduct of the suit including the lawyer fee can be paid to the plaintiff by the defendant. In contrast, in a case where the defendant wins the suit filed independently by the plaintiff, if the court considers the action clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment, the court may pay the defendant a reasonable amount of money for the lawyer fee and litigation expenses. The litigation expenses of the defendant who wins the suit filed by the US government can be paid under this Act.

Qui tam is a Latin word meaning a person who serves not just himself but also the King. Qui tam actions date back to the era of the common law in England before the Magna Carta was introduced. They gradually developed into a form acknowledged in the statutes. The plaintiffs of qui tam actions are ① persons who suffered damages and ② persons who provided information. In the United States, many qui tam rules were made into statues in colonial times but they do not appear to have been regarded as meaningful until the enactment of the *False Claims Act* (Kim Kisun, 2012:27-28).

The FCA is a federal law which is also called the Lincoln law because it was proposed by President Lincoln. It was first enacted in 1863 during the American Civil War as a means to respond to widespread fraud committed by military contractors who sold the Union Army rancid foods and faulty rifles. It was amended in 1943, 1986 and 2009. The current law is mostly based on the 1986 amendment which introduced major changes

Adjustment Act of 1990.

in order to strengthen control over false claimers. The changes made in 2009 were included in Section 4 of the *Fraud Enforcement and Recovery Act of 2009* (FERA) which aimed to increase accountability for financial frauds which caused a global economic crisis and to prevent frauds taking advantage of the federal government's economic recovery programs. The FERA enhanced enforcement of laws regarding mortgage, securities, commodities, financial institutions fraud and fraud on the federal government support and recovery programs, and the Financial Crisis Inquiry Commission was established under the Act. The laws against false claims exist not just at the federal level but also at state levels. Currently, 26 states and 2 cities have similar laws.[3)]

The FCA listed seven types of conduct or persons that result in FCA liability: any person who 1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; 2) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; 3) has possession, custody, or control of property or money used, or to be used, by the government and knowingly delivers, or causes to be delivered, less than all of that money or property; 4) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the government and, intending to defraud the government, makes or delivers the receipt without completely knowing that the information on the receipt is true; 5) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government, or a member of the Armed Forces, who lawfully may not sell or pledge property; 6) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government; 7) conspires to commit any of the above six types of misconduct.

A civil action for false claims may not be brought ① more than 6 years after the date on which the violation is committed, or ② more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but

3) States with similar laws are California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, Wisconsin and the two cities are New York and Chicago. (Park Heungsik, et al., 2012:12).

in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

Of the 11,362 civil actions for false claims filed between October 1987 and September 2010, 4,159 or 37% were filed by the US government (an annual average of about 173) while 7,203 or 63% were filed by private persons (an annual average of about 300), which shows that reliance on qui tam suits was higher. During the same period, a total of $27,265,758,703 was recovered through civil actions for false claims. Of the amount, $9,037,568,689 (33%) was recovered through suits filed by the government and $18,228,190,114 (67%) through qui tam suits. The latter is more than double the former. However, in the cases where the government was not involved in the qui tam suits filed by private persons, the recovered amount was $595,785,859 which accounts for only 3.3% of the amount recovered through all qui tam suits and only 2.2% of the total amount recovered. Meanwhile, during the period, the recovered amount increased every year regardless of the plaintiff but the amount recovered through qui tam suits increased at a more rapid pace. During the same period, the average recovery amount per case was $2,399,732, 10 times higher than $231,850, the average of 1987. There was no big difference in the overall trend between actions filed by the government and qui tam suits. It is just that the amount recovered through a qui tam suit ($2,530,639) was slightly larger than the amount recovered through a government suit ($2,173,015) and the pace of increase was slightly faster in qui tam suits as well. During the period, about $18.2 billion was recovered through qui tam suits and about $2,878,000,000 was rewarded to the plaintiffs. So, the proportion of the rewards to the recovery amount was about 15.8%.

<Table Ⅲ-10> Summary of civil actions for false claims

	Filed by the government	Qui tam suits	Total
Number of suits	4,159 (37%)	7,203건 (63%)	11,362 (100%)
Recovered amount	$9,037,568,689 (33%)	$18,228,190,114 (67%)	$27,265,758,703 (100%)
Average recovery amount	$2,173,015	$2,530,639	$2,399,732

The amount of money rewarded to the whistleblower by applying the FCA is in the millions of or even in the tens of millions of dollars per case. Here are a couple of famous

whistleblowing cases. It was reported that the National Health Laboratories were issuing invoices to the government after conducting unnecessary blood tests and a former project manager of General Electric reported that the government officials were diverting US government funds by overcharging the government for jet engines while conducting a government project.

This Act does not only provide rewards but also relief from retaliatory actions. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop one or more violations of the Act. Relief shall include ① reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, ② 2 times the amount of back pay, ③ interest on the back pay, and ④ compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this clause may be brought in the appropriate district court of the United States for the relief provided in this subsection. However, an action may not be brought more than 3 years after the date on which the retaliation was committed.

6.2 *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* (Dodd-Frank Act)[4)]

The *False Claims Act* is a general law on rewards for whistleblowers in the United States. Although parties who make false claims are actors in the private sector such as corporations that signed contracts with the government, it is the US government funds for which false claims are made. In that sense, the Act can be understood as a law for rewarding whistleblowers in the public sector. In contrast, the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* can be described as a reward scheme for whistleblowing against violations of public interest in the private sector.

4) Kim Kisun, 2012:78-81.

This Act was legislated after President Obama stressed the need for a sweeping financial reform including an overhaul of the financial regulatory system in an effort to prevent a serious economic recession and an enormous fiscal loss caused by the financial crisis. Reward and protection programs for whistleblowers were introduced as an important means to ensure the effectiveness of the financial reform. The Act amended two existing laws, the *Commodity Exchange Act* and the *Securities Exchange Act* of 1934 to introduce reward programs for whistleblowers. The program under the *Commodity Exchange Act* rewards the individual who provides information on a violation of the Act which leads to an enforcement action where more than $1 million is ordered in monetary sanctions[5]. Rewards for whistleblowers range from 10 to 30% of the recovery. The *Securities Exchange Act* also introduced a similar reward program for whistleblowers.

Under the *Commodity Exchange Act,* rewards are paid by the Commodity Futures Trading Commission while under the *Securities Exchange Act*, they are paid by the Securities and Exchange Commission. Rewards are paid to whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action. However, no reward shall be paid to any whistleblower who :

① is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of an appropriate regulatory agency, the Department of Justice, a law enforcement organization, etc;
② is convicted of a criminal violation related to the judicial or administrative action;
③ provides information based on 'the facts that led to the action' provided by another whistleblower;
④ fails to submit information to the Commission in such form as the Commission may, by rule, require.

The Commission shall pay the whistleblower at least 10% but not more than 30% of what has been collected of the monetary sanctions imposed in the action or related actions. In determining the amount of a reward, the Commission shall take into consideration the significance of the information provided by the whistleblower to the success of the covered

5) Monetary sanctions are defined as ① an order of payment of a fine, return of money or payment of interests, ② the money deposited in the recovery fund or any other fund udner the *Sarbanes-Oxley Act* as a result of legal/administrative litigation or settlement during the litigation process.

judicial or administrative action, the degree of assistance provided by the whistleblower in the action and other additional relevant factors that the Commission may establish by rule or regulation. Any determination including whether or in what amount to make rewards may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission.

Meanwhile, the Dodd-Frank Act established the Commodity Futures Trading Commission Consumer Protection Fund and the Securities and Exchange Commission Investor Protection Fund in order to secure resources for the payment of rewards to whistleblowers.

The Act also provides strong confidentiality protection. The whistleblower is allowed to initially report fraud anonymously through an attorney. The Act also allows an employee of a company to expose the illegal benefits his/her company gained by defrauding the government and file a claim to return the unfair gains to the government. By covering employees of private subsidiaries and affiliates of publicly traded companies, the Dodd-Frank Act expanded the protection provided by the Sarbanes-Oxley Act.

6.3 The ACRC Act of Korea

The ACRC Act provides that the ACRC shall pay up to KRW 2 billion when whistleblowing directly contributed to the recovery or increase of revenues or the reduction of costs of public organizations. In addition, if reporting of an act of corruption brought financial benefits or prevented damages to a public organization, or served the public interest to a significant degree even if it did not result in direct financial gains, the Commission may pay an award to the informant.

6.3.1 Rewards

6.3.1.1 Purposes of Rewards

First, it is monetary rewards for whistleblowers' contribution to the recovery of the revenues which would have been lost without their reporting. Second, rewards are given to reinstate the whistleblower to a state prior to suffering punitive measures. The amount of the reward is estimated by taking into account expenses for medical treatment, change of residence, legal proceedings, loss of job, change of job, etc (ACRC, 2008:40).

6.3.1.2 Procedures for Payment of Rewards

For the whistleblower to receive a reward, he/she must file a request for the reward with the ACRC. The request must be made within 2 years after the date on which it is known that legal relations regarding the recovery or increase of revenues or the reduction of costs of the public organization are established. The Commission shall determine whether to pay such reward and the amount of the reward, if any, to be paid, within 90 days of the date of the application therefore, unless there exists any reason to the contrary.

The Reward Deliberation Board

Members (7 Persons) : 1 head, 1 mandatory member, 5 designated members

- Head (1): Appointed among members of the ACRC through a resolution of the Commission.
- Mandatory member (1): Designated among public officials of the Commission with the rank of Director General by the Chairperson of the Commission
- Designated members (5): Designated by the Chairman of the Commission among persons with education or experience in corruption prevention and reward who are experts in law, accounting, appraisal or who are recommended by non-profit non-governmental organizations under Article 2 of the Assistance for Non-Profit Non-Governmental Organizations Act or who are experts in other relevant fields (the term in office is 2 years and renewable only once).

6.3.1.3 Requirements for Payment of Financial Rewards

The recovery or increase of revenues or the reduction of costs of public organizations materialized or legal relations in the matter should be established. Here, the recovery or increase of revenues or reduction of costs must be attributable to the following types of impositions and recoveries.

Causes of the recovery or increase of revenues or the reduction of costs of public organizations

1. Forfeit or imposition of a levy
2. Imposition of a national or local tax
3. Recovery of capital through the compensation for damages or the return of illegally acquired gains
4. Decrease in expenses due to changes in a contract
5. Other measures or court decisions taken, except for the statutory notification or imposition of fines, penalties, surcharges or fines for negligence.

6.3.1.4 Criteria for Determination of the Reward Amount

A reward shall be paid only when the recovery or increase of revenues or the reduction of costs has a direct cause and effect relationship with the whistleblowing. The amount of rewards shall be estimated according to the table below and it shall include expenses for medical treatment, change of residence, loss of job, change of job, etc., which are expenses incurred to restore the person to a state prior to suffering punitive actions. However, the total amount of a reward may not exceed KRW 2 billion.

Benefits incurred[6]	Payment criteria
KRW100 million or less	20%
Over KRW100 million and not more than KRW500 million	KRW20 million + 14% for the amount exceeding KRW100 million
Over KRW500 million and not more than KRW2 billion	KRW76 million + 10% for the amount exceeding KRW500 million
Over KRW2 billion and not more than KRW4 billion	KRW226 million + 6% for the amount exceeding KRW2 billion
Over KRW4 billion	KRW346 million + 4% for the amount exceeding KRW4 billion (Maximum KRW 2 billion)

6.3.1.5 Grounds for Reducing the Amount of Rewards

When determining the amount of reward, the Commission may reduce the amount under the above criteria considering ① accuracy and reliability of the report of corruption and related evidential materials and the extent to which the disclosure contributes to resolving the corruption case, ② whether the informant's disclosure has been already covered by the media, ③ whether the informant was involved in the corrupt act exposed by the report.

6.3.1.6 Restrictions of Payment of Rewards

For cases reported by public officials in connection with their duties, rewards may not be paid. If a public official, who remains or was involved in inspection, investigation or examination of allegations of corruption, reports corruption in connection with his or her current or former duties, reward shall not be paid to him or her.

6) The amount of the recovered or increased revenues, or reduced costs of public institutions directly caused by restitution or imposition of penalties resulting from whistleblowing or such amount whose legal relations are established.

6.3.1.7 Prohibition of Double Payment of Rewards

In the event that any person who filed a request for a reward has already been paid a financial award pursuant to this Act or some other Act(s) and subordinate statute(s) for the same reason and the reward that the person is entitled to receive is larger than the amount he/she has already received, the amount of the reward shall be determined by deducting the already paid amount.

6.3.1.8 Restitution of Rewards

The Commission or an institution that has paid rewards under this Act or some other Act(s) and subordinate statute(s) may claw back the whole or part of the rewards in the events that ① the applicant for the rewards received the rewards through falsehood or some other unjustifiable means, ② the rewards were paid in violation of the Article on prohibition of double payment, and ③ the rewards were paid by mistake.

6.3.1.9 The Amount of Rewards Paid (between 2002 and 2014)

During this period, the Commission paid out about KRW 6.84 billion in 250 cases and the average amount of reward per case was KRW 27.39 million. The proportion of the reward to the amount recovered to public institutions was on average 10.2%.

<Table Ⅲ-11> The annual amount of rewards paid under the ACRC Act

(Unit: KRW 1,000)

Year	No. of cases	Benefits incurred	Amount of reward	Average reward amount per case	Ratio of reward to benefits (%)
Total	250	67,181,254	6,848,011	27,392	10.2
2002	1	7,430	743	743	10.0
2003	2	1,114,962	73,744	36,872	6.6
2004	5	1,609,320	98,298	19,660	6.1
2005	17	3,669,620	268,868	15,816	7.3
2006	19	1,037,070	84,654	4,455	8.2
2007	26	2,049,584	277,340	10,667	13.5
2008	18	2,149,407	328,175	18,232	15.2
2009	20	5,811,771	642,146	32,107	11.0
2010	23	4,505,568	603,641	26,245	13.4
2011	12	18,834,014	1,499,401	124,950	7.9
2012	40	11,131,731	1,400,444	35,011	12.5
2013	37	8,393,380	951,210	25,708	11.3
2014	30	6,867,397	619,347	20,645	9.0

Examples of Reward Payment [7)]

1) Fraud on project expenses for the sewer system revamp in 2011 (the reward payment was the largest ever)

The informant reported that Company A and Company B were suspected to have defrauded the city who awarded the contract for the sewer system revamp of about KRW 5 billion in project expenses by pretending that temporary erection fixtures were installed as indicated in the design when, in practice, there were no such fixtures. The investigation found that the accused obtained about KRW 4.47 billion in financial gains by fraud. As a result, the 11 persons involved were indicted for fraud and breach of trust, which led them to be sentenced to imprisonment and fines and the city recovered the entirety of the defrauded amount of about KRW 4.47 billion in 2010 and the KRW 150 million paid to the construction surveillance agency. After deliberating on whether there was a direct relationship between the reporting and the recovery, the Commission paid the informant KRW 371,030,000 in reward, which was the largest ever payment made to an informant by estimating the incurred benefit to be about KRW 4.6 billion (combination of the recovered damages and the collected penalty).

In 2012, it was found that the project expenses were reduced by about KRW 825,000,000 due to the reporting and this resulted in an additional reward of about KRW 33.9 million to the informant.

2) Defrauding of the national treasury by a defence contractor in 2011

The informant reported that the president of defence contractor C was suspected to have defrauded a government agency of KRW 20.1 billion by inflating the labor inputs in a battery replacement contract and that in connection with the fraud, an employee of the government agency allegedly neglected his duty and breached trust. The Prosecution charged 3 persons of the defence contractor with fraud and embezzlement and they were sentenced to imprisonment and fines while the government agency recovered about KRW 8.1 billion. At the informant's request of reward, the Commission initially estimated the reward to be KRW 440,000,000 but after taking into account the fact that the informant was also involved in the fraud, the Commission reduced the amount by 30% to KRW 312,330,000.

3) Irregularities in supply of self-propelled artillery in 2011

The informant reported that Company D based in the US which supplied 684 key parts of self-propelled artillery OO to Company E, a main supplier of the artillery between 1998 and 2009 gained unfair profits of about KRW 2.5 billion won (about KRW4.3 million per unit) by doctoring documents such as the import license and VAT receipts. The prosecution charged two persons with fraud and the court found one of them guilty. As a result, the Defence Acquisition Program Administration recovered a total of about KRW 4.29 billion. After deliberating on whether there was a direct relationship between the reporting and the

recovery, the Commission paid the informant KRW 263,710,000 in reward by estimating the incurred benefits to be KRW 2.6 billion.

4) Fraud on waste treatment expenses and connivance by the supervisor in District OO in 2012

The informant reported that Company G contracted with state-run corporation F for treatment of combustible synthetic resin wastes from District OO and Company H which had a waste transport contract with F were suspected to have inflated their records and claimed more expenses for waste treatment than they actually spent. The report also alleged that the supervisor of the work, an employee of a state-run corporation condoned such irregularities and received bribery for that. The prosecution charged the heads of the contractors and the court sentenced them to imprisonment. Corporation F recovered the contractors' deposits of KRW 600 million. After deliberating on whether there was a direct relationship between the reporting and the recovery, the Commission paid the informant KRW 86.37 million in reward based on the recovered amount of KRW 600 million.

5) Embezzlement of travel expenses in 2002 (First case of reward payment)

It was reported that executives and employees of a state-run corporation under a government Ministry embezzled KRW 7,431,970 of travel expenses by falsely documenting their travel records. The entirety of the embezzled amount was recovered and KRW 743,000 was paid out in reward.

6.3.2 Awards

6.3.2.1 Grounds for Award Payment

If reporting of an act of corruption brought financial benefits or prevented damages to a public organization, or served the public interest to a significant degree even if the reporting did not directly lead to an increase of income of the organization, the Commission may pay an award to the informant. More specific grounds for award payment are as follows.

7) 1) through 4): the ACRC, 2013b:379-380, 5): Lee Jimun, 2007:112

Grounds for award payment

- A case in which there was prosecution, stay of prosecution, exemption of prosecution, noticed disposition, imposition of negligence fine or additional collection, disciplinary action or corrective measures against the person who committed corruption
- A case that resulted in institutional improvement, for example, in the form of the enactment or revision of laws and subordinate statutes
- A case in which the disclosure contributes to preventing a public organization from bearing economic costs to be otherwise incurred by improving a related policy, or suspending or ending the implementation of such a policy
- A case in which a person comes forward to make a good faith disclosure of his or her receiving bribery
- Other cases in which the Reward Deliberation Board of the Commission deems it appropriate to pay an award

The difference between reward and award is worth noting. A reward must be paid when the informant is qualified to receive the reward, which means that the informant has the right to file a request for reward payment. On the other hand, payment of awards is within the discretion of the Commission. So the informant does not have the right to request an award.

At the time when the now defunct Anti-corruption Act was enacted, there did not exist a clause on award but an amendment made it possible to pay an award when reporting of an act of corruption "brought financial benefits to a public organization, or served the public interest to a significant degree." **Payment of awards** was introduced because reward payment scheme only was not an incentive strong enough to motivate reporting in that request of reward payment was allowed only when the reporting directly resulted in revenue increase or cost reduction of a public organization. Otherwise, the Commission could only recommend the informant for an award but there were no provisions on award payment. Public interest whistleblowing cases in Korea rarely brought about revenue increase or cost reduction of public organizations as they were mostly related to public safety and health (e.g. poor construction work of a new airport, defective repair work of Korea Railroad Corporation, the US Army's discharge of toxic substances to the River Han, etc.) or undemocratic practices of the government (e.g. irregularities found in the Board of Audit and Inspection, election fraud, illegal surveillance by a military intelligence agency). Following civic groups' argument that awards should be granted for whistleblowing that serves public interest, the award payment clause made its way into law (Lee Jimun, 2011).

6.3.2.2 Criteria for Determination of the Award Amount

In principle, the amount of an award may not exceed KRW 100 million. However, in cases where a person who accepted bribery voluntarily reports the money and goods he/she received, the amount of award shall be 20% of the reported amount but not more than KRW 200 million. If there are two or more grounds for award payment, the case which may guarantee the biggest amount of award shall serve as a criterion for the payment of award.

As was the case with reward payment, when determining the amount of award, the amount estimated based on the aforementioned criteria may be reduced by considering ① accuracy and reliability of the report of corruption and related evidential materials and the extent to which the disclosure contributes to resolving the corruption case, ② whether the informant's disclosure has been already covered by the media, and ③ whether the informant was involved in the corrupt act exposed by the report.

6.3.2.3 Restitution of Awards

The provisions on restitution of rewards are also applied to restitution of awards.

6.3.2.4 The Amount of Awards Paid

The amount of awards paid to informants whose reporting brought financial benefits or prevented damages to a public organization, or served the public interest to a significant degree was KRW 562,656,000 (69 cases) or about KRW 8.2 million per case.

<Table Ⅲ-12> The annual amount of awards paid under the ACRC Act

(Unit: KRW 1,000)

Year	No. of cases	Amount of paid awards
Total	69	562,656
2006	3	35,000
2007	8	50,000
2008	6	100,000
2009	6	77,500
2010	10	59,000
2011	5	25,000
2012	14	80,000
2013	11	60,500
2014	6	75,656

* The award scheme has been applied since July 21, 2005.

Examples of Award Payment[8)]

1) Manipulation of bioequivalence test results in 2008 (the largest ever award payment was made)

The informant worked for the pharmaceutical research institute of university A and participated in bioequivalence tests for drugs. He/she reported that defective drugs obtained approval from OO Agency after the research institute manipulated test data and that such practices were widespread in the pharmaceutical community. Former head of OO Agency and 22 others were charged by the prosecution and OO Agency issued a written apology to the public. The Commission paid the informant KRW 50 million, the highest ever whistleblower award, recognizing the informant's contribution to punishment of the people involved, improvement of regulations in OO Agency, and eradication of bioequivalence test manipulation.

2) Fraud on training expenses by trainers of OO Sports Committee in 2011

The informant reported that rhythmic gymnastics trainers were suspected to have obtained more than KRW 23 million by fraud by inflating room and food prices in collusion with the owner of the hotel in Seoul where the trainers stayed twice a year between 2007 and 2009 for training of substitutes. The prosecution granted all the suspects a stay of prosecution, considering that they were first-time offenders, all were dismissed at their own requests before this action was taken and they spent the money not for themselves but for the athletes. The Commission paid the informant an award of KRW 5 million, taking into account the facts that it was a reporting of an act of corruption which could bring financial damages to a public institution and that the incident caused a social uproar as it was informed to the media.

3) Fraud in connection with procurement bidding and military contracts in 2006

It was reported that military contracts were conducted in an irregular manner (prior leakage of contract information, manipulation of prices, prior leakage of bidding information, etc.) and that the national defence budget was being wasted. Investigations found that the allegations were true. As a result, the KRW 17,420,000 that had been lost due to fraud and bribery was recovered, the head of the contractor was charged an evaded tax of KRW 35 million, 12 persons involved faced judicial or disciplinary actions, and improvements were made in the guidelines on military contracts. Giving credit to the informant for his/her contribution to protection of national wealth and prevention of corruption, the Commission paid the informant an award of KRW 25 million.

4) Embezzlement of invigilation expenses by an employee of a national university in 2007

There was a report that an employee of a national university in charge of managing invigilation expenses for a national exam was embezzling the expenses by inflating the number of invigilators or paying the invigilators only part of the money they were entitled

to receive. Investigations found that the allegations were true. As a result, KRW 13.84 million was recovered, the employee was sentenced to 10 months of imprisonment with a stay of execution for 2 years, and improvements were made in the way exams were managed. Recognized for such contribution, the informant was paid KRW 5 million in award.

6.3.3 Prize

In addition to payment of awards described above, if a person reports an act of corruption and by doing so, brings financial benefits or prevents financial damage to a public organization, or serves the public interest to a significant degree, the Commission may recommend him/her for a prize under the Awards and Decorations Act. Between 2003 and 2012, 42 persons who contributed to prevention of corruption received government prizes and citations from the Commission (ACRC, 2013c:372 ; ACRC, 2012b:277).

<Table Ⅲ-13> Number of prizes awarded each year

(In number of persons)

Year	Total	Orders of Merit/Medals of Honor	Presidential Citation	Prime Minister's Citation	ACRC Chairman's Citation
Total	42	2	10	14	16
2003	3	-	-	-	3
2004	5	-	1	4	-
2005	11	-	2	4	5
2006	8	Medals of Honor 1	2	2	3
2007	3	-	-	2	1
2008	3	-	2	-	1
2009	3	-	2	1	-
2010	3	-	1	1	1
2011	3	Medals of Honor 1	-	-	2
2012	-	-	-	-	-

Indonesia has a legal clause that grants "a symbol of gratitude" to public interest whistleblowers. Israel also has a similar practice. The Speaker of the Parliament may present a letter of appreciation to whistleblowers after consulting with the President (Park Heungsik, et al., 2004:57).

8) 1) and 2): ACRC, 2013:377, 3) and 4): ACRC, 2008:59-60

6.4 *Act on the Protection of Public Interest Whistleblowers* of Korea

The *Act on the Protection of Public Interest Whistleblowers* provides that the Commission may pay a reward of up to KRW 1 billion to an informant whose reporting directly contributed to recovery or increase of revenues of the central or local governments. In addition, given the fact that it takes a long time to receive a legal remedy for the punitive measures the informant had to face due to his/her reporting, relief money is provided to help relieve the financial distress caused by expenses for medical treatment, change of residence, litigation, etc.

6.4.1 Reward

6.4.1.1 Requirements for Payment of Financial Rewards

For the informant to receive a reward, his/her reporting must directly contribute to recovery or increase of revenues of the central or local governments or legal relations in the matter should be established. Here, the recovery or increase of revenues must be attributable to the following types of impositions and recoveries.

Causes of the recovery or increase in revenues of public organizations

- Penalty or notification
- Forfeit or imposition of a levy
- Imposition of fines for negligence or charges for compelling the compliance
- Imposition of penalty surcharges (including the cancellation or suspension of a permit, license, etc. when there is the possibility to pay a penalty surcharge in lieu of the cancellation or suspension of a permit, license, etc.);
- Other dispositions or judgments as prescribed by Presidential Decree (imposition of a national or local tax, imposition of charges or additional charges, judgment to compensate damages or restitute unlawful gains)

6.4.1.2 Procedures for Reward Payment

The application for the payment of rewards shall be filed within two years from the date the applicant became aware of the establishment of the legal relations regarding the recovery of or increase in revenues for the central or local governments, or within five years from the date the legal relations in that matter are established. However, provided that a justifiable reason exists, this provision shall not apply.

The Commission shall determine whether to pay such rewards and the amount of the rewards, if any, to be paid, within 90 days from the date that the application was made, unless there are exceptional circumstances otherwise.

6.4.1.3 Criteria for Determination of the Reward Amount

The reward amount shall be determined following the table below but it may not exceed KRW 1 billion.

Benefits incurred	Payment criteria
KRW100 million or less	20%
Over KRW100 million and not more than KRW500 million	KRW20 million + 14% for the amount exceeding KRW100 million
Over KRW500 million and not more than KRW2 billion	KRW76 million + 10% for the amount exceeding KRW500 million
Over KRW2 billion and not more than KRW4 billion	KRW226 million + 6% for the amount exceeding KRW2 billion
Over KRW4 billion	KRW346 million + 4% for the amount exceeding KRW4 billion (Maximum KRW 1 billion)

However, in the event that the reward amount related to an individual public interest violation case is less than KRW 100,000, the reward shall not be paid.

6.4.1.4 Grounds for Reduction or Non-payment of Reward

The Commission may decide to reduce or not to pay the amount determined under the above criteria considering ① accuracy and reliability of the report of corruption and related evidential materials, ② whether the informant's disclosure has been already covered by the media, ③ whether the informant was involved in the corrupt act exposed by the report,

④ the extent to which the informant contributes to eradication and prevention of public interest violations, and ⑤ whether the informant has the obligation to report violations of the public interest to a relevant administrative agency or made the report in connection with his/her duties.

6.4.1.5 Restrictions of Payment of Rewards

For cases reported by public officials who have the obligation to report violations of the public interest to a relevant administrative agency and cases reported in connection with the informant's duties, rewards may be reduced or not be paid. If a public official, who remains or was involved in investigation or examination of allegations of corruption, reports corruption in connection with his or her current or former duties, reward shall not be paid to him or her.

6.4.1.6 Prohibition of Double Payment of Rewards

In the event that any person who filed a request for a reward has already been paid a financial award pursuant to this Act or some other Act(s) and subordinate statute(s) for the same reason and the reward that the person is entitled to receive is larger than the amount he/she has already received, the amount of the reward shall be determined by deducting the already paid amount. This is intended to prevent double payment given the fact that there were already 60 or more laws that granted monetary compensation to informants under the names of reward or award even before the *Act on the Protection of Public Interest Whistleblowers* was enacted.

6.4.1.7 Restitution and Reimbursement of Rewards

The Commission or an institution that has paid rewards under the ACRC Act or some other Act(s) and subordinate statute(s) may claw back the whole or part of the rewards in the events that ① the informant received the rewards through falsehood or some other unjustifiable means, ② the rewards were paid in violation of the Article on prohibition of double payment, and ③ the rewards were paid by mistake.

In the event that the Commission paid a reward to an informant, judging that the reporting directly contributed to recovery of or increase in revenues of a local government and

legal relations in the matter were established, the local government that was notified of the decision of payment of rewards shall reimburse the Commission for the amount of the reward. This obligation of local governments to reimburse the amount of rewards is not stipulated in the ACRC Act but such obligation was introduced to resolve the imbalance where the central government has to bear the cost of rewards while a local government enjoys recovery of or increase in its revenues even though it did not make any particular contribution to prevention or eradication of public interest violations. In the event that the applicant for a reward who is obliged to restitute the reward or a local government that is obliged to reimburse the Commission does not submit the payment[9], the Commission may collect the amount of money in the same way as that national or local taxes in arrears are collected.

6.4.1.8 Examples of Reward Payment and Current Status

Reward payment was first implemented in late September, 2011 and as of the end of May, 2013, penalties and fines worth KRW 533 million have been imposed and accordingly, KRW 100 million of rewards has been paid out in 119 cases. Major cases of reward payment are as follows.[10]

The highest amount of reward paid in a single case so far was KRW 11.04 million for reporting against a fishery company which sold shark's fin, flying fish roe and salmon roe which passed the expiration date by repackaging them with falsified expiration date labels. The informant rewarded with the highest amount of the year 2011 (KRW 9.6 million) was the one who reported the owner of a gas station who sold relatively cheap kerosene, a boiler fuel as a dump truck fuel and a dump truck owner who used the oil for violation of the Petroleum and Petroleum Substitute Fuel Business Act. There were 30 reports against restaurants and supermarkets that falsely labeled or did not label the country of origin for rice, kimchi, beef, pork, chicken (violation of the *Act on Origin Labeling of Agricultural and Fishery Products*), and fruits and a total of KRW 7.29 million was paid out in reward. Illegal land fill or abandoning of construction wastes such as waste concrete was reported for violation of the Waste Control Act. There were 3 such cases and a total of KRW 2.12 million was paid out in reward. Fugitive dust emissions due to failure to place dust

9) The local government shall pay the amount of the reward back to the central government within 3 months after it receives the notification on reimbursement from the Commission.
10) Summary of press releases of the ACRC (May 20, 2013 and December 17, 2012).

protection in construction sites were reported for violation of the *Clean Air Conservation Act*. There were 15 such cases and a total of KRW 6.42 million was paid out in reward. Illegal tattooing for semi-permanent make-up purposes was reported for violation of the *Medical Act* and a total of KRW 3.35 million in 5 cases was paid out in reward. There were 2 reports of failure to indicate non-smoking area in violation of the *National Health Promotion Act* and KRW 540,000 of rewards was paid to the informants.

6.4.2 Relief Money

Rewards are paid only to informants but the Commission may pay relief money for not only public interest whistleblowers themselves but also their relatives or cohabitants who had to bear the following types of damages or costs due to the reporting.

Grounds for requesting payment of relief money

- Expenses spent for physical or psychological treatment
- Moving expenses caused by change of occupation, change of position, or transfer of workplace or secondment
- Expenses spent for litigation procedures to reinstate his/her original state of life
- Losses in wages during the period the punitive measures were in effect
- Other significant economic losses (except cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower and termination of a contract for goods or services, or any other measure that causes economic disadvantages to the whistleblower)

6.4.2.1 Payment Procedures

The public interest whistleblower and his/her relatives or cohabitants who wish to receive relief money shall file a request with the Commission. In response, the Commission may pay relief money based on the deliberations and resolutions at the Reward Deliberation Board.

6.4.2.2 Criteria for Determining the Amount of Relief Money

The following factors are taken into account in determining the amount of relief money.

- Expenses incurred related to medical examination, hospitalization, medication, surgery, etc. for physical and psychological treatments
- Actual costs incurred to move the residence as a result of transfer of workplace, secondment, personal protection, etc.
- Fees incurred to hire a lawyer, certified public labor attorney, etc. for dispute over recovery of the original state of life
- Monthly average of wages or actual income during the three months prior to the date the disadvantageous measures were taken and the period of wage losses for which relief money is paid may not exceed 36 months (If the monthly average exceeds double the average wage, the amount equivalent to double the average wage shall be paid. If there is no way of proving the amount of the monthly average or the calculated monthly average is below the average wage, the average wage shall be paid. The average wage is specified by the average wage of daily workers based on nationwide statistics on the wages of the typical male or female laborer, which is conducted by a wage survey agency that regularly publishes wage statistics at least 6 times a year.
- Other expenditures the Reward Deliberation Board recognizes as being incurred related to damages or costs as a result of the public interest whistleblowing, etc..

6.4.2.3 Grounds for Reduction or Non-payment of Relief Money

In the event that the public interest whistleblower, his/her relatives, or his/her cohabitants already obtained indemnity for damages or expenses that fall under the category of 'grounds for relief money payment,' the Commission shall not pay the relief money if the relief money they are entitled to receive is the same or less than the already paid amount.

6.4.2.4 Prohibition of Double Payment of Relief Money

In the event that any person who is entitled to receive relief money has already been paid any type of relief money pursuant to other Act(s) and subordinate statute(s) for the same reason and the relief money that the person stands to receive is larger than the amount he/she has already received, the amount of the relief money shall be determined by deducting the already paid amount.

6.4.2.5 Restitution of Relief Money

The Commission or an institution that has paid relief money under the ACRC Act or some other Act(s) and subordinate statute(s) shall claw back the money in the events that ① the informant received the money through falsehood or some other unjustifiable

means, ② the money was doubly paid for the same reason, and ③ the money was paid by mistake. In the event that a person who is obliged to restitute relief money does not submit the payment, the Commission may collect the amount of money in the same way as that national taxes in arrears are collected.

6.4.2.6 Subrogation Rights to Claim Damages for Relief Money

In the event that the Commission has paid the relief money, it shall subrogate the claim, held by the person who has received the relief money, for damages or expenses that fall under the category of grounds for paying relief money, within the limit of the paid amount.

6.4.2.7 Current Status

There were 2 requests made to claim relief money but as of October, 2012, one of them is cancelled and the other is under examination. So there has been no case of relief money payment so far (ACRC, 2013c:403).



Discussions and Exercise

- Discuss whether reward payment is needed.
- Discuss whether it is necessary to set a ceiling on the amount of reward (The *False Claims Act* of the US does not specify a ceiling while the Anti-corruption Act and the *Act on the Protection of Public Interest Whistleblowers of Korea* set a ceiling at KRW 2 billion and KRW 1 billion, respectively).
- Discuss the matter of including in the reward (or relief money) expenses for medical treatment, change of residence, litigation, and lost wages, etc. which incurred due to actions taken against the informant.
- Discuss whether it is necessary to pay an award even when the reporting does not directly contribute to recovery of revenues of a public institution as specified in the Anti-corruption Act.
- Discuss the practice of not paying a reward when the informant is a public official and reported a corr6upt act in connection with his/her duties.
- Discuss whether it is necessary to give prizes (medals, citations, etc.) like in Korea.
- Discuss whether there is a need for providing such incentives as special promotion, extra points provided in employment, or training opportunities instead of direct incentives like rewards.

※ If your country have a reward scheme, you may share the practices in your own country when discussing the points suggested above.

7. Summary



Goals	• To gain comprehensive understanding of protection and reward schemes by comparing laws in different countries • To explore major characteristics of Korean laws and report handling procedures

7.1 Comparison of Relevant Laws in Different Countries

Comparison has been made as follows among the Federal Employee Protection of Disclosures Act of the US, the *Public Interest Disclosure Act* of the UK, the *Public Service Whistle-blowing Act* of Canada, the *Protected Disclosures Act* of New Zealand, the *Protected Disclosures Act* of South Africa, and the *Public Interest Informant Protection Act* of Japan, and the *Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission*, the *Act on the Protection of Public Interest Whistleblowers* of Korea.

7.1.1 Scope and Requirements of Protected Reports

7.1.1.1 Protected Informants

US	UK	Canada	New Zealand	South Africa	Japan	Korea	
						Corruption	Public interest
Federal employees	Workers (Including public servants)	Federal employees	Workers (Including public sector)	Workers (Including public sector)	Workers (Including public sector)	Any person (Including foreigners)	

7.1.1.2 Protected Reports of Corrupt Acts

US		① a violation of any law, rule, or regulation, ② gross mismanagement, ③ a gross waste of funds, ④ an abuse of authority, ⑤ a substantial and specific danger to public health or safety
UK		① criminal offence, ② failure to fulfil legal obligation, ③ miscarriage of justice, ④ threat to health or safety of individuals, ⑤ environmental violation, ⑥ intentional cover-up of any of the above 5 types of violation. Not just on-going violations but even the possibility of their occurrence may be reported.
Canada		① a contravention of any law or regulation, ② a misuse of public funds or a public asset, ③ a gross mismanagement in the public sector, ④ an act or omission that causes substantial and specific danger to life, health, safety of individuals or to the environment, ⑤ gross violation of the code of conduct of public officials, ⑥ intentionally ordering or suggesting others to commit any of the above five types of violation
New Zealand		① Using public funds or resources in an illegal or irregular manner ②an act, omission or course of conduct that poses serious threat to public health or safety, or the environment ③ an act, omission or course of conduct that causes serious threat to the right to fair trial and enforcement of laws for prevention, investigation and detection of criminal offenses ④ an act, omission or course of conduct that constitutes a criminal offense ⑤ an act, omission or course of conduct by a public servant that is highhanded and unfairly discriminatory or constitutes gross negligence or misconduct
South Africa		① a criminal offense that was already committed, is being committed, or is possible to be committed ② Non-fulfillment of a legal obligation that was already committed, is being committed, or is possible to be committed ③ miscarriage of justice that was already committed, is being committed, or is possible to be committed ④ threat to health and safety of individuals that was already committed, is being committed, or is possible to be committed ⑤ violation of working environment that was already committed, is being committed, or is possible to be committed ⑥ unfair acts of discrimination specified in Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 ⑦ intentional cover-up of any of the above 5 types of violation that was already committed, is being committed, or is possible to be committed
Japan		Violations of 441 laws on life, safety, property, and other interests of the public (consumer rights, environmental protection, fair competition, etc.)
Korea	**Corruption**	Acts of corruption and violations of the code of conduct for public officials may be reported. Acts of corruption include ① act of a public organization employee to seek illegitimate gains for himself/herself or for any third party by abusing his/her position or authority, or violating Acts and subordinate statutes in connection with his/her duties, ② act of causing financial damage to a public organization in violation of Acts and subordinate statutes, when it is in the process of executing its budget, or acquiring, managing or disposing of its property, or entering into and executing a contract to which it is a party, ③ act of forcing, recommending, suggesting or encouraging someone to engage in or conceal the acts provided for by the above ① and ②.
	Public interest	An act that infringes on the health and safety of the public, the environment, consumer interests and fair competition in violation of any of the 180 public interest related laws and is subject to penal provision or, cancellation, suspension of license or other administrative actions.

7.1.13 Obligation to Report in Good Faith

US	UK	Canada	New Zealand	South Africa	Japan	Korea	
						Corruption	Public interest
Reasonable belief	Reasonable belief + good faith	Good faith	Good faith	Reasonable belief + good faith	Reasonable grounds	Reasonable belief + good faith	

7.1.1.4 Where to Make a Report

US		No particular restrictions. Tip-off to the media can also be protected. However, confidential information may be reported only to the head of the Office of Special Council, the Inspector General, or a person designated by the head of a relevant agency.
UK		The employer or the place designated by the employer, the head of an administrative agency or the individual appointed by the agency through legal counselling under laws or their subordinate statutes, and a regulatory agency designated by the Minister. There is no clear reference to the media but it is interpreted that tip-off to the media is also protected.
Canada		① The supervisor or a designated senior official at the institution the informant belongs to, ② the Public Sector Integrity Commissioner, ③ the Auditor General when the report is about the Office of the Public Sector Integrity Commissioner, ④ the public when there is not enough time to report to any of ① ~ ③ and when the informant(a public official) has reasonable grounds to believe that the event he/she intends to report is about an act or omission that falls under one of the categories specified in relevant laws.
New Zealand		Internal procedures must be followed and in specials cases, reports may be made to the head of an institution, competent authorities or a cabinet member or the ombudsman.
South Africa		The legal advisor, the employer, a cabinet member, or a cabinet council, a particular individual or organization. Other more general ways of reporting are also allowed.
Japan		① The employer or the party that receives service from a dispatched worker, ② parties designated by those specified in ①, ③ competent administrative authorities, ④ the party that is needed for prevention of events subject to reporting and prevention of spread damage due to such events
Korea	**Corruption**	Basically through the ACRC. However, when a public official witnesses another official committing a corrupt act in connection with their duties, he/she has the obligation to report it to an investigative agency, the Board of Audit and Inspection, or the ACRC. The institution where the alleged wrongdoer belongs or the public institution responsible for the institution, organization or company where the alleged wrongdoer belongs.
	Public interest	① The head (or the employer) of the institution, organization or company (or the individual) who violates public interest, ②the administrative or regulatory agency with the authority to supervise, regulate or investigate public interest violations, ③ an investigative agency, ④ the ACRC, ⑤ members of the National Assembly, ⑥ Public institutions or corporations established under laws related to public interest violations

7.1.2 Protection in Employment Relationships

7.1.2.1 Scope of Persons Subject to Protection

US		① Exercise of appeal, complaint, or grievance right allowed under laws, guidelines or regulations, ② testimony for the individual who is exercising rights in ① and other forms of legal support, ③ cooperating with or providing information to the Inspector General or the Special Counsel under applicable laws, and ④ any person who faced punitive measures at workplace after refusing to follow the order to violate laws may also be protected. Also protection is provided to any person who is not an informant under the Act but was mistaken for an informant and faced retaliatory actions.
Canada		Any person who faced retaliation after cooperating with investigation conducted due to a whistleblower report is subject to protection.
Korea	**Corruption**	In addition to the informant, any person who cooperated with inspection, investigation or examination of the reported act by making statements or submitting related documents is also protected (guarantee of position, personal protection, mitigation of culpability).
	Public interest	Protection is extended to any person who made a statement or testimony or submitted documents in the investigation and legal processes related to protection of informants, including persons who intended to prepare for public interest whistleblowing by collecting evidence, etc.

In the U.S., many of the laws on the private sector whistleblower protection primarily protect a person who reported an act of violation (not only a person who provided information but also a person who started a legal process by filing a complaint or a lawsuit or who prompted a relevant regulatory agency to start legal processes under relevant laws) or who made a testimony during related legal procedures but there are sectoral laws that protect persons who cooperated in legal procedures including investigation and litigation and persons who refused to participate in violation of law or opposed conduct, policy or work in violation of law. In addition, there are a number of other laws that protect persons who are scheduled to make a report or testimony, or to cooperate.

7.1.2.2 Relevant Agencies

US	UK	Canada	New Zealand	South Africa	Japan	Korea	
						Corruption	Public interest
File a request with the Office of Special Counsel, follow the decision of the Merit Systems Protection Board	The Employment Tribunal	File a request with the Public Sector Integrity Commissioner, protection decision is made at the Public Servants Disclosure Protection Tribunal	File an objection under the Employment Contract Act	The Labour Court and competent courts	The court	Request with the ACRC or lawsuit	

7.1.2.3 Types of Prohibited Punitive Measures or Discrimination

US		Take or fail to take, or threaten to take or not to take the following 11 personnel measures: ① appointment, ② promotion, ③ dismissal, suspension of duties, demotion, wage reduction, temporarily not giving any duty or other disciplinary or corrective actions, ④ secondment, transfer to a position with the same or a different status, ⑤ non-competitive reappointment, ⑥ reinstatement, ⑦ reappointment, ⑧ performance evaluation, ⑨ decision on wage, welfare benefits, awards or decision on education or training (but only the education or training expected to influence appointment, promotion, performance evaluation or other personnel arrangement), ⑩ decision to order mental examination, ⑪ other significant changes in duties, responsibilities or working conditions
UK		Unfair dismissal and damage caused by actions taken or intentional failure to take certain actions by the employer
Canada		① Disciplinary actions, ② demotion, ③ termination of employment relationship (retirement, dismissal, etc.), ④ all measures that negatively influence employment or working conditions, ⑤ threatening to take any of the actions in ① through ④
New Zealand		Dismissal or other retaliatory actions
South Africa		① Disciplinary actions, ② dismissal, suspension of duties, demotion, harassment or blackmailing, ③ transfer against the person's will, ④ rejection of transfer or promotion opportunities, ⑤ change of employment or retirement conditions against the employee, ⑥ rejection of certain treatments or punitive treatments, ⑦ refusal to assign duties or location of duties, ⑧ blackmailing, ⑨ adverse actions with respect to employment, safety or place of work
Japan		① Dismissal, ② demotion, wage reduction and other adverse actions, ③ cancellation of secondment of a worker, ④ rotation of seconded workers or other adverse actions
Korea	**Corruption**	① Dismissal, discharge and other corresponding detrimental measures, ② removal from obligation, demotion, restriction of promotion, and other corresponding detrimental measures, ③ transfer to a position with the same or a different status, and other corresponding detrimental measures ④ discrimination in terms of working conditions such as income discrimination, non-assignment of jobs and group bullying

	Public interest	① Dismissal, discharge and other corresponding detrimental measures, ② disciplinary actions, suspension of duties, pay reduction, demotion, restriction of promotion and other unfair unfavourable personnel measures, ③ work reassignment, transfer, denial of duties, rearrangement of duties or any other personnel actions that are against the whistleblower's will, ④ discrimination in the performance evaluation, peer review, etc. and subsequent discrimination in the payment of wages, bonuses, etc., ⑤ cancellation of education, training or other self-development opportunities; restriction or removal of budget, work force or other available resources, suspension of access to security information or classified information; cancellation of authorization to handle security information or classified information; or any other discrimination or measures detrimental to the working conditions of the whistleblower, ⑥ putting the whistleblower's name on a watch list as well as release of such a list, bullying, use of violence and abusive language toward the whistleblower, or any other action that causes psychological or physical harm to the whistleblower, ⑦ unfair audit or inspection of the whistleblower's work as well as disclosure of the results of such an audit or inspection, ⑧ cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower, ⑨ termination of a contract for goods or services, or any other measure that causes economic disadvantages to the whistleblower

7.1.2.4 Burden of Proof

US		Under the circumstances where whistling blowing is acknowledged as a "contributing factor" to unfavourable personnel measures taken by an institution, if the institution fails to demonstrate "clear and convincing evidence" that the same measure would have been taken without the whistleblowing, the measures shall be regarded as retaliation.
UK		For other types of detrimental actions than dismissal and detrimental actions to non-employee worker, if he/she brought a claim to the Employment Tribunal, the responsibility lies in the employer to provide reasons for an act or omission that caused the detrimental actions the worker faced. For unfair dismissal, if the dismissed employee worked for the institution for a year or longer, the employer has the responsibility to prove that the dismissal was legitimate while if the employment period was less than a year, the responsibility is on the worker.
Korea	**Corruption**	If the whistleblower requests the Commission to reinstate him/herself to his/her original state or litigates for that purpose due to punitive measures, discrimination in working conditions and other economic or administrative disadvantages he/she faced after making a report, then he/she is presumed to have suffered such disadvantages for his/her act of reporting corruption.
	Public interest	Should any of the events described below occur, it shall be presumed that the public interest whistleblower has been subject to unfavourable measures as a result of his/her public interest whistleblowing: ① there is an attempt to identify the public interest whistleblower, obstruct whistleblowing, or force him or her to rescind his/her case; ② an unfavourable measure was implemented within two years from the day the public interest whistleblowing took place; ③ unfavourable measures were implemented even after the ACRC recommended the institution it should not implement such measures.

7.1.2.5 Exemption from Confidentiality

US		Even for information whose disclosure is banned by law or which is treated as national security or diplomatic secrets classified pursuant to executive order, reports made to ① the Office of Special Counsel, ② the Inspector General of each institution, ③ a person authorized by the head of an institution to receive reports shall be protected.
UK		The law specifies that no regulation that prohibits workers from making protected reports is valid and making a report concerning company secrets can also be protected.
Korea	**Corruption**	If a person reports corrupt acts according to the ACRC, he/she shall be deemed not to have violated the obligation of confidentiality in the performance of his/her duty, even though other laws, pacts, employment rules, etc. stipulate otherwise.
	Public interest	In the event that the public interest whistleblowing contains confidential work-related information, the public interest whistleblower shall be deemed not to have violated his/her professional confidentiality obligation, notwithstanding the provisions of some other Act(s) and subordinate statute(s), collective agreements or the employment rules, etc. The provisions prohibiting or restricting public interest whistleblowing in a collective agreement, employment agreement, supply contract, etc. shall be deemed invalid.

7.1.2.6 Protective Measures

US	The Merit Systems Protection Board may include in corrective actions for disadvantages in an employment relationship ① reinstatement to a position where the informant would have been able to have without the whistleblowing, ② reasonable and predictable damages caused by unpaid wages, loss of related benefits, expenses for related medical treatment, transport expenses, etc., ③ attorney fees. Preferential treatment to the informant over the course of personnel reshuffle may also be included.
UK	The Employment Tribunal shall order the employer to reinstate the whistleblower to his/her previous position or to employ him/her back. If the court does not issue such remedial order, it shall order the employer to pay a damage award, which consists of basic award and compensatory award.
Canada	Once the Public Servants Disclosure Protection Tribunal decides that the whistleblower faced retaliation due to whistleblowing, the tribunal may order his/her employer or the chief executive/appropriate chief executive of the institution, or any person acting on their behalf to take all the necessary measures among the following 6 listed below: ① return to his or her duties, ② reinstatement or damage award equivalent to reinstatement, ③ a damage award of up to the amount the whistleblower would have earned without retaliation, ④ nullification of unfavourable measures such as disciplinary actions against the whistleblower or damage award equivalent to compensation for monetary or other forms of penalties, ⑤ all the expenses the whistleblower had to bear as direct consequences of retaliation, ⑥ damage award of up to CAD 10,000 as compensation for the suffering the whistleblower had to endure as a result of retaliation.

South Africa		Upon making a report, the whistleblower must be transferred to a different position in the same or different location and if the whistleblower is an employee of a government agency, he/she must be transferred to another government agency. The employment conditions of the transferred employee should not be inferior to the conditions he/she had before the transfer.
Japan		There are regulations that specify protective measures that nullify or prohibit unfavourable actions against public interest whistleblowers such as dismissal or termination of the employment contract. According to such regulations, the employer may not take unfavourable measures such as demotion or pay reduction against a person on grounds of whistleblowing. In the event that the whistleblower is a seconded worker, the institution that uses him/her may not ask the institution who seconded the worker to replace him/her or take any other unfavourable actions.
Korea	**Corruption**	The Commission may ask the head of an organization, group or enterprise to which the whistleblower belongs or a related agency to take appropriate measures such as reinstatement. If a public organization employee reports corrupt acts and duly asks the Commission to take proper personnel management measures such as transfer and secondment, then it may request the Minister of Security and Public Administration or the head of an appropriate public agency to take necessary steps.
	Public interest	In the event that an examination finds the applicant faced unfavourable measures as a result of whistleblowing, the Commission shall order the party who implemented such actions to take each of the following protective measures within a period of 30 days: ① reinstatement, ② payment of remuneration, etc. that has been delayed or has been paid discriminately, including interest, ③cancellation or prohibition of other unfavourable measures

7.1.2.7 Temporary Relief

US		If there are reasonable grounds for assuming that the personnel measures the whistleblower faced fall under the categories of prohibited measures, the Special Counsel may request the Merit Systems Protection Board to suspend execution of such measures for 45 days. In this case, the member of the Board who received the request must make a decision within 3 working days. Unless they consider it inappropriate, they must order suspension of execution and may extend the period of suspension if necessary.
UK		The laws states that the whistleblower who is unfairly dismissed as a result of whistleblowing, he/she may request the Employment Tribunal a temporary remedy within 7 days from the date when the dismissal becomes effective. If the Tribunal considers the whistleblower's claim reasonable, it may order temporary relief such as temporary reinstatement, temporary re-employment, continuation of the employment contract that existed before the dismissal.
Canada		It may not be injunctive relief but there is a provision that prohibits initiation of procedures pursuant to other laws or the collective agreement regarding the measures the applicant claims to be retaliatory actions.
Korea	**Corruption**	None.
	Public Interest	

7.1.2.8 Punishment of the Person Who Took Disadvantageous Actions

US		The decision on whether there is a need for penalties against the person who took prohibited personnel measures and the person who failed to implement the order of the Merit Systems Protection Board may be submitted to the Board. The Board may take disciplinary actions such as expulsion, demotion, restriction of appointment to federal positions for up to 5 years, suspension of duties, reprimand, or a civil fine of up to $1,000. A disciplinary action and a fine may be imposed concurrently. For such disciplinary actions, administrative protest is not allowed but only appealing to the Court of Appeals for Federal Circuit is allowed.
Canada		When a person is confirmed to have taken retaliatory actions against the whistleblower, the Public Servants Disclosure Protection Tribunal may order his/her employer or the chief executive/appropriate chief executive of the institution, or any person acting on their behalf to take disciplinary actions against the person. The tribunal may order any types of disciplinary actions (e.g. termination of employment relationship, cancellation of appointment, etc.). The wrongdoer may not raise any legal objection to the orders of the tribunal based on any other laws or the collective agreement.
Korea	**Corruption**	If a person who unfairly treated or discriminated against a whistleblower in terms of public position or working conditions fails to meet the requests made by the Commission, then he/she will be sentenced to imprisonment of up to 1 year or a fine of up to KRW 10 million. A person who unfairly treated or discriminated against a whistleblower in terms of his/her public position or working conditions shall be punishable with a fine of up to KRW10 million. A person who failed to implement measures to guarantee the whistleblower's public position in order to resolve unfair treatment or discrimination in working conditions shall also be punishable with a fine of up to 10 million.
	Public interest	① A person who took actions against a whistleblower such as expulsion and dismissal shall be sentenced to imprisonment of up to 2 years or a fine of up to KRW 20 million, ② a person who did not carry out the decision to take protective measures requested by the Commission that had been confirmed with or without an administrative proceeding shall also be punishable with imprisonment of up to 2 years or a fine of up to KRW 20 million, ③ a person who took unfavourable measures against a whistleblower in employment relations apart from measures in ① and unfair economic and administrative measures is punishable with imprisonment of up to 1 year or a fine of up to KRW 10 million. ④ In addition to taking protective actions for the whistleblower, the Commission may ask a relevant disciplinary officer to take disciplinary actions against the person who took unfavourable measures against the whistleblower.

7.1.2.9 Settlement

U.K.		Advisory, Conciliation Arbitration Service (ACAS) is in charge of provisional arbitration that interferes labor disputes with the consent of the concerned parties, not limiting whistleblower cases.
Canada		The Integrity Commissioner may appoint a conciliator in order to reach a settlement during investigation into the request for protection. Conciliation of dispute over protection is possible when there is an agreement between the applicant for protection and the person who has the authority to implement relief measures while conciliation of dispute over disciplinary actions is possible when there is an agreement between the person who took retaliatory measures against the whistleblower and the person who has the authority to take disciplinary actions. The Integrity Commissioner may decide whether to approve or reject the conditions for dispute conciliation. If the Commissioner approves the conditions, the request for protection shall be dismissed and the execution of the approved dispute conciliation shall be pursuant to the decision of the Federal Court.
Korea	**Corruption**	None found.
	Public interest	In the event that the Commission receives a request for protective measures, it may recommend reconciliation or present a reconciliation proposal with regard to protective measures, compensation for damages, etc., either ex officio or upon request of the concerned parties, before it decides to take protective measures, reject the case or give a recommendation. In the event that the concerned parties agree to accept the reconciliation proposal of the Commission, the Commission shall draw up a reconciliation protocol that shall be signed or sealed by the concerned parties and by all the members of the Commission who have been involved in the reconciliation process. Then, it is deemed that the concerned parties have reached an agreement, of which the content is equivalent to the protocol, and the protocol has the same effect as a judicial reconciliation under the Civil Procedure Act.

7.1.3 Special protection

7.1.3.1 Safeguarding Personal Confidentiality

US	Personal details of the informant shall not be disclosed to the Special Counsel without the consent of the informant unless otherwise stated in the law.
Canada	Each public institution is required to keep confidential the identities of persons involved in the whistleblowing process such as the informant, witness and the person responsible for the concerned misconduct, and to put in place procedures to guarantee confidentiality. Except for cases where disclosure is required or allowed by applicable laws, the Integrity Officer and any person acting on behalf of him or following his orders are prohibited from disclosing any information they obtained while performing duties pursuant to the Public Service Whistle-blowing Act.

New Zealand		The person who received a report must do their best to make sure that information related to the whistleblower's identity is not disclosed. However, disclosure may be allowed if the whistleblower consented in writing and the recipient of the report considers disclosure necessary for ① effective investigation into the reported act, ② prevention of serious threat to public health, safety or the environment, and ③ observation of the principle of natural justice.
Korea	**Corruption**	Any employee of the Commission or an investigation agency to which matters of corruption are referred shall be prohibited from disclosing or suggesting the identity of the informant without the consent of the informant him/herself or persons who cooperated in inspection, investigation and examination of the reported act. When the identity of an informant is disclosed without his or her consent in the process of handling allegations of corruption, the Commission shall examine how such disclosure occurred. If it is found that an employee of the Commission or an investigation agency to which matters of corruption are referred, the Commission may take such measures as necessary to request the person in authority to take disciplinary action against persons involved. No person with the knowledge of the fact that someone is an informant (and his/her relatives and cohabitants) under protection shall tell, disclose to or publicize to any third party personal information concerning the informant or other facts that infer the identity of the informant. The Commission may accuse persons who violated the confidentiality obligation and the wrongdoer is punishable with imprisonment of up to 3 years or a fine of up to KRW 10 million.
	Public interest	Unless there was consent by the informant, no person with the knowledge of the fact that someone is an informant shall tell, disclose to or publicize to any third party personal information concerning the informant or other facts that infer the identity of the informant. Any person who violated such confidentiality obligation is punishable with imprisonment of up to 3 years or a fine of up to KRW 30 million. The Commission may take such measures as necessary to request the person in authority to take disciplinary action against the wrongdoer.

7.1.3.2 Physical Protection

Korea	**Corruption**	If an informant feels that he/she or his/her supporters, family, relatives or cohabitants should be protected, s/he may request the Commission to take protective steps. In such a case, the Commission may ask the Commissioner General of the Korean National Police Agency, the chief of a local police agency or the chief of the competent police station to take relevant protective steps.
	Public interest	The public interest whistleblower, his/her relatives or cohabitants may request the Commission to take protective measures for their personal safety in the event that the public interest whistleblower, his/her relatives or cohabitants have faced or are likely to face serious danger to their lives or safety. In such an event, the Commission may, if deemed necessary, request the chief of the competent police station or agency to provide necessary personal protection measures.

7.1.3.3 Special Protection in Investigative and Criminal Procedures

Korea	**Corruption**	If a person suffers disadvantages or discrimination for his/her report of corruption or if there are reasonable grounds to assume that he/she may experience such disadvantages or discrimination, Article 7, Articles 9 through 12 of the Act on the Protection of Reporters of Specific Crimes shall apply *mutatis mutandis* to the investigation and the following criminal procedures in connection with the reported act of corruption.
	Public interest	Article 7 and Articles 9 through 12 of the Act on the Protection of Reporters of Specific Crimes shall apply *mutatis mutandis* to the investigation and criminal procedures in the event that justifiable reasons exist that the public interest whistleblower, his/her relatives, or his/her cohabitants have suffered or could suffer damages because of the public interest whistleblowing.

7.1.3.4 Mitigation of Sentences or Disciplinary Actions

Korea	**Corruption**	If a person reports corrupt acts according to this Act, which results in the detection of a crime committed by himself/herself, punishment for the crime may be mitigated or remitted. This provision on reduction or exemption of responsibility of the informant shall apply mutatis mutandis to any disciplinary measure taken by a public organization. Co-operators shall also be subject to legal protection.
	Public interest	If public interest whistleblowing leads to the detection of a crime perpetrated by the public interest whistleblower, the punishment of such person or persons may be mitigated or remitted. In the event the public interest whistleblower is subject to disciplinary measures for his/her illegal acts discovered in connection with the public interest whistleblowing, the Commission may request the relevant disciplinary authority of the public interest whistleblower to mitigate or remit the punishment. In this case, the person who received such a request shall accept it unless there is any justifiable reason for not doing so.

7.1.3.5 Exemption from Compensating for Damages

New Zealand		There is exemption from civil and criminal actions. The informant of a corrupt act or the person who referred the case to relevant authorities for investigation does not have the obligation to be prosecuted or to face warning for the reason that they disclosed or referred the information.
Korea	**Corruption**	None found
	Public interest	The person reported cannot file a claim for damages caused by public interest whistleblowing against the public interest whistleblower.

7.1.3.6 Protection from Other Administrative and Economic Disadvantages

Korea	**Corruption**	Any person, who has been put at financial or administrative disadvantage, such as the cancellation of permit or license and the revocation of a contract, may request the Commission take necessary steps, for example, to ensure the temporary implementation of the permit, license, or contract, for the purpose of restoring the situation back to his/her original state, or correcting the disadvantages. When the Commission considers such a request reasonable, it may ask the head of an organization, group or enterprise to which the requester belongs or related agency to take proper measures. In this case, the head of the body shall comply with the request from the Commission, unless there are justifiable reasons to act contrarily. The person who fails to implement the corrective measures requested by the Commission is punishable with a fine of up to KRW 10 million.
	Public interest	Disadvantageous measures include not only unfavourable personnel measures but also ① cancellation of a license or permit, or any other action that causes administrative disadvantages to the whistleblower, ② termination of a contract for goods or services, or any other measure that causes economic disadvantages to the whistleblower. Any person who face such measures may request the Commission for protection. After examining the request case, the Commission may decide to recommend that the person who implemented the disadvantageous measures take the protective measures, necessary to enable a permit, license, or contract to remain in effect. Since this is just a "recommendation," it is not legally binding whereas the *ACRC Act* stipulates an "order" to take protective measures, which is legally binding.

7.1.3.7 Medical and Legal Support

Korea	**Corruption**	The Commission signed MOUs with the Korean Neuropsychiatric Association and the Korean Bar Association and enacted and implemented the 'guidelines on medial support and legal remedy for informants of corrupt acts' in order to make sure that informants who suffer from mental distress have free access to neuropsychiatric treatments.
	Public interest	

7.1.4 Incentives for Whistleblowers

False Claims Act	The person who files actions and recovers damages on behalf of the government stands to receive a portion of the recovered damages as monetary rewards. Under this law, any person who gains unjust enrichment from the government through false claims in the process of carrying out a contract is liable for ① a civil penalty of between $5,000 and $ 10,000, ② treble the damages the US government suffered and ③ the litigation costs. There are cases where the government itself files actions against the false claimer but private individuals are also allowed to file such actions on behalf of the government so that the chances of detecting frauds are increased. Such lawsuits filed by private individuals are called qui tam suits. The government may participate in the lawsuit filed by a private individual as a party to the suit. In this case, if the individual wins the suit, the individual will be rewarded with 15 to 25% of the recovered damages or the

		settlement amount. When a private individual conducts the suit without the government's involvement, the person will receive an amount the court considers reasonable in the range of 25 to 30% of the recovered damages or the settlement amount.
The Dodd and Frank Act		The program under the Commodity Exchange Act rewards the individual who provides information on a violation of the Act which leads to an enforcement action where more than $1 million is ordered in monetary sanctions. Rewards for whistleblowers range from 10 to 30% of the recovery. The Securities Exchange Act also introduced a similar reward program for whistleblowers.
Korea	**Corruption**	The Commission shall pay up to KRW 2 billion when whistleblowing directly contributed to the recovery or increase of revenues or the reduction of costs of public organizations. The amount of a reward shall include expenses for medical treatment, change of residence, change of job, and litigation and lost wages which are expenses incurred to restore the person to a state prior to suffering punitive actions. If reporting of an act of corruption brought financial benefits or prevented damages to a public organization, or served the public interest to a significant degree even if it did not result in direct financial gains, the Commission may pay the informant an award of up to KRW 100 million.
	Public interest	The Commission may pay a reward of up to KRW 1 billion to an informant whose reporting directly contributed to recovery or increase of revenues of the central or local governments. In addition, given the fact that it takes a long time to receive a legal remedy for the punitive measures the informant had to face due to his/her reporting, relief money is provided to help relieve the indirect financial distress caused by expenses for medical treatment, change of residence, litigation, etc.

7.1.5 Others

7.1.5.1 Mandatory Assessment of the Outcome of the Law and Parliamentary Report

Mandatory assessment of the outcome of the law is aimed to assess how much effect the law had on protection of whistleblowers when a certain period of time has passed after the law took effect, to prevent loosening of the enforcement of the law, and to ensure consistent and proper protection for the whistleblower (Park Heungsik, et al., 2002a: 125). The ACRC Act and the *Act on the Protection of Public Interest Whistleblowers* of Korea do not provide such mandatory assessment. In Canada, the Minister of the Public Service Human Resources Management Agency must make sure that there is independent assessment of the relevant law 5 years after the law enters into effect and a report should be submitted to both the Senate and the House of Commons upon completion of the assessment. As for parliamentary report, while the ACRC Act of Korea does not have a particular clause on such a report, the Canadian law states that annual reports must be prepared every year and submitted to the President of the Senate and the Speaker of the House of the Commons, who shall introduce the report to the chamber they preside over[11] (Lee Jimun,

et al., 2013:96). The *Protected Disclosure Act* of New Zealand also has a similar clause, which provides that law enforcement status and whether or not amendment is needed shall be reported to the Parliament 2 years after the law takes effect. In the US, an annual report on the activities of the Special Counsel is submitted to Congress (Park Heungsik, et al., 2002b:125-126).

7.1.5.2 Sector Penalties

Sector penalties differ from individual penalties. All laws governing whistleblower protection provides penalties on individuals who retaliated against a whistleblower but no penalties are specified on the department where such retaliation took place or the whole group of people involved (Park Heungsik, et al., 2002b:127).

7.1.5.3 Anonymous Reporting

No clause on anonymous reporting is found in the laws introduced above. The Dodd and Frank Act states a request for rewards may be made anonymously by a proxy but this does not mean reporting can be done anonymously.

7.2 Key Characteristic of Legislation and Report Handling Process of Korea

7.2.1 Key Characteristic of the ACRC Act and the Act on the Protection of Public Interest Whistleblowers of Korea

Key characteristics of the ACRC Act are as follows. First, it defines whistleblower protection as governed not by the *Act on the Protection of Public Interest Whistleblowers* but by the Anti-corruption Act. In other words, whistleblower protection is a tool for prevention of corruption in that protection of public interest whistleblowers is not the only purpose

11) The annual report must contain the following information: a) the general number of investigations related to this law, b) the number of reported corruption cases, the number of requests for protection due to retaliation, the number of cases where follow-up measures were taken and not taken, c) the number of investigations launched under this law, d) the number of investigations recommended by the Commissioner and update of the progress, e) whether there exist structural problems that cause corruption, f) recommendation of improvement the Commissioner deems appropriate, g) other matters outside the scope the Commissioner deems appropriate.

of the ACRC Act. Second, it established the ACRC as an independent institution that receives reports and protects informants. Third, rewards as monetary incentives are specifically defined. Fourth, specific measures for personal protection are stated. Fifth, it provides guarantee of position and personal protection not only to the informant but also to people who helped him/her by making a testimony or submitting documents. Sixth, when it is found that the informant engaged in a criminal act related to his/her reporting, the informant's sentence can be reduced or remitted and this also applies to disciplinary actions of public institutions. Seventh, it includes exemption of confidentiality. In the event that the public interest whistleblowing contains confidential work-related information, the public interest whistleblower shall be deemed not to have violated his/her professional confidentiality obligation, notwithstanding the provisions of some other Act(s) and subordinate statute(s), collective agreements or employment rules. Lastly, it does not limit the scope of informants to whistleblowers but any person may make a report. Only public officials have the obligation to report acts of corruption related to their own duties.[12)]

The *Act on the Protection of Public Interest Whistleblowers* also have the above characteristics except the first one. The following is the characteristics that can be found only in the *Act on the Protection of Public Interest Whistleblowers*. First, it is an independent law separate from the ACRC and it provides protection of public interest whistleblowing and whistleblowers. Second, while the ACRC Act defines the subject of protected reports in a general manner, this law lists specific acts that violate public interest and 180 related laws. Third, it states that the Commission shall present a proposal for reconciliation upon request or ex officio. Fourth, it allows internal whistleblowing by accepting reports to heads of an institution, organization or corporation or employers and it also allows reports to be made to members of the National Assembly. Fifth, it specifically lists punitive actions and they includes group bullying which falls under the category of harassment. Sixth, it nullifies prohibition or restriction of whistleblowing stated in collective agreements, employment contracts, supply contracts, etc. Seventh, this law provides relief money aside from rewards (Lee Jimun, 2012:16).

12) Re-summarized Park Heungsik, et al., 2002: 134-135 and included exemption from confidentiality and persons who are eligible to file a report.

[Figure Ⅲ-1] Changes after introduction of the *Act on Protection of Public Interest Whistleblowers*

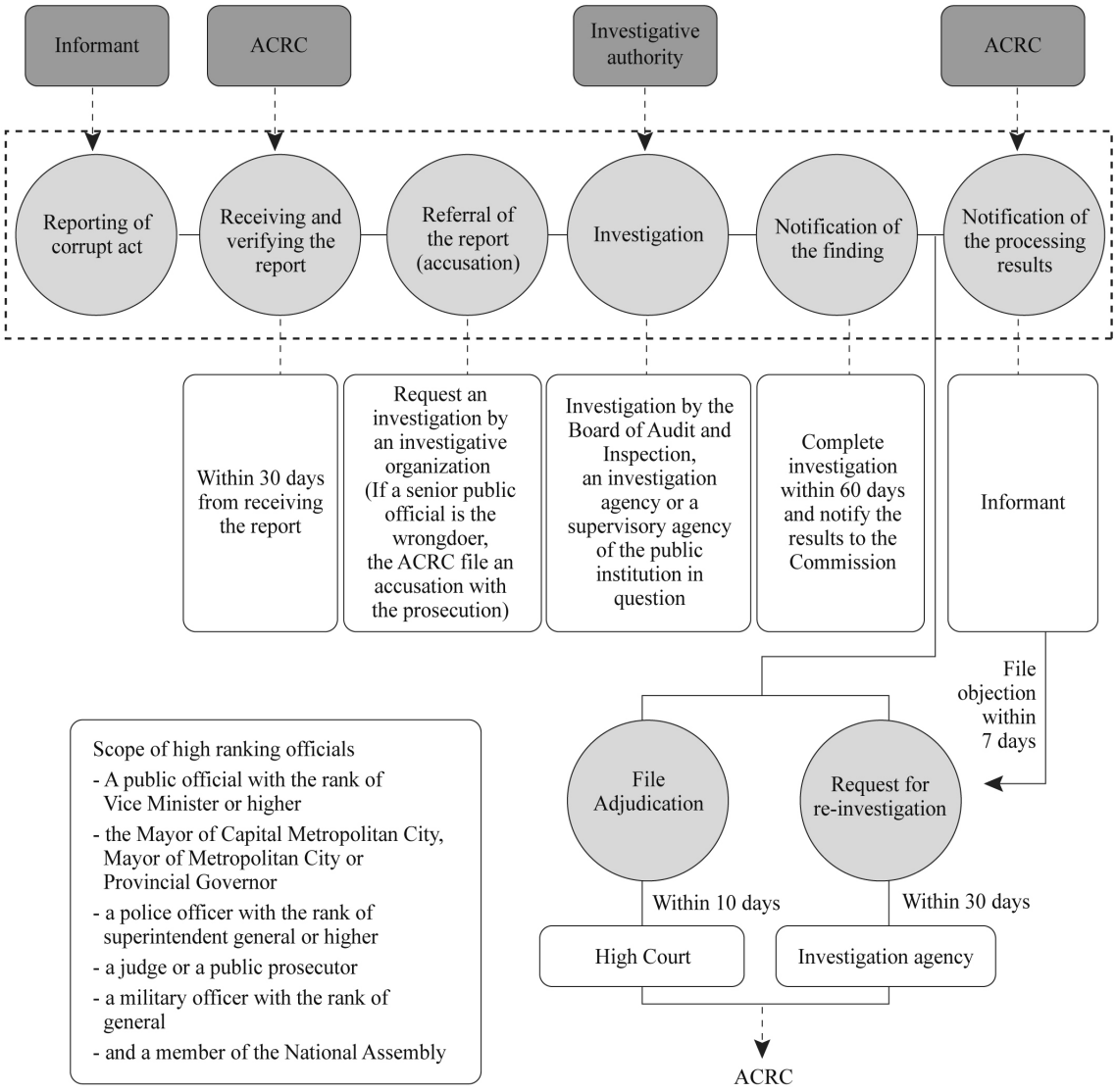
(ACRC, 2013c:401)

	ACRC Act	*Act on the Protection of Public Interest Whistleblowers*
Types of whistleblowing under protection	Acts of corruption	Public interest violations related to public health/safety, the environment, consumer interests, and fair competition
Reporting accepting institutions	The ACRC, an investigation agency, the Board of Audit and Inspection, the public institution the whistleblowee belongs to and its supervisory agency	- Corporations, administrative /regulatory agencies, investigation agencies, the ACRC, members of the National Assembly and some public organizations - Stipulate the procedures for handling of whistleblowing cases and related obligations for corporations
Sanctions	Imprisonment of up to 3 years and a fine of up to KRW 10 million	Imprisonment of up to 3 years and a fine of up to KRW 30 million
Reward	- Paid only for reporting of corruption - No reimbursement	- Paid when whistleblowing led to increase in revenues of the central or local governments - Local governments reimburse the Commission for the amount of the reward to reduce financial burden of the central government.
Relief	No relief money program	Paid for expenses for medical treatment, change of residence and litigation, wage losses, etc.

7.2.2 Report Handling Procedures under the ACRC Act and the Act on the Protection of Public Interest Whistleblowers

7.2.2.1 Procedures under the ACRC Act

[Figure Ⅲ-2] Report handling procedures under the ACRC Act



- (Verification of reported acts and request for document submission) The Commission, upon receipt of a public interest whistleblowing case, may verify any information necessary to specify the case such as personal details of the whistleblower, and the details and purport of the public interest whistleblowing and may request the public interest whistleblower to submit necessary material needed for ascertaining the truth of the matters specified. It may also verify whether the whistleblower consented to identity disclosure, whether he/she secured a witness or supporting materials that can prove the details of the reported act and whether the informant filed any report, suit, complaint or petition for the same case with other authorities before reporting it to the Commission.

Cases where the Commission may not hear opinions and request materials

- Matters related to national secrets
- Matters on the appropriateness of an investigation, trial and execution of sentence or matters of which the Board of Audit and Inspection is undertaking inspection
- Matters on an administrative appeal or litigation, a ruling of the Constitutional Court, a constitutional petition, a review by the Board of Audit and Inspection or other objection or remedy procedures that are in progress under other laws
- Matters on which procedures for mediation of interests among parties concerned are in progress under laws and their subordinate statutes such as settlement, mediation, conciliation and arbitration
- Matters finalized by a judgment, decision, ruling, settlement, mediation, arbitration, etc. or other matters on which the Audit and Inspection Commission has passed a resolution in accordance with the Board of Audit and Inspection Act

- (Examination of the reported act and decide whether to refer the case and whether to bring charges) The Commission examines whether the reported act falls under the categories of corruption, the results of investigation into information necessary to specify the case, whether there is violation of applicable laws or regulations and whether it is necessary to refer the case to an investigative organization for further investigation or bring charges. If the need arises for investigating the results of such exanimation, the Commission shall refer the case to an investigative organization (the Board of Audit and Inspection, an investigative agency and a supervisory agency of the public institution in question or the public institution itself if a supervisory agency does not exist.). However, referral shall not be made in the following cases.

- It is clear that the report was false.
- The informant does not comply with the request to supplement the content of his/her report within a certain time frame and thus his/her statement fails to be verified.
- The same report has been repeatedly filed concerning the same matter without justifiable reasons and the informant has already been informed of the result.
- Reports have been filed by two or more people concerning the same matter and the inspection, investigation or examination initiated by the earlier report is being conducted or has been completed by appropriate authorities and there is no further evidence.
- The case has been already exposed to the public by the media and the lack of further evidence led to a conclusion that no further inspection, examination, or investigation is needed.

If a person suspected of committing corruption on which the Commission has received a report is a senior public official who falls under any of the following categories and if details on his/her suspected act of corruption requires an investigation for criminal punishment and public prosecution, the Commission shall file an accusation with the prosecution against him/her under the name of the Commission.

'Senior public official' refers to : A public official with the rank of Vice Minister or higher; the Mayor of Capital Metropolitan City, Mayor of Metropolitan City or Provincial Governor; a police officer with the rank of superintendent general or higher; a judge or a public prosecutor; a military officer with the rank of general; and a member of the National Assembly

- (Notification of the investigation results) The investigation agency shall close the inspection, investigation or examination within 60 days from the day when the case was referred. The period may be extended when there are justifiable reasons and the reason for extension and the extended period shall be notified to the Commission. The agency shall notify the findings of their investigation within 10 days after the inspection, investigation or examination is closed. Immediately after receiving the results, the Commission shall relay a summary of the findings to the informant.

- (Request for re-investigation and objection filing) When the inspection, investigation or examination conducted by the investigative agency is deemed inadequate, the Commission may ask the agency to launch again the inspection, investigation or examination by presenting reasonable grounds, for example, submitting new evidence, within 30 days after the Commission is notified of the findings. Any informant who is informed of these findings may raise objections to the findings. The investigative agency that is requested to re-launch the inspection, investigation or examination shall notify the Commission of the results of such further inspection, investigation or examination within 7 days of completion. In that case, the Commission, upon receiving the findings of such an inspection, investigation or examination, shall relay a summary of the findings to the informant.

- (Adjudication filing) In a case where the Commission filed an accusation against the suspect of a corrupt act, if the public prosecutor concerned delivers a notice to the

Commission that s/he does not institute a public prosecution against the suspect, then the Commission may file an application for an adjudication on the right or wrong thereof with the High Court within 10 days from the date the Commission received the prosecutor's notice.

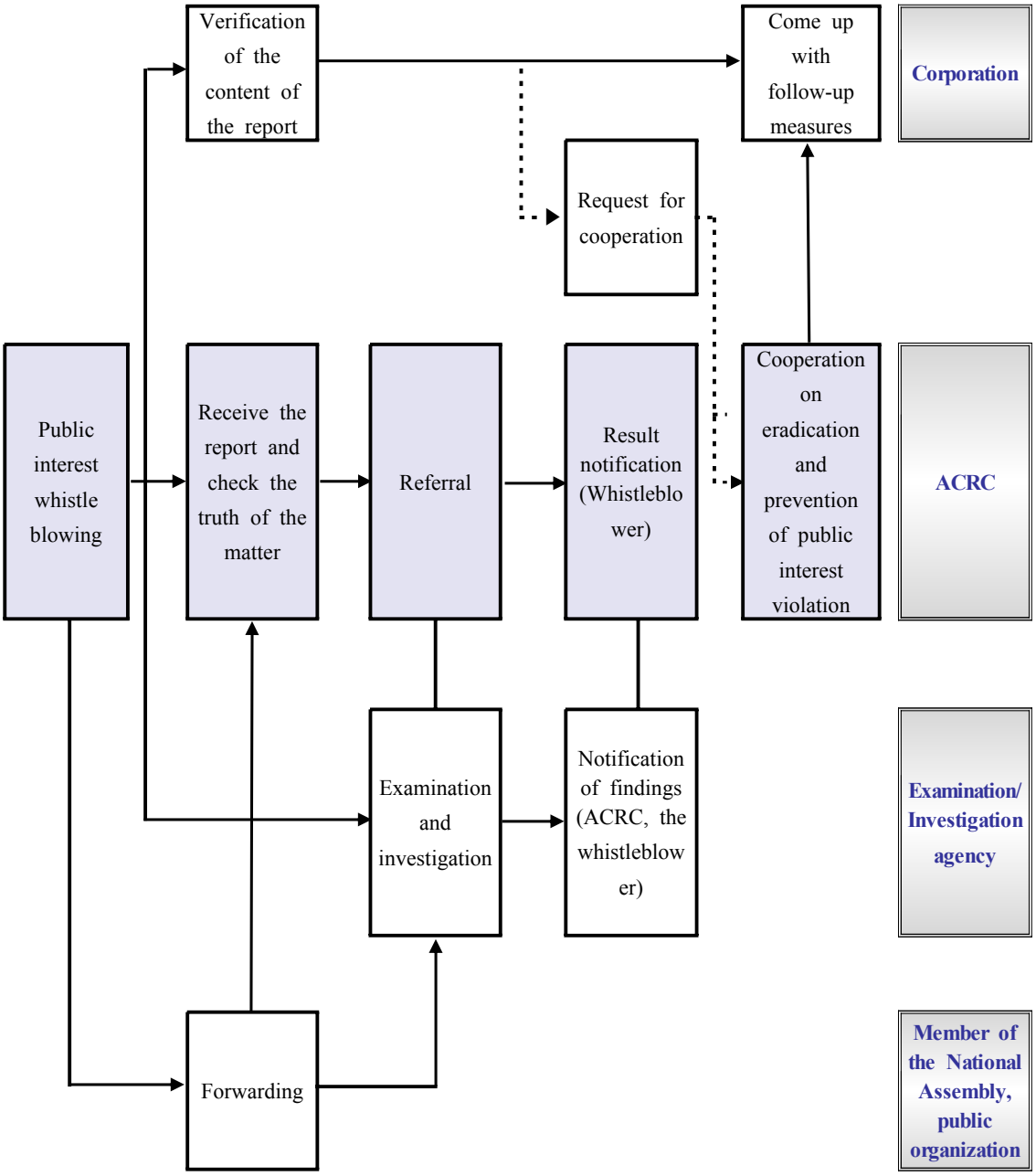
Charges of corruption against the suspect

Between Article 129 and 133 of the Criminal Act (bribe offering, improper action after accepting bribe, acceptance of bribe through good offices, offering bribe to a third person) and between Article 355 and 357 of the same Act (embezzlement and breach of trust, occupational embezzlement and breach of trust, receiving or giving bribe by breach of trust). Also included is cases were additional penalties are imposed under other laws.

7.2.2.2 Report Handling under the *Act on the Protection of Public Interest Whistleblowers*

- (Verification upon receiving the report) Verification of formal requirements – Whether the document contains essential information such as personal details and whether evidence of violation is included shall be verified. In the event that some information is missing or not specific enough, the Commission shall request the whistleblower to supplement the content of his/her report within a certain period of time. Reports made anonymously or under another person's name are not considered public interest whistleblowing. Verification of practical requirements - Whether the reported act falls under the categories of public interest violation shall be verified. Verification whether the whistleblower consents to identity disclosure – All examination agencies (administrative/regulatory agencies) that are entitled to handle public interest whistleblowing shall demonstrate whether the whistleblower consented to disclosing or alluding to his/her identity in the process of handling the report.

[Figure Ⅲ-3] Report handing process under *Act on Protection of Public Interest Whistleblowing*



- (Examination of the reported act) An examination agency (administrative/regulatory agency) shall conduct necessary investigation if the reported case is a matter on which they have the authority to supervise, regulate or examine. However, they may decide not to launch investigation or discontinue investigation in any of the following cases.

- The content of the public interest whistle blowing is clearly false.
- The personal information of the whistleblower is not available.
- The public interest whistleblower fails to supplement his/her written report or supporting materials after receiving at least two requests to do so.
- The whistleblower makes the same report again on a matter for which he/she has already been notified of the processing result without any justifiable reason.

- (Notification of findings) When whistleblowing was made directly to an examination agency, the agency shall take necessary measures according to the findings of their investigation and notify the results to the whistleblower. In the event that the agency decides not to launch investigation or to discontinue investigation, the agency shall also notify the decision to the whistleblower. When a case was referred to an examination agency by the Commission, the agency shall notify the findings to the Commission within 10 days after completing the investigation. The notification shall be in writing and shall include the following information.

- The results of processing the case, such as criminal disposition and administrative disposition, and details and the reason(s) thereof
- The direction in which the processing of the case shall go after the examination or investigation thereof has been completed
- In the event that the case is or is expected to be subject to the payment of a reward or of relief money, the fact thereof
- In the event that it is deemed necessary to make improvements in institutionalized practices, as identified by the public interest whistleblowing case, the summary thereof
- Other matters regarding public interest whistleblowing that the Commission or the public interest whistleblower needs to be aware of.

If the Commission requests the examination agency for an update on processing of the referred case before the agency notifies the commission of the findings, the agency shall comply with the request.

- (Transfer, re-referral) In the event that an examination agency has received a public interest whistleblowing case outside its jurisdiction, it shall transfer the case to a competent examination agency and shall notify the whistleblower of the fact thereof. (Transfer of whistleblowing cases)

Should an examination agency to which a public interest whistleblowing case was referred deem it reasonable for another examination or investigation agency to process the case, the former examination agency may re-refer the case to the latter examination agency in consultation with the Commission. (Re-referral of public interest whistleblowing cases)

- (Handling of whistleblowing cases by the representative of a company or a member of the National Assembly)
  - The representative or employer who has received a public interest whistleblowing case shall verify the validity of the report, and devise and implement measures for elimination and prevention of violation of the public interest.
  - The representative may request the Commission for cooperation in devising and implementing such measures.
  - Any member of the National Assembly and any public organization that receives a whistleblower's report shall forward the case to an examination agency, an investigation agency or the Commission. The representative of a company may forward the reported case to an examination agency, an investigation agency or the Commission if such forwarding is needed for elimination and prevention of public interest violation and if the whistleblower consented.

How to make public interest whistleblowing by example (ACRC, 2012d)

The representative of a fishery import company (B) gained unfair profit in billions of Korean won by importing parts of cods only traded for animal feeds and is banned from import into this country after falsely reporting that they are edible, and then selling them to department stores, large supermarkets and restaurants for 10 years. Employee A accidentally found this out and discussed it with his supervisor C but C did not take any particular action. So, A reported the matter to the Commission. As investigation started, B threatened A to cancel the report but A refused to do so. As a result, A was fired. B was sentenced to one year in prison and a fine of KRW 2.05 billion for violation of the Food Sanitation Act.

1) Is the act A reported a public interest violation?
   As it is an act that could put public health in danger, it is a violation of Article 94 of the Food Sanitation Act, which is one of the laws covered in activities of public interest violation.

2) Where can A report the case?
   The representative of the company (B), the city hall or the district office whose jurisdiction covers A's workplace, the Ministry of Food and Drug Safety, an investigation agency, the

ACRC, a member of the National Assembly.

3) What kind of protection is A subject to after dismissal?
Reinstatement if whistleblowing is considered to be the reason for dismissal.

4) Can A receive a reward or relief money?
As the court ordered a fine of KRW 2.05 billion, A is entitled to receive a reward of up to KRW 290 million and relief money may also be paid if damages or expenses (e.g. expenses for medical treatment, change of residence or wage loss) occurred.

5) What kind of penalties will B who fired A face?
If B does not implement the protective measures the Commission ordered, B can be punishable with imprisonment of up to 2 years or a fine of up to KRW 20 million.



Discussions and Exercise

- Fill out the self-diagnosis questionnaire on whistleblower protection and discuss the results.
- If your country has related laws and programs, discuss what kind of protection or reward you would like to be included in the laws/programs and why.
- If your country does not have related laws and programs, discuss whether it is necessary to introduce protection programs for whistleblowers and also discuss how much protection you could expect from such programs. If you think it will be hard to immediately introduce such programs, discuss why you think that way.
- Create a slogan that can clearly demonstrate the necessity for public interest whistleblowing and protection programs for whistleblowers.
- Create a script for a 3 minute video clip that can clearly demonstrate the necessity for public interest whistleblowing and protection programs for whistleblowers (individually or in groups).

Chapter 4. Code of Conduct for Public Officials

1. What Is Code of Conduct? ····· 191
2. Code of Conduct in Major Countries and Private Companies ····· 197
3. Korea's Code of Conduct, Cases, and Comparison with Other Codes ····· 239



1. What Is Code of Conduct?



Goals	• To understand the concept of code of conduct • To understand code of conduct, code of ethics, and code of practice • To understand the need for code of conduct

1.1 Measure of Internal and External Control

Two approaches – external control and internal control – are generally used to ensure responsible behaviors of public officials working for public organizations.

External control can be understood as a trial to put a restriction on individual public official's behaviors, through measures generated from outside. There are usually two external control measures. The first is a typical American response to violation of ethical behaviors, for which a new law is enacted or a new rule or regulation is established. The second measure is to rearrange organizational structure or establish a new organization that can monitor public officials' behaviors thoroughly. Typical examples of such measures include the *Ethics in Government Act* adopted by former U.S. President Jimmy Carter and Congress in 1978, after the Watergate Affair, and the U.S. Office of Government Ethics, an organization founded according to the Act (Cooper,2012:131). Laws, rules, and regulatory codes of conduct as an external control stipulate the details of actions that public officials must take to avoid punishment or not to cause a trouble (Bowman,2001:336).

The second approach to making public officials behave responsibly is to make efforts to promote and enhance professional and occupational values and public officials' behavioral standards, through education and training, official or unofficial exchange of opinions, and academic research. These are efforts called internal control (Cooper, 2012: 132). In this approach, reinforcement of internal control is important, and enhancement of virtues and personality, as well as integrity, are emphasized. In this approach, public officials are not seen just as a bureaucratic functionary, but as an ethical body that can pursue greater social good (Bowman, 2001: 336).

Both of the two approaches need to be used appropriately, to ensure responsible public service. In this chapter, only code of conduct is discussed excluding internal controls, as the topic of this chapter is one of the measures for external control, that is, code of conduct.

1.2 Code of Conduct as External Control Measure

1.2.1 Meaning of Code of Conduct

As mentioned above, a typical external control measure for making public officials responsible is establishment of an ethics-related law, rule, or regulation. A new organization for ethics or prevention of corruption may also be founded, based on the new law. Notably, code of conduct can be seen as legal behavioral requirements developed as part of governmental effort to prevent public officials' corruption and to establish appropriate behavioral standards for public officials. Code of conduct is a written statement of legal behavioral requirements for not only public officials who do administration but also all citizens who receive government services and who take part in them sometimes. Let us define code and conduct separately first, to understand the concept clearly. First, "conduct" is generally defined as an attitude, action, behavior, and demeanor. Then, "code" can be explained differently, as a law, regulation, rule, standard, or prescript. Therefore, "code of conduct" shows in detail the list of conducts deemed to be appropriate or inappropriate, which is expressed in the form of a law, regulation, or policy statement. That is, code of conduct is a written description of what conducts a public official should do in a given environment, at his/her given position (Bruce, 1998: 407).

Let us compare code of conduct with code of ethics, which is a similar concept, to better understand it. These two terms are frequently used as mutually-compatible words in daily lives, but they actually have quite different concepts. First, while code of conduct provides a list of detailed instructions on how to behave in a certain situation, code of ethics is a collection of desirable norms for life and work. In other words, while code of conduct writes about what to do and not to do in a given situation, in a detailed and descriptive way, code of ethics only has ideal and value-oriented statements to give inspiration and promote an ethical behavior. Code of ethics does not require certain behaviors in detail. Second, code of conduct becomes mandatory through sanctions established by the law.

That is, all the people to whom code of conduct is applied should know its content and abide by it without fail. However, code of ethics is not necessarily obligatory, as long as the provisions in it were not prohibited in the first place by the expert group who created it. Advocates of code of ethics hope that people know it and abide by it. Third, while code of conduct is related with detailed expectations for how people hired by an organization that created the code of conduct, or a government institution or people who are provided with such an organization's service should behave, code of ethics gives information about limits and standards of work for people in a certain profession. In short, code of conduct is created for the purpose of protecting public officials, recipients of government service, and general citizens overall (Bruce, 1998: 407). Lastly, while code of ethics is created based on the concept of integrity, code of conduct is created based on the concept of observance of law (Gilman 2005).

Another concept that should be distinguished from code of conduct is code of practice. Code of practice is "a more detailed materialization of code of conduct, which goes beyond expression of desirable values and clearly defines detailed standards and procedures that public officials must follow regarding a certain area or action." In addition, in the code system, code of practice is reflecting each institution's distinct characteristics (Yoon Tae-bum, 2003; Kim Jong-moo and Yoon Soo-jae, 2004: 676).

Code of conduct is designed to expect or prevent certain behavioral patterns. For example, it is for prevention of detailed actions such as conflict of interest, self-dealing, bribery, or inappropriate behavior. Accordingly, most codes of conduct are very long and detailed. The reason why such long and detailed code of conduct is created is to protect public officials and to save honor of the government. Most codes of conduct write "… shall not…" and describe certain behaviors that public officials must not be involved, in a detailed manner (Gilman, 2005). <Table Ⅳ-1> shows examples of code of conduct, code of ethics, and code of practice.

<Table Ⅳ-1> Examples of Code of Conduct, Code of Ethics, and Code of Practice

Code of	Example of provisions
Conduct	- While performing his/her duties, a public official shall not give any preferential treatment to a specific person on the grounds of kinship, religion, regional or academic ties (*Code of Conduct for Public Officials*, Article 6). - A public official shall not directly use his or her public position to unduely benefit him/herself or other people (*Code of Conduct for Public Officials*, Article 10).
Ethics	- Uphold the Constitution and the Law. Respect and support government constitutions and laws, while seeking to improve laws and policies to promote the public good (American Society of Public Administration(ASPA)'s Code of Ethics 2). - Promote democratic participation. Inform the public and encourage active engagement in governance (ASPA's Code of Ethics 3).
Practice	- Seoul city government's public officials make active efforts for establishment and implementation of City of Seoul's guidelines for city design. (City of Seoul, *Culture, Tourism, and Design Headquarters' Code of Ethical Practice for Public Officials*, Article 4-3). - Seoul city government's public officials do not use or benefit from an additional service such as air mileage given by use of the city's budget for private usage, without a legitimate reason (City of Seoul, *Culture, Tourism, and Design Headquarters' Code of Ethical Practice for Public Officials*, Article 11).

1.2.2 Origin of Code of Conduct

Code of conduct has a long history originated from the Babylonian Code of Hammurabi that was created in the 18th century B.C. Code of conduct also traces its origin to the *Ten Commandments* written in "*Five Books of Moses*", as well as code of the Greek city government in the 17th century B.C. These ancient codes have influenced specific code of conduct for a certain situation, as well as development of modern legal system. The first code of conduct in the United States of America is a code that specified detailed behaviors required for members of the Massachusetts Bay Colony. This code was included in preach of John Winthrop, the first ruler of the Massachusetts Bay Colony, in 1630. This 17th-century code of conduct included a contractual consent and an encouraging introduction that gives inspirations (Bruce,1998:408).

In Korea, there were "four don'ts and three rejections" during the Joseon Dynasty period, as a behavioral code for practice of public officials' integrity. "Four don'ts and three rejections" refer to four behaviors that public officials must not do and three gains that

they must reject, which are similar to modern day's code of conduct. As for "four don'ts", public officials must not have a sideline, purchase land, extend their house, and eat local specialty during their term of duty. As to "three rejections", public officials must reject an unfair request from a person of influence, reject any return if they granted a request inevitably, and reject any money gift for happy occasions or condolence money for funerals (Lee Gyoo-tae, *Korea People's Living Culture 2*; Koo Hee-ryeong, 2009, recited).

1.2.3 Need for Code of Conduct

Generally, code of conduct plays functions such as encouraging ethical behaviors, preventing corruption by blocking unethical behaviors, providing criteria for evaluating public officials' behaviors, and setting a public official's rights and obligations according to his/her position, when he/she is faced with an illegal request or expectation (Palidauskaite, 2003). Detailed need for code of conduct is as the following.

(1) Preventing corruption – One of the most important reasons why code of conduct is necessary is because corruption could be prevented in advance, through code of conduct. Code of conduct that is defined specifically and concretely plays the role of preventing corruption in advance, by eliminating possibility of misunderstanding and by providing clear criteria to define what is legal and illegal, for public officials and all related people (Kim Jong-moo and Yoon Soo-jae, 2004).

(2) Suggesting standards of ethical behavior – Code of conduct plays a role of guidebook when a public official has to make a difficult decision. When a public official is faced with a trouble regarding conflicting values or interests in a certain situation, code of conduct can suggest the standard of action for how the official should behave in the situation (Kim Jong-moo and Yoon Soo-jae, 2004; Palidauskaite, 2003). That is, code of conduct will play the role of guideline that can help public officials make an ethical decision, when they are faced with a dilemma that threats ethical decision-making (Yoon Tae-bum, 2003).

(3) Securing public officials' responsibility – Code of conduct provides criteria for evaluation of public officials' behaviors, thereby suggesting actions that public officials can do or cannot do in detail and imposing sanctions when the rules are violated. This helps secure public officials' responsibility (Kim Jong-moo and Yoon Soo-jae, 2004).

(4) Building trust among stakeholders – Code of conduct for public officials enables trust to be formed among public officials and citizens who are service recipients, as well as among public officials themselves. A code of conduct that is established concretely and precisely demonstrates clearly the standard of public officials' behaviors and what ordinary citizens can or cannot do, so if it is followed well, trust for administration is built between public officials and citizens, as well as among public officials themselves, and this can help improvement of the public sector's transparency and formation of social capital (Kim Jon-moo and Yoon Soo-jae, 2004).

(5) Establishing an ethical government – In conclusion, code of conduct for public officials is to establish an ethical government, by preventing corruption in public administration through suggestion of ethical behavioral standards to public officials, and by securing public trust through establishment of public officials' responsibility and public administration's transparency.



Discussions and Exercise

- Read Korea's *Code of Conduct for Public Officials* and discuss codes of conduct implemented in your respective countries.
- Introduce your country's policy or system that is implemented to enhance public officials' ethical standards and responsibility and to prevent corruption. Examine what internal controls and external controls are among them.

2. Code of Conduct in Major Countries and Private Companies



Goals	• To examine models of code of conduct suggested by international organizations • To examine major countries' codes of conduct and difference between them • To examine content of private companies' codes of conduct

This chapter looks into the elements and content of codes of conduct suggested by international organizations as a measure for preventing corruption, as well as the content of codes of conduct in major countries and private companies. Code of conduct is widely used in international conventions against corruption. *Organization of American States Inter-American Convention Against Corruption* used code of conduct for the first time, and in 2003, the *U.N. Convention Against Corruption* included code of conduct for public officials as the most important element for prevention of corruption (Gilman,2005). Plus, the UN (the United Nations) suggested the *International Code of Conduct for Public Officials* in 1995, as part of its countermeasures for preventing corruption in the UN member countries, while the OECD (Organization for Economic Cooperation and Development) suggests the *12 Principles for Managing Ethics in the Public Service*. Code of conduct can be established as a law as in the Philippines, or as a presidential decree as in Korea and the United States, so countries adopt code of conduct for public officials in a variety of different forms. Private companies also adopt and implement code of conduct for their employees, for prevention of fraudulent acts and improvement of their corporate image.

In this chapter, the content of OECD's *12 Principles for Managing Ethics in Public Service*, UN's *International Code of Conduct for Public Officials*, and European Council's *Model Code of Conduct for Public Officials*, is examined.

2.1 OECD's 12 Principles for Managing Ethics in the Public Service

Maintaining high standard of behavior in the public service has been a very important issue in the OECD member countries. Since high-end behavioral standards are necessary

in the public service sector for continuous development of globalization and international competition, the OECD suggested the *12 Principles for Managing Ethics in the Public Service*, in 1998. In the first principle, OECD states that ethical standards and principles for public officials, which are set simply and clearly such as code of conduct for public officials, are necessary. The 12 principles are as the following (OECD,1998).

1. **Ethical standards for public service should be clear:** Public servants need to know the basic principles and standards they are expected to apply to their work and where the boundaries of acceptable behaviour lie. A concise, well-publicised statement of core ethical standards and principles that guide public service, for example in the form of a code of conduct, can accomplish this by creating a shared understanding across government and within the broader community.

2. **Ethical standards should be reflected in the legal framework**: The legal framework is the basis for communicating the minimum obligatory standards and principles of behaviour for every public servant. Laws and regulations could state the fundamental values of public service and should provide the framework for guidance, investigation, disciplinary action and prosecution.

3. **Ethical guidance should be available to public servants**: Professional socialisation should contribute to the development of the necessary judgement and skills enabling public servants to apply ethical principles in concrete circumstances. Training facilitates ethics awareness and can develop essential skills for ethical analysis and moral reasoning. Impartial advice can help create an environment in which public servants are more willing to confront and resolve ethical tensions and problems. Guidance and internal consultation mechanisms should be made available to help public servants apply basic ethical standards in the workplace.

4. **Public servants should know their rights and obligations when exposing wrongdoing**: Public servants need to know what their rights and obligations are in terms of exposing actual or suspected wrongdoing within the public service. These should include clear rules and procedures for officials to follow, and a formal chain of responsibility. Public servants also need to know what protection will be available to them in cases of exposing wrongdoing.

5. **Political commitment to ethics should reinforce the ethical conduct of public servants**: Political leaders are responsible for maintaining a high standard of propriety in the discharge of their official duties. Their commitment is demonstrated by example and by taking action that is only available at the political level, for instance by creating legislative and institutional arrangements that reinforce ethical behaviour and create sanctions against wrongdoing, by providing adequate support and resources for ethics-related activities throughout government and by avoiding the exploitation of ethics rules and laws for political purposes.

6. **The decision-making process should be transparent and open to scrutiny**: The public has a right to know how public institutions apply the power and resources entrusted to them. Public scrutiny should be facilitated by transparent and democratic processes, oversight by the legislature and access to public information. Transparency should be further enhanced by measures such as disclosure systems and recognition of the role of an active and independent media.

7. **There should be clear guidelines for interaction between the public and private sectors**: Clear rules defining ethical standards should guide the behaviour of public servants in dealing with the private sector, for example regarding public procurement, outsourcing or public employment conditions. Increasing interaction between the public and private sectors demands that more attention should be placed on public service values and requiring external partners to respect those same values.

8. **Managers should demonstrate and promote ethical conduct**: An organisational environment where high standards of conduct are encouraged by providing appropriate incentives for ethical behaviour, such as adequate working conditions and effective performance assessment, has a direct impact on the daily practice of public service values and ethical standards. Managers have an important role in this regard by providing consistent leadership and serving as role models in terms of ethics and conduct in their professional relationship with political leaders, other public servants and citizens.

9. **Management policies, procedures and practices should promote ethical conduct**: Management policies and practices should demonstrate an organisation's commitment to ethical standards. It is not sufficient for governments to have only rule-based or compliance-based structures. Compliance systems alone can inadvertently encourage

some public servants simply to function on the edge of misconduct, arguing that if they are not violating the law they are acting ethically. Government policy should not only delineate the minimal standards below which a government official's actions will not be tolerated, but also clearly articulate a set of public service values that employees should aspire to.

10. **Public service conditions and management of human resources should promote ethical conduct**: Public service employment conditions, such as career prospects, personal development, adequate remuneration and human resource management policies should create an environment conducive to ethical behaviour. Using basic principles, such as merit, consistently in the daily process of recruitment and promotion helps operationalise integrity in the public service.

11. **Adequate accountability mechanisms should be in place within the public service**: Public servants should be accountable for their actions to their superiors and, more broadly, to the public. Accountability should focus both on compliance with rules and ethical principles and on achievement of results. Accountability mechanisms can be internal to an agency as well as government-wide, or can be provided by civil society. Mechanisms promoting accountability can be designed to provide adequate controls while allowing for appropriately flexible management.

12. **Appropriate procedures and sanctions should exist to deal with misconduct**: Mechanisms for the detection and independent investigation of wrongdoing such as corruption are a necessary part of an ethics infrastructure. It is necessary to have reliable procedures and resources for monitoring, reporting and investigating breaches of public service rules, as well as commensurate administrative or disciplinary sanctions to discourage misconduct. Managers should exercise appropriate judgement in using these mechanisms when actions need to be taken.

2.2 United Nation's International Code of Conduct for Public Officials

As part of its effort to resolve the issue of corruption in member countries, the UN created the *International Code of Conduct for Public Officials* in 1995 and asked the Secretary General to distribute the code to all member countries. The content of the code suggested by the UN includes general principles, conflict of interest and disqualification, disclosure

of assets, acceptance of gifts and other favours, confidential information, and political activity, etc. (UN, 1997).

2.2.1 General Principles

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.

2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.

3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

2.2.2 Conflict of Interest and Disqualification

4. Public officials shall not use their official authority for the improper advancement of their own or their family's personal or financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.

5. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.

6. Public officials shall at no time improperly use public moneys, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.

7. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

2.2.3 Disclosures of Assets

8. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependants.

2.2.4 Acceptance of Gifts or Other Favours

9. Public officials shall not solicit or receive directly or indirectly any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement.

2.2.5 Confidential Information

10. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

2.2.6 Political Activity

11. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties.

2.3 European Council's Model Code of Conduct for Public Officials

European Council, a body composed of European Union (EU) member countries' heads of state, recommended a code of conduct for EU countries' public officials on May 11, 2000, to improve public awareness and promote ethical values, as a measure for preventing corruption. Major content of the model code is as the following (EU, 2000).

(1) Scope of coverage: This Code applies to all public officials. For the purpose of this Code "public official" means a person employed by a public authority. The provisions of the Code may also be applied to persons employed by private organisations performing public services. The provisions of this Code do not apply to publicly elected representatives, members of the government and holders of judicial office.

(2) Obligation of the public administration and public officials: On the coming into effect of this Code, the public administration has a duty to inform public officials about its provisions. Every public officials has the duty to take all necessary action to comply with the provisions of this Code.

(3) The public official should carry out his or her duties in accordance with the law, and with those lawful instructions and ethical standards which relate to his or her functions.

(4) Conflict of Interest: The public official should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.

(5) The public official is accountable to his or her immediate hierarchical superior unless otherwise prescribed by law.

(6) Confidentiality: Having due regard for the right of access to official information, the public officials has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her employment.

(7) Reporting: The public official who believes he or she is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter in accordance with the law. The public official should, in accordance with the law, report to the competent authorities if he or she becomes aware of breaches of this Code by other public officials. The public official who has reported any of the above in accordance with the law and believes that the response does not meet his or her concern may report the matter in writing to the relevant head of the public service. The public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowlege in the course of, or arising from, his or her employment. The investigation of the reported fact shall be carried out by the competent authorities. The public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable ground and in good faith.

(8) Conflict of interest: Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence or appear to influence, the impartial and objective performance of his or her official duties. The public official's private interest includes any advantage to himself of herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to be alert to any actual or potential conflict of interest; take steps to avoid such conflict; disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it; comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict. Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment. The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests.

(9) Incompatible outside interests: The public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a public official. Where it is not clear whether an activity is compatible, he or she should seek advice from his or her superior.

(10) Political or public activity: Subject to respect for fundamental and constitutional rights, the public official should take care that none of his or her political activities or involvement on political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally. In the exercise of his or her duties, the public official should not allow himself or herself to be used for partisan political purposes. The public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of their position or the nature of their duties.

(11) Protection of the public official's privacy: All necessary steps should be taken to ensure that the public official's privacy is appropriately respected. Accordingly, declarations provided for in this Code are to be kept confidential uless otherwise provided for by the law.

(12) Gifts: The public official should not demand or accept gifts, favours, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organizations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts. When the public official is in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior.

(13) Reaction to improper offers: If the public official is offered undue advantage he or she should take the following:

- refuse the undue advantage;
- try to identify the person who made the offer;;
- avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence;

- if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;
- obtain witnesses if possible, such as colleagues working nearby;
- prepare as soon as possible a written record of the attempt, preferably in an official notebook;
- report the attempt as soon as possible to his or her supervisor or directly to the appropriate law enforcement authority;
- continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

(14) Misuse of official position: The public official should not offer or give any advantage in any way connected with his or her position as a public official, unless lawfully authorised to do so. The public official should not seek to influence for private purposes any person or body, including other public officials, by using his or her official position or by offering them personal advantages.

(15) Having regard to the framework provided by domestic law for access to information held by public authorities, a public official should only disclose information in accordance with the rules and requirements applying to the authority by which he or she is employed. The public official should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware. The public official should not seek access to information which it is inappropriate for him or her to have. The public official should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment. Equally the public official has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable ground to believe is false or misleading.

(16) Public and official resources: In the exercise of his or her discretionary powers, the public official should ensure that on the one hand the staff, and on the other hand the public property, facilities, services and financial resources with which he or she is entrusted are managed and used effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.

(17) Integrity checking: The public official who has responsibility for recruitment, promotion or posting should ensure that appropriate checks on the integrity of the candidate are carried out as lawfully required. If the result of any such check makes him or her uncertain as to how to proceed, he or she should seek appropriate advice.

(18) Leaving the public service: The public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service. The public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment. In accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that person or body. The former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorised to do so. The public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointment on leaving the public service.

The OECD's *12 Principles for Managing Ethics in the Public Service* suggest a variety of elements needed for establishment of an ethical government, in a comprehensive manner. They show not only elements regarding code of conduct for public officials, but also general elements needed for establishment of an ethical government. On contrary, UN's *International Code of Conduct for Public Officials* suggests more detailed elements. They are about general principles to follow as a public official, conflict of interest and disqualification, disclosure of assets, acceptance of gifts and other favours, confidential information, and political activity. However, this international code of conduct does not suggest universal and concrete principles that different countries can actually apply. Countries may be just able to refer to it to understand what type of provisions must be included in their own code of conduct. The code of conduct suggested by the European Council is longer and more detailed than the UN code. Notably, European Council's code explains about reporting through an internal channel, conflict of interest, reaction to improper offers,

etc., in a more detailed and specific way. <TableⅣ-3> is a comparison between major topics in UN's code of conduct and European Council's code of conduct.

<Table Ⅳ-3> UN *International Code of Conduct for Public Officials* and European Council's *Model Code of Conduct*

	UN Code	European Council Code
Prevention of conflict of interest	Conflict of interest and disqualification	Conflict of interest / Declaration of interests / Incompatible outside interests /
Public officials' report of property	Reporting of property	x
Gifts	Acceptance of gifts and other favours	Gifts / Reaction to improper offers /
Information of the government	Confidential information	Information held by public authorities
Political activity	Political activity	Political or public activity
Whistleblowing	x	Reporting
Protection of public officials' privacy	x	Protection of the public official's privacy
Misuse of official position	x	Misuse of official position
Integrity checking	x	Integrity checking
Supervisory accountability	x	Supervisory accountability
Behavior after retirement	x	Leaving the public service
Observance of the code and sanctions	x	Observance of this Code and sanctions

2.4 Codes of Conduct in Major Countries

Many countries have codes of ethics that write conceptual statements or codes of conduct that set concrete behavioral guidelines, to enhance integrity, legitimacy, transparency, and impartiality and to prevent corruption in public officials' performance of their duties. Countries that have codes of conduct include the United States (*Standards of Ethical Conduct for Employees of the Executive Branch*, Presidential Ordinance, 1992), Australia (*Australian Public Service Values and Code of Conduct*, Public Service Act of 1999, Article 10 and Article 13), Italy (*Code of Conduct for Government Employees*), Republic of Korea (*Code of Conduct for Maintaining the Integrity of Public Officials*), New Zealand (*Public Service Code of Conduct*), etc. (OECD,2013). Countries that have codes of ethics include Canada

(*Values and Ethics Code for the Public Service*), Poland (*Civil Service Code of Ethics*, Prime Minister Decree, October 11, 2002), etc.

2.4.1 The United States' Code of Conduct

In 1989, the United States Presidential Committee for Reform of Federal Ethics Law suggested that behavioral standards of different public institutions be replaced with one single regulation that can be applied to all employees of the country's executive branch. According to the suggestion, President Bush signed Presidential Decree 12674, on April 12, 1989. The presidential decree suggested 14 basic principles for ethical behavior of the executive branch's employees, and Office of Government Ethics ("OGE") was ordered to create a comprehensive and clear set of principles for the executive branch's ethical behavior. On August 7, 1992, OGE promulgated the *Standard of Ethical Conduct for Employees of the Executive Branch*. This regulation was enacted on February 3, 1993, and was codified into C.F.R. part 2635. Then, this part 2635 has been revised for several times (US Office of Government Ethics, 2013).

The United States' code of conduct has nine subparts: 1) general provisions, 2) gifts from outside sources, 3) gifts between employees, 4) conflicting financial interests, 5) impartiality in performing official duties, 6) seeking other employment, 7) misuse of position, 8) outside activity, and 9) related statutes. The biggest characteristic of the United States' code of conduct is that its content is very extensive. Each of the nine subparts has two to nine parts, whose content is very detailed. Plus, real-life examples to which the code is applied are demonstrated, to deliver the meaning of each provision clearly and to minimize ambiguity in applying it (LII, 2013).

The following is explanation about the Unites States' code of conduct that is currently applied.

1) General provisions – General provisions explain public officials' basic duty and terminologies used in the code, and define exception to application of the code, supplemental agency regulations, disciplinary and corrective action against violation of the code, and designation of an agency ethics official.

2) Gifts from outside sources – This subpart contains standards that prohibit an employee

from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless.

- An employee shall not accept a gift in return for being influenced in the performance of an official act, nor solicit or coerce the offering of a gift.
- An employee shall not accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain
- With exceptions, an employee may accept unsolicited gifts having an aggregate market value of $20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person shall not exceed $50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds $20, the employee may not pay the excess value over $20 in order to accept that portion of the gift or those gifts worth $20. Where the aggregate value of tangible items offered on a single occasion exceeds $20, the employee may decline any distinct and separate item in order to accept those items aggregating $20 or less.
- An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.
- an employee may accept reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications. An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.
- An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of $200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of $200 and awards of cash or investment

interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition.

- An employee may accept an honorary degree from an institution of higher education based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution. An employee who may accept an award or honorary degree may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.
- Gifts based on outside business or employment relationships: An employee may accept meals, lodgings, transportation and other benefits ① resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position; or ② resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status.
- Gifts in connection with political activities permitted by the Hatch Act Reform Amendments: An employee who, in accordance with the Hatch Act Reform Amendments of 1993, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an employee to a political event may accept meals, free attendance and entertainment provided at the event by such an organization.
- When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.
- An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where the invitation is from a person who is not a prohibited source and no fee is charged to any person in attendance.

- An employee assigned to duty in, or on official travel to, a foreign area may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided: ① the market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas; ② there is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities; and others.
- Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member.
- An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation. Gifts are accepted under specific statutory authority.
- Proper disposition of prohibited gifts (5 CFR 2635. 205). An employee who has received a gift that cannot be accepted under this subpart shall return any tangible item to the donor or pay the donor its market value. When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.
- For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value.
- An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift.

3) Gifts between employees (5CFR 2635.301) – This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself/herself.

- General standards (5 CFR 2635.302): a) An employee may not ① directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or ② solicit a contribution from another employee for a gift to either his own or the other employee's official superior. b) An employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless ① the two employees are not in a subordinate-official superior relationship; and ② there is a personal relationship

between the two employees that would justify the gift. c) Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

- §2635.303 defines *Gifts, Indirectly, Official superior, Solicit,* and *Voluntary contribution* in detail. §2635.304 stipulates exceptions. **a) General exceptions**. On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay: ① Items, other than cash, with an aggregate market value of $10 or less per occasion; ② Items such as food and refreshments to be shared in the office among several employees; ③ Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends; and ④ Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions. **b) Special, infrequent occasions**. A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay: ① in recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or ② upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer. **c) Voluntary contributions.** An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior: ① on a special, infrequent occasion as described in paragraph (b) of this section; or ② on an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

4) Conflict of financial interests (§§ 2635.401–2635.403) - This subpart is about a disqualification requirement and a prohibition on acquiring or continuing to hold specific financial interests.

- § 2635.402 contains disqualifying financial interests. a) Statutory prohibition. An employee is prohibited by criminal statute from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. b) It also defines *Direct and predictable effect, Imputed interests, Particular*

matter, and *Personal and substantial*.

- §2635.403 Prohibited financial interests. An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation or by reason of an agency determination of substantial conflict.

5) Fairness (Impartiality) in performing official duties (§§ 2635.501 – 2635.503). §2635.501 a) – This subpart is intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties.

- §2635.502 Personal and business relationships. a) Consideration of appearances by the employee. Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance. b) Definition of *an employee has a covered relationship with.* c) Determination by agency designee. d) Authorization by agency designee. e) Disqualification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor.
- §2635.503 Extraordinary payments from former employers. An employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. b) Extraordinary payment means any item, including cash or an investment interest, with a value in excess of $10,000, which is paid after it became known to the former employer that the individual was being considered for or had accepted a Government position.

6) Seeking other employment (§§ 2635.601-2635.606).

- § 2635.602. a) (1) An employee who is contemplating outside employment to be undertaken concurrently with his Federal employment must abide by any limitations applicable to his outside activities. (2) An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable.
- §2635.603 here defines meaning of *Employment*, and *Prospective employer* in detail. §2635.604 (Disqualification while seeking employment). a) Obligation to disqualify. The employee shall not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment. Disqualification is accomplished by not participating in the particular matter. b) An employee who becomes aware of the need to disqualify himself from participation in a particular matter should notify the person responsible for his assignment. d) Agency determination of substantial conflict. Where the agency determines that the employee's action in seeking employment with a particular person will require his disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired, the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.
- §2635.605: §2635.606. An employee shall be disqualified from participating personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority or by a regulatory exemption under the authority.

7) Misuse of position (§§ 2635.701-705) ⁻This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment.

- §2635.702 Use of public office for private gain. An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit

organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. a) Inducement or coercion of benefits. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity. b) Appearance of governmental sanction. an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by §2635.807(b). He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment. c) Endorsement. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except: ① in furtherance of statutory authority to promote products, services or enterprises; or ② as a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission. d) Performance of official duties affecting a private interest.

- § 2635.703. Use of nonpublic information. An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure. b) Nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public.
- § 2635.704 Use of Government property. a) An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. b) Definitions. (1) Government property includes any form of real or personal property in which the Government has an

ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. (2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

- § 2635.705. Use of official time. a) Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. b) Use of a subordinate's time. An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

8) Outside activities (CFR 2635. 801). ⁻This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees.

- §2635.802 Conflicting outside employment and activities. An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. a)An activity conflicts with an employee's official duties ① if it is prohibited by statute or by an agency supplemental regulation; or if it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired. Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards set forth in this part.
- §2635.803. Prior approval for outside employment and activities. An employee shall obtain prior approval before engaging in outside employment or activities. An agency shall, if necessary, require employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.
- §2635.804. Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees. a) A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. b) Covered noncareer employees may not receive outside earned income which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule.
- §2635.805 Service as an expert witness. An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation,

in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest. c) Authorization to serve as an expert witness.

- §2635.807 Teaching, speaking and writing. Except as permitted, an employee shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.
- §2635.808 Fundraising activities. An employee may engage in fundraising for a nonprofit organization, other than a political organization.
- §2635.809. Just financial obligations. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law.

9) The last subpart is about related statues.

Example in the United States Code of Conduct

An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of $18 and a book about the history of cartography with a market value of $15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds $20.

2.4.2 Australia's Code of Conduct

Australia has the *Australian Public Service ("APS") Values* in Article 10 and the *APS Code of Conduct* in Article 13 of the *Public Service Act 1999*. The Code of Conduct in Article 13 has 13 paragraphs, and they state general provisions, rather than writing details as in the United States' code. The content in it is as the following (AG,2013).

(1) An APS employee must behave honestly and with integrity in connection with APS employment.

(2) An APS employee must act with care and diligence in connection with APS employment.

(3) An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.

(4) An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws.

(5) An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.

(6) An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff.

(7) An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.

(8) An APS employee must use Commonwealth resources in a proper manner.

(9) An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.

(10) An APS employee must not make improper use of: (a) inside information; or (b) the employee's duties, status, power or authority; in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.

(11) An APS employee must at all times behave in a way that upholds: (a) the APS Values and APS Employment Principles; and (b) the integrity and good reputation of the employee's Agency and the APS.

(12) An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.

(13) An APS employee must comply with any other conduct requirement that is prescribed by the regulations.

Article 14 says that agency head are bound by the code of conduct in the same way as APS employees. Article 15 defines breaches of the code. Paragraph 1 state that an agency head may impose the following sanctions on an APS employee in the agency who is found to have breached the code of conduct; termination of employment; reduction in classification; re-assignment of duties; reduction in salary; deductions from salary, by way of fine; or a reprimand. Paragraph 3 stipulates that an agency head must establish written procedures for determining whether an APS employee, or a former APS employee, in the agency has breached the code of conduct. The procedures: (a) must comply with basic procedural requirements set out in commissioner's directions; (b) must have due regard to procedural fairness. The procedures may be different for different categories of APS employees. Paragraph 4 specifies that the commissioner must issue directions in writing for the purposes of the procedures written above. Paragraph 5 says that an agency head must ensure that the procedures established under subsection (3) are made publicly available.

2.4.3 Canada's Values and Ethics Code for the Public Service

Canada's *Values and Ethics Code for the Public Service,* implemented since September 1, 2003, has total four chapters: Chapter1 – Statement of Public Service Values and Ethics; Chapter2 – Conflict of Interest Measures; Chapter3 – Post-Employment Measures; and Chapter4 – Avenues of Resolution (TBCS, 2003).

Chapter 1 has statements about values and ethics, which introduce the role of Canada's public service, objective of the code, democratic values, professional values, ethical values, and people values as public service values, scope of the code's application, public official's overall responsibilities, authorities, and accountabilities. Rather than mentioning specific behaviors, most of the provisions in Canada's code highlight law-abidingness, importance of public interest, effectiveness, efficiency, fairness, objectiveness, and public trust of public administration, while giving inspirations for public officials, as a code of ethics does.

Chapter 2 is about conflict of interest. The followings are major provisions in the chapter.

1) Avoiding and preventing situations that could give rise to a conflict of interest, or the appearance of a conflict of interest, is one of the primary means by which a public

servant maintains public confidence in the impartiality and objectivity of the Public Service.

2) In carrying out their official duties, public servants should arrange their private affairs in a manner that will prevent real, apparent or potential conflicts of interest from arising.

3) If a conflict does arise between the private interests and the official duties of a public servant, the conflict should be resolved in favour of the public interest.

4) Public servants should not have private interests that would be affected particularly or significantly by government actions in which they participate. They should not solicit or accept transfers of economic benefit. They should not step out of their official roles to assist private entities or persons in their dealings with the government.

5) They should not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public.

6) They should not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and that is not generally available to the public.

For a public servant to comply with these measures, it will usually be sufficient to submit a Confidential Report to the Deputy Head. The Confidential Report outlines the public servant's ownership of assets, receipt of gifts, hospitality or other benefits, or participation in any outside employment or activities that could give rise to a conflict of interest.

7) The Deputy Head will make the decision and communicate it to the public servant in cases of: a) avoiding or withdrawing from activities or situations that would place the public servant in real, potential or apparent conflict of interest with his or her official duties; and b) having an asset sold at arm's length or placed in a blind trust where continued ownership would constitute a real, apparent or potential conflict of interest with the public servant's official duties. The Deputy Head will try to achieve

mutual agreement with the public servant in question and will take into account such factors as: a) the public servant's specific responsibilities; b) the value and types of assets and interests involved; and c) the actual costs to be incurred by divesting the assets and interests.

8) Outside Employment or Activities: Public servants may engage in employment outside the Public Service and take part in outside activities unless the employment or activities are likely to give rise to a conflict of interest or in any way undermine the neutrality of the Public Service. Where outside employment or activities might subject public servants to demands incompatible with their official duties, or cast doubt on their ability to perform their duties in a completely objective manner, they shall submit a Confidential Report to their Deputy Head. The Deputy Head may require that the outside activities be curtailed, modified or terminated if it is determined that real, apparent or potential conflict of interest exists.

9) Gifts, Hospitality and Other Benefits: Public servants shall not accept or solicit any gifts, hospitality or other benefits that may have a real or apparent influence on their objectivity in carrying out their official duties or that may place them under obligation to the donor. This includes free or discounted admission to sporting and cultural events arising out of an actual or potential business relationship directly related to the public servant's official duties. The acceptance of gifts, hospitality and other benefits is permissible if they a) are infrequent and of minimal value (low-cost promotional objects, simple meals, souvenirs with no cash value); b) arise out of activities or events related to the official duties of the public servant concerned; c) are within the normal standards of courtesy, hospitality or protocol; and d) do not compromise or appear to compromise in any way the integrity of the public servant concerned or his or her organization. Where it is impossible to decline gifts, hospitality and other benefits that do not meet the principles set out above, or where it is believed that there is sufficient benefit to the organization to warrant acceptance of certain types of hospitality, a public servant shall seek written direction from their Deputy Head. The Deputy Head will then notify the public servant in writing whether the gifts, hospitality and other benefits are to be declined or retained by the department, donated to charity, disposed of, or retained by the public servant concerned.

Chapter 3 sets standards for behavior after retirement.

1) Without unduly restricting their ability to seek other employment, former public servants should undertake to minimize the possibility of real, apparent or potential conflicts of interest between their new employment and their most recent responsibilities within the federal public service. Before leaving employment, public servants should disclose their intention of future employment and discuss potential conflicts with their Deputy Head. Public servants must disclose, in a Confidential Report to their Deputy Head, all firm offers of employment that could place them in a real, Values and Ethics Code for the Public Service apparent or potential conflict of interest situation. They must also disclose immediately the acceptance of any such offer.

2) Former public servants shall not, within a period of one year after leaving office: a) accept appointment to a board of directors of, or employment with, entities with which they personally, or through their subordinates, had significant official dealings during the period of one year immediately prior to the termination of their service; b) make representations for, or on behalf of, persons to any department or organization with which they personally, or through their subordinates, had significant official dealings during the period of one year immediately prior to the termination of their service; or c) give advice to their clients using information that is not available to the public concerning the programs or policies of the departments or organizations with which they were employed or with which they had a direct and substantial relationship.

The last chapter 4 suggests measures for resolution.

1) Any public servant who wants to raise issues related to this Code should first talk with his or her manager or contact the senior official designated by the Deputy Head.

2) Any public servant who witnesses or has knowledge of wrongdoing in the workplace may refer the matter for resolution, in confidence and without fear of reprisal, to the Senior Officer designated for the purpose by the Deputy Head under the provisions of the Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace. Furthermore, any public servant who believes that he or she is being asked to act in a way that is inconsistent with the values and ethics set out in Chapter

1 of this Code can report the matter in confidence and without fear of reprisal to the Senior Officer, as described above.

If the matter is not appropriately addressed at this level, or the public servant has reason to believe it could not be disclosed in confidence within the organization, it may then be referred to the Public Service Integrity Officer. It is expected that most matters arising from the application of this Code can and should be resolved at the organizational level.

3) A public servant who does not comply with the requirements of this Code is subject to appropriate disciplinary action, up to and including termination of employment.

These are the content of Canada's *Values and Ethics Code for the Public Service* that was implemented from 2003 to 2011. Canada's new *Values and Ethics Code for the Public Service,* which has been in place since April 2, 2012, shed off elements of a code of conduct and strengthened a characteristic as a code of ethics. The code stipulates the role of federal public servants, role of ministers, objectives, statement of values, respect for democracy, respect for people, integrity, stewardship, and excellence. The code advices that public servants discuss and resolve matters with their immediate supervisor, when ethical issues arise. It also states that if public servants have information that could indicate a serious breach of the code, they can bring the matter, in confidence and without fear of reprisal, to the attention of their immediate supervisor, their senior officer for disclosure, or the Public Sector Integrity Commissioner. According to the code, senior officers for disclosure are responsible for supporting the chief executive in meeting the requirements of the PSDPA (*Public Servants Disclosure Protection Act*) and they help promote a positive environment for disclosing wrongdoing, and deal with disclosures of wrongdoing made by employees of the organization.

This new code deleted the content included in the previous code's chapter 2 and 3 – conflict of interest and post-employment measures. Conflict of interest and post-employment measures are now discussed to be included in Section 107 of the *Public Service Labour Relation Act*, and public officials of several negotiation bodies currently apply chapter 2 and 3 of the *Value and Ethics Code for the Public Service 2003* for conflict of interest and post-employment measures, until the negotiation process is completed (TBCS,2013).

2.4.4 U.K.'s Code of Conduct

2.4.4.1 UK Civil Service Code

The code of conduct for all U.K. (the United Kingdom) public officials is simple. It has total 20 provisions, and most of them write about civil service values, integrity as a standard of behavior, honesty, objectivity, impartiality, political impartiality, and rights and responsibilities, rather than stipulating specific elements for a proper action. The following table shows examples of the provisions in the *U.K. Civil Service Code* (CSC,2010).

Example of the U.K. Civil Service Code

- You must not use information acquired in the course of your official duties to further your private interests or those of others.
- You must not accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise your personal judgment or integrity.
- You must not disclose official information without authority. This duty continues to apply after you leave the Civil Service.
- You must not deceive of knowingly mislead Ministers, Parliament or others.
- You must not be influenced by improper pressures from others or the prospect of personal gain.
- You must not ignore inconvenient facts or relevant considerations when providing advice or making decision.
- You must not act in a way that unjustifiably favours or discriminates against particular individuals or interests.
- You must not act in a way that is determined by party political considerations, or use official resources for party political purposes.

2.4.4.2 U.K.'s Code of Conduct for Ministers

A code of conduct for the U.K.'s ministers was published as *Questions of Procedures for Ministers* in 1992. It has been modified repeatedly, by continuous proposals from the Committee on Standards in Public Life. The latest version of the code was promulgated by Prime Minister David Cameronon on May 21, 2010 (Gay,2012). The U.K.'s code of conduct for ministers has total 10 sections: Ministers of the Crown; Ministers and the Government; Ministers and Appointments; Ministers and Their Departments; Ministers and

Civil Servants; Ministers' Constituencies and Party Interest; Ministers' Private Interest; Ministers and the Presentation of Policy; Ministers and Parliament; and Travel by Ministers (Cabinet Office, UK, 2010). This code is a guidebook about how ministers should behave to observe the standards in it and how they should deal with their duties.

Section 1 specifies that Ministers of the Crown are expected to behave in a way that upholds the highest standards of propriety. Then, it states general provisions on Ministers' collective responsibility, their parliamentary duty, accountability for the policies, policy decisions, responsibility for actions of their departments and agencies, offering of information, request for information disclosure, prevention of conflict between their public duties and their private interests, prohibition of accepting any gift or hospitality which might compromise their judgment, separation of roles as Minister and constituency member for Ministers in the House of Commons, prohibition of using government resources for partisan political purposes, etc.

Section 2 is about Ministers and the Government. The principle of collective responsibility requires that Ministers should be able to express their views frankly. This in turn requires that the privacy of opinions expressed in the Cabinet and Ministerial Committees, should be maintained. Decisions reached by the Cabinet or Ministerial Committees are binding on all members of the government. The rest of the section writes about duty to attend the Cabinet and Cabinet Committee meetings, publication of policy statements and consultation papers, handling of cabinet documents, access by former ministers to official papers, and the law officers.

Section 3 is about Ministers and appointments. Ministers have a duty to ensure that influence over civil service and public appointments is not abused for partisan purposes. Civil service appointments must be made in accordance with the requirements of the *Constitutional Reform and Governance Act 2010* and the *Civil Service Commissioners' Recruitment Principles*. Public appointments should be made in accordance with the requirements of the law and the code of practice issued by the Commissioner for Public Appointments. The rest of the section writes about special advisers, departmental boards, and parliamentary private secretaries.

Section 4 is about ministers and their departments. The Prime Minister is responsible for the overall organization of the executive and the allocation of functions between Ministers in charge of departments. The rest of the section talks about approval criteria, ministers outside the Cabinet, arrangements during absence from London, and Royal Commissions and public inquiries.

Section 5 is about ministers and public servants. Its general principle says that Ministers must uphold the political impartiality of the civil service, and not ask civil servants to act in any way which would conflict with the *Civil Service Code* and the requirements of the *Constitutional Reform and Governance Act 2010*. The rest talks about the role of the Accounting Officer.

Section 6 is about Ministers' constituency and party interests. The general principle states that facilities provided to ministers at Government expenses to enable them to carry out their official duties should not be used for party or constituency work. The rest of the section explains about use of Government property/resources, constituency interests, lottery bids, and Parliamentary Commissioner for Administration cases.

Section 7 is about Ministers' private interests. Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.

- It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the independent adviser on Ministers' interests. On appointment to each new office, Ministers must provide their Permanent Secretary with a full list in writing of all interests which might be thought to give rise to a conflict. The list should also cover interests of the Minister's spouse or partner and close family which might be thought to give rise to a conflict. Where appropriate, the Minister will meet the Permanent Secretary and the independent adviser on Ministers' interests to agree action on the handling of interests. Ministers must record in writing what action has been taken, and provide the Permanent Secretary and the independent adviser on Ministers' interests with a copy of that record.
- The personal information which Ministers disclose to those who advise them is treated

in confidence. However, a statement covering relevant Ministers' interests will be published twice yearly. Where it is proper for a Minister to retain a private interest, he or she should declare that interest to Ministerial colleagues. Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision they should be guided by the advice given to them by their Permanent Secretary and the independent adviser on Ministers' interests.

- Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation.
- In addition, there are such provisions as *Steps to be taken where financial interests are retained; Official Residences; When they take up office, Ministers should give up any other public appointment they may hold*; and *they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy*.
- In order to avoid any conflict of interest, Ministers on taking up office should give up membership or chairmanship of a Select Committee or All Party Parliamentary Group. There is no objection to a Minister holding trade union membership but care must be taken to avoid any actual or perceived conflict of interest.
- Ministers should not normally, while holding office, accept decorations from foreign countries.
- No Minister should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. Any Minister in doubt or difficulty should seek the advice of their Permanent Secretary and the independent adviser on Ministers' interests where appropriate.
- Gifts given to Ministers in their Ministerial capacity become the property of the Government. Gifts of small value, currently this is set at £140, may be retained by the recipient. Gifts of a higher value should be handed over to the department for disposal unless the recipient wishes to purchase the gift abated by £140.
- There is usually no customs duty or import VAT payable on the importation of official gifts received overseas. Departments will publish, at least quarterly, details of gifts received and given by Ministers valued at more than £140.

- If a Minister accepts hospitality in a Ministerial capacity, the Minister should notify their Permanent Secretary. Departments will publish, at least quarterly, details of hospitality received by Ministers in a Ministerial capacity.
- On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. Former Ministers must abide by the advice of the Committee.

Section 8 is about Ministers and the presentation of policy. Its general principle goes that official facilities paid for out of public funds can be used for Government publicity and advertising but may not be used for the dissemination of material which is essentially party political. Then, the following clauses state the rules that Ministers should follow when they announce policy content, Cabinet works, or new policy to the mass media. Next, ministers should not accept payment for speeches or media articles of an official nature or which directly draw on their responsibilities or experience as Ministers. Plus, Ministers may not, while in office, write and publish a book on their ministerial experience. Former Ministers intending to publish their memoirs are required to submit the draft manuscript in good time before publication to the Cabinet Secretary and to conform to the principles set out in the Radcliffe report of 1976. The rest of the section talks about journalists, how to raise complaints to a certain part, meetings with external organization, statistics, etc.

Section 9 is about ministers and Parliament. Its general principle says when Parliament is in session, the most important announcements of Government policy should be made in the first instance, in Parliament. Then, the rest of the section talks about the timing and form of announcement, oral statement, and selection of committee reports.

Section 10 is about travel by Ministers. Its general principle says that Ministers must ensure that they always make efficient and cost-effective travel arrangements. Official transport should not normally be used for travel arrangements arising from party or private business, except where this is justified on security grounds. Then, the rest of the section talks about overseas visits, non-scheduled flights, ministers recalled from abroad, UK visits, use of official cars, party political occasions, prohibition of using air miles for private

purposes, travelling expenses of spouses and partners, and travelling expenses of special advisers.

2.4.5 Comparison between Major Countries' Codes

Major countries' codes of conduct generally stipulate prohibition of giving and receiving gifts, avoidance of conflict of interests, fair performance of duty, rules to be followed after retirement, ban on misuse of official position, and restriction on outside activities, while details are set differently in accordance with circumstances of different countries.

To look into the characteristic of each country's code, that of Australia and the U.K is close to a code of ethics, as they define very extensive principles, while the code of the U.S. states very detailed behaviors. The code of Canada and the ministerial code of the U.K are somewhere between the two. For example, when it comes to giving and receiving gifts, the U.K. code just says, "You must not accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise your personal judgment or integrity." However, in the U.S. code, a particular value of a gift that can be accepted is stated in detail that a public official cannot accept a gift that amounts to $20 or greater, and the total amount of gifts accepted in a year cannot exceed $50.

The content is also different for each country. When compared to other countries, Australia's code does not have a statement about gifts, instead, it says that public officials must act in a way that does not damage the country's reputation when they are abroad. The U.S.'s code bans misuse of working hours, and Canada's code stipulates that a public official cannot be hired by or become a board member of an institution that had an official transaction with him/herself or through a subordinate employee in the year before his/her retirement, for one year after retirement. The following <Table Ⅳ-6> briefly shows the difference in the content of different countries' codes of conduct.

<Table Ⅳ-6> Comparison between Different Countries' Codes of Conduct

		U.S	Australia	Canada	U.K. Civil Service Code	U.K. Ministerial Code
Acceptance of gifts	from outside	o	x	o	o	o
	between public officials	o				
Conflict of interest	Conflict of financial interest	o	o(general)	o(general)	o(general)	o
Fair performance of official duty	Private & business relations	o	x	o(general)	o(general)	x
	Substantial payment from former employer	o	x			x
	Political impartiality	x	x	x	o	o
	Avoidance of influence from improper pressure	x	x	x	o	x
Outside employment (including action after retirement)	When looking for outside employment	o	x	o	x	o
Misuse of official position	Prohibition on pursuit of private interest by using official position	o	o	o	o	o
	Prohibition of misusing confidential information	o	o (information from ministers or ministers' employee)	o	o	o
	Prohibition of misusing public resources	o	o	o	o	o
	Prohibition of misusing working hours	o	x	x	x	x
Outside activity	Outside employment, activity, and approval	o	x	o	x	x
Action in overseas		x	o	x	x	x
Issue resolution measure (including breach of the code)	Raising issue to higher level	o	x	o	o	x
	Internal reporting	o	x	o	o	x
Provision of honest information		x	o	x	o	x

The form that is worth noting is that of the U.S.'s code. It explains about a provision that seems to be vague for application, by taking detailed examples, to deliver the meaning clearly. These examples make public officials understand the provisions of the code easily.

2.5 Private Companies' Codes of Conduct

2.5.1 Verizon Wireless's Code of Conduct

Ethisphere project research team[1] scores and ranks codes of ethics and business conduct of private companies which sign contract with the federal government, by evaluating their public availability, tone from the top, readability, non-retaliation, and commitment to stakeholders. Verizon Wireless got the highest score in 2008 (Ethisphere, 2013). The following is the summary of Verizon Wireless's code of conduct (Verizon Wireless, 2013).

The first part of this 38-page code of conduct highlights excellent service, focus on customers, better and faster service, diversity, personal development, integrity, and the best. It also suggests commitment to customers, integrity, respect, performance excellence, and accountability, as the company's core values. Anyone may submit an anonymous or confidential complaint or inquiry by calling or going on-line. If an employee of the company believes that he/she is a victim of or a witness to discrimination or harassment, he/she must report it to supervisor, Human Resources or make a confidential contact to the Compliance Guideline. Employees must report any concerns or questions they have about the accuracy or integrity of Verizon's financial statements, reporting, accounting, internal accounting controls or auditing matters to Internal Audit or to the Compliance Guideline. Those reports and complaints will be kept confidential to the extent permitted by law and by the company's need to investigate the situation. Verizon prohibits retaliation against employees who submit or participate in the investigation of any complaints. Employees must cooperate completely in any investigation relating to Verizon. Employees must be honest and forthcoming at all times during an investigation, and they must provide any investigator with full, accurate, timely and truthful information.

Then, the code sets four big categories. Plus, it has Q&A section beside lines, for a clear explanation.

1) Section 1 (Maintaining an Inclusive, Fair and Healthy Work Environment). This section writes details about maintenance of diversity and equal opportunity commitment for

1) Ethisphere is a leading international think-tank to create, improve, and share the best practice of private companies' ethics, corporate social responsibility, and sustainability (http://www. ethisphere.com/about/).

employees, customers, service providers, and local partners, ban on discrimination and harassment, ban on workplace violence and how to respond to workplace violence, substance abuse, ban on alcohol solicitation and fundraising, ban on gambling, monitoring on the job, etc.

2) Section 2 (Maintaining Integrity and Fairness in the Workplace). Employees must disclose any potential or actual conflict to the VZ Compliance Guideline. Employees may not supervise someone with whom they share a close personal relationship. Nor may employees participate in the selection process for, or supervise Verizon's relationship with, a company that does business with Verizon if it employs someone with whom they have such a close personal relationship. Employees may not be self-employed or employed by or own a company or organization (including a charitable organization). Employees can participate in an individual capacity in outside organizations. However, if they are a member of an outside organization, they must remove themselves from discussing or voting on any matter that involves the interests of Verizon or its competitors. They must disclose any potential conflict to the VZ Compliance Guideline. Then, the rest of the section is about political conflict of interest, personal political interests, ban on political contribution of corporate assets, legal department's approval of election or appointment of public office, and prohibition on transaction or acquisition of financial gains by using internal information. It also says that loans greater than $25 between employees who are in a direct or indirect reporting relationship are prohibited.

3) Section 3 (Protection of Verizon's Assets and Reputation). Employees must create accurate records that reflect the true nature of the transactions and activities that they record. Verizon is committed to transparency in financial reporting to enhance investors' understanding. Company records must be retained according to applicable laws. Employees must protect company information. Employees must safeguard non-public company information. Employees cannot accept non-public information belonging to a third party. Then, the rest of the section is talking about list of certain prohibited activities in terms of use of company systems, security of facilities, intellectual property, information of former employers, handling external communications, etc.

4) Section 4 (Maintaining Integrity and Fairness in the Marketplace). This section writes details about respect for customer privacy for maintaining integrity and fairness in the marketplace, customer marketing, providing all and clear and direct information about

service, requirements needed when dealing with the government as a customer, selecting and maintaining relationship with business providers, things to remember when providing gifts or entertainment, occasions when gifts and entertainment are appropriate, prohibited exchange of gifts, gifts including travel and lodging, returning gifts, gifts outside the workplace, gifts and entertainment involving government officials, bribes, rebate, and loans, relationships with and obligations of departing and former employees, interaction with competitors, avoiding violations of the antitrust laws, gathering information about Competitors, relations with affiliates, etc.

Examples of Q&A in Verizon Wireless's Code of Conduct

Q. My wife manages a training consulting firm. Can she submit a proposal to become a Verizon vendor?
A. You should report this relationship to your supervisor, refer the matter to Corporate Sourcing and refrain from participating in Verizon's discussions or relationship on this matter.

Q. Can I check the weather on the internet with my computer?
A. Limited personal use of company systems is permissible if it conforms to Code standards.

2.5.2 Coca Cola's Code of Ethics

Coca Cola highlights company's honesty and ethics. As it has seen numerous cases where famous companies' trust and reputation collapse overnight and they go bankrupt, Coca Cola came to highlight company ethics and practice of its code of business ethics, which can play a role of guidebook for its employees to act appropriately. (Coca Cola, 2012). It has four big categories. The categories and their content are as the following.

1) Acting with integrity around the globe: Compliance with the code and law, what is expected to managers, approval by local ethical officer, and raising concerns over violation of the code (anonymity and confidentiality, investigations, and no retaliation).

2) Integrity in the company: Business and financial records, protection of company assets and prohibition on use of them outside company responsibilities, protection of the company's nonpublic information (nonpublic information: employees, inventions, contracts, strategic and business plans, major management changes, new product launches,

mergers and acquisitions, technical specifications, pricing, proposals, financial data, and product costs), prohibition of trading based on material nonpublic information, and protection of employees' privacy.

3) Conflicts with integrity: Avoidance of outside investment, restriction on outside employment and accepted scope, financial conflict of interest in relation with relatives and friends, prohibition on gifts, meals, and entertainment, how to reject, and accepted scope.

4) Integrity in dealing with others: Prohibition on bribe to the government, encouraging employees for personal participation in the political process and restrictions, company's political contribution, partnership with customers, suppliers, and consumers, and fair competition with competitors.

Examples and Q&A in Coca Cola's Code of Conduct

A Personal Favor

- An employee used Company computers and equipment, as well as time at work, to design and print wedding invitations and birth announcements as a favor for other employees. The employee misused Company assets.

Teaching

Q: I am a marketing manager and have volunteered to teach a course on marketing at a local college. I believe that my students would benefit from a discussion of how the Company developed several marketing campaigns. Can I discuss this work in class?

A: Only with prior approval from your Local Ethics Officer. The development of marketing campaigns is a Company work product and a Company asset. Much of this work may be proprietary, and may not be appropriate to reveal outside the Company.

Excerpt from page 12 in Coca Cola's Code of Business Conduct 2012

2.5.3 POSCO's Code of Ethics

POSCO enacted and has been implementing fundamental principles for practice of corporate ethics from June 3, 2003, for establishment of proper values among all POSCO members. The principles advocate basic corporate duties, top priority on customer value, partnership with trading partners, transparent decision-making for shareholders and investors, respect

of executives and employees' human rights, prohibition on discrimination or harassment, social responsibility for the country and society, and environment-friendly management (POSCO, 2013).

POSCO's standard of conduct has provisions on transaction with customers, conflict of interest, protection of company assets, protection and sharing of information, respect for human, environmental protection, sound social life, and compliance with ethical rules. Each item has three to four sub-provisions. Examples of the sub-provisions are as the following.

Examples of POSCO's Standard of Conduct

01. Trade with customers
- We will comply with sound and fair trading order.
- We will not demand any form of return or make unfair request by using our superior position.
- We will refrain from transaction with companies who have violated laws, including tax evasion, fraudulent accounting, or environmental contamination.

02. We will not do unfair actions with stakeholders, in regards to tasks that cause conflict of interest.
- We will not get cash loans or ask a request that may negatively influence stakeholders' proper performance of duties.
- We will not offer or receive any cash or other valuables, except for ordinary souvenirs or gifts.

03. Protection of company assets
- We will not acquire personal gains by using company assets or information.
- We will not acquire unfair profits for ourselves or others by using the company's important internal information.
- We will not use the company's equipment, facilities, etc., for purposes not directly related with our duties for the company.

09. We will respect social rules for a sound social life and maintain honor as a POSCO member.
- We will not do any action that may damage the reputation of POSCO or POSCO members.
- We will not do any activity that may benefit a certain political party or social group, by using our position in the company.

To establish more specific provisions for the standard of conduct, the company set out the practical guidelines. The practical guidelines consist of 15 articles, aiming at setting "the standards of scope and behaviors allowed in terms of all kinds of benefits and gains regarding executives' and employees' performance of work." The 15 articles include provisions on such matters as receipt of money, hospitality, entertainment, favor, gift money, improper solicitation for personnel affairs, monetary transactions, unauthorized use of corporate budget and resources, obligation of department managers, obligation to report and guarantee of confidentiality, award and disciplinary measures.

Examples of POSCO's Practice Guidelines

Article 3 (Money and other Valuables)

(1) Executives and employees must never demand or receive money or other valuables from stakeholders for any reason. However, the scope excludes souvenirs marked with a stakeholder's company logo, or ordinary souvenirs distributed to participants of a stakeholder's company event.
(2) When executives and employees have already received money or other valuables unknowingly or against their will, they must return it immediately, or report it to the head of their division when return is difficult.
(3) Head of division handles the reported money or valuables transparently and fairly, and the result must be reported to the Global Ethical Management Group.

Article 4 (Entertainment)

(1) Entertainment within a usual scope such as dining with stakeholders can be accepted. However, entertainment at a bar with hosts or hostesses is prohibited.
(2) Entertainment that goes beyond an ordinary level must not be accepted, and when it is accepted inevitably, it must be reported to the head of division.
(3) When offering entertainment to a stakeholder beyond an ordinary level at the company's expenses, or attending an event that includes an entertainment beyond an usual level, division head's consent must be acquired in advance.

Article 6 (Money Gifts or Condolence Money)

(1) Festivities or funerals of the family of executives and employees or their colleagues must not be notified to stakeholders, and notifying through a third person is regarded as notification by the person himself/herself.
(2) Notification of festivities or funerals of the family of executives and employees must be made on the wedding and funeral board in EP community website, and notification by sending email to individual company e-mail accounts or invitation letters by post is prohibited. The scope of family includes only the executive or employee himself/herself, his/her parents, his/her spouse and the spouse's parents, and children.

(3) Value of gift money for wedding and condolence money for funeral should not exceed KRW 50,000, which is an ordinary amount.
(4) Executives and employees shall not receive money gift or condolence money from stakeholders. However, when they have already received the money inevitably, the value is recommended to be less than KRW 50,000, and not exceeding KRW 100,000 at the maximum. If the value received exceeds KRW 100,000, it must be returned or given to the Global Ethical Management Group.
(5) Executives and employees shall submit materials about the return of money gift or condolence money received from stakeholders, when required by the Global Ethical Management Group.
(6) Executives and employees must not receive garlands for wedding or funerals from stakeholders, and must not display them even though they have already received garlands inevitably.
(7) Executives and employees must not have extravagant wedding ceremonies at five-star hotels or similar places.

Article 12 (Reporting Obligation and Confidentiality)
(1) Executives and employees must report to the Global Management Group by the fastest and most convenient way, when they recognize the fact that they have breached these guidelines.
(2) Division heads must fill the designated form and report to the Global Ethical Management Group immediately, when they are reported about subordinate staff's breach of these guidelines.
(3) The Global Ethical Management Group may investigate facts about the reported case when necessary, and related executives and employees must actively cooperate with the investigation.
(4) Executives and employees shall not impose disadvantage to the reporter or whistleblower, or disclose who they are.
(5) When there is potential of personnel disadvantage for the reporter or whistleblower, measures such as change of assigned position is taken, as the person in question's wishes.
(6) Executives and employees shall keep it confidential even if they accidentally come to know about the reporting in the course of performing their duty, and they may be penalized if they disclose the fact.



Discussions and Exercise

- Examine different characteristics of codes of conduct suggested by international organizations.
- Study each country's code of conduct and find out shared features and differences.
- Discuss shared features and differences between private sector's codes of conduct and countries' codes of conduct.

3. Korea's Code of Conduct, Cases, and Comparison with Other Codes



Goals	• To study Korea's code of conduct and cases to which it is applied • To examine how the content of Korea's code of conduct is different from other countries' codes of conduct

3.1 History and Background of Korea's Code of Conduct

3.1.1. Code of Conduct for Public Officials

Article 7 (Obligation of Public Organization Employees to Maintain Integrity) of Korea's *Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights Commission* ("Anti-Corruption Act") stipulates the obligation for public organization employees to maintain integrity, that every public organization employee shall honor Acts and subordinate statutes, perform his/her duties impartially and hospitably, and refrain from engaging in corruption and damaging his/her dignity. For practice of such a purport, Article 8 of the Act states that the code of conduct that public organization employees shall observe shall be prescribed by Presidential Decrees, National Assembly regulations, Supreme Court regulations, Constitutional Court regulations, National Election Commission regulations, or public organization rules. The article also prescribes the following four categories.

Four Categories To Be Prescribed in Code of Conduct for Public Officials

1. Matters on the prohibition of public organization employees from and restrictions on receiving entertainment, money and other pecuniary advantages from any person related to his/her duties
2. Matters on the prohibition of public organization employees from and restrictions on using his/her public position to influence personnel management, seek financial benefits, exert undue influence, or solicit favors
3. Matters on, for example, fair personnel management, which public organization employees shall observe in order to create a sound climate in officialdom
4. Other matters that shall be addressed to prevent corruption and maintain the integrity and dignity of public office

Korea's *Code of Conduct for Public Officials* was enacted and promulgated by presidential decree, on February 18, 2003, for the purpose of maintaining public officials' integrity, which is applied to all public officials working for the administration, and the code has been implemented since May 19, 2003. In accordance with the presidential decree, all central administrative agencies and local government agencies have established and implemented their own code of conduct. Then, the Court, the National Election Commission, and the Constitutional Court also established codes of conduct for their own employees until September 2003, and have been implementing the codes so far. The *Code of Conduct for Public Officials* enacted by presidential decree was first revised on December 29, 2005, and has added new provisions on prohibition of religious bias, expansion of the scope of work-related party and work of interests, prohibition of the improper use of public position, etc., in the third revision in 2008 and the fourth revision (ACRC, 2013c).

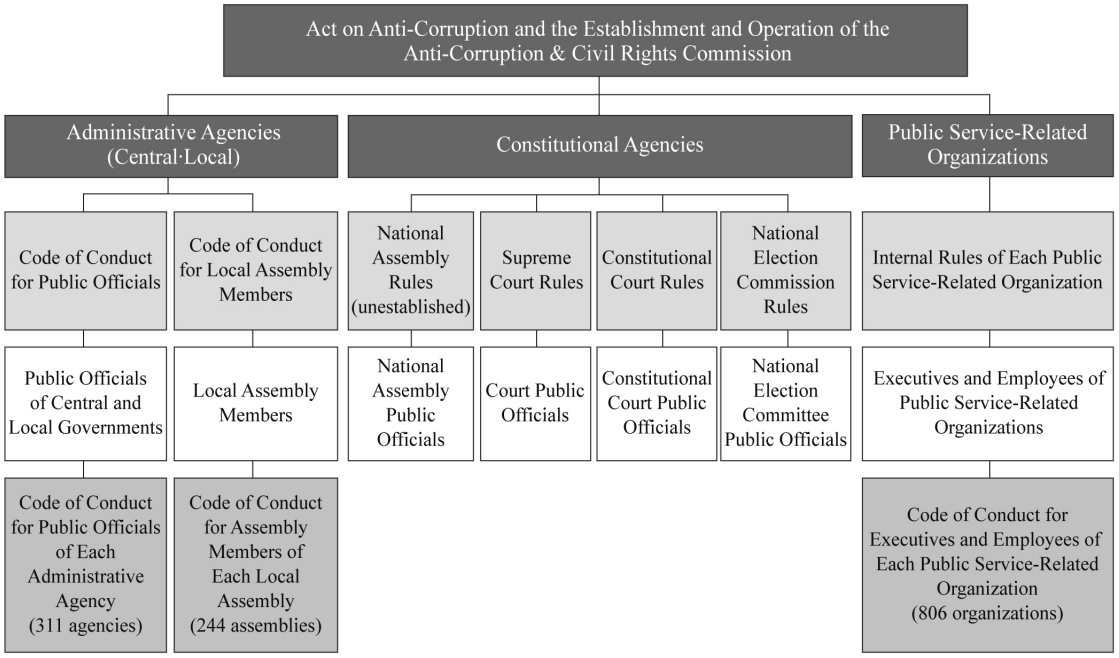
3.1.2 Code of Conduct for Local Assembly Members

At first, the *Code of Conduct for Public Officials* had been applied to the members of local assemblies, but a separate code of conduct that should be observed by local assembly members was enacted on November 2, 2010, considering the characteristics of assembly members' duty, which is different from that of public officials, as well as the specificity of their position as they are representative of local residents. The code has total six chapters and 24 articles, which contain provisions on fair performance of duties of local assembly members, prohibition of acquiring unfair gains, establishment of sound local assembly climate, measures against breach of the code, and supplementary rules. It has been implemented since February 3, 2011 (ACRC, 2013c).

3.1.3 Code of Conduct for Employees of Public Service-Related Organizations

The code of conduct for employees of public service-related organizations had been enacted and implemented by 404 public service-related organizations voluntarily, at recommendation of the Korea Independent Commission against Corruption in September, 2004. Then, in July 2005, a legal ground for establishment of a code of conduct for employees of public service-related organizations was formed by revision of the *Anti-Corruption Act* (Article8) in July 2005 and the Act's enforcement ordinance (Article 2). In June 2006, 476 public service-related organizations had and were implementing code of conduct for executives as their internal code, and as of 2013, total 806 public service-related organizations are implementing codes of conduct for their executives and employees (ACRC, 2013c).

<Figure> Operation System of Code of Conduct for Public Organization Employees



3.2 Major Content and Cases of Code of Conduct for Public Officials

The *Code of Conduct for Public Officials* has total six chapters: Chapter1 – General Provision; Chapter2 – Fair Performance of Duties; Chapter3 – Prohibition of Giving and Receiving Unfair Profits; Chapter4 – Creation of Healthy Climate of Civil Service; Chapter5 – Measures against Violation; Chapter6 – Supplementary Provisions.

<Table> Details of Code of Conduct for Public Officials

Fair Performance of Duties (6 provisions)	■ Handling of Instructions that Hinder Fair Performance of Duties (Article 4) ■ Recusation for Conflicts of Interest (Article 5) ■ Exclusion of Preferential Treatment (Article 6) ■ Prohibition of Use of Budget for Unspecified Purposes (Article 7) ■ Handling of Unjust Request from Politicians (Article 8) ■ Prohibition of Illegal Solicitation for Personnel Affairs (Article 9)
Prohibition of Giving and Receiving Unfair Profits (7 provisions)	■ Prohibition of Influence Peddling (Article 10) ■ Prohibition of the Improper Use of Public Position (Article10-2) ■ Prohibition of Illegal Solicitation (Article 11) ■ Restriction of Use of Duty-Related Information for Financial Transactions (Article 12) ■ Prohibition of Personal Use of Public Property (Article 13) ■ Restriction of Receiving Money or Other Valuables (Article 14) ■ Prohibition of Giving Money or Other Valuables (Article 14-2)
Creation of Healthy Climate of Civil Service (3 provisions)	■ Report on Outside Lecture or Conference (Article 15) ■ Prohibition of Borrowing Money (Article 16) ■ Restriction on Notification of Festivities and Funerals and on Receipt of Money Thereof (Article 17)

3.2.1 General Provisions

The General provisions define the code's purpose and terms: "duty-related party", "duty-related public officials", "gift", and "gift of entertainment." Then, they prescribe that the scope of the code's application includes government officials and local government officials, excluding public officials of the National Assembly, the Court, and the Constitutional Court, and the National Election Commission.

3.2.2 Fair Performance of Duties

Chapter 2 defines six elements necessary for public officials' fair performance of duties.

1) Handling of Instructions that Hinder Fair Performance of Duties

(1) Background: This provision stipulates procedures of rejecting superiors' unfair instruction in performing duties, for the purpose of fair performance of public officials' duties. Plus, it gives agency heads an obligation to take action against the instruction that hinders fair performance of public officials' duties. As such, the provision is establishing an institutional mechanism for public officials to get away from unfair instructions. (ACRC, 2013c).

(2) Content: If and when a public official gives his or her subordinate the instructions that may hamper fair performance of public duties in order to pursue his or her own private interest or the interests of any third party, the subordinate public official may refuse to follow the instructions by communicating the reason to the superior official or consult with the officer in charge of the *Code of Conduct for Public Officials*. The Code of Conduct Officer shall give notification to the head of the agency concerned; provided, however, that this shall not apply when the superior public official, who gave the wrongful instruction, changes or cancels it while the Code of Conduct Officer is checking its details.

Case of Hindrance of Fair Performance of Duty

President A of a public high school called the school's director of administration to his office before the school's autumn field trip, and ordered the director to appoint a certain travel agency with which he had relations when working at the previous school, and to sign contract with the agency, for the field trip. The director explained that he cannot follow the president's instruction, because a relevant rule stipulates "Designation of a travel agency for student field trip is to be reviewed and decided by the school operation committee, and the agency shall be appointed transparently through an open competitive tender." However, the president said that he holds the authority to select a travel agency and the issue has nothing to do with the school operation committee, then he ordered to sign contract with the travel agency, unilaterally and repeatedly. In such a case, the director of administration must report it to the head of education at the local education office, who is his highest supervisor, or deal with the issue after consulting with the school's vice-president, who is the school's code of conduct official. (ACRC, 2011: 14).

2) Recusation for Conflict of Interest

(1) Background: This provision was established to enable public officials themselves to cut off any potential of corruption, by making them explain and avoid in advance any reason of unfair performance of duty. To this end, the provision gives a clear suggestion of cases where fairness of public officials' performance of duty might be hampered (ACRC, 2013c).

(2) Content: When a public official's duty falls under any of the following subparagraphs, he or she shall consult the immediate senior official or the Code of Conduct Officer about avoiding such duty and then handle the matter; provided, however, that this shall not apply if the duty concerned is one of the simple civil petition services: (a) Where the duty concerned is directly related to the public official's own financial interests; or those of certain other persons, such as his/her lineal ascendants/descendants and spouse; and the spouse's linear ascendants/descendants; (b) Where a duty-related party is his/her relative within the relationship of third degree; (c) Where a duty-related party is the agency or the representative of the agency for which he or she used to work within the past 2 years; and (d) Where a duty-related party is defined by the Agency Head as a person with whom a public official may not perform his/her duties in an impartial manner.

Case of Recusation for Conflict of Interest

Director A, a member of construction inquiry commission of a city government, has recently received a call from his cousin who said his land was sent to the construction inquiry commission for a new construction permit case. Director A's cousin asked him to look after the case. So, Director A contacted other members of the inquiry commission who had bigger influence, and argued for the need for the new building for which his cousin applied for new construction permit. Eventually, the new construction permission was granted without objection of other members. This case amounts to breach of the code of conduct, as Director A's cousin is his duty-related party, because he is the directors' relative within the relationship of third degree (ACRC, 2011: 17).

U.S. Code of Conduct

- An employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which has a financial interest. An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute or by agency regulation.
- **Example)** An employee of the National Library of Medicine at the National Institutes of Health has just been asked to serve on the technical evaluation panel to review proposals for a new library computer search system. DEF Computer Corporation, a closely held company in which he and his wife own a majority of the stock, has submitted a proposal. Because award of the systems contract to DEF or to any other offeror will have a direct and predictable effect on both his and his wife's financial interests, the employee cannot participate on the technical evaluation team unless his disqualification has been waived.

UN Code of Conduct for Public Officials

- Public officials must report in accordance with law and policy, a business, commercial, and financial gain or activity that brings about financial profit which could cause conflict of interest according to the level of duty of their position.

EU's Model Code of Conduct

- Public officials must not pursue personal profit that conflict with their public position. If such conflict of interest is actual, potential, or obvious, public officials have the obligation to avoid it without failure.

Australia's Code of Conduct)

- Australian public officials must disclose any (actual or obvious) conflict of interest in relation with employment of an Australian public official and must go through reasonable steps to avoid it.

3) Exclusion of Preferential Treatment

(1) Background: This provision was enacted to prevent an action that undermines trust in the public service, such as decision making based on nepotism or paternalism rather than on reasonable and objective criteria, distorted distribution of value, hindrance of fair competition, etc. (ACRC, 2013c).

(2) Content: While performing his/her duties, a public official shall not give any preferential treatment to a specific person on the grounds of kinship, religion, regional or academic ties.

Case of Exclusion of Preferential Treatment

Section chief A of business office of a provincial government gave three months of time for preparation for promotion examination, to project manager B, who graduated from the same high school with him, when project manager B complained about difficulty with studying after failing the exam once. During the period, project manager B did not perform his public duty, instead, he committed himself to preparing for promotion exam at his home, library, or private institute (ACRC, 2011: 19).

4) Prohibition of Use of Budget for Unspecified Purposes

(1) Background: This provision was enacted to prevent waste of the government budget by prohibiting an unfair use of budget for public duties by public officials. Notably, it was introduced to proactively block unfair actions such as production of false public document or fabrication of work-related materials for improper compilation or use of budget (ACRC, 2013c).

(2) Content: A public official shall not make his or her agency bear economic costs by using its budget for unspecified purposes.

Case of Prohibition of Use of Budget for Unspecified Purposes

- Kim, the head of fire department of a city government, spent KRW 570,000-worth budget to pay gift money or condolence money for weddings and funerals of his relatives and friends, and to offer entertainment to them. He also paid KRW 520,000 made by an illegal

cash-back transaction using a city government credit card for business operating expenses, for group dinner of his staff. This is an action that caused financial loss to his public agency by using public budget for operation of public business for an unspecified purpose, thus Kim violated the *Code of Conduct for Public Officials* (ACRC, 2013).

- Section chief A of an Education Office paid KRW 99,000 for gathering with his vice school president colleagues at a restaurant in Seoul, with his corporate credit card. Including that, he has spent total KRW 750,000 on weekends for personal purposes near his house, for seven times until March 2007. The ACRC recollected all the amount he has spent for his personal purposes and issued a warning.
- Director General B of an Education Office used official vehicle for 32 times for business trip, but received KRW 387,000 falsely, under the name of recovering business trip transportation expenses. All the value used for the director general's personal purposes was recollected and a warning was issued.

UN's Code of Conduct for Public Officials

- Public officials shall never improperly use public money, assets, service, information acquired during the course of their service or performance of their duties, or information acquired as a result of official activity unrelated with their public duty.

EU's Model Code of Conduct

- Public officials must ensure that public staff, public assets, facilities, service, and financial resources are managed and used effectively, efficiently, and economically in exercising their discretion. Those resources shall not be used for personal purposes, unless it is approved by law.

5) Handling of Unjust Request from Politicians

(1) Background: This provision was created to enable public officials to perform their duties fairly by defining processes for handling of unjust request or demand from a politician or political party in the course of performing their duties, and to enable working-level staff to perform their duties fairly, by imposing duty to take action against an unjust request from politicians, to agency heads (ACRC, 2013c).

(2) Content: If a politician or a political party forces or requests a public official to perform his or her duties in a biased and improper way, he or she shall either give notification to the head of his/her agency or consult with the Code of Conduct Officer before handling the matter.

Case of Handling of Unjust Request

General Affairs Director A at a local government received a call from a member of the county assembly who requested to hire his relative for the county's street cleaner position. The county assembly member also said that if his relative is not hired, director A will face disadvantage in budget deliberation for his department. Director A gave a lot of thoughts and then, he helped employment of the county assembly member's relative by talking with the head of HR and asking interviewers to give higher scores for the relative on the day of the interview, without reporting it to the county governor or the code of conduct officer (ACRC, 2011: 31).

6) Prohibition of Illegal Solicitation for Personnel Affairs

(1) Background: This provision was enacted to prohibit public officials' action of exercising an unfair influence on personnel management by using their public position, and to prevent unfair actions such as bribery or influence peddling in regards to solicitation for personnel affairs (ACRC, 2013c).

(2) Content: Public officials shall not ask any third party to solicit a public official who handles affairs on his or her personnel management for the purpose of getting personal benefits and shall not use his or her public position to unduly influence the decisions on personnel management for other public officials.

Case of Prohibition of Illegal Solicitation for Personnel Affairs

A head of an affiliate institution of a local government received a request to hire his friend's son who was not eligible for the position because of his place of living. He hired his friend's son by helping a false resident registration, and hired the son of a former team head as a no-time-limit contract worker (ACRC press release, 2013).

U.S. Code of Conduct

- An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

3.2.3 Prohibition of Giving and Receiving Unfair Profits

Chapter 3 has five provisions about prohibition of influence peddling, prohibition of illegal solicitation, restriction of use of duty-related information, prohibition of personal use of public property, and restriction of receiving money or other valuables.

1) Prohibition of Influence Peddling and Prohibition of the Improper Use of Public Position:

(1) Background: This provision is to prevent public officials from pursuing economically or socially unfair profits by using their superior position related with public duty. It is also a provision to prohibit public officials' actions such as pursuing personal profits for themselves or others by using the name of their institution or position in a way that is not related with their public duty, and making the general public believe a person (or group) is granted public authority (ACRC, 2013).

(2) Content: Article 10 stipulates that a public official shall not directly use his or her public position to benefit himself/herself or other people. The article also says that a public official shall not use or allow other people to use his/her position or the title of the agency in the way that they appear on public announcement or notice, for personal gains other than official duties.

① Case of Prohibition of Influence Peddling

Team head A, who works for a local branch of a public corporation, directly purchased golden keys to be given to retirees as souvenir, from his wife's jewelry shop at about KRW 8 million, which is more expensive than the market price. He also induced branch affiliates of his institution to purchase souvenirs worth KRW 60 million from his wife's shop. This is an obvious violation of prohibition of influence peddling, which amounts to breach of the code of conduct (ACRC, 2011: 36).

② Case of Prohibition of Improper Use of Public Position

Director A of a central government department was asked a favor from his acquaintance who is a staff of a private association, that director A's government department pretends to sponsor the association's art contest with entry fees. Director A approved the association to use the name of his department in banners and ads, as if the department sponsors the contest, to induce many students to take part in the contest with trust in its credibility. This amounts to breach of the code of conduct (ACRC, 2011: 37).

U.S. Code of Conduct

- An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.
- An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another.
- **Example)** An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment.

2) Prohibition of Illegal Solicitation

(1) Background: This provision is to prohibit act of illegal solicitation that could distort a fair decision-making and hamper objective performance of duties in the public service (ACRC, 2013).

(2) Content: A public official shall not use any good office or solicitation to hinder other public officials from performing their duties in a fair and proper manner and shall not introduce a duty-related party to any other duty-related party or to a public official for the purpose of benefiting him/herself or other selected people.

Case of Prohibition of Illegal Solicitation

Public official A who works at the general affairs division of a central government department requested submission of quotations to different printing companies, to receive a printing service in a fair and transparent manner, but the head of the department's audit team illegally solicited A to make an exception for the case and sign a private contract with printer C who is his friend from the same province (ACRC, 2011: 38).

3) Restriction of Use of Duty-Related Information for Financial Transactions

(1) Background: This provision was introduced to prevent public officials' illegal actions of pursuing their own or others' financial profits by privately using information they obtained during the course of performance of their duties (ACRC, 2013c).

(2) Content: A public official shall not be involved in transactions of or make investment in marketable securities, real estate and other financial instruments by using information he or she obtained in the course of performing his or her public duties; nor shall he or she give such information to any other person in order to help them make such financial transactions or investment.

Case of Restriction on Use of Duty-Related Information for Financial Transactions

When an urban management plan to adjust and remove greenbelt and widen area of construction permission was proposed, a staff of the region's construction administration department let his relatives purchase large volume of land in the greenbelt and sell the land afterwards, to gain a big margin (ACRC, 2011: 41).

U.S. Code of Conduct

- § 2635.703. a) An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure. b) Nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public.
- **Example)** A Navy employee learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment. She may not take any action to purchase stock in the corporation or its suppliers and she may not advise friends or relatives to do so until after public announcement of the award. Such actions could violate Federal securities statutes as well as this section.

UN Code of Conduct for Public Officials

- Public officials shall never improperly use public money, assets, service, or information acquired in the course of performance of their duty or by official activities unrelated with their official duty.

4) Prohibition of Personal Use of Public Property

(1) Background: This provision was introduced to prevent a moral hazard in which public officials use public resources as if they were their own properties, as well as public officials' private use of indirect profits generated collaterally from the use of the government budget (ACRC, 2013c).

(2) A public official shall not benefit himself or herself by using public properties including publicly-owned vehicles, vessels and airplanes, and additional services provided as a result of budget expenditure, including frequent flyer miles and reward points without justifiable grounds.

Case of Prohibition of Personal Use of Public Property

Mayor A of a city government has used general official vehicles and drivers for his wife doing voluntary work or visiting church personally. Then, the mayor's wife called the person in charge of the city's vehicle operation during weekdays, to demand vehicles for her personal use, to visit church, go to voluntary work, or do personal errands (ACRC, 2011: 42).

The U.S. Code of Conduct

- § 2635.704 (Use of Government Property). a) An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. b) Definition. (1) Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. (2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.
- **Example)** An employee may make a personal long distance call charged to her personal calling card.

The UN Code of Conduct for Public Officials

- Public officials shall never improperly use public money, assets, service, information that they obtained in the course of performance of their duty, or information that they obtained as a result of official activity unrelated with their official duty.

5) Restriction of Receiving and Giving Money or Other Valuables

(1) Background: This provision is to prevent public officials from receiving money or other valuables from duty-related parties based on the superior position generated from their public duty. In other words, it was introduced to enhance public officials' awareness of integrity by blocking acquisition of unfair gains through public duties. It was also enacted to prohibit action of public officials' giving money or other valuables to a superior public official or politician who has direct interests with them (ACRC, 2013c).

(2) Content: A public official shall not receive money, valuables, real estates, gifts or gifts of entertainment; provided, however, that this provision shall not apply to one of the following.

Cases Where Public Officials Can Receive Money or Other Valuables

1. Money or other articles provided by a lawful ground of claim such as the payment of debt;
2. Foods or convenience provided within the scope of conventional practices;
3. Transportation, accommodation or foods uniformly provided by a sponsor to all participants in an official event related to duties;
4. Souvenirs or promotional goods distributed to many and unspecified persons;
5. Money or other valuables publicly provided to a public official in need who is afflicted with a disease or suffers other kind of disaster; and
6. Money or other valuables provided to a public official to facilitate the performance of his or her duties within the limit set by the Agency Head.

Public officials shall not receive money or other valuables from duty-related public officials. However, they may receive some types of money or valuables stated in the table above, as well as a small gift is offered according to common practices; a friendly society publicly offers money or other valuables; and a superior public official offers money or other valuables to his or her subordinates to promote their morale or to console, encourage or reward them.

Furthermore, public officials shall not offer money or other valuables to other public officials who are banned from receiving money or valuables from themselves.

Article 11, paragraph ① of the *Operation Guidelines of the Code of Conduct for Public Officials* sets the "extent of ordinary custom" as value not greater than KRW 30,000. Then, paragraph ② sets the scope of "permitted for successful performance of public duties" to an extent in which public officials' integrity is not undermined.

Case of Giving and Receiving Money or Other Valuables

Local government official A solicited change in her personnel through her colleague B whose husband C was the director of HR at that time. Then, C took actions to transfer A to another department. A thought that she should express gratitude to the help of B and C and gave them KRW 500,000 enclosed in a cookie box. B received the box, knowing the fact that there was KRW 500,000 in it (ACRC, 2011: 49).

The U.S. Code of Conduct

- An employee shall not accept a gift in return for being influenced in the performance of an official act, nor solicit or coerce the offering of a gift. / With exceptions, an employee may accept unsolicited gifts having an aggregate market value of $20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person shall not exceed $50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds $20, the employee may not pay the excess value over $20 in order to accept that portion of the gift or those gifts worth $20. Where the aggregate value of tangible items offered on a single occasion exceeds $20, the employee may decline any distinct and separate item in order to accept those items aggregating $20 or less. / An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.
- **Example)** An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of $18 and a book about the history of cartography with a market value of $15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds $20.

The UN Code of Conduct for Public Officials

- Public officials shall not directly or indirectly receive or demand any gift or favour that may influence the practice of their functions, performance of their duties, or their judgment.

EU's Model Code of Conduct

- Public officials shall not demand or receive a gift, favor, entertainment, hospitality, or other benefits for themselves, their family, relatives, or other people or organizations related in terms of public officials' business or politics, when it influences or may influence fairness in performance of their duties. Customary entertainment or small gifts are not included in the prohibited scope. When public officials are not sure about whether they can receive a gift of entertainment, they should consult with their superiors.

3.2.4 Creation of Healthy Climate of Civil Service

Chapter 4 is writing about report on outside lecture or conference, prohibition of borrowing money, and restriction on notification of festivities and funerals, for purpose of creating a healthy civil service.

1) Report on Outside Lecture or Conference

(1) Background: This provision was introduced to block corruption such as public officials' demand for money for outside lecture or conference and formation of back-scratching relation between public officials and certain interest groups, as well as to prevent irregularities such as negligence of public duties because of too many outside lectures or acceptance of too much lecture fees (ACRC, 2013c).

(2) Content: If a public official intends to give a lecture or participate conference, etc. which pays an honorarium, he or she shall notify the head of his/her agency of (a) who made a request for the outside lecture or conference, (b) reasons for such request, (c) the venue, date and time for the outside lecture or conference and (d) the amount of an honorarium; provided, however, that he or she may not report it if the request for the outside lecture or conference is made by the State or a local government. The total amount of an honorarium shall not exceed ordinary standard conventionally applied by the party who made a request for such outside lecture or conference.

Case of Reporting Outside Lectures or Conferences

Two central government agency public officials in charge of corporate business (4th level and 6th level) took a day off to give lecture about corporations at an ordinary private company not directly related with their public duty. They received KRW 1 million of honorarium but did not report it (ACRC, 2011:63).

The U.S. Code of Conduct

- §2635.802 (Conflicting outside employment and activities). An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties: (a) If it is prohibited by statute or by an agency supplemental regulation; or (b) If, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired. Employees are cautioned for other types of outside activities even though those outside activities may not be prohibited under this section.
- §2635.803. (Prior approval for outside employment and activities). An employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary, an agency shall require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.
- Except for exceptionally permitted cases, an employee shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.
- **Example)** The Director of the Division of Enforcement at the Commodity Futures Trading Commission has a keen interest in stamp collecting and has spent years developing his own collection as well as studying the field generally. He is asked by an international society of philatelists to give a series of four lectures on how to assess the value of American stamps. Because the subject does not relate to his official duties, the Director may accept compensation for the lecture series. He could not, however, accept a similar invitation from a commodities broker.

The U.K.'s Code of Conduct

- Ministers must not receive any reward for speech of news article that came from their ministerial responsibility or experience, or as part of their public duty, according to the rules to follow when announcing public policy, Cabinet work, or new policy to the mass media. Plus, Ministers must not write or publish a book about their ministerial experience during their term of duty.

2) Prohibition of Borrowing Money

(1) Background: This provision was introduced to block potential bribery for public officials in the name of borrowing money, and to prevent irregularities such as public officials' lending money at high interest rate based on their public position, by banning money transaction between public officials and duty-related parties (ACRC, 2013c).

(2) Content: A public official shall not borrow money from, lend money to, or rent real estate from a duty-related party or a duty-related public official without compensation including cases where such compensation is insignificant compared to the market value or customary transaction value. Notwithstanding the provisions of previous paragraph, a public official, who intends to borrow money from, lend money to or rent real estate from a duty-related party or a duty-related public official without any compensation for unavoidable reasons, shall give notification to the head of his/her agency.

Case of Prohibition of Borrowing Money

Deputy Director A who handles evaluation work in an evaluation committee had insufficient money to complete his contract to purchase an apartment house, so he borrowed KRW 50 million at an interest rate of 8%, which is the interest rate of commercial banks, personally from his high school alumnus. The alumnus from whom Deputy Director A borrowed the money was a local government staff in charge of evaluation duty, and the local government was one of the subject institutions for the evaluation of Deputy Director A's evaluation committee. Few months after moving into the new apartment house, Deputy Director A repaid all the principal and interest, but this amounts to breach of the code of conduct, as he borrowed money from a duty-related public official (ACRC, 2011: 64).

Verizon Wireless's Code

- Verizon Wireless bans its executives and employees from lending money worth $25 or more, to a person in a direct or indirect reporting relationship.

3) Restriction on Notification of Festivities and Funerals and on Receipt of Money Thereof

(1) Background: This provision was introduced to establish desirable norms in sharing of family events among public officials, by restricting public officials' notification of their own family events to duty-related parties or duty-related public officials based on their superior position, and by blocking possibility of money gift or condolence money for weddings and funerals being used as a vehicle of delivering bribe (ACRC, 2013c).

(2) Content: A public official shall not notify a duty-related party or a duty-related public official of festivities and funerals except as expressly provided by the following.

Cases where Notification of Festivities and Funerals and Receipt of Money Thereof are Acceptable

1. Notification of festivities and funerals given to relatives;
2. Notification of festivities and funerals given to current or former colleagues;
3. Notification of festivities and funerals through newspapers, broadcasting or intranet to which only his/her current or former colleagues pursuant to subparagraph 2 above have access; and
4. Notification of festivities and funerals given to the members of a religious organization or a social gathering to which he or she belongs.

A public official shall not give or take money or other valuables for festivities and funerals whose worth exceeds the standards, which the Agency Head set within the scope of common practices and after collecting opinions from the employees of the government agency, except as expressly provided by one of the following cases: 1. where money or other valuables are given or taken between a public official and his/her relatives for festivities and funerals; 2. where money or other valuables for festivities and funerals are given to a public official by a religious organization or a friendly society to which he or she belongs, in accordance with its articles of association or regulations; and 3. where money or other valuables are given for festivities and funerals determined by the Agency Head.

Article 14 of the *Operation Guidelines of Code of Conduct for Public Officials* stipulates that the value of money or other valuables given for festivities and funerals shall be determined in detail by the head of public institutions within generally-accepted extent,

which does not exceed KRW 50,000.

Case of Restriction on Notification of Festivities and Funerals and on Receipt of Money Thereof

Secretary A of the head of a district office sent wedding invitations with his name card in it to more than 40 occupational associations within the district, including Saemaeul Association, civil defense association, welfare groups, restaurant business association, entertainment business association, etc. Then, he received gift money that exceeds KRW 50,000 from many of those associations (ACRC, 2011: 66).

The U.S. Code of Conduct

- A gift appropriate to special and infrequent occasions such as marriage, illness, or the birth or adoption of child may be given to an official superior or accepted from a subordinate or other employee receiving less pay.
- **Example)** A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for $70.

3.2.5 Measures against Violation

Chapter 5 stipulates consultation on legality, report and confirmation of violation, and disposal of money or other articles prohibited.

1) Consultation on Legality: When a public official deems it unclear whether his/her performance of duties violates this Decree, he or she shall handle the duties after consulting the code of conduct officer.

2) Report and Confirmation of Violation, and Disciplinary Action: Anyone who should become aware that a public official violates this Decree may report such fact to the head of an agency to which the public official belongs, the code of conduct officer in that agency, or the Anti-Corruption and Civil Rights Commission. The person who files a report shall specify in the report the personal details of him/herself as well as of the violator including name, address, etc., and the details of violation. The head of an agency to which the public official in question belongs or the code of conduct officer at the agency, should he or she receive a report of violation,

shall guarantee the confidentiality for the informant and the report details and shall take necessary measures so that the informant may not receive any detrimental treatment due to the report. The code of conduct officer shall confirm the reported violation and then report it to the head of the relevant agency, attaching a vindication submitted by the public official concerned. The head of the agency, should he or she has received a report may take necessary measures including disciplinary actions against the public official concerned.

Annex 2 of the *Operation Guidelines of the Code of Conduct for Public Officials* sets sentencing criteria for a violator of the provision on prohibition of giving and receiving money and other valuables. However, the criteria are not mandatory, but just for reference.

<Table> Sentencing Criteria for a Violator of the Provision on Prohibition of Giving and Receiving Money and Other Valuables

Type of Irregularity \ Value / Type of Action		Less than KRW 1mn	KRW 1mn – 3mn	KRW 3mn – 5mn	KRW 5mn – 10mn	KRW 10mn or more
Customary giving & receiving of money, valuables, or entertainment	Passive	Reprimand	Wage cut	Suspension	Dismissal	Expulsion
	Active	Reprimand, Wage cut	Wage cut, Suspension	Suspension, Dismissal	Dismissal, Expulsion	Expulsion
Giving or receiving money, valuables, or entertainment in relation with public duty and not taking an illegal or improper action accordingly	Passive	Wage cut	Suspension	Dismissal	Expulsion	
	Active	Wage cut, Suspension	Suspension, Dismissal	Dismissal, Expulsion	Expulsion	
Giving or receiving money, valuables, or entertainment in relation with public duty, and taking an illegal or improper action accordingly	Passive	Suspension	Dismissal	Expulsion		
	Active	Suspension, Dismissal	Dismissal, Expulsion	Expulsion		

Case of Measures against Breach in the United States' and Australian Codes

The U.S. Code of Conduct

- A corrective action or disciplinary action may be taken against breach of the code. Corrective action includes compensation, change in duty, disqualification, and prohibition of activity, while disciplinary action includes reprimand, suspension, demotion, and dismissal.

Australian Code of Conduct

- A public official found to have violated the code may receive dismissal, demotion, change in duty, wage cut, deduction in wage as fine, and reprimand.

3) Disposal of Money or Other Articles Prohibited: A public official who has received money or other valuables shall immediately return the money or other valuables received in excess of or in violation of the prescribed standards to the offering party. In which case, the public official concerned may request the expenses for return thereof from the head of the agency to which he or she belongs, by attaching documentary evidence. If the money or other valuables to be returned are subject to loss, decay or deterioration, if it is difficult to return them because the name or address of the offering party is not obvious or if there are other unavoidable reasons for not returning them, the public official concerned shall immediately report such fact to the head of his or her agency or the Code of Conduct Officer and then dispose them according to the decisions by the head of the agency.

Cases of Disposal of Prohibited Gifts

The U.S. Code of Conduct

- An employee who has received a gift that cannot be accepted under this Code shall return any tangible item to the donor or pay the donor its market value. When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.
- For any entertainment, favor, service, benefit or other intangible, an employee who has received it shall reimburse the donor the market value. An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift.
- **Example)** To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth $200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor $200.

3.2.6 Supplementary Provisions

The supplementary provisions are stipulating at least once-a-year education on the code of conduct, designation of code of conduct officer, and operation of code of conduct by agency.

3.3 Major Data Regarding the Code of Conduct for Public Officials

3.3.1 Cases of Breach of the Code

The table below shows cases of breach of the code, reported from May 2003 to 2012.

<Table> Cases of Breach of the Code (May 2003 – 2012)

Type of breach	Total	Giving and receiving money, valuables, or entertainment	Using public budget for unspecified purpose	Influence peddling	Personal use of public property	Reporting outside lecture	Prohibition of borrowing money	Hampering fair performance of duty	Notifying festivities and funerals, and receiving money thereof	Others
No. of cases	10,134	5,216	3,136	441	403	329	116	92	84	315
Proportion (%)	100	51.5	30.9	4.4	4.0	3.2	1.1	0.9	0.8	3.1

To look into cases of the breach of the code for the past nine years, 5,216 cases which take up 51.5% out of the total, are cases of giving and receiving money, valuables, or entertainment. Along with 3,136 cases of use of public budget for unspecified use which account for 30.9%, the two types of breach make up 82.4% out of all the cases of the breach of the code (ACRC, 2013).

3.3.2 Cases of Disposition against Breach of the Code

<Table> Cases of Disposition against Breach of the Code (May 2003 - 2012)

Type of Disposition	Total	Disciplinary Action							Warning • caution	Others (admonition, etc.)	Pending
		Subtotal	Expulsion	Dismissal	Demotion	Suspension	Wage cut	Reprimand			
No. of cases	10,134	4,533	734	519	29	946	1,054	1,251	4,620	926	55
Proportion (%)	100	44.7	7.2	5.1	0.3	9.3	10.4	12.4	45.6	9.15	0.55

By type of disposition against breach of the code, disciplinary actions take up 46.5%, which include reprimand, wage cut, suspension, expulsion, dismissal, and demotion in the named order. Other types of disposition such as warning or caution, and other actions such as admonition, account for 51.6% (ACRC, 2013).

3.3.3 Cases of Return of Money or Valuables Prohibited by the Code

<Table> Cases of Return of Money or Valuables Prohibited by the Code (2006 – 2012: No. of cases, KRW 1mn)

Type of organization	Total	Central government departments	City governments/local governments	Educational offices
No. of cases	32,407	26,694	4,632	1,081
Value	3,244,412	3,176,776	584,733	85,903

The table above about cases of return of money or other valuables prohibited in the code shows that the total number of such return cases was 32,407 from 2006 to 2012, and the total value returned was about KRW 3.244 billion. By organization, central government departments recorded the highest number of returns at 26,694 with total value of KRW 3.176 billion, while city and local governments recorded 4,632 returns at KRW 584 million, and educational offices recorded 1,081 returns at KRW 85.9 million (ACRC, 2013).



Discussions and Exercise

- Find provisions on giving and receiving gifts, misuse of public position, use of public budget for unspecified purposes, and conflict of interest in your own country's code of conduct, and compare the provisions with those of other countries stated in this textbook. Then, study actual cases and make presentation on them.

References

Chapter 1

※ Local Bibliography [omitted]

- Andvig, J. C., Fjeldstad, O.-H., Amundsen, I., Sjssener, T., and Søreide, T. 2000. "Research on Corruption: A Policy Oriented Survey," Final Report Commissioned by NORAD.
- Cobb, L. and Gonzalez. 2005. "Corruption as a System of Interlocking Vicious Cycles: Lessons from NationLab," mimeo. Available at http://www.aetheling.com/NL/docs/NL-Concept-of-Corruption.pdf.
- Heidenheimer, A. J., 1989, "Perspectives on the Perception of Corruption., in A. J. Heidenheimer, M. Johnston and V. T. LeVine (eds.), Political Corruption: A Handbook (New Brunswick: Transaction Publishers).
- Huberts, L. W. J. C. 1998. "What can be Done against Public Corruption and Fraud: Expert Views on Strategies to Protect Integrity," Crime, Law and Social Change 29: 209-224.
- Lambsdorff, J. G. 2007. The Institutional Economics of Corruption and Reform: Theory, Evidence, and Policy (New York: Cambridge University Press).
- McCusker, R. 2006. "Review of Anti-Corruption Strategies," Technical and Background Paper No. 23, Australian Institute of Criminology, Australian Government.
- Organisation for Economic Co-operation and Development (OECD), 2011, Convention on Combating Bribery of Foreign Public Officials in International Business Transaction and Related Documents (Paris: OECD).
- Pellegrini, L. and Gerlagh, R. 2008. "Causes of Corruption: A Survey of Cross-country Analyses and Extended Results," Economics of Governance 9: 245-263.
- Rohwer, A. 2009. "Measuring Corruption: A Comparison between the Transparency International's Corruption Perception Index and the World Bank's Governance Indicators," CESifo DICE Report 3.
- Rose-Ackerman, S. 1999. Corruption and Government: Causes, Consequences, and Reform (New York: Cambridge University Press).
- United Nations, 2004a, United Nations Convention Against Corruption (New York:

United Nations). Available at http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

- United Nations, 2004b, United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators (Vienna, United Nations).
- USAid, 2009, Anticorruption Assessment Handbook: Final Report. Available at http://transition.usaid.gov/our_work/democracy_and_governance/technical_areas/anticorruption_handbook/index.html.

Chapter 2

- Banner, H. and de Hann, I.(2008), "SAINT: A Tool to Assess the Integrity of Public Sector Organizations," International Journal of Government Auditing 35(2).
- Bureau Integriteitsbevordering Openbare Sector(BIOS), 2003, "A New Integrity Instrument," mimeo.
- Griffith University and Transparency International Australia, 2005, "Chaos or Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems," National Integrity Systems Assessment (NISA) Final Report.
- Johnson, M. and Kpundeh, S. (2002). "The Measurement Problem: A Focus on Governance," Forum on Corruption and Society 2(1): 33-44.
- Kaufmann, D., Kraay, A. and Mastruzzi, M., 2006, "Measuring Corruption: Myths and Realities," mimeo. World Bank.
- Lam, S. 2011, "Tackling Corruption: The Hong Kong Experience," Resource Material Series No. 83, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).
- Organisation for Economic Co-operation and Development (OECD) and Asian Development Bank (ADB), 2006, Anti-Corruption Policies in Asia and the Pacific: Progress in Legal and Institutional Reform in 25 Countries (Manila: ADB). Available at http://www.oecd.org/site/adboecdanti-corruptioninitiative/36832820.pdf.
- Pope, J., 2000, "Confronting Corruption: The Elements of a National Integrity System," in TI Source Book 2000 (Berlin: Transparency International).
- Rohwer, A. 2009. "Measuring Corruption: A Comparison between the Transparency International's Corruption Perception Index and the World Bank's Governance Indicators," CESifo DICE Report 3.
- Saisana, M. and Saltelli, A., 2012, "Corruption Perceptions Index 2012: Statistical

Assessment," JRC Scientific and Policy Reports, European Commission.

- Treisman, D. (2000). "The Causes of Corruption: A Cross-national Survey," Journal of Public Economics 76(3): 399-457.
- United Nations Development Programme (UNDP), 2009, A Trainer's Manual on Measuring Corruption at the Country Level (New York: UNDP).
- United Nations Office on Drugs and Crime (UNODC), 2004, The Global Programme Against Corruption: UN Anti-Corruption Toolkit (Vienna: UNODC).

Chapter 3

- International Labour Organization Thesaurus(2005)
- OECD(2011) G20 Anti-Corruption Action Plan, Action Point 7: Protection of Whistleblowers
- OECD(2012. 4). Whistleblower Protection

Chapter 4

- Australian Government(2013). APS Values and Code of Conduct, http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-an d-code-of-conduct, search date: March 18, 2013
- Bowman, James(2001). From Codes of Conduct to Codes of Ethics, in Handbook of Administrative Ethics, edited by Terry Cooper, New York: Marcel Dekker.
- Bruce, Willa Marie(1998). Code of Conduct, in International Encyclopedia of Public Policy and Administration, edited by Sharfritz, Jay M., Boulder, Colorado: Westview Press.
- Cooper, Terry L.(2012). Responsible Administrator: An Approach to Ethics for the Administrative Role, San Francisco: Jossey-Bass.
- Cabinet Office, UK(2010). Ministerial Code, https://www.gov.uk/government/publications/ministerial-code, search date : April 24, 2013.
- Civil Service Code (2010). UK Civil Service Code.
- Civil Service Commissioner(2011). Annual Report 2009/10, http://civilservicecom mission.independent.gov.uk/wp-content/uploads/2012/03/Annual%20Report%2009-10.pdf, final search date: May 27, 2013.
- Civil Service Commission(2013). Civil Service Code, http://civilservicecommission.independent.gov.uk/civil-service-code/, final search date: May 27, 2013.

- Ethicsphere (2013). Government Contractor Ethics 08 Rankings. http://ethisphere.com/wp-content/themes/ethisphere-2009/pdf/govtcontractorupdated.pdf. search date: April 26, 2013.
- European Union (2000). Recommendation No. R(2000) 10 fo the Committee of Ministers to Member states on codes of conduct for public officials.
- Gilman, Stuart C.(2005). Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Success and Lessons, Prepared for the PREM, the World Bank.
- Gay, Oonagh(2012). The Ministerial Code, www.parliament.uk/briefing-papers/sn03750.pdf, search date: April 24, 2013.
- Legal Information Institute(2013). Standards of Ethical Conduct for Employees of the Executive Branch, Cornell University Law School. http://www.law.cornell.edu/cfr/text/5/2635, search date: March 18, 2013.
- OECD(1998). Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service.
- OECD(2013). Ethics Codes and Codes of Conduct in OECD Countries.
- Palidauskaite, Jolanta(2003). Codes of Conduct for Public Servants in Eastern and Central European Countries: Comparative Perspective, EGPA 2003, www.oecd.org/mena/governance/35521438.pdf.
- Treasury Board of Canada Secretariat(2003). Values and Ethics Code for the Public Service 2003. http://www.oecd.org/mena/governance/35528015.pdf
- Treasury Board of Canada Secretariat(2013). Policy on Conflict of Interest and Post-Employment. http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25178&section=text
- United States Office of Government Ethics(2013). 5 C.F.R. Part 2635: Standards of Ethical Conduct for Employees of the Executive Branch.
- United Nation(1997). Resolution Adopted By the General Assembly[on the report of the Third Committee (A/51/610)]. - Action against corruption. http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010930.pdf. search date: April 7, 2013.
- Values and Ethics Code for the Public Service 2012. http://www.tbs-sct.gc.ca/pol-cont/25049-eng.pdf
- Verizonwireless (2013). Your Work Your Code of Conduct. http://aboutus.verizonwireless.com/pdfs/Code_of_Conduct.pdf. search date: April 26, 2013.

Appendix 1. CPIA Governance Rating Questionnaire

CPIA rating in Transparency, Accountability and Corruption in the Public Sector		
Score		Guidelines
1	a	There are no checks and balances on executive power. Public officials use their positions for personal gain and take bribes openly. Seats in the legislature and positions in the civil service are often bought and sold.
	b	Government decision-making is secretive. The public is prevented from participating in or learning about decisions and their implications.
	c	The state has been captured by narrow interests (economic, political, ethnic, and/or military). Administrative corruption is rampant.
2	a	There are only ineffective audits and other checks and balances on executive power. Public officials are not sanctioned for failures in service delivery or for receiving bribes.
	b	Decision making is not transparent, and government withholds information needed by the public and civil society organizations to judge its performance. The media are not independent of government or powerful business interests.
	c	Boundaries between the public and private sector are ill-defined, and conflicts of interest abound. Laws and policies are biased towards narrow private interests. Implementation of laws and policies is distorted by corruption, and resources budgeted for public services are diverted to private gain.
3	a	External accountability mechanisms such as inspector-general, ombudsman, or independent audit may exist, but have inadequate resources or authority
	b	Decision making is generally not transparent, and public dissemination of information on government policies and outcomes is a low priority. Restrictions on the media limit its potential for information-gathering and scrutiny.
	c	Elected and other public officials often have private interests that conflict with their professional duties.
4	a	External accountability mechanisms limit somewhat the degree to which special interests can divert resources or influence policy making through illicit and non-transparent means. Risks and opportunities for corruption within the executive are reduced through adequate monitoring and reporting lines.
	b	Decision making is generally transparent. Government actively attempts to distribute relevant information to the public, although capacity may be a constraint. Significant parts of the media operate outside the influence of government or powerful business interests, and media publicity provides some deterrent against unethical behaviour.
	c	Conflict of interest and ethics rules exist and the prospect of sanctions has some effect on the extent to which public officials shape policies to further their own private interests.
5	a	Accountability for decisions is ensured through a strong public service ethic reinforced by audits, inspections, and adverse publicity for performance failures. The judiciary is impartial and independent of other branches of government. Authorities monitor the prevalence of corruption and implement sanctions transparently.
	b	The reasons for decisions, and their results and costs, are clear and communicated to the general public. Citizens can obtain government documents at nominal cost. Both state-owned (if any) and private media are independent of government influence and fulfil critical oversight roles.
	c	Conflict of interest and ethics rules for public servants are observed and enforced. Top government officials are required to disclose income and assets, and are not immune from prosecution under the law for malfeasance.
6		Criteria for "5" on all three sub-ratings are fully met. There are no warning signs of possible deterioration, and there is widespread expectation of continued strong or improving performance.

Appendix 2. Transparency International Bribe Payers Survey Questionnaire

SURVEY QUESTIONNAIRE

Please answer the following two questions in relation to your business dealings in this country, with foreign firms:

1. In your principal lines of business in this country, do you have business relationships – for example as a supplier, client, partner or competitor – with companies whose headquarters are located in any of the following countries?

Argentina	1
Australia	2
Belgium	3
Brazil	4
Canada	5
China	6
France	7
Germany	8
Hong Kong	9
India	10
Indonesia	11
Italy	12
Japan	13
Malaysia	14
Mexico	15
Netherlands	16
Russia	17
Saudi Arabia	18
Singapore	19
South Africa	20
South Korea	21
Spain	22
Switzerland	23
Taiwan	24
Turkey	25
United Arab Emirates	26
United Kingdom	27
United States	28

2. For each of the countries you have selected, could you please tell us, using a scale of 1 to 5 where 1 means never and 5 means almost always, how often do firms headquartered in that country engage in bribery in this country?

Never				Almost Always
1	2	3	4	5

Don't know 6
No answer 7

Please answer these questions in relation to the sectors you have business relationships with, in this country or abroad:

3. In your principal line of business, with which of the following sectors do you have business relationships, for example as a supplier, client, partner or competitor?

Banking and finance	1
Real estate, property, legal and business services	2
Heavy manufacturing (including industrial machinery, vehicles and building materials)	3
Arms, defence and military	4
Civilian aerospace	5
Public works contracts and construction	6
Information technology (computers and software)	7
Consumer services (retail, hotels, restaurants and leisure)	8
Light manufacturing (including food and beverage products and household goods)	9
Mining	10
Agriculture	11
Fisheries	12
Forestry	13
Pharmaceutical and healthcare	14
Oil and gas	15
Utilities	16
Power generation and transmission	17
Telecommunications and equipment	18
Transportation and storage	19

4. For each of the sectors you have a relationship with, in your experience, how often do firms in each of these sectors engage in bribery? Please use a scale of 1-5 where 1 means never and 5 means almost always.

Never				Almost Always
1	2	3	4	5

Don't know 6
No answer 7

5. Using the same scale, in your experience, how often do firms in each sector engage in bribery of low-level public officials, for example to speed up administrative processes and/or facilitate the granting of licenses?

Never				Almost Always
1	2	3	4	5

Don't know 6
No answer 7

6. Using the same scale, in your experience, how often do firms in each sector use improper contributions to high-ranking politicians or political parties to achieve influence?

Never				Almost Always
1	2	3	4	5

Don't know 6
No answer 7

7. Using the same scale, in your experience, how often do firms in each sector pay or receive bribes from other private firms?

Appendix 3. 2014 Survey on the Integrity of Public Organizations

2014 Survey on the Internal Integrity of Public Organizations

Hello. The Anti-Corruption and Civil Rights Commission is conducting a survey on the integrity level of △△△ (name of organization) under the Anti-Corruption Act. This part is to assess internal integrity of your organization such as personnel affairs, budget execution, and work order.
Your personal information including e-mail was collected and provided to assess integrity level according to the Article 12 and the Article 29 of the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission and will not be distributed for commercial purposes.
Your responses will remain strictly confidential in accordance with the Statistics Act. All the information provided by you will be codified and encrypted while being processed or collected.
Your honest opinions will contribute to building reasonable working environment and culture while earning trust from the public by improving integrity level of your organization. It would be appreciated if you take a moment to participate in the survey to make public service sector more transparent.

The following questions are for data classification.

SQ1. Which group does **your current organization** belongs to?

1. Central government agency
2. Provincial or metropolitan government agency
3. City or lower-level local government agency
4. Office of education
5. Public service-related organization

SQ2. **How many years** in total have you been **working for** □□ (name of organization)?

1. 10 years or less 2. 11 to 20 years
3. 21 to 30 years 4. 31 years or more

Please look at the questions carefully and choose the responses most similar to your opinion.

Cultural Integrity Index

■ Organizational Culture

Q1. Do you believe members of your organization **handle their duties in a transparent manner**?

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree
①	②	③	④	⑤	⑥	⑦

Q2. Do you believe members of your organization **handle their duties in an unjust manner to pursue personal interests**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree
①	②	③	④	⑤	⑥	⑦

Q3. Do you believe members of your organization are **affected by relationships based on region, academic background, and family members** in dealing with their duties?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree
①	②	③	④	⑤	⑥	⑦

Q4. Do you believe members of your organization **exercise influence or make solicitations in an unjust manner** regarding their duties?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree
①	②	③	④	⑤	⑥	⑦

Q5. Do you believe members of your organization **use internal information for their own interests or provide it to a third party**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree
①	②	③	④	⑤	⑥	⑦

Q6. Do you believe members of your organization **offer or receive money, valuables, entertainment, or convenience to or from other employees or duty-related parties**?

Money or valuables: Money, vouchers, complimentary tickets, gift cards, art works, gifts, excessive or improper donation, honorarium, consultancy fee, parting gifts, etc.

Entertainment: Meal or drink worth ₩30,000 or more per person, golf games, domestic or international travels, etc.

Convenience: Accommodation, transport, event sponsorship, improper business support, job opportunities to family members or relatives of the person in charge of the duty, special benefits to real estate transactions, etc.

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree
①	②	③	④	⑤	⑥	⑦

■ Anti-Corruption System

Q7. Do you believe **whistleblowers of corruption or public interest can be sufficiently protected** at your organization?

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree
①	②	③	④	⑤	⑥	⑦

Q8. Do you believe your organization **strictly punishes corrupt employees**?

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree
①	②	③	④	⑤	⑥	⑦

Q9. Do you believe **internal corruption control system** at your organization **is working properly**?

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree
①	②	③	④	⑤	⑥	⑦

Duty Integrity Index

■ Personnel Affairs

Q10. How often do you believe **money, valuables, entertainment, convenience, or favors are provided in relation to personnel affairs** such as recruitment, promotion, transfer, and performance evaluation at your organization?

Very Often	Often	Slightly often	Neutral	Not much	Almost never	Never
①	②	③	④	⑤	⑥	⑦

Q11. **To what extent do you believe providing money, valuables, entertainment, or convenience affects the result of personnel affairs** at your organization?

Very Often	Often	Slightly often	Neutral	Not much	Almost never	Never
①	②	③	④	⑤	⑥	⑦

Q12. Have you **provided money or valuables in relation to personnel affairs** such as promotion and transfer **in the past 12 months**?

1. Yes
   ☞ **Go to Q12-1, Q12-2, and Q13.**
2. No
   ☞ **Go to Q13.**

Q12-1. **(Only for those who answered "Yes")** How often have you **provided money or valuables in total in relation to personnel affairs** such as promotion and transfer **in the past 12 months**?

1. Once 2. Twice 3. Three times
4. Four to five times 5. Six to ten times
6. 11 times or more

Q12-2. **(Only for those who answered "Yes") How much** have you **provided in total in relation to personnel affairs in the past 12 months**?

1. ₩ 500,000 or less 2. ₩ 510,000 to 1 million
3. ₩ 1.01 to 2 million 4. ₩ 2.01 to 3 million
5. ₩ 3.01 to 5 million 6. ₩ 5.01 million or more

Q13. Have you **provided entertainment or convenience in relation to personnel affairs in the past 12 months**?

1. Yes
   ☞ **Go to Q13-1, Q13-2, and Q14.**
2. No
   ☞ **Go to Q14.**

Q13-1. **(Only for those who answered "Yes")** How many times **in total** have you **provided entertainment or convenience in relation to personnel affairs in the past 12 months**?

1. Once 2. Twice 3. Three times
4. Four to five times 5. Six to ten times
6. 11 times or more

Q13-2. **(Only for those who answered "Yes") How much entertainment or convenience in total** have you **provided in relation to personnel affairs in the past 12 months**?

1. ₩ 500,000 or less 2. ₩ 510,000 to 1 million
3. ₩ 1.01 to 2 million 4. ₩ 2.01 to 3 million
5. ₩ 3.01 to 5 million 6. ₩ 5.01 million or more

Q14. **(For respondents who answered "Yes" to one or more questions from Q12 to Q13)** What was the **reason for providing money, valuables, entertainment, or convenience in relation to personnel affairs**? Please indicate **all** that apply.

1. At the request of those involved in personnel affairs such as superiors or personnel committee members
2. To collect relevant information
3. As an appreciation for handling personnel affairs
4. To prevent disadvantages in terms of personnel affairs
5. As a customary practice
6. Others ( )

Q15. Have your **colleagues, superiors, or subordinates provided money, valuables, entertainment, or convenience in relation to personnel affairs** such as employment, promotion, transfer, and performance evaluation **in the past 12 months**?

Yes	No
①	②

■ Budget Execution

Q16. How often do you believe **the budget is executed in an illegal or unjust manner** at your organization?

Very Often	Often	Slightly often	Neutral	Not much	Almost never	Never
①	②	③	④	⑤	⑥	⑦

Q17. Are there any **cases where business promotion expenses were executed in an illegal or unjust manner in the past 12 months**? Please respond **including cases of other employees** at your organization including yours.

1. Yes ☞ **Go to Q17-1, Q17-2, and Q18.**
2. No ☞ **Go to Q18.**

Q17-1. **(Only for those who answered "Yes") How many times in total did you use business promotion expenses in an illegal or unjust manner in the past 12 months**?

1. Once a year 2. Two to three times a year
3. Once or twice a quarter
4. Once a month 5. Twice a month
6. More than three times a month

Q17-2. **(Only for those who answered "Yes") How much business promotion expenses did you spend in total in an illegal or unjust manner in the past 12 months**?

1. ₩ 500,000 or less 2. ₩ 510,000 to 1million
3. ₩ 1.01 to 3 million 4. ₩ 3.01 to 5 million
5. ₩ 5.01 to 10 million
6. ₩ 10.01 million or more

Q18. Were there any cases where **operating or travel expenses were used in an illegal or unjust manner in the past 12 months**? **Please respond including cases of other employees** at your organization including yours.

1. Yes ☞ **Go to Q18-1, Q18-2, and Q19.**
2. No ☞ **Go to Q19.**

Operating expenses refer to public utility charges, taxes, food costs, rental fees, equipment and facility maintenance costs, and other operating costs.

Q18-1. **(Only for those who answered "Yes") How many times in total did you use operating or travel expenses in an illegal or unjust manner in the past 12 months**?

1. Once a year 2. Two to three times a year
3. Once or twice a quarter
4. Once a month 5. Twice a month
6. More than three times a month

Q18-2. **(Only for those who answered "Yes") How much operating or travel expenses did you spend in total in an illegal or unjust manner in the past 12 months**?

1. ₩ 500,000 or less 2. ₩ 510,000 to 1million
3. ₩ 1.01 to 3 million 4. ₩ 3.01 to 5 million
5. ₩ 5.01 to 10 million
6. ₩ 10.01 million or more

Q19. How many times in total were **project expenses used in an illegal or unjust manner at your organization in the past 12 months**? **Please respond including cases of other employees** at your organization including yours.

1. Yes ☞ **Go to Q19-1, Q19-2, and Q20.**
2. No ☞ **Go to Q20.**

Project expenses refer to the budget allocated for performing the duty of the organization such as costs for loan, fund management, facility project, research, service, support for affiliated and private organizations, and staff training.

Q19-1. **(Only for those who answered "Yes") How many times in total did you use project expenses in an illegal or unjust manner in the past 12 months**?

1. Once a year 2. Two to three times a year
3. Once or twice a quarter
4. Once a month 5. Twice a month
6. More than three times a month

Q19-2. **(Only for those who answered "Yes") How much project expenses did you spend in total in an illegal or unjust manner in the past 12 months**? Please indicate **the amount you used illegally and improperly**, not the total amount of the project..

1. ₩ 10 million or less 2. ₩ 10.01 to 50 million
3. ₩ 50.01 to 100 million 4. ₩ 100.01 to 500 million
5. ₩ 500.01 million to 1 billion
6. ₩ 1 billion and 10,000 or more

Q20. **(For those who answered "Yes" to one or more questions from Q17 to Q19)** What do you believe are the **reasons for illegal or unjust budget execution**? Please indicate **all** that apply.

1. Insufficient operating, travel, and business promotion expenses
2. As a customary practice
3. As ordered by superiors
4. External pressure, solicitation, lobby, etc
5. Lack of ethics among individuals
6. Others (Please specify:_____)

■ Faimess in Work Order

Q21. How often do you believe **the senior staff of your organization does not actively perform their given duties or avoids or imputes their responsibilities**?

Very often	Often	Slightly often	Neutral	Not much	Almost never	Never
①	②	③	④	⑤	⑥	⑦

Q22. How **often** do you believe **the senior staff of your organization gives unjust work instructions**?

Very often	Often	Slightly often	Neutral	Not much	Almost never	Never
①	②	③	④	⑤	⑥	⑦

Q23. How **often** do you believe **disadvantageous treatment has been given as a result of non-compliance with the unjust work instructions** of the senior staff at your organization?

Very often	Often	Slightly often	Neutral	Not much	Almost never	Never
①	②	③	④	⑤	⑥	⑦

Q24. Have you been **given unjust work instructions by the senior staff** while performing your duty **within the past 12 months**? (Please respond based on your own personal experience.)

1. Yes ☞ **Go to Q24-1.**
2. No ☞ **Go to Q25.**

Q24-1. **(Only for those who answered "Yes")** How many occasions **in total** were you given **unjust work instructions** from the senior staff **within the past 12 months**?

1. Once a year 2. Two to three times a year
3. Once or twice a quarter
4. Once a month 5. Twice a month
6. More than three times a month

■ Internal Response for Outside Corruption

Q25. Have your **colleagues, superiors, or subordinates offered or received money, valuables, entertainment, or convenience to or from outside duty-related parties** in the past 12 months? Please respond **excluding the cases you learned from audit or media reports**.

Yes	No
①	②

Q26. Have you received **orders or requests asking for good reviews** on the Survey on the Integrity of Public Organizations conducted by the Anti-Corruption and Civil Rights Commission?

1. Yes ☞ **Go to Q26-1.**
2. No ☞ **Go to Q27.**

Q26-1. **(If "Yes")** How were you asked and what did they request? Please refer to the following and specify in detail.

For instance, instructions or recommendations made via **intranet, e-mail, phone, text message, educational session, or meeting,** etc.

(_____)

The following survey asks the **willingness of the head (chief executive)** of your organization **to improve the integrity of your organization and the effectiveness of anti-corruption efforts.**

Q27. **To what extent** do you believe **the head of your organization is making efforts to improve anti-corruption and integrity levels** of your organization given the overall situation?

Never	Almost never	Not much	Neutral	Slightly	Greatly	Very Greatly
①	②	③	④	⑤	⑥	⑦

Q28. **To what extent** do you believe **the senior staff of your organization takes the lead in improving anti-corruption and integrity levels**?

Never	Almost never	Not much	Neutral	Slightly	Greatly	Very Greatly
①	②	③	④	⑤	⑥	⑦

Q29. **To what extent** do you believe your organization's **anti-corruption or integrity levels improved compared to a year ago**?

Never	Almost never	Not much	Neutral	Slightly	Greatly	Very Greatly
①	②	③	④	⑤	⑥	⑦

The following survey is about the **integrity assessment of the agency that supervises your organization. This is not related to the integrity assessment of your own organization.**

Q30. **Have you, your colleagues, or executives of your organization provided money, valuables, entertainment, or convenience to the public officials of △△, the supervising agency of your organization in the past 12 months**?

Yes	No
①	②

Q31. Do you believe **the Survey on the Integrity of Public Organizations** conducted by the Anti-Corruption and Civil Rights Commission **is effective in preventing corruption and improving anti-corruption efforts**?

Never	Almost never	Not much	Neutral	Slightly	Greatly	Very Greatly
①	②	③	④	⑤	⑥	⑦

Thank you for participating in the Integrity Survey conducted by the Anti-Corruption and Civil Rights Commission

2014 Survey on the External Integrity of Public Organizations

Hello. The Anti-Corruption and Civil Rights Commission of Korea is conducting survey on the integrity of △△ (name of organization) according to the Anti-Corruption Act. I am ○○○ (name of interviewer) from □□□, conducting a survey at the request of the ACRC. The survey is conducted every year to gather information needed to devise anti-corruption policies. Your personal information and responses will remain strictly confidential in accordance with the Statistics Act. It would be appreciated if you take a moment to answer the following questions to build more transparent public service sector.

▣ Name of public organization: ____ ▣ Name of public service assessed: _____
▣ Presence of agent : 1. Public service user 2. Agent ▣ Experience in administrative disposition: 1. Yes 2. No

SQ1. Have you handled △△ public service with public officials (employees) from □□ (name of organization) for a year **from July 2013 to the end of June 2014**?

1. Yes 2. No ☞ **Finish the Interview**

Please answer the following questions based only on your experience for a year from July 2013 to the end of June 2014 while handling △△ public service with public officials (employees) from □□ (name of organization). Please listen to each of the following questions carefully and choose the answer most similar to your opinion.

Corruption Risk Index

■ Transparency

Q1. Do you believe **procedures or standards** of handling public service **are disclosed in a transparent manner**?

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Do not Know/ No answer
①	②	③	④	⑤	⑥	⑦	⑨

Q2. Do you believe **procedures or standards** of handling public service **are practical enough to apply in reality**?

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Do not Know/ No answer
①	②	③	④	⑤	⑥	⑦	⑨

■ Accountability

Q3. Do you believe the public officials in charge **make active efforts to handle the public service**? (e.g. meeting the deadline, giving explanations, etc.)

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Do not Know/ No answer
①	②	③	④	⑤	⑥	⑦	⑨

Q4. Do you believe public officials (employees) in charge **abuse their authority in dealing with public service**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Do not Know/ No answer
①	②	③	④	⑤	⑥	⑦	⑨

Corruption Index

■ Corruption Perception

Q5. Do you believe public officials (employees) related to **△△ public service of □□ (name of organization) provide special benefits to some people in an unfair manner?**

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Do not Know/ No answer
①	②	③	④	⑤	⑥	⑦	⑨

Q6. Do you believe public officials (employees) **are affected by their relationships based on region, academic background, and family members** in handling public service?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Do not Know/ No answer
①	②	③	④	⑤	⑥	⑦	⑨

Q7. Do you believe public officials (employees) **exercise influence or make solicitations in an improper manner**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Do not Know/ No answer
①	②	③	④	⑤	⑥	⑦	⑨

Q8. Do you believe public officials (employees) related to the public service **handle their duty in un unjust manner to pursue their personal interests**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Do not Know/ No answer
①	②	③	④	⑤	⑥	⑦	⑨

■ Direct Experience of Corruption

※ Have you offered the following items (bribes, entertainment, or convenience) to public officials (employees) from □□ (name of organization) in the past 12 months? Your answers will be used as statistics only and will remain confidential in accordance with the Statistics Act. Your honest answers will be appreciated in making transparent public service sector.

Q9. Have you offered **money, gift cards, art works, or gifts**?

1. Yes.
☞ **Go to Q9-1, Q9-2, and Q10.**
2. No.
☞ **Go to Q10.**
3. Do not Know/ No answer
☞ **Go to Q10.**

Q9-1. **(If "Yes") How often have you offered money, gift cards, etc in total in the past 12 months?**

1. Once 2. Twice 3. Three times
4. Four to Five times 5. Six to Seven Times
6. Eight to ten times
7. 11 to 15 times 8. 16 times or more
9. Do not Know/ No answer

Q9-2. **(If "Yes") How much money, gift cards, etc have you offered in total in the past 12 months?**

1. ₩ 50,000 or less 2. ₩ 60,000-150,000
3. ₩ 160,000-300,000 4. ₩ 310,000-500,000
5. ₩ 510,000-1 million 6. ₩ 1.01-2 million
7. ₩ 2.01-30 million 8. ₩ 3.01-5 million
9. ₩ 5.01-10 million 10. ₩ 10.1 million or more
11. Do not Know/ No answer

Q10. Have you offered **excessive or improper honorarium, consultancy fee, or donation**?

1. Yes.
☞ **Go to Q10-1, Q10-2, and Q11.**
2. No.
☞ **Go to Q11.**
3. Do not Know/ No answer
☞ **Go to Q11.**

Q10-1. **(If "Yes") How often** have you **offered honorarium, consultancy fee, or donation in total in the past 12 months**?

1. Once 2. Twice 3. Three times
4. Four to Five times 5. Six to Seven Times
6. Eight to ten times
7. 11 to 15 times 8. 16 times or more
9. Do not Know/ No answer

Q10-2. **(If "Yes") How much honorarium, consultancy fee, or donation** have you **offered in total in the past 12 months?**

1. ₩ 50,000 or less 2. ₩ 60,000-150,000
3. ₩ 160,000-300,000 4. ₩ 310,000-500,000
5. ₩ 510,000-1 million 6. ₩ 1.01-2 million
7. ₩ 2.01-30 million 8. ₩ 3.01-5 million
9. ₩ 5.01-10 million 10. ₩ 10.1 million or more
11. Do not Know/ No answer

Q11. Have you provided **meal or drink worth more than ₩ 30,000 per person**?

1. Yes.
☞ **Go to Q11-1, Q11-2, and Q12.**
2. No.
☞ **Go to Q12.**
3. Do not Know/ No answer
☞ **Go to Q12.**

Q11-1. **(If "Yes") How often** have you **provided meal or drink worth more than ₩ 30,000 per person in total in the past 12 months**?

1. Once 2. Twice 3. Third
4. Four or Five times 5. Six or Seven Times
6. Eight to ten times
7. 11 to 15 times 8. 16 times or more
9. Do not Know/No answer

Q11-2. **(If "Yes") How much** have you **spent to provide meal or drink worth more than ₩ 30,000 per person in total the past 12 months**?

1. ₩ 50,000 or less 2. ₩ 60,000-150,000
3. ₩ 160,000-300,000 4. ₩ 310,000-500,000
5. ₩ 510,000-1 million 6. ₩ 1.01-2 million
7. ₩ 2.01-30 million 8. ₩ 3.01-5 million
9. ₩ 5.01-10 million 10. ₩ 10.1 million or more
11. Do not Know/ No answer

Q12. Have you provided **golf games or domestic/ international travels**?

1. Yes.
☞ **Go to Q12-1, Q12-2, and Q14.**
2. No.
☞ **Go to Q13.**
3. Do not Know/No answer
☞ **Go to Q14.**

Q12-1. **(If "Yes") How often** have you **provided golf games or domestic/international travels in total in the past 12 months?**

1. Once 2. Twice 3. Three times
4. Four to Five times 5. Six to Seven Times
6. Eight to ten times
7. 11 to 15 times 8. 16 times or more
9. Do not Know/ No answer

Q12-2. **(If "Yes") How much golf games or domestic/ international travels in total** have you **provided in the past 12 months?**

1. ₩ 50,000 or less 2. ₩ 60,000-150,000
3. ₩ 160,000-300,000 4. ₩ 310,000-500,000
5. ₩ 510,000-1 million 6. ₩ 1.01-2 million
7. ₩ 2.01-30 million 8. ₩ 3.01-5 million
9. ₩ 5.01-10 million 10. ₩ 10.1 million or more
11. Do not Know/ No answer

Q13. Have you provided **accommodation, transport, event sponsorship, or improper business support**?

1. Yes.
☞ **Go to Q13-1 and Q14.**
2. No.
☞ **Go to Q14.**
3. Do not Know/ No answer
☞ **Go to Q14.**

Q13-1. **(If "Yes") How often** have you **provided accommodation, transport, sponsorship, or improper business support in total in the past 12 months**?

1. Once 2. Twice 3. Three times
4. Four to Five times 5. Six to Seven Times
6. Eight to ten times
7. 11 to 15 times 8. 16 times or more
9. Do not Know/ No answer

Q14. Have you provided **job opportunities or benefits to real estate transactions to a family member or a relative of the public official in charge**?

1. Yes.
☞ **Go to Q14-1 and Q15-1.**
2. No.
☞ **Go to Q15-1.**
3. Do not Know/ No answer
☞ **Go to Q15-1.**

Q14-1. **(If "Yes") How often** have you **provided job opportunities or benefits to real estate transactions to a family member or a relative of the public official in charge in total in the past 12 months**?

1. Once 2. Twice 3. Three times
4. Four to Five times 5. Six to Seven Times
6. Eight to ten times
7. 11 to 15 times 8. 16 times or more
9. Do not Know/ No answer

Q15-1. **(Only for those who answered "Yes" to one or more questions from Q9 to Q14) When** have you **provided or offered above-mentioned item(s)?** Please indicate **all** that apply.

1. Before handling the duty
2. During handling the duty
3. After handling the duty
4. Frequently
5. On special occasions such as holidays or events held by the public organization
6. During transfer of the public official (employee) in charge
7. Others (Please specify:_____)
9. Do not know/ No answer

Q15-2. **(Only for those who answered "Yes" to one or more questions from Q9 to Q14)** What was the **reason for providing** above-mentioned item(s)? Please indicate **all** that apply.

1. At the request of the public official (employee) in charge
2. To speed up the work process
3. To collect relevant information
4. To alleviate or cancel the penalty
5. As an appreciation for service
6. As a customary practice or courtesy
7. Others (Please specify:_____)
9. Do not know/ No answer

■ Indirect Experience of Corruption

Q16. Have your **relatives, colleagues, or other employees in the same industry provided money, valuables, entertainment, or convenience to public officials (employees) in the past 12 months?** Please answer excluding the cases you learned from media reports.

Yes	No	Do not know/ No answer
①	②	⑨

Q17. Please specify one example if you want to make suggestions to improve institutions in order to prevent corruption of public officials **regarding △△ duty**.

_____

Q18. Have you **been asked** by a public official (employee) of □□ (name of organization) **to give good reviews if you participate in this year's Integrity Survey** conducted by the Anti-Corruption and Civil Rights Commission?

1. Yes ☞ **Go to Q18-1.**
2. No ☞ **Go to DQ1.**
9. Do not Know/ No answer ☞ **Go to DQ1.**

Q18-1. **(If "Yes")** How were you asked and what was the content of request?

_____

Questions for Data Classification

DQ1. Which age group do you fall under?

1. 20s 2. 30s 3. 40s
4. 50s 5. Over 60

■ Thank you for participating in this survey. ■

※ To be recorded by the interviewer.

DQ2. Gender : 1. Male 2. Female

2014 Policy Customer Survey on the Integrity of Public Organizations

Hello. The Anti-Corruption and Civil Rights Commission is surveying integrity level of △△ (name of organization) under the Anti-Corruption Act.
This is the Policy Customer Survey on the Integrity of Public Organizations. This part of the integrity level survey on △△ (name of organization) is developed for academia, reporters, members of the National Assembly, the Board of Audit and Inspection, and civil organizations, and others whose duties are related to △△ (name of organization).
Your responses will be used to develop anti-corruption policies. Your personal information and responses will remain strictly confidential under the Statistics Act. It would be appreciated if you take a moment to participate in the survey.

SQ1. Classification 1 **(automatically check DB)**

1. Expert ☞ **SQ2-1** 2. Duty-related person ☞ **SQ2-2**

SQ2-1. Expert **(automatically check DB)**

1. Academic or advisory committee member
2. Retired public official
3. Reporter 4. Aide of the National Assembly
5. Council member (aide)
6. Auditor from the Board of Audit and Inspection
7. Auditor from a supervisory organization
8. Civil auditor

SQ2-2. Duty-related person **(automatically check DB)**

1. Employee of a public institution
2. Member of an interest group
3. Member of a civic organization

SQ3. **(Except for those who chose 2 to SQ2-1)** Are you involved in a duty or an industry related to OO (name of organization)?

1. Yes ☞ **SQ4** 2. No ☞ **Finish the Interview**

Now we will start a survey on OO (name of organization). Please take a look at the survey and choose the responses most similar to your opinion.

Corruption Perception

Q1. Do you believe OO (name of organization) **pursues unnecessary projects or wastes budget**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q2. Do you believe employees of OO (name of organization) **exercise influence or make solicitations in an unjust manner**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q3. Do you believe employees of OO (name of organization) **handle public service in an unjust manner to pursue their personal interests**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q4. Do you believe employees of OO (name of organization) **provide special benefits to some people in an unjust manner**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q5. Do you believe employees of OO (name of organization) **are affected by their relationships based on region, academic background, or family members**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q6. Do you believe employees of OO (name of organization) **receive money, valuables, entertainment, or conveniences** from a duty-related person?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q7. Do you believe OO (name of organization) **discloses its main policies or business information in a transparent manner**?

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q8. Do you believe employees of OO (name of organization) **abuse their authority in handling their duty**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q9. Do you believe **public officials retired** from OO (name of organization) **attempt to lobby or influence OO**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q10. Do you believe employees of OO (name of organization) **use internal information for personal purposes or provide it to a third party**?

Strongly agree	Agree	Slightly agree	Neutral	Slightly disagree	Disagree	Strongly disagree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Corruption Control

Q11. Do you believe OO (name of organization) **strictly detects or punishes corruption**?

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q12. Do you believe **whistleblowers of corruption or public interest are sufficiently protected** at OO (name of organization)?

Strongly disagree	Disagree	Slightly disagree	Neutral	Slightly agree	Agree	Strongly agree	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q13. **To what extent** do you believe OO (name of organization) **makes efforts to prevent corruption and improve integrity** of the organization?

Never	Almost never	Not much	Neutral	Slightly	Greatly	Very greatly	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Corruption Experience

Q14. (Only for those related to the duty) **Have you, your friends and relatives, colleagues, other employees in the same industry provided money, valuables, entertainment, or convenience to employees of OO (name of organization) in the past 12 months?**

Yes	No	Don't know/ No response
①	②	⑨

Q14. (Only for experts) **Have people who are related to the duty of OO (name of organization) provided money, valuables, entertainment, or convenience to employees of OO (name of organization) in the past 12 months?**

Yes	No	Don't know/ No response
①	②	⑨

Now we will ask questions on **willingness of the head (chief executive) of OO (name of organization) to improve integrity and the effectiveness of anti-corruption efforts.**

Q15. **To what extent** do you believe **the head of OO (name of organization) makes efforts to improve anti-corruption and integrity levels** given the overall circumstances?

Never	Almost never	Not much	Neutral	Slightly	Greatly	Very greatly	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

Q16. **To what extent** do you believe **senior staff** of OO (name of organization) **takes the lead in improving anti-corruption and integrity levels**?

Never	Almost never	Not much	Neutral	Slightly	Greatly	Very greatly	Don't know/ No response
①	②	③	④	⑤	⑥	⑦	⑨

■ Thank you for participating in the survey ■

Appendix 4. Hong Kong ICAC Assignment Studies

http://www.ichannel.icac.hk/youtube/play.html?video=XI2PpfT-M_8