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\* [CAC/COSP/IRG/2023/1](#).



## II. Executive summary

### Republic of Korea

#### 1. Introduction: overview of the legal and institutional framework of the Republic of Korea in the context of implementation of the United Nations Convention against Corruption

The Republic of Korea signed the United Nations Convention against Corruption on 10 December 2003 and ratified it on 27 March 2008. The Convention entered into force for the Republic of Korea on 26 April 2008.

The country's implementation of chapters III and IV of the Convention was reviewed in the third year of the first review cycle, and the executive summary of that review was issued on 10 December 2013 (CAC/COSP/IRG/I/3/1/Add.7).

Generally accepted rules of international law and international conventions, once ratified and in effect, form an integral part of the country's domestic law and override contrary provisions (art. 6 of the Constitution).

The national legal framework against corruption includes the Criminal Act, the Criminal Procedure Act, the Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission (ACRC Act), the Improper Solicitation and Graft Act, the Public Service Ethics Act, the Act on the Prevention of Conflict of Interest Related to Duties of Public Servants (Conflict of Interest Prevention Act), the Act on the Protection of Public Interest Whistle-blowers, the State Public Officials Act, the Act on Special Cases concerning the Confiscation and Return of Property Acquired through Corrupt Practices (Confiscation Act), the Act on Prohibition of False Claims for Public Funds and Recovery of Illicit Profits, the Act on Regulation and Punishment of Criminal Proceeds Concealment (Proceeds Act), the Financial Transaction Reports Act, the Act on International Judicial Mutual Assistance in Criminal Matters (Mutual Legal Assistance Act) and the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc. (Act on Special Cases concerning Narcotics Trafficking).

Competent authorities and bodies with mandates relevant to preventing and countering corruption include, primarily, the Anti-Corruption and Civil Rights Commission (ACRC), the Anti-Corruption Policy Consultative Council, the Public-Private Consultative Council for Transparent Society and the Board of Audit and Inspection.

#### 2. Chapter II: preventive measures

##### 2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

The Republic of Korea established a five-year comprehensive anti-corruption plan for the period 2018–2022. The plan was developed by the Anti-Corruption Policy Consultative Council on the basis of broad consultations with civil society through an online platform for citizens and through the Public-Private Consultative Council for Transparent Society, which consists of representatives from the public and private sectors and civil society and was formed to promote the participation of civic groups in developing and monitoring anti-corruption policy. The plan establishes 50 tasks to be implemented by government agencies in four strategic areas.

Oversight and coordination in the implementation of comprehensive anti-corruption policies are ensured primarily by the Anti-Corruption Policy Consultative Council, which is composed of 20 members, including the President as the Chair, as well as the Chair of ACRC and relevant ministers. To monitor the implementation of the plan, ACRC launched an anti-corruption policy task management system through which

the responsible officials in the respective agencies report on the implementation of their tasks on a quarterly basis. Implementation results are usually published by each agency in a press release, and the comprehensive implementation result is also announced in a press release by the Council or on the ACRC website. In addition, some of the results of the plan are also monitored by the public through the citizens monitoring group for anti-corruption policy.

ACRC engages in various preventive anti-corruption practices and regularly assesses the effectiveness of those activities through the annual Comprehensive Integrity Assessment, which integrates the Assessment of Anti-Corruption Initiatives and the Integrity Assessment. ACRC periodically evaluates and recommends improvements to anti-corruption legal instruments and administrative measures through regular corruption risk assessments conducted in accordance with articles 12 (12) and 28 of the ACRC Act and institutional improvement measures taken pursuant to articles 12, 27 and 29 of the Act.

ACRC is the designated body responsible for establishing and implementing corruption prevention policies (art. 11 of the ACRC Act). Its activities include disseminating knowledge about the prevention of corruption (art. 12 (7)), including through its Anti-Corruption Training Institute, which provides integrity training for public officials.

ACRC is established under the Office of the Prime Minister (art. 11 of the ACRC Act). Its independence is enshrined in article 16 of the Act. Its chair and members are appointed for a term of three years each, with the possibility of a one-time reappointment or recommissioning. The employees of its secretariat are selected through the public sector's open competitive examination, special recruitment or transfer from other departments, and selected employees are trained for their positions. The Commission's annual budget is secured through the budget and settlement deliberations of the National Assembly.

The Republic of Korea participates in international and regional anti-corruption programmes through the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Financial Action Task Force, the Group of 20 (G20) Anti-Corruption Working Group, the Anti-Corruption and Transparency Experts Working Group of the Asia-Pacific Economic Cooperation forum, the Open Government Partnership, the International Anti-Corruption Academy and the International Anti-Corruption Conference.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

The recruitment, hiring, retention, promotion and retirement of non-elected public officials are regulated in the State Public Officials Act. Non-elected officials are recruited through an open competitive examination (art. 28 (1) of the Act) or through a special appointment examination in the case of specific professions (art. 28 (2)). The examination subjects, which are determined by law (art. 7 of the Decree on Public Officials Appointment Examinations), the selection procedure and the results of examinations are published in media outlets, online and in newspapers (art. 47 of the Decree). Complaints concerning the examination process can be lodged through administrative appeals or litigation.

There are no specific procedures for selecting individuals for positions considered vulnerable to corruption. However, each agency designates officials "in charge of corruption-prone tasks" whose duties include those related to financial assistance, permissions, approvals and licences, inspection and audit, tax, and contract inspection and examination, as illustrated in the ACRC guidelines on the operation of anti-corruption education of March 2022. Persons in those positions may undergo tailored training as stipulated in the guidelines, in addition to the regular anti-corruption training that public servants are required to complete. Article 45 of the Decree on the Appointment of Public Officials provides for the rotation of

entry-level public officials and managerial positions, and under separate regulations a rotation period is also applied to public officials in the special service.

The remuneration of public officials is determined in consideration of the complexity of the duties and the degree of responsibility of the post, taking into account private sector salaries (art. 46 of the State Public Officials Act). All public officials are required to receive anti-corruption and integrity training at least once a year (art. 81-2 of the ACRC Act and art. 88-2 of the Enforcement Decree of the Act).

Requirements for election to public office are established in article 16 of the Public Official Election Act. Persons who have been convicted of certain crimes, including bribery, are ineligible (art. 19). Candidates for elected public office must also file statements of property holdings and tax payment.

The Political Funds Act and the Rules on the Management of Political Funds Affairs regulate the funding of candidates for election to public office. Violations of those rules are sanctioned by criminal punishment, fines (chap. VIII of the Political Funds Act) and subsidy reductions (art. 29 of the Act). Donations are capped at 5 million won per year per association (approximately \$3,482) and 20 million won (approximately \$13,930) in overall donations per person per year (art. 11). Foreign donations, as well as donations from domestic and foreign corporations and organizations, are prohibited (art. 31). Donations above specified thresholds must be reported to the competent constituency election commission (art. 40 (3)). The National Election Commission receives financial reports from candidates and political parties in accordance with the Act. The Commission discloses the financial reports to the public, investigates illegal acts and refers matters for criminal investigation.

The Public Service Ethics Act, the Conflict of Interest Prevention Act, the Code of Conduct for Public Officials and the Improper Solicitation and Graft Act contain comprehensive measures to prevent conflicts of interest, including the acceptance of gifts and other benefits. The Republic of Korea significantly strengthened the prevention and sanctioning of conflicts of interest through the Conflict of Interest Prevention Act (effective May 2022), which, inter alia, requires reporting of private interests, activities in the private sector, contact with retirees, related-party transactions and the possession of real estate in connection with duties, and imposes restrictions on outside activities related to the duties of public officials, the employment of family members, negotiated contracts with corporations or organizations in which public officials or their family members serve as executive officers or which are specially related to public officials or their family members, the private use of public resources, and confidential information. Notably, the provisions of the Act cover a wider range of public officials, including constitutional office holders and public service-related organizations, and impose strict sanctions for violations. Each agency subject to the Act is required to designate a conflict of interest prevention officer who is to provide education and counselling services regarding the prevention of conflicts of interest of public servants and to receive and manage reports on private interests.

Public officials of constitutional agencies and executive officers and employees of public service-related institutions are governed by additional codes of conduct established under their internal rules or regulations.

All public officials take an oath of office upon assuming their functions. The ACRC Act, the Improper Solicitation and Graft Act and the Code of Conduct for Public Officials include integrity, honesty and responsibility as obligations of public officials. If violations of the Code of Conduct are found, the heads of the relevant agencies may take disciplinary action (art. 20 of the Code of Conduct).

The Public Service Ethics Act, the Conflict of Interest Prevention Act, the Improper Solicitation and Graft Act and the Code of Conduct for Public Officials form a comprehensive framework for reporting by public officials of external activities, employment, investments, assets and gifts.

Public officials must submit asset declarations and keep blind trusts for stocks worth over 30 million won (approximately \$20,892; arts. 3–5 and 14 (4) of the Public Service Ethics Act), as described under article 8, paragraph 5, and article 52, paragraph 5, of the Convention. Asset declarations are submitted upon employment, promotion and transfer, and annually thereafter, through the online public ethics system of the Ministry of Personnel Management ([www.peti.go.kr](http://www.peti.go.kr)). The assets of spouses and lineal ascendants and descendants who are financially dependent must also be reported. The asset declarations of high-ranking officials are available online through the Official Gazette ([gwanbo.mois.go.kr](http://gwanbo.mois.go.kr)). Disclosures are reviewed by public officials' ethics councils established in 265 public institutions, and verification is carried out by officers in charge of public service ethics.

Pursuant to article 56 of the ACRC Act, public officials are required to report acts of corruption, and failure to do so is punishable pursuant to the State Public Officials Act and the Decree on Disciplinary Action against Public Officials. Reports can be addressed to any investigative authority, the Board of Audit and Inspection or ACRC. Public officials can report acts of corruption following the same procedure as that of general reporting for corruption offences, and they are provided with the same legal protections, including physical protection, confidentiality and protection from retaliation (arts. 12–24 of the Act on the Protection of Public Interest Whistle-blowers). Anonymous reporting is not possible, but proxy reports can be submitted under a lawyer's name pursuant to the Act on the Protection of Public Interest Whistle-blowers, the Improper Solicitation and Graft Act and the ACRC Act.

The Constitution provides for judicial independence (art. 103), the conditions for the removal, suspension and other sanctioning of judges (art. 106) and the public transparency of trials and court decisions (art. 109). Judges are appointed by the Chief Justice of the Supreme Court following examination by the Judges Personnel Committee and the Supreme Court Justice Council. The Judicial Research and Training Institute is responsible for providing ethics training for judicial officials. Judicial officers are subject to the Code of Ethics for Judicial Officials, with disciplinary action taken by the Chief Justice of the Supreme Court on the basis of a decision by the Judges Disciplinary Committee affiliated with the Supreme Court, in accordance with the Discipline of Judges Act.

The prosecution service does not form part of the judiciary. Prosecutors are subject to the same laws and disciplinary sanctions as other public officials. The Act on Discipline of Prosecutors contains regulations on disciplinary action against prosecutors. The Supreme Prosecutors' Office implements its own codes of conduct for prosecutors. A prosecutor may be removed from office only through impeachment or criminal conviction (art. 37 of the Prosecutors' Office Act).

*Public procurement and management of public finances (art. 9)*

Public procurement is regulated by the Act on Contracts to Which the State Is a Party (State Contracts Act), the Act on Contracts to Which a Local Government Is a Party and the Defence Acquisition Programme Act. The Public Procurement Service is the central purchasing body. It operates an e-procurement system ([www.g2b.go.kr](http://www.g2b.go.kr)) in which tender notices are published, including predetermined criteria and time frames (art. 8 of the State Contracts Act and arts. 33–36 of its Enforcement Decree). Open competitive tenders are generally used for contracting, but limited competitive tenders or negotiated contracts are permitted in exceptional cases (art. 7 of the State Contracts Act). Comprehensive data collected through the e-procurement system are published online.

The Audit Office of the Public Procurement Service conducts ex ante monitoring of public procurement. Audit offices in all central agencies provide internal oversight, while the Board of Audit and Inspection provides external oversight.

Appeals procedures are specified in the State Contracts Act (arts. 28 and 29). Petitions for objection can also be raised through the “ePeople” online petitioning and communication system, with the Board of Audit and Inspection or through the courts.

A rotation policy applies to procurement officials, in addition to rules requiring the declaration of private interests (art. 5 (1) of the Conflict of Interest Prevention Act). The Public Procurement Training Institute provides integrity training to employees of the Public Procurement Service, public user entities and procurement suppliers (art. 32 of the State Contracts Act).

The National Finance Act determines the procedures for adopting the national budget. The Government submits the budget proposal to the National Assembly for deliberation and a decision (art. 54 of the Constitution). Article 7 (2) of the Enforcement Decree of the National Finance Act provides for the participation of citizens in the adoption of the budget.

Heads of central government agencies submit tax revenue collection and expenditure reports to the Minister of Economy and Finance through a digital accounting system on a monthly basis (art. 38 of the Management of the National Fund Act and arts. 97, 98 and 101 of its Enforcement Decree).

The National Finance Act regulates the national statement of accounts and the submission thereof to the National Assembly, the inspection of account settlements, the implementation of public financial management and the supervision of the execution and settlement of budget and fund management plans, as well as citizens' monitoring of spending of the budget and funds (arts. 59–61, 99 and 100).

The National Assembly, through competent standing committees, conducts inspections of government institutions and supervises national accounting, in accordance with the Act on the Inspection and Investigation of State Administration. The Board of Audit and Inspection, which is the country's supreme audit institution, further audits the settlement of accounts of revenues and expenditure of the State, audits and supervises any other accounts and inspects the functions of administrative agencies and public officials (art. 20 of the Board of Audit and Inspection Act). Internal audit bodies are established in all central government offices, local governments and public institutions (art. 5 of the Act on Public Sector Audits), and the Board of Audit and Inspection examines those internal audit activities annually. Under article 16 of the Act on the Inspection and Investigation of State Administration, corrective measures must be taken in the case of failure to comply with the rules relating to the management of public finances. The measures must be reported to the National Assembly and disclosed on the website of the Inspection of State Administration.

Accounting books and records kept by central government agencies are stored in the digital accounting system (arts. 92 and 95 of the Enforcement Decree of the Management of the National Fund Act), and the Ministry of Economy and Finance keeps a register of total revenue and expenditure (art. 94 of the Enforcement Decree). Accounting personnel who cause losses of or damage to State property are liable for such losses or damage, and if they are incurred in accordance with instructions or requests of their supervisors, both the accounting personnel and their supervisors are liable for reimbursement (arts. 4 and 8 of the Act on the Liability of Accounting Personnel). Disciplinary measures are also provided for in the absence of damages for violations of a public official's duties (art. 78, para. 2, of the State Public Officials Act). The Government may also institute civil litigation under the Civil Act and impose criminal sanctions or administrative penalties pursuant to the State Public Officials Act.

*Public reporting; participation of society (arts. 10 and 13)*

The Official Information Disclosure Act requires institutions to actively disclose information to the public (art. 3) and to establish information disclosure councils to handle requests (art. 12). Any citizen, legal person or foreign resident in the Republic of Korea can request the disclosure of public information, and all information kept by public institutions is subject to disclosure, except as provided in article 9 (1) of the Act. The Act specifies which information may not be disclosed and specifies appeals mechanisms (art. 9).

An online information disclosure system allows citizens to easily request the disclosure of public information. When a request for information disclosure is submitted to an institution, the decision on whether to disclose the information is made within 10 days. Decisions not to disclose or to partially disclose information may be challenged through internal, external and judicial remedial procedures (arts. 18–20 of the Official Information Disclosure Act).

The Republic of Korea has adopted measures to facilitate public access to the competent decision-making authorities. The measures include a system of hearings allowing citizens to express their opinions and examine evidence before an administrative agency takes a certain decision. Moreover, the public service website “Government 24” allows citizens to request the issuance of civil service documents, including through smartphones. Citizens can communicate with the authorities through the ePeople system and a “people’s idea box”, in which people’s opinions about public institutions are collected online, including with regard to anti-corruption and integrity policies.

As described above, the Republic of Korea assesses the integrity level of public institutions on an annual basis. Public institutions are evaluated on the basis of surveys among different stakeholders and the institutions’ anti-corruption performance, and the results are made public in the form of ratings. Public institutions also publish the results of the integrity assessments online (art. 27-3 of the ACRC Act).

A citizens monitoring group for anti-corruption policy consisting of 100 citizens selected from an online platform was created to discuss corruption issues and monitor anti-corruption policies. Other relevant entities include the Public-Private Consultative Council for Transparent Society and the Transparent Society Pact.

ACRC raises awareness of its activities through diverse public relations activities and online platforms. Public education programmes include components on integrity in elementary and middle school and on corruption and public service ethics in high school. The Anti-Corruption Training Institute under ACRC runs outreach integrity programmes for primary, secondary and tertiary schools and a massive open online course for the general public.

Pursuant to the ACRC Act, anyone may report corruption to ACRC online, in person or by fax. ACRC runs a digital corruption and public interest reporting system, known as the “Clean Portal”, which is designed to allow anyone to file a report on corrupt behaviour or violations of the public interest. Corruption and public interest reports may be filed by proxy through a lawyer as described above.

#### *Private sector (art. 12)*

Corruption prevention in the private sector, including in State-owned enterprises, is a government priority. A public-private consultative group for combating corruption has been established to engage the private sector in corruption prevention.

Companies in the Republic of Korea have an obligation to prevent corruption and are subject to a duty of due attention and supervision (art. 5 of the ACRC Act and art. 24 of the Improper Solicitation and Graft Act). Whistle-blower protection is available to employees in private entities who report corruption to the relevant authorities.

Voluntary compliance and business ethics standards include the “Corporate anti-corruption guide”, the “Corporate guide for the voluntary prevention of infringements of the public interest” and the “Model for integrity assessment by industry”. ACRC provides support for the ethical management of companies.

All domestic companies must register and keep their incorporation data up to date in a company register (art. 172 of the Commercial Act). The register does not contain information on the ownership of company shares, such as beneficial ownership information. A register of beneficial ownership of corporate shareholdings is maintained. Both registers are accessible to the public. Tax authorities, the Financial

Intelligence Unit of the Republic of Korea and other competent authorities may verify the information contained in the two registers, including beneficial ownership information.

A range of measures are in place to prevent the misuse of procedures that regulate licensing, subsidies and procedures for private entities (art. 5 and chap. V of the Improper Solicitation and Graft Act, and arts. 40–43 of the Subsidy Management Act). Illicit gains derived from the fraudulent use of government subsidies are subject to restitution, and penalties may be imposed pursuant to the Act on Prohibition of False Claims for Public Funds and Recovery of Illicit Profits.

Accounting standards for companies are specified in article 5 of the Act on External Audit of Stock Companies, and chapter V (arts. 39, 41 and 42) of the Act provides for penalties for violations of those standards. The Act requires listed companies and companies with total assets above 100 billion won (approximately \$74.6 million) to have internal accounting controls (art. 8 (1)). In addition, listed companies, companies to be listed and companies whose total assets amount to at least 50 billion won (approximately \$34.8 million) are subject to external audits (art. 4). Companies with operations below the specified thresholds are exempt from the requirements, as are State-owned companies that are not listed (art. 4 (2)).

Article 17 of the Public Service Ethics Act restricts the employment of public officials in any closely related institution within five years of their retirement. In addition, retired officials are prohibited from performing certain duties and from making improper solicitations towards public officials with whom they were previously affiliated (art. 18-4 of the Act). A stricter cooling-off period is in place for public officials whose employment is terminated as a result of acts of corruption (art. 82 of the ACRC Act). Violations of those provisions are subject to criminal and administrative sanctions.

The accounting practices listed in article 12, paragraph 3, of the Convention, including off-the-books accounts, are prohibited (arts. 23 (5), 39 and 41 of the Act on External Audit of Stock Companies).

The tax deductibility of expenses constituting bribes is prohibited (art. 78 (4) (2) of the Enforcement Decree of the Income Tax Act and art. 50 (1) (4) of the Enforcement Decree of the Corporate Tax Act).

#### *Measures to prevent money-laundering (art. 14)*

The prevention of money-laundering is regulated primarily in the Proceeds Act and the Financial Transaction Reports Act. The measures apply to financial institutions and money or value transfer service providers, including casinos, but not to other designated non-financial businesses and professions. At the time of the review, a bill that would expand the scope of obliged entities to cover all designated non-financial businesses and professions was under preparation following earlier consideration by the National Assembly.

The regulatory regime encompasses requirements concerning, inter alia, customer and beneficial owner identification and verification, record-keeping and the reporting of suspicious transactions, as described under article 52 of the Convention. The Republic of Korea published its third national risk assessment in November 2018.

Domestic coordination and cooperation are led by the Anti-Money-Laundering and Countering the Financing of Terrorism Policy Coordination Committee. The Financial Intelligence Unit and other competent authorities coordinate, cooperate and exchange information through different mechanisms, including through the Unit's Information Analysis Office and analysis officers dispatched from law enforcement agencies.

International cooperation and information exchange take place through the Egmont Secure Web and direct cooperation channels among competent authorities, including on the basis of agreements and arrangements. The Supreme Prosecutors' Office has

established an agency for international cooperation and hosts the secretariat of the Asset Recovery Inter-Agency Network for Asia and the Pacific.

The Republic of Korea has measures in place to detect and prevent cross-border movements of currency and bearer negotiable instruments. Failures to declare, or false declarations of, any transportation of means of payment above \$10,000 or the equivalent are subject to administrative sanctions for sums from \$10,000 to \$30,000 or to criminal sanctions for sums exceeding \$30,000 (arts. 17 and 32 (1) of the Foreign Exchange Transactions Act, art. 31 (2) of the Enforcement Decree of the Act and art. 6 (2) of the Foreign Exchange Transactions Regulation).

Financial institutions are required to ensure that all cross-border wire transfers of \$1,000 or more (or the equivalent in other currencies) are accompanied by accurate originator information (art. 5-3 of the Financial Transaction Reports Act). There is no requirement to obtain and verify customer information for wire transfers below that threshold. For domestic wire transfers of more than 1 million won (approximately \$697) or the equivalent in other currencies, originator information must also be made available. Beneficiary institutions are required to establish and operate effective risk-based procedures to identify wire transfers lacking complete originator information (art. 48 (2) of the Regulation on Money-Laundering and Countering the Financing of Terrorism). Financial institutions are required to have risk-based policies to determine when to reject wire transfers that do not comply with the specified requirements (art. 48 (3) of the Regulation).

As a member of the Financial Action Task Force and G20, the Republic of Korea actively participates in international bodies to combat money-laundering. The country completed the fourth round of its mutual evaluation by the Financial Action Task Force, and the report was published in April 2020.

## 2.2. Successes and good practices

- Active involvement of civil society, the general public and the private sector in the establishment and ongoing monitoring and evaluation of anti-corruption policies (art. 5, para. 1).
- Regular internal and external assessments to evaluate the effectiveness of anti-corruption measures (art. 5, para. 1).
- Availability of comprehensive and timely information and statistics on public procurement using data collected through the e-procurement system (art. 9, para. 1).
- Measures facilitating access to information, including the information disclosure system, which allows citizens to easily request the disclosure of public information, the operation of the Information Disclosure Committee to coordinate the information disclosure policy, and annual reporting on disclosure requests to the National Assembly and publication thereof online (art. 10 (a)).
- Active promotion of the contribution of the public to decision-making processes, including on anti-corruption policy through its ePeople system and the “people’s idea box” of ACRC (art. 13, para. 1 (a)).

## 2.3. Challenges in implementation

It is recommended that the Republic of Korea:

- Continue to apply sustained, systematic and coordinated preventive measures that support the involvement of all relevant stakeholders (art. 5, paras. 1–3).
- Endeavour to adopt and systematically apply specific procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption, and the rotation, where appropriate, of such individuals to other positions (art. 7, para. 1 (b)).

- Continue the implementation of the Conflict of Interest Prevention Act and the harmonization of measures relating to conflicts of interest, with a view to ensuring adequate clarity of obligations for public officials, whether elected or appointed (art. 7, para. 4, and art. 8, para. 5).
- Continue its efforts to strengthen corruption prevention in the private sector, including in State-owned enterprises, by:
  - Promoting cooperation of the private sector with investigating and prosecuting authorities (art. 12, para. 2 (a))
  - Continuing to promote the development of standards and principles of sound business conduct, ethics and corporate governance, and continuing to strengthen corruption prevention involving State-owned enterprises (art. 12, para. 2 (b))
  - Promoting transparency among private entities, including beneficial ownership information (art. 12, para. 2 (c))
  - Ensuring that private entities, taking into account their structure and size, have sufficient internal auditing controls to prevent and detect corruption (art. 12, para. 2 (f))
- Continue to raise awareness of available whistle-blower protections to facilitate the reporting of corruption, including the possibility of proxy reporting (art. 13, para. 2).
- Amend its legislation to expand the scope of obliged entities to cover all designated non-financial businesses and professions and designate supervisors for those sectors (art. 14, para. 1).

### **3. Chapter V: asset recovery**

#### **3.1. Observations on the implementation of the articles under review**

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

The Republic of Korea may provide a range of mutual legal assistance pertaining to asset recovery in accordance with the country's legislation and international treaties, or on the basis of reciprocity. Specialized legislation includes the Mutual Legal Assistance Act, the Confiscation Act, the Act on Special Cases concerning Narcotics Trafficking and the Proceeds Act. A recent amendment to the Proceeds Act implements a threshold approach to the scope of crimes subject to criminal asset recovery, thus allowing for a greater measure of assistance in asset recovery cases.

In February 2018, the Republic of Korea established permanent departments that are exclusively in charge of the recovery of proceeds of crime: the Criminal Asset Recovery Division in the Supreme Prosecutors' Office and the Criminal Asset Recovery Department in the Seoul Central District Prosecutors' Office. The country has also established an international cooperation centre in the Supreme Prosecutors' Office to provide assistance in asset recovery. Through recent amendments to the Prosecution Service Act and the Criminal Procedure Act, the powers of public prosecutors to seek preservation orders prior to indictment were significantly reduced, which could have an impact on the effectiveness and timeliness of asset recovery responses. A constitutional challenge to the overall amendments of the Prosecution Service Act and the Criminal Procedure Act was ongoing at the time of the country visit.

The Republic of Korea has refused requests for mutual legal assistance in only seven cases since 2015, mostly owing to the political nature of the offence or a lack of supporting information. The country's authorities have successfully returned assets to and recovered proceeds from other countries.

The Financial Intelligence Unit can spontaneously share specified financial transaction information with foreign intelligence services in accordance with the principle of reciprocity, but the use of such information in investigations or trials of foreign criminal offences (even if in accordance with the purposes of the original request) is subject to the consent of the Commissioner of the Unit and the Minister of Justice (art. 11 (3) of the Act on Reporting and Using Specified Financial Transaction Information).

The country has signed bilateral treaties on mutual legal assistance with 33 countries, with most of the treaties containing provisions relevant to asset recovery, and it has acceded to the European Convention on Mutual Assistance in Criminal Matters.

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

Financial institutions are required to identify their customers and verify the accuracy of their identity before opening accounts or conducting occasional transactions above prescribed thresholds (art. 5-2 (1) of the Financial Transaction Reports Act and art. 37 of the Regulation on Money-Laundering and Countering the Financing of Terrorism). Financial institutions are further required to identify and verify the natural persons who ultimately own or control the customer (art. 41 of the Regulation and art. 5-2 (1) 1 (b) of the Act).

The Regulation on Money-Laundering and Countering the Financing of Terrorism (Financial Intelligence Unit Notice No. 2019-2) sets out high-risk customer types, products and services with increased risks of money-laundering and terrorism financing for which enhanced due diligence is mandatory. These requirements apply to foreign politically exposed persons, but not to domestic politically exposed persons or the senior management of international organizations. Additional guidelines, including with regard to virtual assets, have also been issued.

The Financial Services Commission may designate natural or legal persons as persons prohibited from conducting financial transactions and may publicly announce such designations through notifications issued by the Financial Intelligence Unit, including at the request of foreign States.

Financial institutions in the Republic of Korea must maintain internal and external reports and related data, including the records of customer due diligence activities, financial transactions, suspicious transaction reports and cash transaction reports, for at least five years following the termination of the business relationship or the completion of the transaction (art. 5-4 of the Financial Transaction Reports Act, art. 10-9 of the Enforcement Decree of the Act, and arts. 84–87 of the Regulation on Money-Laundering and Countering the Financing of Terrorism).

Anyone who intends to engage in banking business must obtain authorization from the Financial Services Commission (art. 8 (1) and (2) of the Banking Act). Financial institutions may not enter into or continue a correspondent banking relationship with a shell bank and should satisfy themselves that the respondent institution does not permit its accounts to be used by shell banks (art. 58 of the Regulation on Money-Laundering and Countering the Financing of Terrorism).

As described above in the section on article 7, paragraph 4, and article 8, paragraph 5, of the Convention, comprehensive measures are in place to require public officials to submit asset declarations.

The Republic of Korea requires its public officials who have an interest in or signature or other authority over foreign financial accounts to report that relationship to appropriate authorities and to maintain related records (art. 4 of the Public Service Ethics Act).

The Financial Intelligence Unit is responsible, inter alia, for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

Courts in the Republic of Korea may exercise jurisdiction over the legal actions of foreign States, recognizing the State as a direct party (Supreme Court decision 97DA39216 of 17 December 1998).

The country's legislation further provides victims with rights to seek compensation in civil (and in some cases criminal) proceedings (art. 213 of the Civil Act, art. 25 of the Act on Special Cases concerning Expedition, etc., of Legal Proceedings, and art. 6 of the Confiscation Act). A foreign State that has been the victim of a crime will be recognized as a victim as would any other legal person.

A foreign Government may intervene as a third party in criminal confiscation proceedings to claim rightful ownership of property (arts. 23–32 of the Act on Special Cases concerning Narcotics Trafficking, which apply equally to the procedures set out in the Proceeds Act, pursuant to art. 12 of that Act and the provisions of the Confiscation Act). Furthermore, a foreign Government that is the rightful owner of property subject to confiscation may recover its ownership through civil action as a primary party in the civil procedure even if the confiscation ruling is finally adjudicated.

Article 7 of the Confiscation Act provides for the facilitation of international cooperation in the return of property that is the subject of cooperation. That Act, read together with the applicable provisions of the Act on Special Cases concerning Narcotics Trafficking, sets out circumstances under which the authorities of the Republic of Korea may respond to a request for the return of property that is the subject of cooperation. Those circumstances include conditions of reciprocity and a requirement that the requesting State has guaranteed that the property will be conveyed to the original owner, the victim, or any other person who has a legitimate right (art. 7).

Article 67 of the Act on Special Cases concerning Narcotics Trafficking sets out the procedure for handling requests for the execution of final and conclusive foreign confiscation judgments. In conducting the procedure, the court may allow full or partial cooperation, refuse cooperation or dismiss a request, but it may not review whether the final and conclusive judgement in the foreign State was properly made. Once a court in the Republic of Korea approves the execution of a mutual legal assistance request based on a final and conclusive judgment on confiscation rendered in a foreign country, the Government of the Republic of Korea may execute the requested assistance without a final and conclusive confiscation decision made by a court in the Republic of Korea (art. 69 of the Act).

The Republic of Korea may also confiscate assets on behalf of a requesting country (art. 5 of the Mutual Legal Assistance Act, arts. 11 and 12 of the Proceeds Act, arts. 7–14 of the Confiscation Act and art. 64 of the Act on Special Cases concerning Narcotics Trafficking). These powers apply to the proceeds of corruption, money-laundering and predicate offences, as well as property of corresponding value (arts. 3 and 5 of the Confiscation Act, arts. 8, 10 and 12 of the Proceeds Act, arts. 64–78 of the Act on Special Cases concerning Narcotics Trafficking, art. 215 of the Criminal Procedure Act and art. 48 of the Criminal Act).

The Republic of Korea has a conviction-based confiscation regime. However, confiscation may be ordered in limited cases when the requisites for confiscation are satisfied, even if, after indictment, the defendant is found not guilty, the indictment is dismissed or the defendant is exempted from the indictment (art. 49 of the Criminal Act). The country's authorities have reported a need to introduce non-conviction-based confiscation, and related bills have been introduced in the National Assembly.

The procedure for handling mutual legal assistance requests for the identification, freezing, seizure and confiscation of criminal proceeds related to (or other assets created through) corruption and other offences is prescribed in the Act on Special

Cases concerning Narcotics Trafficking, the Proceeds Act and the Confiscation Act, and in the general procedure prescribed in the Mutual Legal Assistance Act. Articles 64 to 78 of the Act on Special Cases concerning Narcotics Trafficking enable a wide scope of assistance regarding the freezing and confiscation of criminal proceeds and property of equivalent value. Those articles apply equally to the procedure under the Proceeds Act, according to article 12 thereof.

The country's authorities do not require an order by a foreign court or competent authority to freeze or seize property related to proceeds of crime pursuant to articles 71 and 72 of the Act on Special Cases concerning Narcotics Trafficking.

Property preservation orders temporarily prohibit the disposition of property and prevent the dissipation of proceeds or assets of equivalent value prior to confiscation. Those measures, as prescribed by the Act on Special Cases concerning Narcotics Trafficking, apply equally to confiscation, "value confiscation" and international cooperation under the Confiscation Act.

In the absence of an applicable treaty, article 12 of the Mutual Legal Assistance Act establishes general criteria regarding the content of mutual legal assistance requests. Some further guidance is provided in the "Step-by-step guide for asset recovery from G20 countries", an updated version of which was issued in 2020.

Under article 11 of the Confiscation Act, assistance may be refused if the value of the property that is the subject of cooperation is insignificant. In practice, the authorities of the Republic of Korea provide assistance regardless of the value of property, and they consult with requesting States as a matter of practice before refusing assistance or lifting provisional measures.

Third-party rights in confiscation proceedings are protected (art. 9 (2) of the Proceeds Act and art. 15 (2) of the Act on Special Cases concerning Narcotics Trafficking).

#### *Return and disposal of assets (art. 57)*

The provisions on asset disposal and return involving offences under the Convention are contained in the Confiscation Act. Pursuant to article 11 (1) of the Act, the Minister of Justice may decide to return property in whole or in part, unless its value is insignificant, the requesting State withdraws the request or returning the property would be inconsistent with the protection of important national interests. Under article 11 (2) and (3), the chief public prosecutor is authorized to take measures necessary for international cooperation and the preservation of property for the purpose of return. Article 14 (2) authorizes the Minister of Justice to impose conditions on return with which the requesting State is expected to comply regarding the use and return of property that is the subject of cooperation.

However, there is no reference in the legislation to the binding obligation to return property to a requesting State under the circumstances set out in article 57, paragraph 3, of the Convention. No further regulations or guidelines to regulate asset return have been issued.

Under article 36 of the Mutual Legal Assistance Act, the expenses of mutual assistance are to be borne by the requesting country, unless a special agreement among the parties exists; however, the expenses of providing assistance in the territory of the Republic of Korea may be borne by the Republic of Korea. To date, there have been no instances in which the Government has asked a requesting country to bear the expenses of its request. Case examples involving the successful recovery of assets pursuant to relevant agreements and arrangements were provided.

### **3.2. Challenges in implementation**

It is recommended that the Republic of Korea:

- Continue efforts to strengthen asset recovery responses by ensuring that competent authorities are able to swiftly and effectively respond to foreign requests for preservation orders and related requests, including by reviewing

recent legal amendments that removed the powers of prosecutors to launch and conduct investigations and to seek preservation orders prior to indictment and by making necessary modifications, as appropriate, to enhance effectiveness (art. 51).

- Expand the scope of obligations to combat money-laundering and the financing of terrorism to include domestic persons with prominent public functions (given their potentially higher risks) and persons with prominent public functions in international organizations (art. 52, para. 1).
- Consider expanding the grounds on which the Government may facilitate international cooperation in asset recovery to alleviate the strict condition of reciprocity pursuant to article 7 of the Confiscation Act (art. 54, para. 1 (a)).
- Continue efforts to introduce specific measures on non-conviction-based confiscation in the country's legal system (art. 54, para. 1 (c)).
- Consider specifying in a legal text or procedure the practice of consulting with requesting States before refusing assistance or lifting provisional measures (art. 55, para. 8).
- Consider requiring prior authorization for the use of specified financial information by foreign authorities only in cases where the use of such information is beyond the purpose for which the information was originally sought or requested (art. 56).
- Adopt measures to provide for the return of proceeds to requesting States as described under article 57, paragraph 3.

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