The Republic of Korea’s Protection of Whistleblower Confidentiality & Proxy Reporting: Purpose, Achievements & Challenges
* COVID-19 related Public Interest Whistle-blowing

1. Reports should be filed under real name in principle

2. Introducing proxy reporting for more confidentiality

3. Achievements and challenges

4. Efforts to overcome challenges
★ COVID-19 related public interest whistle-blowing

**Acts of public interest violation** mean:
Acts that infringe public health and safety, the environment, consumer interests, fair competition, and other equivalent public interest, and also are subject to penal provisions or administrative disposals caused by the violation of the applicable 284 laws designated by the Act

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<th>COVID-19 related acts of public health violation</th>
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| **Infectious Disease Control and Prevention Act** | ✓ Refusal of inpatient treatment after infected with COVID-19  
✓ Making false statement during epidemiological tracing  |
| **Quarantine Act** | ✓ Refusal of quarantine or testing by in-bound and out bound travelers suspected of infection  |
| **Price Stabilization Act** | ✓ Practice of cornering and hoarding of masks or hand sanitizers  |
| **Occupational Safety & Health Act** | ✓ Acts of employer making infected employees continue to work  |
| **Emergency Medical Service Act** | ✓ Acts of using violence or threatening language during transportation or receiving emergency medical treatment against emergency medical personnel  |
COVID-19 related whistle-blowing

- Main examples: cornering & hoarding of masks, and violation of infectious disease preventative measures including orders of complying with preventative measures such as banning multiple people gathering, or wearing masks.

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<th>COVID-19 related acts of public health violation</th>
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<td>Medical Service Act</td>
<td>✓ Medical institutions or personnel not complying with requests for reporting situation or documentary inspection</td>
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<td>Child Care Act</td>
<td>✓ Childcare centers not complying with shutdown orders to prevent the spread of COVID 19 infection</td>
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<td>Mother and Child Health Act</td>
<td>✓ Postnatal care centers not reporting fact that its workers have been tested positive or suspected of infection</td>
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Basic Regime to Protect Whistleblowers

- Prohibition of disclosure of whistleblower identity
- Guarantee of confidentiality
- Guarantee of status
- Decision of protective measures including restitution to original status
- Protective measures provided if whistleblowers are likely to face danger to life or body
- Punishment or administrative disposal against whistleblowers be mitigated or exempted
In principle, reports should be filed under real name

- Reports are filed with name including personal information (electronic format allowed)

**Items included in the reporting document**

- Whistle-blower’s information including name, residential number, address, contact info., etc.
- Person suspected of violating public interest
- Details of act of violating public interest
- Purport of reporting

- attachment of evidences
Introducing Proxy Reporting for Confidentiality

Guarantee of confidentiality (Article 12 of the Act)

• No one shall disclose whistleblower’s personal information or details which may infer the identity of whistleblower.
• Violators shall be imposed not more than 5 years of imprisonment or fine of not more than 50 mil. won.

Nevertheless, identity disclosure continues to occur (7 cases in 2017, 10 cases in 2018) mainly due to inattention or mistake of officials in charge during the investigation process

➤ Introducing proxy reporting (Nov. 18, 2018)

• Reports can be filed under the name of attorney instead of whistleblower
• Personal information and a letter of attorney will be sealed and submitted with evidentiary materials
• No one is allowed to read the sealed material without the consent of whistleblower
Proxy Reporting: Achievement and Challenges


★ Case: Proxy reporting on celebrities’ sexual violence crime through SNS

A proxy report was filed on the fact that a famous singer J and his associates shared and distributed sexual act pictures and video clips taken without the partner women’s consent on mobile group chats. ⇒ he and his associates were sentenced 6 year imprisonment at the first instance court.
Proxy Reporting: Efforts to Overcome Challenges

- Difficulty in hiring an attorney for proxy reporting:
  - ACRC established a group of advisory lawyers (49 members) for proxy reporting (July 26, 2019)

  ✓ In partnership with the Korea Bar Association
  ✓ Whistleblowers may receive legal counseling service or appoint a lawyer to represent him/her for reporting from the advisory group
  ✓ ACRC pays service fee to the lawyer, so no expense incurs on whistleblowers for proxy reporting
Proxy Reporting: Efforts to Overcome Challenges

- Proxy reporting lawyers are critical in the system

(Things to be improved)

✓ Fee for advisory lawyers are low comparing to other general fees of lawyers

✓ Fee support for advisory lawyers is limited to legal counseling and proxy reporting
  * Support to fees of other legal service during investigation after reporting are not allowed

✓ Number of advisory group members with specialized expertise should increase

✓ Training on whistleblower protection is needed to lawyers in general
Thank you