

# CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION IN THE FIGHT AGAINST CORRUPTION

–International Cooperation for Anti-Corruption: South Korean Practices –

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Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law and creating bureaucratic quagmires whose only reason for existing is the soliciting of bribes. Economic development is stunted because foreign direct investment is discouraged and small businesses within the country often find it impossible to overcome the "start-up costs" required because of corruption.<sup>1</sup>

Global attitudes towards corruption have changed dramatically. Where once bribery, corruption and illicit financial flows were often considered part of the cost of doing business, today corruption is widely — and rightly — understood as criminal and corrosive. ... The United Nations Convention against Corruption provides a comprehensive platform for governments, non-governmental organizations, civil society, and individual citizens. Through prevention, criminalization, international cooperation and assets recovery, the Convention advances global progress toward ending corruption.<sup>2</sup>

## I. INTRODUCTION: UNCAC & UNODC'S ACTION AGAINST CORRUPTION

The UN Office on Drugs and Crime (hereinafter referred to as UNODC) promotes international cooperation in crime prevention and criminal justice, as the convergence of drugs, crime, corruption and terrorism is ever more threatening global security. As for the issue of corruption, the UNODC works directly with governments, international organizations, other United Nations entities and civil society to develop and implement programmes for countering corruption.<sup>3</sup>

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<sup>1</sup> <http://www.unodc.org/unodc/en/corruption/index.html?ref=menuaside>

<sup>2</sup> Message from UN Secretary-General, Ban Ki-moon on International Anti-Corruption Day (9 December 2015).

<sup>3</sup> UNODC, UNODC Annual Report 2014 (2014) pp.10-11.

### **A. Open-ended Intergovernmental Working Group on Prevention**

In November 2009, the Conference of the States Parties to the United Nations Convention against Corruption<sup>4</sup> (hereinafter referred to as UNCAC) stressed the importance of implementing articles 5-14 of the UNCAC to prevent and fight corruption. So the Conference decided to establish an interim open-ended intergovernmental working group<sup>5</sup>, to advise and assist the Conference in the implementation of its mandate on the prevention of corruption.<sup>6</sup> The working group should perform the following functions:

- (a) Assist the Conference in developing and accumulating knowledge in the area of prevention of corruption;
- (b) Facilitate the exchange of information and experience among States on preventive measures and practices;
- (c) Facilitate the collection, dissemination and promotion of best practices in the prevention of corruption;
- (d) Assist the Conference in encouraging cooperation among all stakeholders and sectors of society in order to prevent corruption.

At its meeting in August 2011, the Working Group recommended that, at its future meetings, it should continue to focus on the following topics:

- (a) Implementation of article 12 [Private Sector] of the UNCAC, including the use of public-private partnerships;
- (b) Conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7 [Public Sector], 8 [Codes of Conduct for Public Officials], 9 [Public procurement and management of public finances] of the UNCAC.

It was also decided that, in advance of each meeting of the Working Group, States parties should be invited to share their experiences in implementing the provisions under consideration, preferably by using the self-assessment checklist and including, where possible, successes,

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<sup>4</sup> In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the United Nations Office on Drugs and Crime. The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003. In accordance with article 68 (1) of resolution 58/4, the United Nations Convention against Corruption entered into force on 14 December 2005. A Conference of the States Parties is established to review implementation and facilitate activities required by the Convention. (<http://www.unodc.org/unodc/en/treaties/CAC/index.html>)

<sup>5</sup> United Nations Convention against Corruption, Art.63 para.7.

<sup>6</sup> Conference of the States Parties to the United Nations Convention against Corruption, "Preventive measures", Resolution 3/2 (2009)

challenges, technical assistance needs, and lessons learned in implementation.<sup>7</sup> In response to this, the UNODC Secretariat prepared a note,<sup>8</sup> which was circulated for comments by State parties to the UNCAC. Following receipt of comments, the Secretariat confirmed that the topics for discussion at the meetings of the Working Group would continue to be the implementation of article 12 of the Convention, including the use of public-private partnerships, and the conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7 - 9 of the Convention.

In October 2011, the Conference decided that the Working Group should continue its work to advise and assist the Conference in the implementation of its mandate.<sup>9</sup> In its resolution 4/3, the Conference noted that many States parties had shared information on their initiatives and good practices on the topics considered by the Working Group at its meeting in August 2011, and urged States parties to continue to share with the Secretariat and other States parties new as well as updated information on such initiatives and good practices.

## **B. Open-ended Intergovernmental Expert Meetings to Enhance International Cooperation**

In October 2011, the Conference of the States Parties to the UNCAC decided to convene open-ended intergovernmental expert meetings on international cooperation to advise and assist it with respect to extradition and mutual legal assistance, and to convene one such meeting during its fifth session and, prior to that, within existing resources, at least one intersessional meeting.<sup>10</sup> In the same resolution, the Conference also decided that the expert meetings shall perform the following functions:

- (a) assist it in developing cumulative knowledge in the area of international cooperation;
- (b) assist it in encouraging cooperation among relevant existing bilateral, regional and multilateral initiatives and contribute to the implementation of the related provisions of the Convention under the guidance of the Conference;
- (c) facilitate the exchange of experiences among States by identifying challenges and disseminating information on good practices to be followed in order to strengthen capacities at the national level;
- (d) build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities, anti-corruption bodies and practitioners involved in mutual legal assistance and extradition;

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<sup>7</sup> Open-ended Intergovernmental Working Group on the Prevention of Corruption, Provisional agenda and annotations, CAC/COSP/WG.4/2012/1

<sup>8</sup> Proposal for a possible multi-year work plan for the Open-Ended Intergovernmental Working Group on Prevention for the period up to 2015 (CAC/COSP/2011/CRP.4)

<sup>9</sup> Conference of the States Parties to the United Nations Convention against Corruption, Marrakech declaration on the prevention of corruption, Resolution 4/3 (2011)

<sup>10</sup> Convening of open-ended intergovernmental expert meetings to enhance international cooperation, Resolution 4/2 (2011)

- (e) assist the Conference in identifying the capacity-building needs of States.

The Conference further called upon States parties and signatory States to designate a central authority and, as appropriate, local authorities and other governmental experts, to participate in the expert meetings.

### **C. National Anti-Corruption Strategies**

According to the article 5 of UNCAC, it is important to adopt “effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. Responding to a request by the Conference of the States parties to identify and disseminate good practices on the development of national anti-corruption strategies, and in accordance with its responsibility to provide technical assistance to States parties to help them meet their obligations under the UNCAC<sup>11</sup>, UNODC has developed “National Anti-Corruption Strategies – A Practical Guide for Development and Implementation”.<sup>12</sup>

The Guide offers specific recommendations for countries considering drafting or revising a national anti-corruption strategy, drawing on practical experiences of UNCAC States parties and focusing on how to engage all stakeholders in a meaningful and productive drafting process which would culminate in a realistic, measurable and implementable strategy. Many of the recommendations contained in the Guide may also be relevant to countries that plan to meet their obligations under article 5 without adopting a formal strategy document.

#### **(a) Anti-corruption strategy development process**

- **POLITICAL, SOCIAL, ECONOMIC AND CULTURAL CONTEXT:** States must take into account their particular political, social, economic and cultural context when designing anti-corruption strategies.
- **POLITICAL WILL:** Committed political leadership, ideally from the highest levels of the State, and broader political support to steer the overall process and mobilize necessary resources, are necessary conditions of an effective anti-corruption strategy development process.
- **STAKEHOLDER INVOLVEMENT (INCLUSIVE PROCESS) AND OWNERSHIP:** Broad engagement of stakeholders builds ownership and helps to ensure acceptability and effectiveness of strategies adopted. State institutions (executive, legislative and judiciary) at the national and subnational levels, civil society organizations, private sector, media, professional societies, trade and industry associations and labour unions,

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<sup>11</sup> Resolution 5/4 (2012)

<sup>12</sup> UNODC, The United Nations Convention against Corruption National Anti-Corruption Strategies: A Practical Guide for Development and Implementation (2015)

academic institutions, youth and cultural organizations, can serve as important allies and partners in the development of anti-corruption strategies and can reduce the vulnerability of the reform efforts to changes in political leadership.

- **CLEAR AND TRANSPARENT PROCESS:** The process of developing strategies needs to be clear and transparent from the outset.
- **COMMON VISION:** A consensus should be built around a common vision and intended objectives of strategies.
- **STRENGTHENING COORDINATION:** Anti-corruption strategies should focus on enhancing inter- and intra-agency coordination during the development process as well as the implementation and monitoring phases.
- **SOUND KNOWLEDGE BASE:** Development, implementation and monitoring of strategies should be informed by sound diagnostics, needs and evidence of risk and vulnerability areas and gaps in anti-corruption policies and institutions.
- **SUSTAINABILITY AND INSTITUTIONALIZATION OF THE PROCESS:** Development of strategies should be institutionalized to ensure continued relevance and timely modification of the anti-corruption strategies.
- **ALLOCATING AND MOBILIZING RESOURCES:** Necessary resources should be mobilized at the time of development of strategies to ensure effective implementation and monitoring of strategies.
- **PUBLIC COMMUNICATION AND ENGAGEMENT:** Anti-corruption and national planning authorities shall communicate and engage with the public regularly in order to ensure public confidence and channel feedback for the effective implementation of anti-corruption strategies.

(b) Anti-corruption strategy design and content

- **RATIONALE CORE OBJECTIVES AND REALISTIC GOALS:** Core objectives and goals, and rationale for interventions should be defined based on national priorities, and identified gaps and needs.
- **NATIONAL DEVELOPMENT STRATEGY/PRIORITIES AND BROADER CONTEXT:** Anti-corruption strategies should be incorporated within broader national development initiatives currently in focus and should take into account international/regional obligations.
- **INTEGRATION WITH OTHER RELEVANT NATIONAL PROGRAMMES/ REFORM AGENDAS:** Anti-corruption strategies should take into account and establish links with other relevant national strategies (e.g., judicial sector, public

administration reform, open government, etc.) and should seek to form synergies with other agencies.

- **COMPREHENSIVE AND COORDINATED APPROACH:** Anti-corruption strategies should be organized under an overarching/holistic approach while taking into account sector-specific needs.
- **CLEAR AND UNDERSTANDABLE DOCUMENT:** Strategies have to be clear, concise and easily understood.
- **STRUCTURE AND DESIGN:** While there is no simple formula for the proper design, content or implementation of anti-corruption strategies, the UNCAC can be used as a framework for anti-corruption strategies, taking into account relevant data, particular needs and national capacities.
- **PRIORITIZATION AND SEQUENCING:** Strategies need to be realistic on what is achievable in the short, medium and long term, set clear priorities and sequence actions based on priorities. Strategies could be designed with the aim of enhancing the credibility of leadership and ensuring quick tangible results to strengthen the national commitment to reform.
- **IMPLEMENTATION MECHANISM:** It is imperative that strategies provide for an implementation mechanism in the form of an action plan with clearly identified responsibilities and timelines for implementation with focus on results. The agency designated to coordinate implementation of strategies should be within high-level government agencies.
- **SUBNATIONAL IMPLEMENTATION:** Where applicable, particular attention should be paid to strategies' implementation at the subnational and local levels.
- **INSTITUTIONAL AND FINANCIAL SUSTAINABILITY (NEEDS and CAPACITIES):** Strategies should provide for their institutional and financial sustainability and should take into account capacity for implementation.

#### (c) Anti-corruption strategy monitoring and evaluation

- **INTEGRAL PART OF STRATEGY DESIGN:** Monitoring and evaluation mechanisms are an integral part of national anti-corruption strategies. Elements of evaluation and data-collection systems should be built into strategies from the design phase.
- **INDICATORS WITH CLEAR BASELINES AND TARGETS:** Measurable indicators, with established baselines and tracking mechanisms, are needed to determine whether targets are being achieved.

- **NEED FOR DATA-GENERATION TOOLS:** Effective monitoring and evaluation require reliable data that are generated based on multiple sources.
- **REGULAR REPORTING:** Regular monitoring and reporting allow authorities to gauge progress in implementation and achieving results in curbing corruption.
- **EVALUATION VS. PROGRAMME MANAGEMENT:** It is important to distinguish between programme management monitoring (activities/outputs) as opposed to evaluation (outcomes/impact) and between implementation responsibilities as opposed to monitoring and oversight responsibilities.
- **RESPONSIBLE AUTHORITY:** National body/bodies should be entrusted with the responsibility for monitoring, implementation and regular reporting and be provided with sustainable institutional and financial support. An independent evaluation should ensure accurate monitoring and reporting at regular intervals.

#### **D. Stolen Asset Recovery Assistance**

The Stolen Asset Recovery Initiative (hereinafter referred to as StAR) is a partnership between the World Bank Group and the UNODC that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets.<sup>13</sup> StAR's work is built on four key pillars of empowerment, partnership, innovation and international standards.<sup>14</sup>

Firstly, StAR helps countries establish the legal tools and institutions required to recover the proceeds of corruption. It helps them develop the specific skills needed to pursue asset recovery cases, through sharing knowledge and information, and providing hands-on training in asset tracing and international cooperation on legal matters. StAR helps countries apply these tools and skills by facilitating contacts between jurisdictions in support of asset recovery cases.

Secondly, StAR works with and helps bring together governments, regulatory authorities, donor agencies, financial institutions, and civil society organizations from both financial centers and developing countries, fostering collective responsibility and action for the deterrence, detection and recovery of stolen assets.

Thirdly, StAR generates knowledge on the legal and technical tools used to recover the proceeds of corruption, promoting the sharing of global best practices.

Lastly, StAR advocates for the strengthening and effective implementation of Chapter 5 of the UNCAC and other international standards to detect, deter and recover the proceeds of corruption. Working with global forums such as the Conference of States Parties to the UNCAC

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<sup>13</sup> <http://star.worldbank.org/star>

<sup>14</sup> <http://www.unodc.org/unodc/en/corruption/StAR.html>

and its asset recovery working group, the Financial Action Task Force, and other multinational bodies, StAR fosters collective global public action and helps countries implement agreed standards.

## II. LEGAL MEASURES FOR INTERNATIONAL COOPERATION

The United Nations Convention against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem.<sup>15</sup>

With ratification by 178 States parties (as of December 2015)<sup>16</sup>, the Convention has established opposition to corruption as a global norm and made the elimination of corruption a global aspiration. States parties to the Convention must undertake effective measures to prevent corruption<sup>17</sup>, criminalize corrupt acts and ensure effective law enforcement<sup>18</sup>, cooperate with other

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<sup>15</sup> <http://www.unodc.org/unodc/en/corruption/index.html?ref=menuside>

<sup>16</sup> <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

<sup>17</sup> Article 7. Public sector

Article 8. Codes of conduct for public officials

Article 9. Public procurement and management of public finances

Article 10. Public reporting

Article 11. Measures relating to the judiciary and prosecution services

Article 12. Private sector

Article 13. Participation of society

Article 14. Measures to prevent money-laundering

<sup>18</sup> Article 15. Bribery of national public officials

Article 16. Bribery of foreign public officials and officials of public international organizations

Article 17. Embezzlement, misappropriation or other diversion of property by a public official

Article 18. Trading in influence

Article 19. Abuse of functions

Article 20. Illicit enrichment

Article 21. Bribery in the private sector

Article 22. Embezzlement of property in the private sector

Article 23. Laundering of proceeds of crime

Article 24. Concealment

Article 25. Obstruction of justice

Article 26. Liability of legal persons

Article 27. Participation and attempt

Article 28. Knowledge, intent and purpose

Article 29. Statute of limitations

Article 30. Prosecution, adjudication and sanctions

Article 31. Freezing, seizure and confiscation

Article 32. Protection of witnesses, experts and victims

Article 33. Protection of reporting persons

Article 34. Consequences of acts of corruption

Article 35. Compensation for damage

Article 36. Specialized authorities

Article 37. Cooperation with law enforcement authorities

Article 38. Cooperation between national authorities

States parties in enforcing anti-corruption laws<sup>19</sup> and assist one another in the return of assets obtained through corruption.<sup>20</sup>

Moreover, in addition to calling for effective action in each of these specific areas, article 5 imposes the more general requirements that each State party: (a) develop and implement or maintain effective, coordinated anti-corruption policies; (b) establish and promote effective practices aimed at the prevention of corruption; and (c) periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption. Furthermore, under article 6, each State party is required to ensure the existence of a body or bodies, as appropriate, that prevent corruption by implementing the policies referred to in article 5 and, where appropriate, overseeing and coordinating the implementation of those policies. Thus, one of the most important obligations of States parties under the Convention, and to which they are to be held accountable under the Mechanism for the Review of Implementation of the Convention established under article 63, is ensuring that their anti-corruption policies are effective, coordinated and regularly assessed.<sup>21</sup>

The UNCAC covers five main areas: prevention, criminalization and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange. The UNCAC covers many different forms of corruption, such as trading in influence, abuse of power, and various acts of corruption in the private sector. A further significant development was the inclusion of a specific chapter of the Convention dealing with the recovery of assets, a major concern for countries that pursue the assets of former leaders and other officials accused or found to have engaged in corruption. The rapidly growing number of States that have become parties to the Convention is further proof of its universal nature and reach.

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Article 39. Cooperation between national authorities and the private sector

Article 40. Bank secrecy

Article 41. Criminal record

Article 42. Jurisdiction

<sup>19</sup>Article 43. International cooperation

Article 44. Extradition

Article 45. Transfer of sentenced persons

Article 46. Mutual legal assistance

Article 47. Transfer of criminal proceedings

Article 48. Law enforcement cooperation

Article 49. Joint investigations

Article 50. Special investigative techniques

<sup>20</sup>Article 51. General provision

Article 52. Prevention and detection of transfers

Article 53. Measures for direct recovery of property

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Article 55. International cooperation for purposes of confiscation

Article 56. Special cooperation

Article 57. Return and disposal of assets

Article 58. Financial intelligence unit

<sup>21</sup>UNODC, *The United Nations Convention against Corruption National Anti-Corruption Strategies: A Practical Guide for Development and Implementation* (2015), p.1.

## **A. Prevention**

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those who use public services must expect a high standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.<sup>22</sup>

## **B. Criminalization**

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic area of private-sector corruption.<sup>23</sup>

## **C. International Cooperation**

Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.<sup>24</sup>

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<sup>22</sup> UNODC, Legislative guide for the implementation of the United Nations Convention against Corruption, Second Revised Edition (2012) p.2.

<sup>23</sup> UNODC, Legislative guide for the implementation of the United Nations Convention against Corruption, Second Revised Edition (2012) p.2.

<sup>24</sup> UNODC, Legislative guide for the implementation of the United Nations Convention against Corruption, Second Revised Edition (2012) p.2.

#### **D. Asset Recovery**

In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as a fundamental principle of the Convention. This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Reaching agreement on this chapter has involved intensive negotiations, as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought.<sup>25</sup>

Several provisions specify how cooperation and assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims. Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets. Accordingly, article 51 provides for the return of assets to countries of origin as a fundamental principle of this Convention. Article 43 obliges State parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention. With regard to asset recovery in particular, the article provides, *inter alia*, that "In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties".<sup>26</sup>

#### **E. Mechanism for the Review of Implementation of the UNCAC**

The Conference recalled article 63 of the UNCAC, especially paragraph 7, according to which the Conference should establish, if it deemed it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.<sup>27</sup> In the same resolution, the Conference adopted, subject to the provisions of the present resolution, the terms of reference of the Mechanism for the Review of Implementation of the UNCAC<sup>28</sup>, and the draft guidelines for governmental experts and the secretariat in the conduct of country reviews and the draft blueprint for country review reports, contained in the appendix to the annex, which will be finalized by the Implementation Review Group.<sup>29</sup>

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<sup>25</sup> UNODC, Legislative guide for the implementation of the United Nations Convention against Corruption, Second Revised Edition (2012) p. 3.

<sup>26</sup> [http://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html#Asset\\_recovery](http://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html#Asset_recovery)

<sup>27</sup> "Review mechanism", Resolution 3/1 (2009)

<sup>28</sup> Annex, Resolution 3/1 (2009)

<sup>29</sup> <http://www.unodc.org/unodc/en/treaties/CAC/IRG.html>

The Conference recalled its decision<sup>30</sup> by which the Group was charged with following up and continuing the work undertaken previously by the Open-ended Intergovernmental Working Group on Technical Assistance, and taking into account the fact that one of the goals of the Mechanism is to help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance.<sup>31</sup> In the same resolution, the Conference recalled in particular its endorsement<sup>32</sup> of country-led and country-based, integrated and coordinated technical assistance programme delivery and its encouragement to donors to accord high priority to technical assistance to implement the UNCAC. The Conference also endorsed the guidelines for governmental experts and the secretariat in the conduct of country reviews and the blueprint for country review reports as finalized by the Group at its first session and the practice followed by the Group with regard to the procedural issues arising from the drawing of lots.<sup>33</sup>

### III. ANTI-CORRUPTION INVESTIGATION SYSTEM & PRACTICE IN KOREA

#### A. Anti-Corruption Department of the Prosecutors' Office in Korea

In 2013, the Central Investigation Department was replaced by the Anti-Corruption Department to control and support special investigation, directed by the Prosecutor General at the Supreme Prosecutors' Office.<sup>34</sup> (hereinafter referred to as SPO)

The SPO consists of the Planning & Coordination Department, Office of Future Strategy & Vision, Judicial Policy Center, International Cooperation Center, Criminal Department, Violent Crime Investigation Department, Narcotics & Organized Crime Investigation Department, Crime Victim Rights Division, Public Security Department, Criminal Trial & Civil Litigation Department, Forensic Science Investigation Department, Inspection Headquarters and Anti-Corruption Department.

The Anti-Corruption Department finds the focal investigation areas and designates investigation targets on the basis of structural corruption and causes of crimes discovered during in-depth research and analysis on criminal phenomena which have been taking new dimensions following the economic growth and social development. The Anti-Corruption Department performs various tasks including direction, supervision, and coordination of special investigations conducted by District Prosecutors' Offices, dealing with and management of cases transferred from other agencies, support for special investigations such as accounting analysis and tracing funds,

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<sup>30</sup> Resolution 3/1 (2009)

<sup>31</sup> "Mechanism for the Review of Implementation of the United Nations Convention against Corruption", Resolution 4/1(2011)

<sup>32</sup> "Technical assistance to implement the United Nations Convention against Corruption" Resolution 3/4 (2009)

<sup>33</sup> <http://www.unodc.org/unodc/en/treaties/CAC/IRG.html>

<sup>34</sup> The Prosecutors' Office of Korea consists of the Supreme Prosecutor's Office, High Prosecutors' Offices, District and Branch Prosecutors' Offices. The Supreme Prosecutor's Office stands at the top of organizational hierarchy, and its duties include directing and supervising investigation and operations of all other Prosecutors' Offices across the country. The Supreme Prosecutor's Office directs and supervises investigation and operations of all other Prosecutors' Offices across the country. The Prosecutor General handles all affairs and directs all staff members of the Prosecutors' Offices.

asset recovery, research on investigation techniques, international cooperation on investigation, and collaboration with relevant institutions.<sup>35</sup>

The Narcotics & Organized Crime Investigation Department aims to protect the people from hideous crimes ranging from gang-related violence to narcotics offenses, which greatly threaten the lives and property of the public. In particular, this department proactively responds to changes in the criminal environment, where narcotics-related crimes involve trespass of national boundaries, and methods of smuggling are increasingly diversifying. As part of these efforts, the department is strengthening global partnership in investigation by holding a regular Anti-Drug Liaison Officials' Meeting for International Cooperation (ADLOMICO)<sup>36</sup>. This department also supports projects for the elimination of drugs in ASEAN countries with the help from the ASEAN Secretariat, and is leading the effort to adopt advanced investigative techniques, such as information systems for investigation of narcotics crimes and Drug Signature Analysis technique.<sup>37</sup>

## **B. International and Regional Cooperation in Anti-Corruption Investigation**

In Asia and around the world, criminals use increasingly more complex money laundering methods to hide the origins of illegally obtained funds generated by their activities. Money laundering poses serious challenges to the economies and national security of nations. National investigation and prosecution authorities understand that "following the money" — mapping the flow of illicit funds in order to recover them — is the most effective way to combat money laundering. Doing so leads back to the money's source, potentially allowing it to be confiscated and the illicit cash flows stopped. It is, however, an extremely difficult task: Less than 1% of illicit financial flows around the globe are seized and frozen, according to a recent UNODC study.<sup>38</sup>

Law enforcement officials are often constrained by national borders and lack of cross-border cooperation, unlike criminals who are not bound by jurisdictions or borders, and can move illegally obtained money from country to country. To overcome this, Towards AsiaJust Programme<sup>39</sup>, a

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<sup>35</sup> <http://www.spo.go.kr/eng/about/departments.jsp>

<sup>36</sup> The purpose of the ADLOMICO is to share information about international drug trafficking organizations and their illicit trafficking activities and to establish the mechanism for regional cooperation to tackle drug crimes. Since April 1989, the Supreme Prosecutors' Office has organized quarterly meetings of drug-related officials of several embassies in Seoul with the purpose of strengthening international cooperation and facilitating exchange of information on international drug crimes. The ADLOMICO has been excellent forum for sub-regional cooperation, in areas such as exchange of information on new trends of drug crimes and mutual legal assistance among the member countries. ADLOMICO has been highly praised for a model sub-regional cooperation mechanism by the United Nations. And Executive Director of the UNDCP has sent his encouraging message for the participants of ADLOMICO each year. (<http://www.spo.go.kr/eng/division/adlomico/about/adlomico.jsp>)

<sup>37</sup> <http://www.spo.go.kr/eng/about/departments.jsp>

<sup>38</sup> UNODC, Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes (2011) ([http://www.unodc.org/documents/data-and-analysis/Studies/Illicit\\_financial\\_flows\\_2011\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf))

<sup>39</sup> Towards AsiaJust programme aims at establishing a cooperative legal network in Southeast Asian region to effectively fight against international crime. Korean Institute of Criminology (KIC) has signed an MOU with the UNODC Regional Centre for East Asia and the Pacific for the development of the 『Towards AsiaJust』 programme in July 2009. As part of this project, KIC has conducted research on crime trends and criminal justice systems in this region and has provided financial assistance. More specifically, KIC's research aimed at enhancing the level of mutual legal assistance, achieving transnational organized justice. For more efficient and comprehensive research,

sub-programme of the UNODC Regional Centre in East Asia and the Pacific, has worked to form an Asset Recovery Inter-Agency Network for Asia and the Pacific (hereinafter referred to as ARIN-AP), a regional network of prosecutors and law enforcement to promote the comprehensive cross-border cooperation and Mutual Legal Assistance (hereinafter MLA) necessary to effectively combat money laundering.

(a) Development of the ARIN-AP

The organizing meeting in 2012, organized by the UNODC, with support from the SPO of the Republic of Korea and UNODC Vienna's Global Programme against Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPML), the meeting drew practitioners and scholars from Australia, China, Indonesia, Japan, New Zealand, the Republic of Korea, Singapore and Thailand, as well as representatives from UNODC GPML and from the ARIN Secretariats currently established in Europe (CARIN), South Africa (ARINSA) and South America (RRAG). The Korean SPO offered to house the Secretariat of the future ARIN-AP and provide critical support. An inter-agency regional network is essential to successfully forfeit assets from criminals. That is why the Korean SPO would like to facilitate the creation of an ARIN-AP Secretariat.<sup>40</sup> In January 2013, the SPO set up an ARIN-AP webpage.<sup>41</sup> At the conclusion of the 2012 conference, attendees were presented with Conclusions of the Expert meeting to develop Asset Recovery Inter-Agency Network in Asia and the Pacific. The report contains prerequisites, requirements, expectations, suggestions and views raised by participants throughout the meetings in regards to the establishment of ARIN-AP.<sup>42</sup>

In November 2013, the Inaugural General Meeting of the ARIN-AP was held at the SPO. The Meeting attracted 21 countries from the Asia-Pacific region as well as 6 international organizations including UNODC, World Bank, and CARIN. The SPO took the role of Secretariat of the ARIN-AP.

(b) Overview of the ARIN-AP

The aim of ARIN-AP is to increase the effectiveness of members' efforts in depriving criminals of their illicit profits on a multi-agency basis by establishing itself as the center of professionals' network in tackling the proceeds of crime.

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KIC periodically sent researchers to the UNODC Regional Centre for East Asia and the Pacific. Moreover, KIC has participated in various workshops and meetings as part of the programme. As prosecutorial capacity building (PCB) is one of the foremost priorities for the Towards AsiaJust programme, the SPO of the Republic of Korea and UNODC hosted a high level prosecutors' meeting in 2010, with the theme of the Role of Prosecutors Against Proceeds of Crime and Financing of Terrorism, and KIC also participated in the meeting. Another prominent workshop that KIC participated in was the UNODC-ITU's Asia-Pacific Regional Workshop on Asset Recovery and Fighting Cyber Crime in 2011.

([https://eng.kic.re.kr/modedg/contentsView.do?ucont\\_id=CTX001018&srch\\_menu\\_nix=74C47Qr4&srch\\_mu\\_site=CDIDX00002&srch\\_mu\\_lang=CDIDX00023](https://eng.kic.re.kr/modedg/contentsView.do?ucont_id=CTX001018&srch_menu_nix=74C47Qr4&srch_mu_site=CDIDX00002&srch_mu_lang=CDIDX00023))

<sup>40</sup> UNODC, "UNODC promotes Asia Pacific asset recovery inter-agency network"

(<https://www.unodc.org/southeastasiaandpacific/en/2012/12/arin-meeting/story.html>)

<sup>41</sup> <http://www.arin-ap.org/main.do>

<sup>42</sup> <https://www.unodc.org/documents/southeastasiaandpacific//2012/12/arin/Conclusions.pdf>

Seeking to meet its aims ARIN-AP focuses on the proceeds of all crimes, within the framework of international obligations, establishes itself as the center of expertise in all aspects of tackling the proceeds of crime, promotes the exchange of information and best practice, establishes a network of contact points, forms a solid international network with other related organizations such as UNODC and CARIN, researches and develops practices and systems of asset recovery, facilitates and promotes training in all aspects of tackling the proceeds of crime, acts as an advisory group to other appropriate authorities, and cooperates with the private sector in achieving its aims.<sup>43</sup>

#### **IV. ASSET RECOVERY LAW & SYSTEM IN KOREA**

The Republic of Korea regulates the act of disguising criminal proceeds as legitimately acquired or concealing such proceeds (i.e. money laundering), and recovers assets based upon relevant laws including the ‘Act on Regulation of Punishment on Criminal Proceeds Concealment’. Korea also prevents criminals from concealing or disposing properties with a ‘preservation order for the purpose of confiscation’ allowing freezing of assets prior to conviction or indictment.

Korea has traced and confiscated criminal proceeds and exchanged relevant information with foreign countries pursuant to the ‘Act on International Mutual Legal Assistance in Criminal Matters’. Currently, it has bilateral MLA treaties with 23 countries and acceded to the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters thereby forming a mutual legal assistance network with 72 countries. In addition, Korea has enhanced international cooperation in retrieving criminal proceeds by joining the United Nations Convention against Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Egmont Group and APG (Asia-Pacific Group on Money Laundering), and kept its efforts to adopt good models from other countries.

In Korea, many government authorities are taking part in the efforts of asset recovery. For example, the SPO established ‘The Task Force on Money Laundering Investigation and Asset Forfeiture’ for effective asset tracing and recovery in 2006, and expanded the TF into the ‘Criminal Proceeds Confiscation Center’ in 2010. The SPO also created a criminal proceeds confiscation unit in major prosecutors’ offices nationwide. Meanwhile, the International Criminal Affairs Division of the Ministry of Justice manages laws related to asset recovery and supports investigative authorities in mutual legal assistance with their counterparts in other countries. The Korea Finance Intelligence Unit (KoFIU) provides investigators with specific financial records such as STR and CTR and engages in international mutual legal assistance.

In general, Korea uses a formal assistance channel for mutual legal assistance. As to informal assistance, the adequacy of a request is carefully reviewed case by case.

#### **A. Act on Regulation and Punishment of Criminal Proceeds Concealment of 2014**

##### **(a) The Purpose of the 2014 Act**

The purpose of the 2014 Act is to contribute to the maintenance of a sound social order by regulating activities that disguise the acquisition of criminal proceeds related to specific crimes,

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<sup>43</sup> <http://www.arin-ap.org/about/mission>

conceal criminal proceeds for the purpose of encouraging specific crimes, or disguise such assets as legitimately acquired, and by fundamentally eliminating economic factors that encourage specific crimes through prescribing special cases regarding confiscation and collection of equivalent value with regard to criminal proceeds related with specific crimes.

(b) Criminal Proceeds

A person who disguises the acquisition or disposition of criminal proceeds<sup>44</sup>, disguises the origin of criminal proceeds, or conceals criminal proceeds for the purpose of encouraging specific crimes or disguising criminal proceeds as legitimately acquired shall be punished by imprisonment with labour for not more than five years or by a fine not exceeding 30 million won. (Art.3)

A person who knowingly accepts the criminal proceeds, etc.<sup>45</sup> shall be punished by imprisonment with labour for not more than three years or a fine not exceeding 20 million won: Provided, That this shall not apply to any person who accepted the criminal proceeds, etc. presented as a performance of an obligations under statutes or any person who received the criminal proceeds, etc. presented as a performance of an obligations under a contract (only limited to a contract under which a creditor is to offer substantial property interest) not knowing that the performance of such obligations would be performed with the criminal proceeds, etc. at the time of signing the contract. (Art.4.)

When the representative of a corporation, or an agent or employee of, or any other person employed by, a corporation or an individual commits an offence under Articles 3 through 5 in connection with the business affairs of the corporation or individual, not only shall such offender be punished, but also the corporation or individual shall be punished by a fine under the relevant provisions: Provided, That this shall not apply where such corporation or the individual has not been negligent in giving due attention and supervision concerning the relevant business affairs in order to prevent such offense. (Art.7)

(c) Confiscation of Criminal Proceeds

Criminal proceeds, any property derived from criminal proceeds<sup>46</sup>, criminal proceeds related to the criminal acts prescribed in Article 3 or 4, and any property generated by the criminal acts prescribed in Article 3 or 4, any property acquired in return for such criminal act, and any property acquired as a fruit of or in compensation for any property prescribed in subparagraph 3 or 4, any property acquired as compensation for these properties, or any other property acquired by the possession or disposition of the property may be confiscated. (Art.8. para.1.)

Where the property that is subject to confiscation as prescribed in paragraph (1) (hereinafter referred to as property subject to confiscation) is mixed with properties other than the property

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<sup>44</sup> Criminal proceed means property generated by committing serious crimes or acquired in return for such crimes or funds or properties concerning any of the crimes prescribed in the 2014 Act. (Art.2.)

<sup>45</sup> Criminal proceeds, etc. means criminal proceeds, property derived from criminal proceeds, and any other property in which either one of the above properties is indistinguishably mixed with other kinds of property. (Art.2.)

<sup>46</sup> Property derived from criminal proceeds means any property acquired as the fruit of criminal proceeds, property acquired as compensation for criminal proceed, property acquired as compensation for the two above types of property, and property acquired from the possession or disposition of criminal proceeds. (Art.2.)

subject to confiscation and the said property should be confiscated, the equivalent of the value or quantity of the property subject to confiscation (within the limits of the part related to the mixture) from among the property generated by the mixture (hereinafter referred to as mixed property) may be confiscated. (Art.8. para.2.)

The confiscation prescribed in Article 8 (1) shall be limited to cases where the property subject to confiscation or mixed property does not belong to any person other than a criminal: Provided, That where a person other than a criminal knowingly acquires the mentioned property subject to confiscation or mixed property (excluding cases in which the acquisition of the mentioned property subject to confiscation or mixed property falls under the proviso to Article 4) after such crime has been committed, the mentioned property subject to confiscation or mixed property may be confiscated even though it belongs to a person other than a criminal. (Art.9. para.1.)

Where it is impracticable to confiscate the property under the provisions of Article 8 (1) or where it is deemed inappropriate to confiscate the property in light of the nature of such property, the conditions of its use, the existence of a right of any person other than the parties to the offense to such property, or other circumstances, the monetary equivalent to the value of such property may be collected from any of the parties to the offense. Where the property prescribed in Article 8 (1) is crime victim property, such collection shall not be made. (Art.10)

The collection of property subject to confiscation under the 2014 Act, which belongs to an individual, corporation, or those with actual control over the corporation through management control, financial relations, or participation in decision making, who have criminal responsibilities for an accident causing a loss of multiple human lives, may be executed against the property subject to confiscation that any person other than a criminal has knowingly acquired as well as the property which has been derived therefrom. (Article 10-2.)

(d) Disposition by Prosecutors for Execution of Confiscation and Collection

Where it is deemed necessary for the execution of confiscation and collection under this Act, prosecutors may take any of the following dispositions within the necessary minimum range: Provided, That in cases of the dispositions prescribed in subparagraphs 4 and 5 on any person other than a criminal, a warrant referred to in paragraph (3) shall be required demand for attendance of interested persons and hearing of their opinions; demand for a person who owns, possesses, or retains documents or other articles to submit them; request for the provision of certain information on financial transactions provided for in Article 7 (1) of the Act on Reporting and Using Specified Financial Transaction Information; request for the provision of taxation information provided for in Article 81-13 of the Framework Act on National Taxes; request for the provision of information or materials related to the details of financial transactions under Article 4 (1) of the Act on Real Name Financial Transactions and Confidentiality; demand for public institutions or organizations to reply to an inquiry of facts or to report on necessary matters. (Article 10-3. Para.1.)

In receipt of a request for the provision of information pursuant to paragraph (1), no institution shall refuse to comply with such request on the basis of other Acts, except in cases

having significant impacts on the security of the nation, such as military, diplomacy, and inter-Korean relations. (Article 10-3. Para.2.)

Where it is necessary for the execution of confiscation or collection pursuant to paragraph (1), prosecutors may conduct seizure, search, or verification in accordance with a warrant issued by a judge of a district court at their request. (Article 10-3. Para.3.)

(e) Implementation of Mutual Cooperation

When a foreign country has requested cooperation in relation to a foreign criminal case against an act falling under specific crimes and the crimes referred to in Articles 3 and 4 of this Act in the execution of a finally-binding adjudication of confiscation or collection of equivalent value or in the preservation of property for the purpose of confiscation or collection of equivalent value, mutual assistance may be provided except in any of the following cases (Art.11.)

- ① Where activities related to the crimes that require mutual cooperation take place in the Republic of Korea and such activities are not regarded as specific crimes or the crimes referred to in Articles 3 and 4 of the statutes of the Republic of Korea;
- ② Where there is no assurance of the requesting country providing assistance for similar requests made by the Republic of Korea;
- ③ Where it falls under any of the subparagraphs of Article 64 (1) of the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.

**B. The Process of Seeking Restraint, Seizure and Confiscation**

In order to seek the restraint, seizure and forfeiture/confiscation of criminal proceeds from Korea, the following steps should be followed.

(a) Identification of the Asset

In order to recover the proceeds of corruption held within Korea, first identify whether the request is formal or informal. It will be necessary to identify the relevant information explained in the paragraph of Mutual Legal Assistance. In addition, a country requesting to take informal procedures should specify reasons for such request. Then Korea will review the need for the request carefully. In order to assist identifying assets in Korea, the following mechanisms are available:

(b) Mutual Legal Assistance Request

A country may request mutual legal assistance in criminal matters based on the principle of reciprocity even without a bilateral or multilateral treaty in force pursuant to the Act on International Mutual Legal Assistance in Criminal Matters of Korea.

The mutual legal assistance that Korea can provide may differ by requesting state, but generally speaking, Korea offers assistance for investigation into persons or objects, provision of documents or records, collection of evidence, seizure/search or verification, transfer of objects (e.g.

evidence), hearing of statements, or taking measures to have witnesses testify in the requesting state or cooperate on investigation.

The terms of each treaty and relevant laws such as the Act on International Mutual Legal Assistance in Criminal Matters and the Act on Regulation of Punishment on Criminal Proceeds Concealment provide the required information in a mutual legal assistance request. Generally, the following information must be provided in a request seeking assistance from Korea.

- ① Government authorities in charge of investigation and legal proceedings related to the request
- ② Facts of crime for which assistance is requested
- ③ Objectives and contents of the request
- ④ Other matters required for mutual legal assistance

Korea receives letters of mutual legal assistance through diplomatic channels or by direct mail. Once the request is received, the Ministry of Justice reviews the case, mainly with regard to the requirement of dual criminality or necessity to assist. After that, the Ministry of Justice orders the District Prosecutors' Office to proceed with mutual legal assistance, unless any supplementary documents are required. The District Prosecutors' Office proceeds with mutual legal assistance and sends the results to the Ministry of Justice. The Ministry of Justice then reviews the results and sends a reply to the requesting country, unless any additional requests are made.

As the primary contact for mutual legal assistance from Korea, the International Criminal Affairs Division in the Ministry of Justice works with the competent authority of the requesting state as well as Korean prosecutors or law enforcement officials to successfully execute the request for mutual legal assistance.

(c) Access to Database of the Property Registry System Managed by the Court

The Office of Court Administration operates the registry of real estate and vessels held in Korea. The registry information is computerized so that anybody around the world can search and read the information online. Please refer to [www.iros.go.kr](http://www.iros.go.kr). The registry provides information such as stakeholders (e.g. owner, security holders, etc.) of real estate and vessels so as to help identify and trace relevant properties.

(d) Egmont Requests

As a member of the Egmont Group<sup>47</sup>, Korea can exchange information with foreign FIUs for criminal investigations. Korea also laid the foundation for information exchange between KoFIU and foreign FIUs by enacting the 'Financial Transaction Reports Act'. In response to the Egmont requests by foreign FIUs, KoFIU can provide specific financial transaction records such as STR and CTR and other relevant information, provided that the following requirements are met:

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<sup>47</sup> <http://www.egmontgroup.org/>

- ① Specific financial transaction records provided to foreign FIUs shall not be used for other purpose than the one specified on the request;
- ② The fact that specific financial transaction records have been provided shall be kept confidential;
- ③ Specific financial transaction records provided to foreign FIUs shall not be used for criminal investigation or legal proceedings of foreign countries without prior consent of the Commissioner of KoFIU.

### **C. Confiscation of Property relating to Foreign Offences**

When assets have been identified, Korea offers the following means of assistance to recover the assets:

#### **(a) Restraining, Freezing or Seizing Assets**

The requesting state may request mutual legal assistance for seizure or preservation of properties for confiscation. The court orders seizure or preservation of properties in case the court determines there are reasonable grounds to believe that the properties may be confiscated and such order is necessary to confiscate the properties, either upon request from the prosecutor or by authority of the court, even before indictment. The seizure/preservation order for confiscation can prevent disposal of such properties until the court decision on confiscation is rendered.

Therefore, seizure and preservation of properties for confiscation can be based on foreign arrest or charge, a suspicion/belief that a person has committed a foreign serious offense and holds assets, or foreign orders and judgements. As for the enforcement of foreign orders and judgements, various forms of orders and judgements (e.g. pecuniary, substitute value, etc.) may be executed; however, the enforcement of orders or judgements not compatible with the Korean legal system may be restricted. Generally final orders and judgements are considered appropriate.

The request for mutual legal assistance in seizure and preservation of properties for confiscation should include the name of the suspect, charges, facts of crime, relevant laws supporting confiscation, properties of which disposal is banned, rights, the name of the owner of the properties/rights, date of issuance, etc.

#### **(b) Confiscating Assets, Proceeds and/or Instrumentalities**

To confiscate the proceeds and/or instrumentalities of a foreign offense through the enforcement of foreign orders and judgements, mutual legal assistance in criminal matters may be sought.

The request for mutual legal assistance in confiscation should include the similar information as specified in the previous paragraph. Upon request of the prosecutor based on foreign orders and judgements, the Korean court decides on the execution and then the enforcement authorities (Penalty Enforcement Division of Prosecutors' Offices) may execute the confiscation request for the asset.

(c) Limitation

In accordance with Article 11 of the ‘Act on Regulation of Punishment on Criminal Proceeds Concealment,’ mutual legal assistance for restraining, freezing, seizing or confiscating assets from a requesting state may be limited in any of the following cases:

Where activities related to the crimes that require mutual legal assistance take place in Korea and such activities are not regarded as specific crimes subject to asset recovery, money laundering or receiving criminal proceeds according to the Korean laws:

- ① Where there is no assurance of the requesting state providing assistance for similar requests made by Korea;
- ② Where the offense that requires mutual legal assistance is not punishable pursuant to the Korean laws;
- ③ Where the offense that requires mutual legal assistance is still in trial or has a final verdict rendered, or the property for which mutual legal assistance is requested has been already ordered to be preserved for the purpose of confiscation or collection;
- ④ Where the property relevant to the request for assistance in executing the final judgement on confiscation/collection or in preserving the property for confiscation/collection may not be subject to the legal proceedings or preservation for confiscation/collection;
- ⑤ Where a third party with reasons to be believed to have the ownership of the property that requires mutual legal assistance for the execution of the final judgement on confiscation or have the superficies, hypothec, or any other right on the property was not able to claim for his/her rights during the court proceedings for the reasons not attributable to him/her;
- ⑥ Where the court determines that confiscation/collection is not required.

**D. Disposal/Return of Assets**

When a foreign country requests disposal or return of assets, the assets may be returned based upon the Act on International Mutual Legal Assistance in Criminal Matters or the bilateral treaty on international mutual legal assistance. The properties shall be disposed or returned in the ways specified in the request or the agreement made between Korea and the requesting state. However, mutual legal assistance in corruption crimes specified by the ‘Act on Special Cases concerning the Confiscation and Return of Property Acquired through Corrupt Practices’ may not be provided in any of the following cases.

- ① Where an act involved in the offence for which cooperation is requested was committed in the territories of Korea and it is held that the act does not constitute a corruption offense under the relevant acts of Korea;

- ② Where the requesting state has not made a guaranty to the extent that it will accept and respond to a request for cooperation of the same kind if Korea makes such a request;
- ③ Where the requesting state has not made a guaranty that the property subject to execution, etc. will be conveyed to the original owner of the property subject to execution, etc., the victim of the offense or any other person who has a legitimate right;
- ④ Other cases where the request for execution of the final judgement on confiscation/ collection, or for preservation of property for the purpose of confiscation/collection may not be made in accordance with Article 64(1) of the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.

The Act on Special Cases concerning the Confiscation and Return of Property Acquired through Corrupt Practices prescribes that if it is the property of the victim of an offense but it is deemed exceedingly difficult for the victim to recover damages because he/she is not able to exercise his/her right against the offender seeking return of the property or compensation for his/her damages on the property, such property may be confiscated or an equivalent value thereof may be collected. If the prosecutor keeps the property to be returned to the victim after confiscation/collection, the prosecutor shall notify the victim thereof immediately, and the victim shall request the return of the property. Then, the prosecutor shall decide on whether to return the property as early as possible and return the property upon decision without delay.

#### **E. Special Investigation Support Division of the SPO**

In 2001, the Special Investigation Support Division was established to support tax, finance and computer-related investigation at the SPO. To respond to increasingly high-tech crimes, the Division has Asset Tracing Team and Accounting Analysis Team, Criminal Assets Recovery Team, Special Financial Transactions/Technology Leakage Team, and Coordination & External Affairs Team.

##### **(a) Accounting analysis support system**

The accounting analysis team supports accounting analysis investigation and finds charges of embezzlement and breach of trust. In the pre-investigation stage, the team provides pre-analysis of public data, press reports, and intelligence. It also assists the search and seizure process, and analyses account data in the stage of investigation. At trial, special investigators of the team provide testimony and evidentiary reports.

##### **(b) Asset Tracing Support Team**

The asset tracing support team provides pre-analysis of financial transaction and supports the creation of search and seizure warrants for special investigations of prosecutors. In the stage of executing search and seizure warrants, the team analyses transactions, extracts suspicious funds and confirms the source of suspicious funds.

(c) Asset Recovery Center

In 2010, Korea joined the Financial Action Task Force on Money Laundering (FATF).<sup>48</sup> The asset recovery center is performing its tasks of detecting suspicious transactions and transactions of large amounts of cash informed by the FIU, tracking money laundering, finding concealed crime proceeds, requesting and executing preservation measures for forfeiture and collection, and training asset recovery experts.

## V. COOPERATION IN ANTI-CORRUPTION INVESTIGATION: KOREAN CASES

On Monday, November 9, 2015, Korean Minister of Justice Kim Hyun-Woong met with U.S. Attorney General Loretta E. Lynch to finalize the return transfer of US \$1.1 million of forfeited assets to the Republic of Korea. The assets, forfeited in two U.S. civil forfeiture actions settled in 2015, were linked to a corruption scheme organized by former Korean President Chun Doo Hwan. As reported in the March 2015 Red Notice, a criminal court in Korea convicted Chun in 1997 of taking more than US \$200 million in bribes during his presidency.<sup>49</sup>

According to the US Department of Justice (DOJ), the former president's family members and associates laundered profits from his public corruption scheme into the United States. The forfeited assets recovered by the DOJ are just a fraction of the approximately US \$212 million Chun was ordered to pay in restitution. In 2013, the Anti-Corruption Division of the Korean SPO and prosecutors from the DOJ's Kleptocracy Asset Recovery Initiative launched investigations into the potential laundering of bribery proceeds into the United States by Chun and his associates. Kleptocracy prosecutors worked across federal agencies and with Korean law enforcement

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<sup>48</sup> The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field. First issued in 1990, the FATF Recommendations were revised in 1996, 2001, 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application. The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. (<http://www.fatf-gafi.org/>)

<sup>49</sup> Former South Korean President Chun Doo-hwan held office from 1980 to 1988. During that time, he had allegedly amassed more than \$200 million in bribes from large corporations such as Samsung, Hyundai and LG. Over time, traces of the funds started to expose themselves following deeper investigations including boxes filled with cash, and most recently, a house and other assets under his son's name. That same son, Chun Jae-yong, admitted that he had received large sums of money from his father. The former president was ordered in 1996 by South Korean courts to pay back the \$229 million he received illegally, but he had spread the money around so much in others' bank accounts and fake companies, that records showed he only had \$300 to his name. The latest seized sum only represents a small percentage of Chun's bribe money, but South Korean prosecutors are still very actively pursuing the fund more than 30 years after the fact. (<http://www.koreatimesus.com/us-returns-1-2-million-of-seized-assets-from-former-president-to-s-korea/>)

agencies on the investigation. This marks the first instance of the United States returning laundered money to South Korea since their Treaty on Mutual Legal Assistance in Criminal Matters came into force in 1997, as well as the first successful case in which the Korean Ministry of Justice recovered assets of a high-profile public official hidden overseas.<sup>50</sup>

The new 2030 Agenda for Sustainable Development, our plan to end poverty and ensure lives of dignity for all, recognizes the need to fight corruption in all its aspects and calls for significant reductions in illicit financial flows as well as for the recovery of stolen assets .... I call for united efforts to deliver a clear message around the world that firmly rejects corruption and embraces instead the principles of transparency, accountability and good governance. This will benefit communities and countries, helping to usher in a better future for all.<sup>51</sup>

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<sup>50</sup> <http://www.lexology.com/library/detail.aspx?g=267a9284-b983-4320-aefb-c1ff3889060b>

<sup>51</sup> Message from UN Secretary-General, Ban Ki-moon on International Anti-Corruption Day (9 December 2015).