

# NEWSLETTER

December 2020

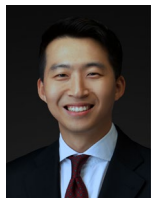
White-Collar Crimes Group

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## Sweeping Changes to the Korean Criminal Procedures Starting in the New Year

A series of legislations affecting the criminal law landscape in Korea have been enacted since the end of 2019 e.g., ‘Corruption Investigation Office for High-Ranking Officials Act’, ‘Prosecutor’s Office Act’ and ‘Criminal Procedure Act’, followed by the establishment of subsidiary laws and regulations. In addition, with the passage of the amendment bill of ‘High-Ranking Official’s Crime Investigation Agency Act’ in December 10th, sweeping changes to the overall law enforcement system are expected.

### 1. Changing Roles of the Prosecutor’s Office and the National Police

In Korea, the Prosecutor’s Office has been the only existing law enforcement authorized for criminal accusation, as well as being the nation’s primary investigative body: Prosecutors not only had the authority to direct police investigations but also initiate or terminate an investigation. Under the new regime, the two law enforcement bodies are expected to be on a more equal standing in their relationship, with the following adjustments to take effect in 2021.

- Prosecutors shall no longer have the right to direct police investigations. Instead, they will be entitled to request the police to conduct supplementary investigation or to take corrective measures.

#### Note

- Prosecutor’s request for supplementary investigation shall be made when the prosecutor finds that the relevant investigation is not sufficient for an indictment, conviction or request for a warrant.
- Prosecutor’s request for corrective measure shall be made by asking the police to send a copy of case documents when either (i) violation of laws, infringement of human rights or (ii) the abuse of authority is reported or recognized.

- In the event of an ‘investigation conflict’, i.e., a situation where two law enforcement offices independently investigate the same case at the same time, the prosecutor may ask the police to send the case to the prosecutor’s office, unless the police had earlier requested for a warrant prior to the prosecutor request.
- The police may file a case for review to the high prosecutor’s office in its jurisdiction when the prosecutor dismisses a request for warrant by the police without any reasonable reason.

■ **Investigative Jurisdiction**

- Cases initiated through criminal complaints at the Prosecutor’s Office

Prosecutors have the authority to investigate only such cases within the scope of their investigation. Cases outside of the scope of their investigative jurisdiction shall be transferred to other law enforcement offices.

- Cases initiated by the Police

When the police decides that a certain case is indictable, the case is then sent to the prosecutor’s office. Meanwhile, when the police concludes that a case is not indictable, the case shall be closed unless the complainant or the victim raises an objection. The police shall send the case to the prosecutor’s office if the complainant or the victim objects to the result of investigation.

Law Enforcement Agency	Cases	Process
Prosecutor’s Office	With jurisdiction	Investigated by the prosecutor
	Without jurisdiction	Transferred to other agencies
Police	Indictable	Sent to prosecutor’s office
	Not indictable	Case closed, if not objected If objected, sent to prosecutor’s office

**Note**

- Documents of cases with non-indictable opinion are sent to the prosecutor’s office. Within 90 days after receipt, the prosecutor may request the police to reinvestigate the case.
- Investigations carried out by special police officers, i.e., officials of specific government agencies(e.g. Ministry of Employment and Labor, National Tax Service, Ministry of Food and Drug Safety, Ministry of Environment, etc.), shall still be under the direction of the prosecutors. Cases investigated by the special police shall be, as has been the case in the past, sent to the prosecutor’s office.
- Starting from 2022, interrogation records written by the prosecutor shall not be taken as evidence of guilt at court unless the suspect admits the record represents the actual facts.

## 2. Prosecutor's Investigative Jurisdiction

- Prosecutors are authorized to investigate (1) corruption crimes, financial crimes, crimes of public officials, election crimes, defense industry crimes and disaster crimes; (2) crimes committed by police officers; (3) crimes relevant to (1), (2) or cases sent from the police.

### Note

- Corruption crimes: bribery(over KRW 30m), influence peddling, violation of the Attorney-at-law Act, violation of the Political Funds Act, taking kick-backs(over KRW 50m), etc.
- Financial crimes: fraud/embezzlement(over KRW 500m), insider trading, industrial espionage, trade secret piracy, violation of competition laws, etc.
- Crimes of public officials: dereliction of duty, abuse of authority, assault while on duty, promulgation of official secrets, creating false official documents, etc.
- Election crimes: election crimes related to referendums, elections of public officials, union presidents, university presidents, etc.
- Defense industry crimes: crimes related to defense industry
- Disaster crimes: crimes related to fire accidents, collapses and explosions with massive casualties

## 3. Establishment of the 'Corruption Investigation Office for High-Ranking Officials'

- The Corruption Investigation Office for High-Ranking Officials(the **CIO**) is an independent investigation agency that has investigative jurisdiction with regards to high-ranking officials, including judges, prosecutors, high-level police officers and high-level government officials of the Financial Supervisory Service(**FSS**), the Board of Audit and Inspection(**BAI**), the National Tax Service(**NTS**), the Korea Fair Trade Commission(**KFTC**), the Financial Services Commission(**FSC**), and their respective family members. Besides, the CIO also has investigative jurisdiction over cases that involve an ordinary citizen if he/she is involved in 'crime of a high-ranking official' and 'related crime'. Particularly where an ordinary person offers a bribe to a high-ranking officials, the CIO shall investigate the case.

### Note

- **Scope of Investigative Jurisdiction:** (a) Crimes concerning the duties of public officials including bribery; (b) Crimes concerning public documents that are related to one's public duties; (c) Embezzlement and breach of trust; (d) Acceptance of bribe for mediation under the Act on the Aggravated Punishment, etc. of Specific Crimes; (e) Violation of the Attorney-At-Law Act; (f) Offenses of giving and receiving political funds under the Political Funds Act, (g) Violation of the National Intelligence Service Korea Act regarding prohibition of involvement in politics, and prohibition of abuse of official authority; (h) Perjury under the Act on Testimony, Appraisal, etc. Before the

National Assembly; (i) Violation of the Act on Regulation and Punishment of Criminal Proceeds Concealment

- **Related Crimes:** (a) Accessory to crimes committed by high-ranking officials and/or their families; (b) Offering a bribe to high-ranking officials and/or their families; (c) Harboring criminal, perjury, destruction of evidence related to 'crime of a high-ranking official'; (d) Any criminal conduct related to 'crime of a high-ranking official' that the CIO becomes aware of in the course of investigation
- For crimes committed by high-ranking officials during their post in office, the CIO shall retain investigative jurisdiction over the case as long as the statute of limitation has not expired.
- Subsequent to investigation, the CIO is obligated to send the relevant case to the prosecutors' office, as the prosecutors maintain the power to prosecute crimes. However, for crimes committed by judges, prosecutors and police officers, the CIO holds the authority not only to investigate the case, but also to prosecute and sustain them.
- If other investigative agencies become aware of 'crime of a high-ranking official', they shall notify the CIO of such crime. The CIO may then request the other investigative agencies to transfer the case to the CIO if the CIO determines that, from the perspective of progress and fairness, it is appropriate to do so. In such cases, other investigative agencies shall comply with the request.

#### 4. Implications of Procedural Changes on Actual Investigations

- **Importance of the jurisdiction:** As the prosecutors' office shall have reduced discretionary power during the initial stage of the investigation, the decision as to where to file the case becomes more important. Case without clear jurisdiction shall be transferred to other investigative agencies.
- **The right to close investigation by the police:** Previously, police officers were obligated to send all criminal cases to the prosecutor's office as they were not allowed to close the case without prosecutor's approval. With newly assigned right to close the investigation, the police can now decide not to send a case to the prosecutor's office. Therefore, the role of the lawyer has become more important from the initial stage of the investigation at police level.
- **Difficulty in handling complaint cases:** Complaint cases will require more detailed approaches as the investigative process varies depending on which law enforcement office initiates the investigation.
- **Strengthened right to assistance of counsel:** According to the revised presidential decree, lawyers are allowed to take notes during the interrogation; participate in every interview with investigators, and the suspects are guaranteed the right to seek advice and counseling.
- **Strengthened right of the suspect:** Late-night and long-term interrogations have been restricted. The investigative agencies shall guarantee various methods of statement and the investigation processes have to be strictly recorded according internal regulations.

- **Right to inspection or copy evidentiary materials:** Individuals concerned with a certain case can also inspect or copy documents and evidentiary materials related to the case.

Major changes in the criminal procedures, including the readjustment of investigation power between the prosecutor's office and national police are expected take effect from January, 2021. As such changes could lead to confusion, we highly recommend that affected individuals actively seek assistance of lawyers from the initial stages of the investigation in order to effectively exercise his or her right against unlawful acts which may occur during the course of the investigation.

If you have any further questions regarding the changes upon criminal procedures, please do not hesitate to contact Lee & Ko's White-Collar Crimes Group.

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