

South Korea's anti-bribery laws



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Conducting business in an overseas market is never an easy task, and becoming accustomed to local rules and customs can be painstakingly difficult and even legally risky. In Korea, it is ever more important to learn the rules of the game before doing business in the Land of the Morning Calm. Many foreign companies tend to jump into business in Korea without first adequately educating themselves as to the applicable anti-corruption laws and business guidelines, and may subsequently pay a heavy price. As the global economy claws its way out of the financial crisis, there might well be an increased temptation for companies to resort to lavish gift giving and entertainment in order to preserve or increase business partners. However, many businessmen are not adequately briefed on the rules surrounding entertainment expenses and gift giving in Korea, a country which has especially strong traditions involving the provision of entertainment and gifts upon occasions ranging from deal closings to weddings and funerals. It is important to understand the rules so that businessmen are not punished for illegal gift giving or bribery.

Anti-corruption laws in Korea are focused mainly on bribery and gift giving, which overlap; the primary difference between the two is in the nature of the recipient. This article focuses on bribery of certain officials or officers.

Under Korean law, in order to commit bribery, the recipient must be either a Korean public official, a foreign public official, or an officer of a Korean financial institution, and the bribe must be offered/provided in connection with a matter that is deemed to be within the scope of the recipient's public duty (the "duty relevance" criteria). In addition, the law requires that there be a "compensatory relationship" between the bribe and the act rendered by the public official. The laws cover both direct and indirect bribes and do not require that the intended result of the bribe be accomplished in order to constitute bribery. The mere promise or a strong showing of intent to provide payment in exchange for an act may constitute bribery, as will the request for payment of a bribe never actually received. Bribery laws pertain to bribes in the form of money and other thing of value including

real estate, securities, job or business opportunities, gifts, entertainment and lavish meals.

The economic value of the bribe is of little importance in determining whether a bribe was given or received under Korean law. Rather, duty relevance and a compensatory relationship are relied upon heavily by the courts in making a determination of guilt. If the foregoing criteria are not met, entertainment and gifts within the normal course of business are generally permissible. If a court considers a bribe to be an insignificant amount, it might take this factor into account when deciding the extent of any criminal penalty, but it will not excuse the action. Meanwhile, where the entertainment/gift provided was of a substantial amount, investigations have been triggered by law enforcement agencies to determine whether a "give-and-take" or quid pro quo relationship existed to such an extent as to constitute a bribe.

There is no codified equation used to calculate the proportional relationship between the bribe amount and the level of punishment it entails. However, when rendering decisions on criminal liability the courts generally examine: (i) the level or position of the public official; (ii) proximity in time and causation between the offering of the bribe and the rendering of the public duty; (iii) the degree of discretionary power of the public official; (iv) motives and circumstances of the bribe; and (v) previous relations between the public officer and the person giving the bribe. Both the person paying the bribe and the person receiving the bribe can be held criminally liable.

Korea's Criminal Act stipulates that acts that were done in accordance with generally accepted business practices, or other actions that do not violate social rules, shall not be punishable, a provision often used as a defence in cases involving bribery. However, the courts have almost never accepted this as a defence in cases where there was duty relevance and a compensatory relationship present in the making of a gift.

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