



National Integrity Systems

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Republic of Korea 2006

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Contents

List of Tables	5
List of Figures	5
Currency	5
Abbreviations	6
About the NIS Country Studies	7
What Is the NIS?	7
Why Conduct NIS Country Studies?	7
Methodology of the NIS Country Studies	7
Executive Summary	8
Priorities and Recommendations	10
Country Profile	12
Corruption Profile	14
Anti-Corruption Activities	17
The National Integrity System	19
Public Sector	19
Executive	25
Supreme Audit Institution	27
Law Enforcement Agency	28
Public Contracting System	30
Ombudsman	33
Anti-Corruption Agency	35
Legislature	36
Electoral Commission.....	39
Judiciary	41
Regional and Local Government	43
Non-Public Sector	46
Political Parties	46
Media	48
Civil Society	51
Business Sector	54
International Institutions.....	58
Evaluation of the NIS	59
Public Sector	59
Non-Public Sector.....	62
References	64
Notes	70
Appendices	76
1. Executive Branch under the Government Organisation Act (2005) (unit: million KRW)	76
2. The Organisation of the National Assembly of the Republic of Korea	77
3. The Organisation of the Judiciary of the Republic of Korea	78

List of Tables

Table 1	Milestones of Korea's Anti-Corruption Activities	18
Table 2	The National Budget of Korea's Public Institutions.....	20
Table 3	Applicable Codes of Conduct of the Korean Public Sector	23
Table 4	Number of Heads of Local Governments and Local Councillors Indicted for Corruption	46
Table 5	Journalists' Perception of Methods of Obtaining Sources (percentage)	51
Table 6	Governmental Support to Non-Profit Civil Organisations under the Act on Support for Non-Profit Civil Organisations	52
Table 7	Number of Requests for Disclosure of Information	60
Table 8	Disciplinary Punishment of Public Officials.....	61
Table 9	Number of Public Officials' Offences Handled by Public Prosecutors	61
Table 10	Number of Public Officials' Offences Handled by Public Prosecutors.....	62

List of Figures

Figure 1	The Governance Organisation of the Republic of Korea	12
Figure 2	Scores of the Republic of Korea on the Corruption Perception Index.....	14
Figure 3	The Budgetary Process of Central Public Institutions	19
Figure 4	The Accounting Settlement Process of Central Public Institutions	20
Figure 5	Structure of Local Autonomies in Korea (as of 2005).....	44

Currency

The currency in Korea is the Korean won (KRW) and the rate of the won to the US dollar in July 2006 was approximately KRW 100 to US\$0.001065.

Abbreviations

ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
BAI	Board of Audit and Inspection
BIS	Bank for International Settlements
CAN	Citizens Action Network
CCEJ	Citizens' Coalition for Economic Justice
CPA	Certified public accountant
CPI	Corruption Perceptions Index
CSO	Civil society organisation
EBS	Education Broadcasting System
GCB	Global Corruption Barometer
GDP	Gross domestic product
GePS	Government e-Procurement Service
GNI	Gross national income
ICT	Information and communication technology
ILO	International Labour Organization
IMF	International Monetary Fund
KBS	Korea Broadcasting System
KICAC	Korea Independent Commission Against Corruption
Korea	Republic of Korea
K-Pact	Korea Pact on Anti-Corruption and Transparency
MBC	Munhwa Broadcasting Corporation
MGAHA	Ministry of Government Administration and Home Affairs
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
PPS	Public Procurement Service
PR	Public relations
PSPD	People's Solidarity for Participatory Democracy
SBS	Seoul Broadcasting System
TI	Transparency International
TV	Television
UN	United Nations
UNDP	United Nations Development Programme
WTO	World Trade Organization

About the NIS Country Studies

What Is the NIS?

The National Integrity System encompasses the key institutions, sectors or specific activities (the 'pillars') that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Strengthening the NIS is about promoting better governance across all aspects of society.

The concept of the NIS has been developed and promoted by Transparency International as part of TI's holistic approach to combating corruption.¹ While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity. The country studies are based on an assessment of the quality of institutions relevant to the overall anti-corruption system.

Why Conduct NIS Country Studies?

The purpose of each country study is to assess the National Integrity System, in theory (law and regulatory provisions) and practice (how well it works). The studies provide both benchmarks for measuring further developments and a basis for comparison among a range of countries.

The studies provide a starting point for signalling areas requiring priority action. They also form the basis from which stakeholders may assess existing anti-corruption initiatives. NIS country studies help explain, for example, which pillars have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. Country studies also assess where the emphasis should be placed on improving the system and what factors are required to support the overall development of the NIS.

The country studies create a strong empirical basis that adds to our understanding of strong or weak performers. Within a region, in which several countries may function with similar economic, political or social frameworks, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those countries that are in similar stages of development.

For Transparency International, country studies are an important measurement tool. They complement TI's global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems. More than 55 such country studies have been completed as of August 2006.

TI believes that it is necessary to understand the provision for and capacity of the NIS pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks. NIS Country Studies are a unique product of Transparency International, as they reflect the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

Methodology of the NIS Country Studies

The NIS country studies offer a qualitative assessment of the integrity system in a country. The studies are based on both objective and subjective sources of data, which differ in quantity in each country evaluated. The studies therefore require both desk research and field research.

At least one focus group is convened as part of the country study, although more are recommended/desirable. Focus group participants include anti-corruption and governance experts drawn from government (including donors, where relevant), the private sector, the professions (e.g. lawyers, accountants and engineers), media and civil society. The aim of the focus groups is for a broad base of stakeholders to evaluate the NIS and to comment on the draft NIS country study. The results of the meeting then inform further revision of the country study.

Each country study is reviewed by an external expert referee.

Executive Summary

Over a period of 10 years, the Republic of Korea (hereinafter called Korea) has made considerable progress in creating and establishing a sound National Integrity System (NIS). This has taken place through the implementation of a regulatory framework of policies and practices designed specifically to curb corruption in both the public and private sectors. Korea has introduced rules and regulations prompted by international trends and public demand, and the general public is increasingly becoming aware of the importance of good governance, integrity and anti-corruption measures. However, while expectations of rapid development are high, at present Korea still ranks low in terms of integrity and anti-corruption activities, failing to do justice to its relative international economic standing and trailing well behind other Organisation for Economic Co-operation and Development (OECD) countries.

Legal provisions in Korea concerning the governance and integrity of public institutions are meant to ensure an integrated architecture from both inside and outside. Internally, of particular importance is the Anti-Corruption Act, which requires all public institutions to set up codes of conduct for maintaining the integrity of public officials, allows any public official to report acts of corruption conducted by other public officials and enables the public to request audits and inspections of public institutions. The Korea Independent Commission Against Corruption (KICAC), established under the Anti-Corruption Act, handles whistleblowing reports, recommends policies and legislation for combating corruption and also examines the integrity of public institutions.

The Public Service Ethics Act is designed to prevent high-ranking public officials from enjoying financial gains related to their duties during and after their time of employment. This Act requires high-ranking officials to register their assets, report gifts they receive from foreign entities, and obtain prior approval for employment after they leave office.

Externally, four key laws prevail and act as check-and-balance mechanisms. The Budget and Accounts Act regulates the procedures of the budget and final accounts of public institutions. The Board of Audit and Inspection Act allows the Board of Audit and Inspection (BAI) to inspect the final accounts of public agencies and job performance of public institutions, while the Act on the Inspection and Investigation of State Administration allows the National Assembly to carry out inspections and examinations of state administration. Lastly, the Act on the Disclosure of Information by Public Agencies requests public institutions to provide information on their job performance. In addition, there are several acts that provide for civil society to participate in public administrative affairs.

Generally speaking, central public institutions have improved their governance and integrity systems. As a top priority in the current reform agenda, the president has shown eagerness to address corruption during his term of office on the one hand and promote the governance and integrity of public officials on the other. Central government agencies have largely complied both with the president's request for action and with provisions for increasing public consciousness. However, constitutionally independent institutions such as the legislative and the judicial branches have not shown the same level of enthusiasm in addressing corruption, although they too have a mandate to establish plans and programs to guarantee the integrity of their organisations. Meanwhile, on the regional level, local autonomous institutions reveal serious problems in their governance and integrity, with significant increases in corruption.

While the introduction of the Anti-Corruption Act was long regarded as a cornerstone in the anti-corruption movement in Korea, increasing concern remains over the lack of investigative authority of the KICAC, its limited authority and the ineffective nature of whistleblowing mechanisms, raising doubt over the applicability and efficacy of the Act. As for the Public Service Ethics Act, the provisions regarding assets registration and post-employment fail to provide clear guidelines, rules and standards that would discourage and ultimately prohibit officials from enjoying unfair financial gains. In addition, high-ranking public officials continue to be reluctant to comply fully with asset registration and post-employment restrictions. Public-official ethics committees, in charge of overseeing and examining the various provisions of the Public Service Ethics Act, also remain too lenient in fulfilling their duties.

Corruption in Korea has long sparked intense debates in both political and social spheres. For the political leadership, proclaiming engagement in the fight against corruption, especially in the public sector, has become a norm rather than an exception. Current legislation regarding anti-corruption mechanisms remains focused on the public sector, while legislative and voluntary efforts are increasingly concentrating on the non-public sector as well.

Korea's NIS continues to undergo rapid transition. Over a relatively short period of time, it has achieved significant improvement in governance and integrity through political leadership and public demand. What remains at this juncture is the need to address apparent shortcomings.

Recommendations:

The government must carry out the following:

- Enhance monitoring mechanisms to proactively prevent wrongdoing and reactively follow up to sanction the same. This will ensure the highest degree of accountability and integrity from a holistic point of view, resulting in an active interplay between all stakeholders of society.
- Strengthen enforcement and obedience of the regulatory framework that surrounds the country's NIS.
- Empower anti-corruption institutions with more investigative powers, enabling the government to oversee and act on corrupt practices within the system as a whole.
- Introduce a special bureau of investigation of high-ranking public officials.

Priorities and Recommendations

The NIS of Korea continues to undergo rapid transition. Over a relatively short period of time, Korea has achieved significant improvements in governance and integrity through political leadership and public demand. However, Korea at this time needs to address its apparent shortcomings to attain national integrity in congruence with its economic and social status.

Rather than addressing priority areas within each pillar, it is important that, in the case of Korea, emphasis be placed on the fundamental effectiveness of its regulatory environment. Thus, efforts should first of all be channelled into three areas: enhancing monitoring mechanisms, strengthening law enforcement and empowering anti-corruption institutions.

- **Enhancing Monitoring Mechanisms**

The current status of Korea's governance and integrity reveals that, so far, it has failed to institute effective monitoring mechanisms. The narrow emphasis on externalities such as social status and job performance has obscured the basic functioning of the monitoring of governance and integrity. Korean public institutions now have to focus their efforts on strengthening their monitoring systems. At the core of this construct are well-functioning checks-and-balances systems that proactively prevent wrongdoing and reactively follow up to sanction the same. Both horizontal and vertical organisational structures and entities need to be subject to monitoring and checks and balances, including constitutionally independent institutions and non-public organisations. Only then will it be possible to ensure the highest degree of accountability and integrity from a holistic point of view, resulting in an active interplay among all stakeholders of society.

- **Strengthening Law Enforcement**

In Korea, stringent rules and regulations are well in place that are meant to strengthen the country's NIS. Yet, in many sectors, the country continues to tread the borderline between corruption and integrity. Korea's courts and prosecutors have been criticised for their inability and shortcomings in enforcing legislation. Thus, for Korea, the key to success will primarily lie in the strict enforcement and obedience of the regulatory framework that surrounds the country's NIS. Given the prosecutors' and the courts' constitutional independence, law enforcement cannot be strengthened without their commitment. Rigorous internal rules and regulations in addition to professional ethical behaviour will also help prosecutors and the courts to attain fairness and independence in fulfilling their jobs.

- **Empowering Anti-Corruption Institutions**

While the establishment of the KICAC was hailed as another cornerstone in the fight against corruption, the firm positioning and true value of the KICAC to the NIS of Korea has yet to be fully realised. Concern has mounted over the introduction of independent investigative authority, the ineffective nature of whistleblowing mechanisms and the limited authority of the KICAC.

The mere existence of such an anti-corruption body is not enough. To carry out substantive duties for the benefit of the Korean NIS, the KICAC should be equipped with more authoritative and/or investigative powers. The introduction of an investigative authority for the Act constituted one of the major items that civil society requested when the Act was finally passed in 2001; yet, the current Act does not include such a provision. To effectuate the whistleblowing system, the KICAC needs to come up with practical plans to protect whistleblowers from tangible and intangible retaliation. In addition, the Act should be expanded to cover constitutionally independent institutions and non-public sectors as well. Only then will it be possible to oversee and act on corrupt practices within the overall national integrity system.

- **Introduction of a Special Bureau of Investigation of Corruption by High-Ranking Public Officials**

Since 2000 there have been talks of introducing and establishing a special bureau of investigation of high-ranking public officials as there was a continuous stream of scandals involving high-ranking officials that came to an end without clear investigations and judgments. This issue constituted one of the major promises that both the ruling party and the main opposition party presented during their 2002 presidential election campaigns. However, by the end of 2005, the initial plan to introduce an Act establishing such a bureau

was stymied in the National Assembly, and the talks shifted to establishing a standing special investigation system under an anti-corruption-related public institution.

In addition, promoting professional ethics and raising public awareness are further areas that need to be actively tended to as the foundation of a solid NIS. More fundamentally, the NIS is based on the rationale that people serving both public and non-public organisations must abide by professional codes of ethics, recognizing that authority must be accompanied by conduct accountable to the public and society's stakeholders.

For now, however, the main challenge for Korea's anti-corruption efforts and reforms will be the dependence on and sustainability of political commitment towards a coherent and sound anti-corruption framework. Addressing the aforementioned issues would significantly enhance and contribute to a strengthened NIS, which, in turn, would add credibility to and confidence in the country's social, political and economic standing and future prospects.

Country Profile

The Republic of Korea (hereinafter called Korea) is a constitutional democracy with a president elected directly through popular vote. The political power of the country is divided among the executive, legislative and judicial branches.

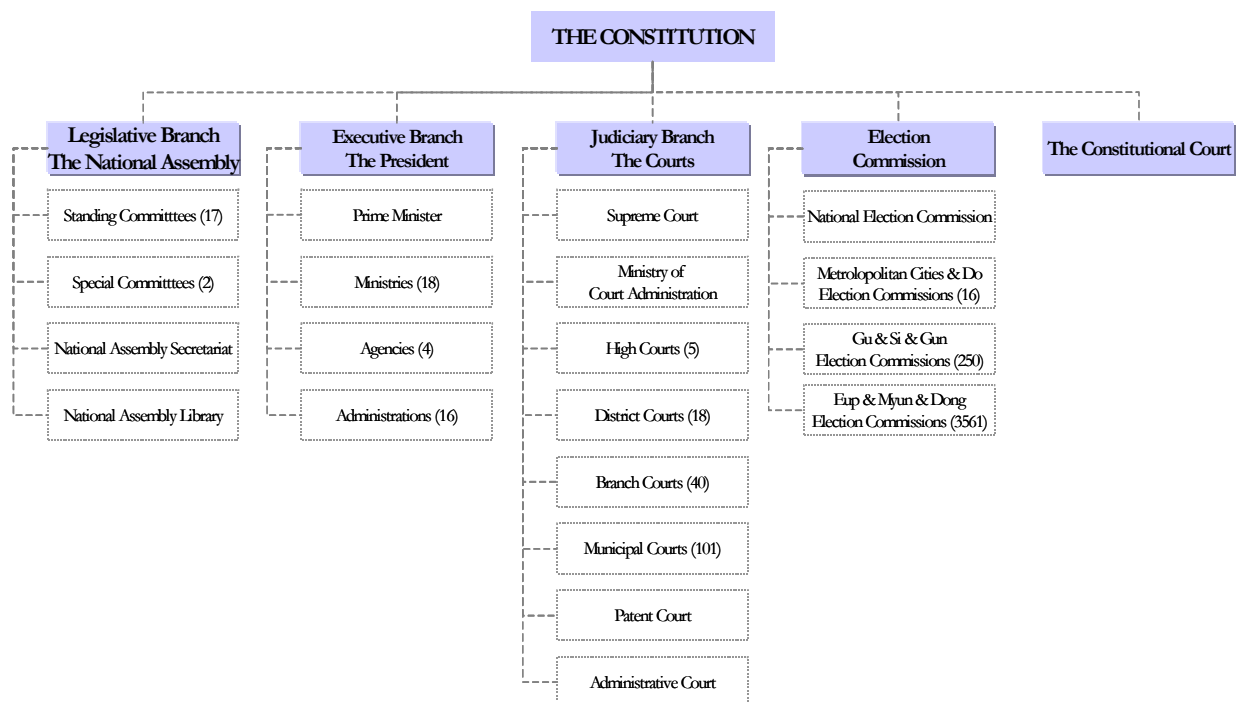
The executive consists of the president and the executive branch, the latter comprising the prime minister, the State Council, 18 administrative ministers, and the Board of Audit and Inspection (BAI). Elected for five years, the president heads the executive branch and also serves as the commander in chief. The prime minister is appointed by the president and confirmed by the National Assembly. The 18 ministers head their respective administrations, participate in the deliberation of major state affairs and act on behalf of the president.

The legislative branch operates through a unicameral body, the National Assembly, consisting of 299 members who each serve four-year terms. The main political parties are the Uri Party, the Grand National Party, the Democratic Labour Party and the Democratic Party. Since the 2002 presidential election, the Uri Party has served as the ruling party. The next presidential election will be held in December 2007, and the next legislative election will be held in April 2008.

The judicial branch, independent under the constitution, has a three-tiered structure: the Supreme Court, the high courts (appellate) and the district courts. The courts exercise jurisdiction over, among other issues, civil, criminal, administrative, electoral and judicial matters.

In addition to the three branches, the constitution establishes the Constitutional Court of Korea to protect the people's fundamental rights and check governmental powers. Moreover, the constitution provides for election commissions that are guaranteed independent status comparable to that of the National Assembly, the executive branch, courts and the Constitutional Court of Korea. Figure 1 shows the structure of Korea's government.

Figure 1 The Governance Organisation of the Republic of Korea



Source: Ministry of Government Administration and Home Affairs, ROK.

The government made tremendous efforts to decentralise powers progressively from the central government to the local governments under the revised Local Autonomy Act. Local governments in Korea include upper and lower levels.

The Republic of Korea was established on 15 April 1948 after five decades of Japanese occupation. In 1950, however, ideological conflicts between the capitalist South and the communist North eventually led to the Korean War, which finally ended with a ceasefire in July 1953. Korea remained under authoritarian military-led rule for close to three decades while, at the same time, rapidly making the transition from the stage of national foundation to modern industrialisation. During this period, the respective governments stressed economic growth as the primary goal of the country and directly intervened in the economy by means of industrial policies and preferential treatment for Korean conglomerates (*chaebol*). As a result, the country enjoyed an annual economic growth rate of more than 7 per cent until the 1980s. However, centralised political power along with a lack of sound check-and-balance mechanisms gave rise to significant levels of corruption that accompanied the country's development and permeated throughout society as a whole. Each government put forward anti-corruption reforms on its agenda, yet corruption persisted; where power was exercised, there also was the shadow of corruption.

Only after the establishment of the first government without direct military ties in over 30 years, in 1993, did systematic efforts to curb and prevent acts of corruption finally and officially take off. Among the various reform endeavours were the introduction of the Presidential Financial and Economic Emergency Order on Real Name Financial Transactions and Guarantee of Secrecy and the Administrative Procedure Act. However, a series of prominent political scandals involving the then president's cronies and sons revealed that efforts to improve the integrity of public representatives remained confined to formal terms. The financial crisis that struck in 1997 clearly underlined the fact that the country's recovery and further development hinged upon the nation-wide fight against corruption.

The financial crisis of 1997–1998 and its aftermath delivered severe blows to the country, with the per capita Gross National Income (GNI) plunging from US\$12,197 in 1996 to US\$7,355 in 1998. The new government that took office in 1998 carried out an overhaul of the economic sector. More important, as the basis for recovery and further development of society the government declared a 'war against corruption' and formulated the Anti-Corruption Program in August 1999, the first comprehensive and systematic approach in the fight against corruption in Korea. Among other things, the government introduced the Anti-Corruption Act and established the Korean Independent Commission Against Corruption (KICAC).

Currently, Korea is in the maturing phase of substantive democratisation. Seven years after the crisis, Korea has re-emerged as a strong global player, reclaiming its spot among the 15 largest economies in the world, with a per capita GNI of US\$16,291 and an annual economic compound growth rate of 4.2 per cent in 2005 that ranks above most OECD countries.² Increased awareness and nation-wide efforts, combined with a systematic and comprehensive approach, have resulted in improved integrity systems and practices. Still, serious corruption occurs and the general public and international communities assert that Korea has a long way to go.

Corruption Profile

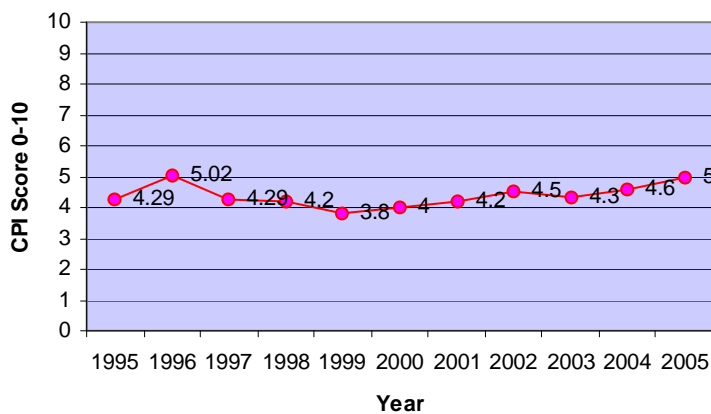
Under the Anti-Corruption Act, the term 'Acts of Corruption' refers to the following acts:

- a) The act of any public official seeking gains for himself/herself or for any third party by abusing his/her position or authority or violating laws and subordinate statutes in connection with his/her duties; and
- b) The act of causing damages to the property of any public agency in violation of laws and subordinate statutes, in the process of carrying out the budget of the relevant public agency, acquiring, managing or disposing of the property of the relevant public agency, or entering into and executing a contract where the relevant public agency is a party.

In general, many Koreans believe that a high level of corruption pervades Korea. Various research indicators underline this perception, and Korea's corruption profile, as drafted by several international bodies, most notably Transparency International (TI) and the World Bank, generally reflect this view.

Under the definition provided by TI, corruption is the misuse of entrusted power for private gain.³ In TI's Corruption Perceptions Index (CPI), the perceptions of business people and country analysts, both resident and non-resident, are compiled to make up a composite survey. It draws on 16 different polls from 10 independent institutions. A CPI Score of 0 reflects a 'highly corrupt' environment whereas a score of 10 corresponds to the opposite. Korea's scores, over a period of 10 years, consistently ranked between 4 and 5, with 5.02 (1996) and 3.8 (1999) being the country's highest and lowest marks respectively. However, since 1999, Korea's corruption perception has steadily improved, indicating that corruption-related problems are being resolved more effectively. Figure 2 depicts the progress of Korea's score on the CPI over the course of the past 10 years.

Figure 2 Scores of the Republic of Korea on the Corruption Perception Index



Source: Transparency International Corruption Perceptions Index.

Yet, from 2000 to 2005, among the 30 member countries of the OECD, Korea has ranked in the lower 20th percentile, with only the Czech Republic, Mexico, Poland, Slovakia and Turkey consistently ranking lower. In absolute terms, among all countries surveyed, Korea finds itself ranked in the upper 50th percentile. Corruption perception in Korea thus does not correspond to its relative international economic stature, falling well behind that of other advanced economies.

The Global Corruption Barometer (GCB) compiled by TI assesses general public attitudes towards the experience of corruption in dozens of countries around the world. This indicator demonstrates that the Korean political sector is the most corrupt segment of the country.⁴ The survey reveals that political parties and the legislature/National Assembly are perceived as the most corrupt institutions.

Another research study covering Korea's governance and corruption profile is the Governance Research Indicator 2004 as compiled by the World Bank Institute. This study focuses on six

dimensions of governance, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. It covers 209 countries over five time periods.⁵ Once again, when compared with OECD member countries, Korea places in the bottom 20th percentile, except for Government Effectiveness.

Finally, the World Bank's Corporate Ethics Index of 2004, which focuses on the private sector, reveals that governance constraints and corruption are key determinants of a country's global competitiveness. The corruption index places Korea's six determinants⁶ between rankings 21 and 25 among the OECD member countries.

Historically, the concentrated power of the central government in Korea and the cosy relationship between politics and the business sectors resulted in deep-rooted corruption. People often resorted to facilitation payments or personal relationships to work out administrative affairs or to maintain business relations. Korea had the unfortunate episodes of two former presidents who held office between 1981 and 1992 but were subsequently imprisoned for, among other things, illegally receiving bribes. Later governments were also found to be involved in corrupt practices. Presidents' relatives and cronies turned out to have been involved in many large scandals. Moreover, in many cases, conglomerates provided huge amounts of improper funding to politicians, who directed new and lucrative business deals to the conglomerates in return.

Since the 1990s, Korea has introduced systematic measures to prevent public officials from inappropriately accumulating wealth and conducting opaque financial transactions. The public officials' property reporting system and the real-name financial transaction system were among the early measures, followed by the introduction of the codes of conduct for maintaining the integrity of public officials and the Anti-Corruption Act. Yet corruption still remains a problematic issue in Korea.

The KICAC has been assessing public administrative institutions on an annual basis since 2002. Their findings indicate a gradual improvement of Korea's NIS architecture.⁷ However, the KICAC points out that questionable gifts and hospitality are still proffered, particularly involving public institutions with work closely related to investigations, construction, public purchases and license approvals. The following cases are among the most recent corruption examples involving public institutions:

- A police officer in Sunnam, an hour away from Seoul, embezzled a total of KRW 185 million on 2,945 occasions from 1999 to 2005 while he was on duty. Rather than depositing the money he received from issuing speeding tickets to a bank account, he personally pocketed the funds and forged false receipts that he then submitted to his office.⁸
- Gambling halls in Pusan, the second largest city in Korea, paid a monthly average of KRW 20 million in bribes to 17 police officers of their district police stations and also paid a monthly average of KRW 1 million in bribes to eight prosecutors of their district prosecutor's offices.⁹
- From 1998 to 2002, IBM Korea and LG IBM PC paid a total of KRW 2.9 billion to 14 public officials of 9 public institutions, including the Ministry of Information and Telecommunication, the National Tax Service, the Supreme Prosecutor's Office and Korea Broadcasting Corporation. In return, the IBM-related companies won the contracts to provide these institutions with computer devices and systems worth KRW 66 billion. In addition, 12 domestic companies such as LG Electronics and SK C&C received money from the two IBM-related companies and served as setoffs in the concerned biddings.¹⁰
- A low-ranking local public official in Ulsan, four hours away from Seoul, received a monthly average of KRW 20 million or a total of KRW 340 million in bribes from construction companies from September 1998 to August 2001. The public official said that he could not even remember who gave how much to him because he received so many bribes on so many occasions.¹¹

More important, the general public of Korea thinks that the most serious corruption activities involve vested and established interest groups, as witnessed by the many scandals involving presidents' relatives and cronies, top-ranking public officials and politicians. Abuse of administrative and legislative power has repeatedly taken place when the government created or allocated businesses and funds. In addition, large conglomerates still provide astronomical amounts of funds to political parties. Adding to these wrongdoings are corporate corruption cases, such as accounting fraud and embezzlement, that have become major issues in Korea, particularly after the financial crisis. The following are some of the major cases of corruption that shocked the public conscience.

- In September 2001, the public learned that the chairperson of a corporate restructuring company had committed large-scale stock manipulations, fraud and embezzlement. More surprisingly, one of the then president's relatives, a staff member of the president's office and the National Intelligence Agency were all involved in some of the fraud. A substantial amount of lobbying took place to evade investigations by the relevant authorities. The Prosecutor's Office eventually arrested the chairperson in 2001 on charges of stock manipulation and embezzlement but released him the next day without a clear explanation. In addition, when he was again arrested in 2001, a former minister of justice exercised his influence to obtain his release in return for a bribe of KRW 100 million, while a brother of the then prosecutor general also received KRW 50 million in return for lobbying the relevant authorities.¹²
- In 2002, it was revealed that parliamentarians and high-ranking public officials received bribes from a company running as a potential candidate for the government sports lottery operation business. They received gifts, hospitality, company shares and money from the company during the period of the passage of the Act on the Operations of the Government's Sports Lottery Business in 1998 and 1999 and also during the operator selection process in 1999 and 2000. More strikingly, the then president's youngest son turned out to have received approximately KRW 3 billion in cash or shares in return for using his influence in the decision-making process.¹³
- In 2003, the country learned that the Grand National Party, the largest political party in Korea, received approximately KRW 50 billion for the 2002 presidential campaign from four large conglomerates. This scandal started when it was revealed that the SK Group had provided KRW 10 billion to the party. Afterwards, it turned out that the LG Group provided KRW 15 billion, the Samsung Group, KRW 15 billion and the Hyundai Group, KRW 10 billion. What enraged the public most was that all of the business groups used large trucks and vans to transfer their funds in cash or bearer bonds in order to evade authorities.¹⁴
- In March 2003, it was revealed that SK Global (currently SK Networks) committed a total of KRW 1.6 trillion in accounting fraud in 2001. At the end of March 2003, the external auditor of SK Global found an additional KRW 480 billion in financial irregularities. Creditors formed a special accounting inspection team to examine SK Global's financial situation and found yet another KRW 4 trillion in financial irregularities relating to its overseas subsidiaries. The special inspection team discovered that SK Global had hidden off-balance-sheet assets amounting to KRW 422 billion through overseas subsidiaries and under false bank accounts. In May 2003, SK Global incurred loss in paid-in capital (capital impairment) of KRW 6 trillion. SK Group's troubles culminated in the accounting frauds of SK Lines, another affiliate of the SK Group. SK Lines misused KRW 1 trillion: the company offered KRW 249 billion to a company with common interest and made futures investments of KRW 788 billion without appropriate authorisation.¹⁵
- Public furore erupted in 2004 over a scandal involving a judge in a district court who received sexual entertainment from a lawyer. This scandal started when a female worker of a saloon reported her manager to the police and to the prosecutor's office on charges of physical violence and racketeering. When the indictment was dismissed at the concerned district court, the worker referred the case to the KICAC. During the process of the investigation by the KICAC and a higher prosecutor's office, it was revealed that the manager of the saloon had a very close relationship with a lawyer and, more important, that the lawyer provided sexual entertainment to a judge, a public official of the local court and also police officers of the local police station. Many believed that this case typified the deep-rooted yet well-hidden practices of the judicial system through which lawyers, prosecutors and judges maintained improper relations at the expense of their independence and the impartiality of their investigations and rulings.¹⁶

Anti-Corruption Activities

Korea started its systematic efforts to fight corruption in the 1990s. The new administration that took office in 1993 revised the Public Service Ethics Act. This revision expanded the range of public officials who were subject to asset registration and post-employment restrictions from those ranking third grade or higher to those ranking fourth grade or higher. Furthermore, the revised Act required top-ranking public officials to disclose the status of their wealth. In 1994, the Public Officials Election Act was passed to suppress illegal electoral activities. In addition, the introduction of the Administrative Procedure Act and the Act on the Disclosure of Information by Public Agencies in 1996 laid the foundation for transparent public service. The government also passed the Act on Real Name Financial Transactions and Guarantee of Secrecy to secure transparency in financial transactions and prevent the illegal flow of funds.

Korea's anti-corruption activities culminated in the combination of the introduction of the Anti-Corruption Act in July 2001 and the establishment of the KICAC in January 2002. Initially, the public's concern over corruption sparked the civil activist movement that advocated the adoption of anti-corruption legislation in 1996. Thereafter, the Korean government exhibited a strong commitment to addressing corruption systematically by establishing the Anti-Corruption Commission directly under the president in 1999. The Anti-Corruption Act, initially proposed by a leading civil activist group in 1996, received support from approximately 40 NGOs. Continuous efforts by civil society eventually led to passage of the Anti-Corruption Act in June 2002. Based on the Act, the Anti-Corruption Commission was upgraded from a presidential advisory board to a national-level anti-corruption agency, the KICAC.

The Act requires all public institutions to establish codes of conduct for maintaining the integrity of public officials and allows any public official to report acts of corruption conducted by other public officials. It also enables the public to request audits and inspections of public institutions in the event that an execution of public affairs seriously harms public interest due to the violation of laws or involvement in an act of corruption. Among the many proactive tasks undertaken by the KICAC are policy recommendations to the central government and governmental institutions, as well as the examination and evaluation of the status of integrity of central and local government institutions. The handling of reports on corruption, including protection and monetary rewards for whistleblowers, constitutes KICAC's ex post measures against corruption. In addition, in 2006, the KICAC will launch the so-called Corruption Impact Assessment, a key task to examine rules and regulations for possible loopholes.

Since February 2004, the president has presided over anti-corruption meetings of government agencies. Heads of central administrative institutions such as the BAI, the Public Prosecutor's Office, the KICAC, the Ministry of Justice, the Ministry of Government Administration and Home Affairs (MGAHA), the Ministry of Finance and Economy and the Fair Trade Commission attend meetings to deliberate on anti-corruption policies and material matters needed to combat corruption effectively.

While the Anti-Corruption Act deals with general public institutions and officials, the Public Service Ethics Act focuses on high-ranking public officials. In order to prevent public officials from enjoying financial gains related to their duties during and after their time of employment, the Act requires high-ranking officials to disclose their assets, report gifts they receive from foreign entities and obtain prior approval for their post-employment. In 2005, the Act additionally introduced the 'blind stock trust' system under which public officials have investment trust companies administer the trading of their stocks and thus shield them from the actual management of their stocks and bonds.

In order to advance the transparency of public institutions, in 2004 the Korean government revised the Act on the Disclosure of Information by Public Agencies, the first amendment since it was established in 1998. The revised Act provides for electronic disclosure, requires public institutions to set up clear standards regarding information disclosure and introduces the information disclosure review committee.

As for the business sector, Korea introduced the Securities-Related Class Action Act, which became partially effective in 2005. Under the Act, individual investors whose economic interests were infringed by certain wrongdoing may bring a class action against the company. Causes of action include insider trading, market manipulation and accounting fraud. The company, if found liable, must pay monetary compensation to all investors who are classified as victims in the lawsuit.

While most legal reforms to combat corruption in Korea have focused on the public sector, recently both the public sector and the private sector have expressed commitment to ethics and integrity in their performance. In 2005, the government, business sectors and other civil groups voluntarily joined the Korea Pact on Anti-Corruption and Transparency (K-Pact), a pledge to commit themselves to the fight against corruption.

Civil society has taken the lead in anti-corruption reforms in Korea. Besides promoting legislative changes, civil society has successfully participated in anti-corruption activities in the public and private sector, such as through National Assembly monitoring, nation-wide blacklisting campaigns in general elections and shareholder activism. Table 1 lists the major milestones in Korea's active engagement in the fight against corruption:

Table 1 Milestones of Korea's Anti-Corruption Activities

Year	Milestone
1993	Revision of the Public Service Ethics Act
1994	Enactment of the Public Officials Election Act
1996	Enactment of the Administrative Procedures Act Enactment of the Act on the Disclosure of Information by Public Agencies
1997	Enactment of the Act on Real Name Financial Transactions and Guarantee of Secrecy
1998	Ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
2000	Revision of the Act on the Report and Use of Special Financial Transactions
2001	Enactment of the Anti-Corruption Act
2002	Establishment of the KICAC Introduction of the Government e-Procurement System (GePS)
2003	Nationwide Establishment of Code of Conduct for Public Officials Signature of the UN Convention against Corruption
2004	First Anti-Corruption Meeting of Government Agencies Combating Corruption Revision of the Act on the Disclosure of Information by Public Agencies Revision of the Political Fund Act Revision of the Public Officials Election Act
2005	Upgrade of the Ombudsman of Korea to a Presidential Body Revision of the Public Service Ethics Act Enactment of the Securities-Related Class Action Act Signature of the Korea Pact on Anti-Corruption and Transparency (K-PACT)
2006	KICAC's Corruption Impact Assessment (planned)

The National Integrity System

Public Sector¹⁷

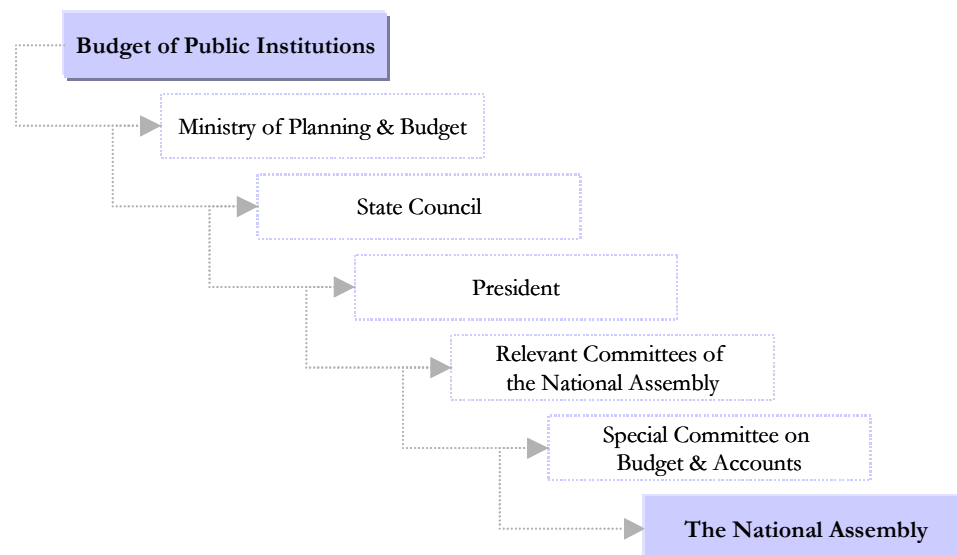
In addition to local autonomy institutions, the Korean constitution provides for the following five major institutions of the government: the legislature, the executive, the judiciary, the Constitutional Court and the election commissions. Each of these institutions has constitutionally guaranteed status and independence. The institutions follow the constitution and other relevant laws for their organisation and operation. As for their budgets and accounts, these national government institutions function according to the Budget and Accounts Act, while local public institutions must follow the Local Autonomy Act. However, both acts contain the same basic mechanisms for the formulation, examination and approval of budgets and accounts.

The national budget, inclusive of all public expenditures, must be recorded in the official budget and recognised in the year-end accounts. Under Article 54 of the constitution, public institutions must draft their budgets for each fiscal year and submit them to the National Assembly for approval. According to the Budget and Accounts Act, each public institution first submits its budget to the Ministry of Planning and Budget, which then formulates the government's entire budget and submits it to the State Council (Articles 25 and 28). After deliberation by the State Council and approval by the president, the national budget bill is submitted to the relevant committees of the National Assembly for preliminary review. The Special Committee on Budget and Accounts conducts an overall review, upon which the National Assembly examines and approves the budget bill at the plenary session.

Article 29 of the Act states that if the proposed amount of the annual budget of a constitutionally independent institution is to be reduced, an opinion of the corresponding head of the independent institution needs to be obtained through a meeting with the State Council. This provision applies to the National Assembly, the Supreme Court, the National Election Commission and the Board of Audit and Inspection, among the public pillars covered in this research.

Figure 3 outlines the budgetary process of national public institutions:

Figure 3 The Budgetary Process of Central Public Institutions



The national budget consists of a general-accounting budget and a special-accounting budget. In 2005, the general-accounting budget of the central government amounted to approximately KRW 134 trillion. The special-accounting budget covers the government's special business, such as financial aid, national property management, environmental management and public procurement, collectively reaching approximately KRW 60 trillion in 2005. Table 2 exhibits the 2005 budget of

the public pillars covered in this research. Eight of the pillars operate a general-accounting budget only, while the Public Procurement Agency (PPA) operates a special-accounting budget.

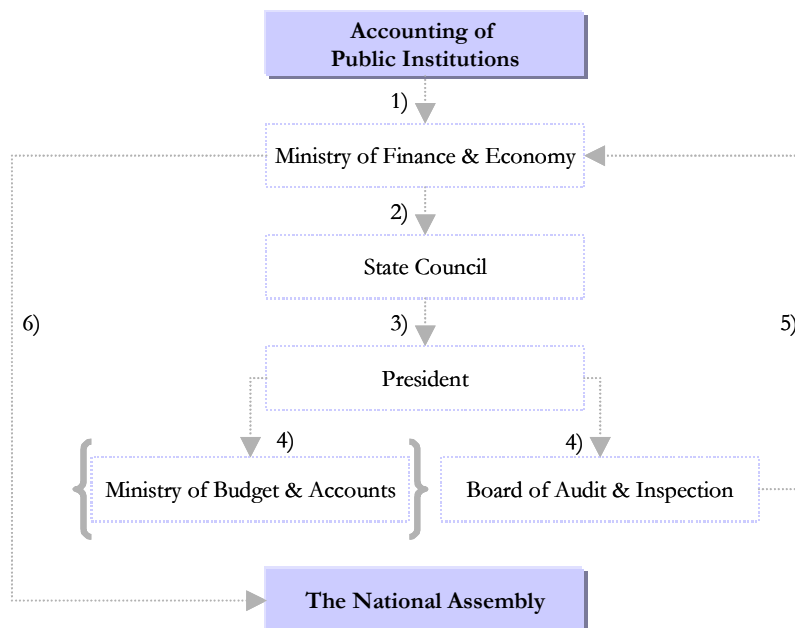
Table 2 The National Budget of Korea's Public Institutions

Pillars		Budget (KRW billion)	Staffing
Central Administrative Sector	Executive Branch	124,134,144	11,473
	Board of Audit and Inspection	75,489	1,020
	Prosecutor's Office	492,000	8,982
	Korea's Public Procurement Service	150,552	943
	Ombudsman of Korea	8,847	200
	KICAC	18,049	170
	Legislature	National Assembly	336,711
Election Commission	National Election Commission	157,308	2,549
Judiciary	Judicial Branch	664,764	15,308

Source: 2005 State Budget, the Ministry of Planning and Budget, www.mpb.go.kr; presidential decrees or relevant internal regulations on staffing.

In addition, each national agency prepares final revenue and expenditure accounts (see Figure 4), final continuing expenditure accounts and a statement of accounts and submits these to the Ministry of Finance and Economy (Article 42, Budget and Accounts Act). In accord with the budgetary process, the Ministry of Finance and Economy then prepares the closing accounts of revenues and expenditures and obtains the approval of the president after deliberation of the State Council (Article 43). The examined revenue and expenditure accounts are later submitted to the Ministry of Budget and Accounts and the BAI, Korea's supreme audit institution (Article 44). The Ministry of Finance and Economy then submits the audited accounts to the National Assembly for final approval (Article 45).

Figure 4 The Accounting Settlement Process of Central Public Institutions



At the end of 2005, Korea had approximately 940,000 public officials in central and local governments, the judiciary, the National Assembly and educational institutions.¹⁸ The constitution guarantees the status and political neutrality of public officials (Article 7). Korean public officials are divided into two categories: national public officials and local public officials. Although different

legislative acts apply to national and local government public officials, in practice, similar provisions govern them both.

The State Public Officials Act divides public officials into those in career service and those in special career service (Article 2). Career service public officials engage in general service, specified service and technical skill service, while special career service public officials perform political service, special official service, contractual service and labour service. Public officials in political service, for example, include those chosen by popular vote or appointed with the consent of the National Assembly and those public officials as designated under other laws and presidential decrees. As of 2004, the number of state public officials in political service included 119 minister- and vice minister-level officials.

By the end of 2004, 88,352 state public officials engaged in general service accounted for 15 per cent of the total number of state public officials. According to Article 4 of the State Public Officials Act, the grade of general service is vertically classified from the first grade to the ninth grade. The grades indicate positions with similar types of duty, degree of difficulty and responsibility. Public officials from fields other than general service do not fall into this grade classification. Titles and duties performed by public officials of each state public institution are prescribed by relevant presidential decrees or enforcement decrees of constitutionally independent institutions.¹⁹

Hierarchy, rather than checks and balances, tends to play a significant role in the governance of public officials in Korea. The State Public Officials Act, for instance, requires public officials to comply with requests of their superiors (Article 57). Such requests should normally be followed unless they unjustly serve the interest of superiors while infringing on the fairness of official functions as outlined under the respective codes of conduct.

The State Public Officials Act, which governs public officials serving the central government, requires public officials to act fairly on behalf of the general public by maintaining their integrity (Articles 59 and 61). Moreover, they are to refrain from engaging in political matters and collective action (Article 65 and 66). Furthermore, a public official found to be involved in a political campaign may be sentenced to imprisonment of one year or less or a fine of a maximum of KRW 3 million (Article 84).

In addition, the National Assembly Act prevents parliamentarians from improperly benefiting from political power or abusing their power (Article 4). This Act also stipulates that parliamentarians may not acquire financial gains or positions from public institutions or provide such gains to third parties. Moreover, the Code of Conduct for Public Officials, in accordance with the Anti-Corruption Act, states that a public official forced or asked by politicians or political parties to conduct unfair tasks must report this fact to the head of the concerned institution or the Chief Compliance Officer within his/her respective institution (Article 8).

The State Public Officials Act regulates the recruitment and promotion of public officials. Public officials are recruited through competitive civil service exams, unless otherwise stated in the Act (Article 28); promotion is based on a combination of exam results, occupational performance and other demonstrations of aptitude (Article 40). As a general rule, the appointment of public officials is based on written tests and occupational performance under the State Public Officials Act (Article 26). In Korea, rules on recruitment, career development and appointment tend to be strictly enforced and followed.

With regard to tenure, public officials generally receive guaranteed lifetime employment under the State Public Officials Act. The Regulation on Contract Public Officials, however, limits the tenure of contract public officials to five years (Article 6).

Public officials retain certain rights of redress regarding their employment. Public officials of central governmental institutions may register appeals to the Request Review Committee under the government's public official committee (Korea Civil Service Commission), while public officials serving constitutionally independent institutions may register their appeals to the appeal review committees under the secretariat offices of their institutions (Article 9, State Public Officials Act). These committees review requests concerning the unfair treatment of public officials, including decisions on their employment status. The State Public Officials Act stipulates that a public official who is dissatisfied with a decision by his or her employer must submit a request to the concerned committee before bringing an administrative lawsuit to court (Article 17).

For detailed rules and regulations, public institutions under the central government fall under the Presidential Decree of the Act, while constitutionally independent institutions set up their own enforcement decrees of the Act. Among the public pillars covered in the research, the National Assembly, the Supreme Court and the National Election Commission have incorporated their own

enforcement decrees. Governance and integrity mechanisms of public institutions and public officials of Korea can be categorised as follows:

Accountability

In general, public institutions fulfil their duties as stated in the constitution and other relevant laws. Public institutions belonging to the central government are accountable to the central government and obligated to report to the president. The secretariat offices of independent bodies, such as the National Assembly, the courts or the National Election Commission, report to the corresponding independent institutions. Most laws do not explicitly provide for reporting mechanisms in detail. In practice, however, all public institutions, except for the independent institutions, report to the next higher levels.

As for the oversight of public institutions, several mechanisms apply. Internally, each public institution operates an audit and inspection division. Internal audits and inspections must meet the requirements of the Regulation on Public Administrative Audit and Inspection and the Standard for Public Audit and Inspection. These divisions carry out audits and inspections on a yearly basis or otherwise when deemed necessary.

Moreover, the constitution gives the BAI the authority to inspect the final accounts of public agencies and official functions of public institutions (Article 97). Accordingly, the Board of Audit and Inspection Act authorises the BAI to examine and confirm the final accounts of revenues and expenditures of the state (Article 20). The Act governs the final accounts of all government institutions and constitutionally independent agencies as subjects of mandatory audits (Article 22).

Under the Board of Audit and Inspection Act, the BAI may conduct inspections of the occupational performance of public officials (Article 24). However, public officials who are members of the National Assembly, the judiciary and the Constitutional Court are exempt from inspections concerning their occupational performance. Furthermore, the BAI may not inspect matters clearly designated as national secrets by the prime minister or matters clearly designated as military secrets or military operations by the Ministry of National Defence.

The same Act allows the BAI to waive partial or whole audits and inspections unless confirmation of the final accounts is denied (Article 28). In general, central administrative institutions must receive audits and inspections by the BAI on an annual basis, while audits and inspections of the secretariat offices of constitutionally independent institutions or presidential commissions, such as the KICAC and the Ombudsman of Korea, are infrequent.

Lastly, according to Article 61 of the constitution and Articles 2 and 3 of the Act on the Inspection and Investigation of State Administration, the National Assembly may conduct National Assembly inspections and hearings on public sector institutions on a yearly basis or otherwise when deemed necessary. The National Assembly provides the resulting reports of these inspections on its homepage. These types of hearings occur frequently.

Transparency

To ensure the highest degree of transparency on a nation-wide level, public agencies must meet the requirements of the Act on the Disclosure of Information by Public Agencies. Pursuant to this Act, public agencies must set up clear standards and rules for the disclosure of information concerning their performance; they must provide information regarding their official functions on their homepages and in other publications; public agencies are directed to provide further information upon requests by the public; they are required to set up their own body to decide on matters related to the disclosure of information and they must also process civil requests for such disclosures. More than 50 per cent of the body must be external figures. In addition, the Commission on the Disclosure of Information by Public Agencies, directly under the president, deliberates on relevant policies and supervises actual practices of public agencies. The MGAHA reports the status of the disclosure of information by public agencies to the National Assembly on an annual basis.

In addition, the Administrative Procedure Act regulates how administrative institutions relay their administrative plans to the public, particularly to those entities who have an interest in the concerned affairs. Under this Act, the public may participate in the work of the civil service, including the executive, by attending public hearings or by submitting opinions prior to the enforcement of administrative plans. This Act, however, does not apply to constitutionally independent institutions.

Certain public services are at the forefront in employing the efficient use of electronic systems to support transparency and accountability mechanisms. In particular, the Public Procurement

Service (PPS) has established a nation-wide online system called the Government e-Procurement System (GePS) under which public institutions can submit offers for bids or contracts and obtain information on companies that want to conduct business with them. The Korean government also operates an integrated online system, e-Government, which allows the public to track civil applications and obtain relevant data that are registered with administrative institutions.

Integrity

To ensure integrity, the Anti-Corruption Act provides nation-wide regulations that require codes of conduct for public officials (Article 8). The Act distinguishes between public officials of independent bodies and public officials of the executive branch and all other remaining central and local government agencies. The KICAC formulated and recommended the Standard Code of Conduct for Public Officials in July 2002. The Standard Code of Conduct for Public Officials that applies to non-independent government agencies has been decreed by a presidential order, while independent bodies, such as the election commissions, the Constitutional Court and the judiciary established their own codes of conduct. As of December 2005, out of a total of 431 institutions, 404 public central and local administrative institutions had incorporated their own codes of conduct.²⁰

The codes of conduct for public officials categorise standards of prohibited acts according to those types who have the greatest likelihood of corruption: public officials who encounter a conflict of interest in their work must report this to and consult their senior personnel or the ethics compliance officer; those who receive such a report must take appropriate measures by either rearranging the work concerned with potential conflicts of interest or by reporting to the head of the institution; public officials may not follow requests that unfairly serve the interest of senior personnel while infringing upon the impartiality of their job performance. The code of conduct restricts the acceptance of gifts and hospitality and lists cases in which public officials may accept gifts and hospitality. In addition, the code states that public officials may not offer preferential treatment through nepotism or cronyism. To enhance its effectiveness, the Code of Conduct includes reporting and handling procedures for violations and establishes that violators may be subject to disciplinary action. Table 3 summarises the codes of conduct incorporated by the public pillars defined in this report:

Table 3 Applicable Codes of Conduct of the Korean Public Sector

Pillars		Applicable Code of Conduct
Central Administrative Sector	Executive branch	Each institution of the executive branch has its own code of conduct.
	Board of Audit and Inspection	BAI's Code of Conduct
	Prosecutor's Office	Code of Conduct for Public Officials of the Prosecutor's Office
	Korea's Public Procurement Service	Code of Conduct for Public Officials of the Public Procurement Service
	Ombudsman of Korea	Code of Conduct for Public Officials of the Ombudsman of Korea
	KICAC	KICAC's Code of Conduct
Legislature	National Assembly	No code of conduct
Election Commission	National Election Commission	Code of Conduct for Public Officials of the Election Commissions
Judiciary	Judiciary branch	Code of Conduct for Public Officials of the Courts
Local Autonomies		Each local government institution has its own code of conduct

With regard to high-ranking public officials, the Public Service Ethics Act provides general rules on three matters: asset registration of public officials, reporting gifts received by public officials and reviews of the post-employment status of retired public officials. The Act establishes public-official ethics committees to deliberate on and examine matters related to the Act. Public-official ethics committees consist of four internal and five external persons. As of December 2004, there are a total of 271 public official ethics committees, of which 250 committees cover local autonomy

institutions. In addition, the Act appoints the MGAHA as the agency in charge of planning and general affairs relating to the Act.

For asset registration, public officials ranking fourth grade or higher or those who are equivalent to such positions must register the status of their property and assets with the corresponding institution (Article 3). As for public officials in political services, public officials ranking first grade and other public officials whose ranks are equivalent to the first or higher grade must disclose the status of their property to the public through official gazettes (Article 10). The requirement takes on the form of self-registration, and the Act requires that those subject to these regulations must honestly register their assets and comply with further requests for information concerning their filings (Article 12). The Act also states that those who receive gifts or hospitality from a foreign entity must report to the corresponding office (Article 15).

Based on the information on the status of assets and property compiled by the corresponding division within a public institution, the institution's corresponding public official ethics committee reviews the registered information and conducts further enquiries if necessary or needed. The public official ethics committee may demand that the head of any financial institution present material on the details of financial transactions carried out by the concerned public officials. If they suspect criminal violations, they may also refer cases to the Ministry of Justice for further investigation (Article 8). Public official ethics committees must submit reports concerning registered assets to the National Assembly on a yearly basis (Article 20-2).

Passed in May 2005, the Act additionally requires corporate shareholdings to be included as part of the restrictions related to unfair financial gains. If the value of shares held by a public official who is subject to the disclosure of registered asset information exceeds a certain amount as stated in the Act, the official must either dispose of the shares or entrust them to a trust fund institution. Once the public official entrusts his or her shares, the investment trust firm manages the official's account after disposing of shares that exceed the relevant share limit within 60 days. The public official may not know how his/her stocks are being managed ('blind stock trust system').

Last, a retired public official ranking fourth grade or higher may not, for a period of two years upon retirement, be employed at a profit-making private enterprise that was closely associated with the department where he/she performed his/her duties within the three years before retirement. A retired public official seeking such employment must obtain prior approval from the corresponding public-official ethics committee (Article 17). A person who violates these post-employment provisions may be sentenced to imprisonment of one year or less or to a fine of a maximum of KRW 10 million.

If a person is employed in violation of the Act, the chairperson of the corresponding public-official ethics committee and the head of the public institution must take measures to seek the dismissal of the person from such employment (Article 19). The public-official ethics committee must report the post-employment status of public officials to the National Assembly on an annual basis (Article 20.2).

Furthermore, according to the Anti-Corruption Act, former public officials who commit an act of corruption in connection with their duties cannot be employed at (1) any public institution, or (2) any private, for-profit entity that maintained close ties with the official's public post during the three years before he or she resigned, or for five years from the date on which he or she resigned (Article 45). Under the Act, those who are illegally employed in any such entity may be sentenced to imprisonment or a fine of KRW 20 million or less (Article 52).

Complaint/Enforcement

Under the Anti-Corruption Act, if an act of public affairs seriously harms public interest due to the violation of laws or involvement in an act of corruption, the public may request the BAI to carry out an inspection of the concerned public institution. In the case of constitutionally independent institutions such as the Constitutional Court, the public can request inspections from the relevant bodies themselves (Article 40).

As for acts of corruption committed by public officials, the Anti-Corruption Act further provides for corruption-reporting mechanisms (Articles 25 through 39). The Act states that public officials shall report acts of corruption to the Prosecutor's Office, the BAI or the KICAC (Article 26). Monetary rewards are granted to those who whistleblow and thereby help preserve public agencies' property, prevent damages to such property or enhance the public's interest (Article 36). Revised in July 2005, the Act allows for a maximum of KRW 2 billion in rewards, compared with KRW 200 million under the previous provision.

To protect whistleblowers from retaliation, the revised Anti-Corruption Act of July 2005 provides for the enhanced protection of those who have reported to the agency (Article 33). More specifically, the provisions concerning 'Physical Protection' state that the KICAC and any employee of the investigative agency involved in whistleblowing matters cannot disclose the identity of a whistleblower without his or her prior consent (Article 29 (3)). The Act also seeks to protect whistleblowers by providing for the Guarantee of Position (Article 32), Physical Protection (Article 33), Protection of Co-operators (Article 34) and Mitigation of Culpability (Article 35). Detailed data regarding whistleblowing remains closed to the public (Articles 32 through 35.2), in line with the whistleblower protection provisions.

Several legal provisions allow for redressing grievances regarding administrative affairs. First, the Petition Act entitles the public to register petitions against a public institution when administrative affairs damage their interests. The Act also applies to cases when the public wants to correct or punish wrongdoings of public officials belonging to administrative institutions. In addition, according to the Administrative Appeals Act, a person damaged through such administrative misconduct may seek redress on his or her own behalf. This Act, however, does not apply to constitutionally independent institutions.

Acts governing the integrity of public officials include the power of sanctions. The heaviest sanction allowed under the Public Service Ethics Act amounts to three years of imprisonment or a fine of KRW 20 million. This may apply to cases in which a person leaks material regarding assets or property to a third party. According to the Anti-Corruption Act, a public official who discloses confidential public information for economic gains may be sentenced to seven years of imprisonment or a fine of KRW 50 million. The State Public Officials Act also provides for sanctions as well as disciplinary action. For example, a public official who participated in political affairs or unfairly engaged in personnel management decisions may be sentenced to one year of imprisonment or a fine of KRW 3 million. Matters regarding the integrity of public officials, such as conflicts of interest or acceptance of gifts or hospitality, are governed by the respective codes of conduct and thus public officials who violate such provisions will receive disciplinary punishment.

Bribery of public officials constitutes a criminal offence. The Criminal Act enumerates the various offences regarding official functions of public officials that are related to bribery (Articles 122 through 135). Bribery, accordingly, includes not only visible monetary gains but also less tangible benefits such as positions and rights that guarantee monetary gains, gifts and hospitality. The Act states that more serious offences shall correspondingly receive more severe punishment under the Act on the Aggravated Punishment etc. of Specific Crimes (Article 135). The Criminal Act outlines in detail the various offences with regard to the bribery of public officials (Article 129 through 134). The provisions include the following:

- Acceptance of a Bribe and Advance Acceptance (Article 129)
- Bribing a Third Party (Article 130)
- Improper Action after Accepting a Bribe and Subsequent Bribery (Article 131)
- Accepting a Bribe through Good Offices (Article 132)
- Offer, etc. of a Bribe (Article 133)
- Confiscation and Subsequent Collection (Article 134)

If a bribe was offered for the purpose of gaining preferential treatment in administrative procedures, any person who has an interest in the administrative proceeding may bring an administrative legal action and seek to invalidate or abrogate the relevant administrative decision. Additionally, the Act on Preventing Bribery of Foreign Public Officials in International Business Transactions states that anyone who offers a bribe to a foreign official may be criminally liable (Article 3).

The BAI functions as the primary agency entitled to audit and inspect the official functions of public officials. Among other divisions, the Special Investigation Bureau of the BAI oversees the general management of official disciplining. The Public Prosecutor's Office also has a public-corruption-dedicated division under the Supreme Prosecutor's Office. Finally, the KICAC serves as yet another institution dedicated to combating corruption in the public sector.

Executive

Under the constitution, the executive branch comprises the president, the prime minister, the State Council, 18 administrative ministries and the BAI. The constitution guarantees the executive branch's independence in conducting its official functions. Presided over by the president, the

State Council, with 15 to 30 members, decides on all important government policies and determines jurisdiction between the ministries. The legislative branch maintains checks and balances over the executive by exercising its approval powers in the appointment of the prime minister and the formation of the State Council.

The president technically appoints all Korean cabinet-level ministers on the recommendation of the prime minister from among members of the State Council. The ministers' authorities and responsibilities derive from the constitution, the Government Organisation Act and ministry-specific regulations, while the Basic Act on Administrative Regulation requires all administrative regulations to be founded upon laws passed by the National Assembly. However, these laws do not stipulate in detail the exact nature of many of the ministers' powers, limits and discretion. The ministers' tenures are not stipulated under the law. The average tenure of Korean ministers remains below one year.

As for personnel management, the State Public Officials Act regulates personnel matters such as the appointment, training and promotion of public servants and establishes the Civil Service Committee that inspects the appropriateness of the personnel management of the government's agencies. Therefore, ministers have limited authority in personnel matters. Nevertheless, as the head of an administrative institution, a minister does retain the authority and discretion to appoint public officials in his or her organisation who rank lower than the fifth grade (Article 32). Officials who are fifth grade or above are recommended by the minister through consultations with the Civil Service Commission. The prime minister then passes on these recommendations to the president, who makes the final appointment (Article 32). More specific staffing regulations of the ministries and other executive institutions are governed by presidential decree. Ministers have the responsibility to train public officials, while the Civil Service Commission plans and coordinates such training. The State Public Officials Act requires that personnel promotion be merit-based.

Under the Government Organisation Act, the executive branch comprises a total of 28 institutions, including four bodies directly below the president, six under the prime minister and 18 ministries. Among the institutions in the executive branch, the Ministry of Education and Human Resources Development has the largest budget with KRW 27 trillion, accounting for 22 per cent of the executive branch's total budget (KRW 124 trillion). The Ministry of Construction and Transportation in turn has the largest number of employees, with 814 people, or 7 per cent of the entire staff of the executive branch (see Appendix 1).

All of the expenditures of the ministries are subject to audits and inspections. However, in the case of the Special Operation Expenses account, ministers do not need to provide detailed evidence on spending; only information on the total sum is required.

Although this is not mandated under any particular law, the executive branch and its relevant ministries and institutions regularly report to the prime minister and the president. In general, main government ministries and administrative institutions receive a BAI audit and inspection of their final accounts on a yearly basis and additional audits and inspections on their job performance sporadically.

Under the Public Service Ethics Act, public officials of the executive branch ranking fourth grade or higher must disclose the status of their property and assets to the corresponding institution (Article 3), while the heads of the institutions of the executive branch and first-grade-ranking public officials must disclose their assets to the MGAHA. The Government Public Official Ethics Committee deliberates on and examines this information and discloses information on assets registered by high-ranking officials to the public in official gazettes. No law provides for lifestyle monitoring, yet high-ranking officials of the executive branch often face intense media scrutiny or criticism by civil activist groups in controversies over real estate speculation or entertainment scandals.

Among those public officials reviewed by the Government Public Official Ethics Committee, 166 received a warning or correction order regarding their asset disclosures between 2003 to 2004, compared to 47 officials during 2001–2001. Furthermore, among those public officials who were subject to the regulation on the disclosure of assets in 2003–2004, 24 were required to correct their assets registrations, compared to 9 cases in the previous two years.²¹

According to the 2004 report of the Government Public Official Ethics Committee, 97 retired public officials were found to have breached restrictions on post-employment in 2002, 98 in 2003 and 132 in 2004. Although they obtained prior approval by the Committee, many of them turned out to be employed at companies that engaged in businesses related to those public institutions where they were formerly employed.²² Thus, public data show that many concerned public officials have not substantially complied with the Act. The data include not only public officials of the executive

branch but also those working under other pillars of the central government examined in this report.

Citizens can bring a suit against the government for an infringement of their civil rights. The Act on Litigation to Which the State Is a Party regulates litigation cases brought against the government. In such cases, the Ministry of Justice represents the government (Article 2), and the justice minister may delegate the authority to represent the government to the heads of the prosecutor's offices (Enforcement Decree of the Act, Article 2). According to the Ministry of Justice, in 2004, 500 cases were brought against the government, with damage liabilities amounting to KRW 7.5 billion. From January to July 2005, the number of cases reached 253, with damage liabilities reaching KRW 12 billion.²³

Members of the executive are not immune from prosecution. According to a survey, from 1993 to 2004, 159 high public officials faced criminal trials for bribery, of whom 56 persons were ministers, vice-ministers or those who served in the presidential office. The survey revealed that although many high-ranking public officials were charged, most of them received relatively light punishments. Furthermore, 68.7 per cent of the 159 people received suspended sentences, compared to the general rate of 60.61 per cent for all criminal cases.²⁴

Supreme Audit Institution

The BAI acts as the supreme audit institution in Korea and has constitutionally guaranteed authority under the direct jurisdiction of the president. The Board Audit and Inspection Act stipulates that the audit agency, though under the president organisationally, retains independence in performing its duties (Article 2). The Act mandates the BAI's independence in terms of the appointment of officials, the formation of its organisation and the formulation of its budget.

Under the constitution, the chairperson of the BAI is appointed by the president with the consent of the National Assembly. The Board of Audit and Inspection Act does not directly provide for the exact qualifications of the head of the audit agency, but it does specify the qualifications for the commissioners of the audit agency (Article 7). As one of the commissioners, the chairperson must therefore also meet the same qualifications.²⁵ The chairperson has a four-year term of office and may be appointed only once. Since 1963, 14 chairpersons have served the BAI, all of whom, except the current one, possessed legal backgrounds; the current chairperson served for the past 37 years as a public servant in the economic sector. Under the Board of Audit and Inspection Act, the chairperson cannot be removed without relevant justification, except when impeached, when sentenced to a punishment equivalent to imprisonment or when he/she becomes unfit to perform his or her duties for an extensive period due to mental or physical infirmity (Article 8). In 2003, the National Assembly, for the first time, rejected the president's appointment of the head of the BAI.

The constitution requires the BAI to report the results of its audits on accounts of public institutions to the president and the National Assembly in the following year (Article 99). The BAI submits audit reports on public accounts to the Special Committee on Budget and Accounts of the National Assembly, while it submits reports on its occupational performance to the Legislature and Judiciary Commission of the National Assembly. The BAI provides these reports in a timely manner on its homepage except those that, if disclosed, may infringe upon individual privacy or public interest. Reports after August 2003 include the full content of audits and inspection results.

Pursuant to the constitution, the Board of Audit and Inspection Act provides for matters to be included in these reports (Article 41). In addition, the Act states that the BAI must report to the president on matters the chairperson of the institution regards as important as a result of an audit and inspection outcome (Article 42).

The public may request audits and inspections to be conducted on the concerned public institutions. Under the Regulation on Handling Public Audit Request and Reports on Corruption, in accordance with the civil request provisions of the Anti-Corruption Act, the BAI has established the Committee on Public Audit Requests (Article 3). The Committee deliberates and decides on how to process the requests. Once the commission decides to launch an inspection, it must finish and deliver the results to those who requested it within 60 days unless otherwise stipulated (Article 43, Anti-Corruption Act). The BAI received 45 and 38 public audit requests in 2003 and 2004, respectively. Of these requests, it accepted 15 and 4 requests, respectively, as cases to be audited.²⁶ Since February 2003, the National Assembly has also had the authority to request the BAI's audit and inspection (Article 127-2, the National Assembly Act).

In addition, the BAI's Open Audit System allows public participation in the process of audit preparation and implementation; it also discloses the audit results to contribute to public awareness and public needs. The BAI has also established a nationwide, toll-free hotline to receive petitions and complaints from the people. The hotline can also be reached by facsimile or on the Internet. In addition, the BAI's homepage provides sections through which the public may present evaluations and opinions on the audit agency.

For oversight, the BAI has an audit and inspection division within its organisation. The division carries out audits and inspections on a yearly basis or when otherwise necessary.

The Government Public Official Ethics Committee deliberates on and examines matters related to asset registration, reports on gifts and post-employment restrictions of BAI's public officials. BAI officials ranking between the fifth grade and seventh grade must also disclose their assets, report foreign gifts and obtain approval from the Committee in regard to post-government employment. In practice, these provisions have not been strictly enforced. For example, according to a BAI report submitted to the National Assembly in October 2004, 12 of a total of 20 former high-ranking public officials who resigned from the BAI in 2004 were employed in government agencies or for-profit companies whose businesses were closely related to the work the former public officials previously served for.²⁷

Law Enforcement Agency²⁸

The Public Prosecutor's Office conducts activities that are necessary for the investigation of crimes. It carries out prosecutions and also directs and supervises the police and other law enforcement agencies concerning investigations of crimes (Article 4, the Public Prosecutor's Office Act). In general, it investigates and prosecutes according to the Criminal Procedure Act.

For corruption cases involving public officials, however, the Prosecutor's Office may trace the assets of public officials accused of corruption for the effective confiscation and forfeiture of illicit proceeds under the Special Act on Confiscation Concerning Public Officials' Offences. Prosecutors are not allowed to utilise the military in this process.

In addition, the Supreme Prosecutor's Office expanded the pre-existing anti-corruption division that focuses on high-ranking figures in the public and private sectors and established the anti-corruption investigation headquarters in September 1999 as well as other anti-corruption investigation departments within prosecutors' offices nationwide. The number of people arrested by the Public Prosecutor's Office for acts related to corruption amounted to 1,724 in 2002, 1,609 in 2003 and 1,146 in 2004.²⁹

Under Article 34 of the Public Prosecutor's Office Act, the prosecutor general is recommended by the minister of justice and appointed by the president, and a public hearing of the National Assembly is required for his/her confirmation. Persons with more than 15 years of experience, as either a judge or a lawyer, qualified lawyers who have conducted legal affairs in certain public-sector organisations or qualified lawyers who have held positions as at least assistant professors of law at a university can become a prosecutor general (Article 27). The prosecutor general's two-year term of office is guaranteed under Article 12.

The qualifications for public prosecutors are identical to those of judges: passing the National Judicial Examination and completing a two-year training course at the Judicial Research and Training Institute (Article 29). The president appoints and assigns public prosecutors upon the recommendation of the minister of justice, while the prosecutor general presents his opinion on appointments and assignments of prosecutors to the minister of justice (Article 34).

The professional status of public prosecutors is strictly guaranteed and ensured by Article 37 of the Public Prosecutor's Office Act. Accordingly, prosecutors are protected from discharge, suspension or salary reduction unless they are impeached, convicted of a crime meriting punishment equivalent to confinement or imprisonment or face disciplinary punishment under the relevant laws.

Personnel management of the Public Prosecutor's Office is governed by laws and presidential decrees. The Personnel Committee of the Public Prosecutor's Office, under the Ministry of Justice, deliberates on matters such as personnel management plans and post assignments as provided for under Article 35 of the Public Prosecutor's Office Act and the Act on the Personnel Committee of the Public Prosecutor's Office.³⁰ Standards on the compensation of public prosecutors are stipulated in Article 36 of the Public Prosecutor's Office Act and the Public Prosecutor Compensation Act. According to Article 39 of the Public Prosecutor's Office Act and the Regulation on the Review Committee on Qualifications for Public Prosecutors, the Review Committee on

Qualifications for Public Prosecutors under the Ministry of Justice carries out examinations on the qualifications for public prosecutors every seven years. The Discipline of Public Prosecutors Act governs the Public Prosecutor Discipline Committee under the Ministry of Justice.

Concern has long mounted over the independence of the Public Prosecutor's Office, and its employees are often criticised for appearing beholden to the interests of the government and other vested-interest groups. For example, when in 2001 the head of a corporate restructuring company turned out to have been involved in wide-ranging stock manipulations, fraud and suspicious relationships with numerous high-ranking public officials, it was later revealed that the Prosecutor's Office itself improperly handled the case. Due to the office's perceived inability to carry out a proper investigation concerning the scandal, the Public Prosecutor's Office was criticised for its lack of independence and fairness.³¹

More recently, however, the Public Prosecutor's Office demonstrated a different commitment by pursuing hard-line and independent investigations and prosecutions. A case in point lies in the investigation of the slush funds provided to various politicians in 2002. The Office regained public trust after carrying out thorough investigations involving incumbent public officials of the executive branch, parliamentarians and large business groups. In 2005, however, the Office's commitment and independence again were questioned as it remained lenient to white-collar crimes committed by large conglomerates such as the Samsung Group, the Daesang Group and the Doosan Group.³²

The Public Prosecutor's Office falls under the supervision of the Ministry of Justice (Article 32, Government Organisation Act), and the minister of justice supervises prosecutorial affairs as the highest superintendent. Nevertheless, the minister's actual supervisory power over individual prosecutors is restricted to general matters, and in special criminal cases, the minister can only direct the prosecutor general (Article 8, the Public Prosecutor's Office Act). In practice, on only one occasion in history has the minister of justice used this supervisory power.³³ The budget of the Public Prosecutor's Office is included in the budget of the Ministry of Justice in order to maintain its independence. The Legislature and Judiciary Commission of the National Assembly, however, has pointed out that such inclusion gives more room for the Office to use its budgets without proper approval from the National Assembly, and eventually infringes on financial transparency.³⁴

The Public Prosecutor's Office functions under a pyramidal structure, comprising the Supreme Public Prosecutor's Office, 5 high public prosecutor's offices, 13 district public prosecutor's offices and 40 branch offices of district public prosecutor's offices. Prosecutors may also supervise the police concerning investigations of criminal offences, and they may appoint special law enforcement agencies.³⁵

The Act on the Number of Personnel of the Public Prosecutor's Office sets the ceiling on the number of public prosecutors at 1,807. As of December 2004, the number of public prosecutors amounted to 1,507, while the number of public officials working at public prosecutors' offices amounted to 7,175.³⁶

The Rule on Reporting of the Public Prosecutor's Office, enacted by the Ministry of Justice, stipulates that the head of each prosecutor's office must report its prosecution activities and material information both to the head of the upper-level prosecutor's office and to the minister of justice. Prosecution activities that must be reported include offences committed by public officials of the Ministry of Justice, judges, parliamentarians and local councillors, and offences relating to high-ranking public officials.

Recently, the Public Prosecutor's Office established several mechanisms through which it consults the public in its work. First, it introduced the Appeal Review Council system in 2004. Consisting of two external and one internal figure, the Council reviews cases that are submitted after having initially been rejected by the Prosecutor's Office. Having external figures such as lawyers on the Council improves the fairness and transparency in the decision-making process of the Prosecutor's Office in investigation affairs. Currently, several high courts have set up these councils or are proceeding with setting up the relevant rules. Second, the Public Prosecutor's Office, in 2004, introduced the civil monitoring system. A prosecutor's office invites public citizens in its jurisdiction to act as civil monitors, thereby reflecting their opinions on the occupational performance in the operations of the office. Third, the prosecutor ombudsman system, established in 2004, allows citizens to present their dissatisfactions regarding the occupational performance of the Public Prosecutor's Office. It invites those who want to get involved to act as ombudsmen through its homepage. An increasing number of prosecutor's offices have introduced this system.

The Ministry of Justice strengthened the inspection powers of the Public Prosecutor's Office by establishing the Inspector General's Office in February 2005. This office assists the ministry in inspections of public prosecutors and those public officials serving the Public Prosecutor's Office. Pursuant to the Regulation on the Inspection Committee of the Ministry of Justice, the Inspection

Committee was established within the ministry in April 2005 so that the justice minister can consult the commission on fair and transparent inspections of the Public Prosecutor's Office and other institutions within the ministry. From January to August 2005, the ministry imposed disciplinary punishment on 67 people, up by 42.5 per cent from the previous year.³⁷

Furthermore, the Public Prosecutor's Office carries out internal inspections. In 2004, the Supreme Prosecutor's Office established the Internal Inspection Committee to deliberate on matters related to internal inspections of the Public Prosecutor's Office. In 2004, the Public Prosecutor's Office carried out two ordinary inspections on 44 prosecutors' offices and affiliated institutions.

All public prosecutors and public officials ranking fourth grade or higher are subject to asset disclosure under the Public Service Ethics Act. In addition, the Enforcement Decree of the Public Service Ethics Act also imposes upon public officials ranking from fifth to seventh grade the obligation to disclose their assets. Among them, public prosecutors ranking above the chief of a public prosecutor's office, public prosecutors who are heads of public prosecutor's branch offices to which deputy chief public prosecutors are assigned as well as first-grade-ranking public officials must disclose their assets directly to the MGAHA. The Government Public Official Ethics Committee must then disclose this registered information in public gazettes. Other public prosecutors and public officials register their assets with the corresponding public prosecutor's office. Prosecutors subject to asset registration are also subject to post-employment restrictions, and thus they must receive prior approval from the corresponding public prosecutor's office of the Government Public Official Ethics Committee.

Among these provisions, the post-employment status of former public prosecutors has drawn particular attention. In May 2005, a civil activist group disclosed that, among the former public prosecutors who served in public prosecutor's offices in Seoul, 49 have been holding outside directorships in major Korean companies. The activist group also showed that, since 2000, 12 former public prosecutors assumed positions in affiliates of the Samsung Group and the SK Group. The Samsung Group alone has employed 11 former public prosecutors.³⁸

In December 2005, the Ministry of Justice established guidelines for reporting acts of corruption by those who serve at the Public Prosecutor's Office and the ministry. These guidelines include whistleblower protection mechanisms and monetary awards. Additionally, complaints about the Public Prosecutor's Office can be registered under other relevant acts.

Cases of disciplinary punishment or prosecution of public prosecutors for acts of corruption seldom occur. From 1998 to 2003, the number of disciplinary punishments imposed on public prosecutors amounted to 15 cases, of which 5 ended in temporary suspensions from office and only 1 case resulted in the release of the prosecutor.³⁹ Other major scandals that involved public prosecutors came to an end when the concerned public prosecutors resigned from office. Most of them started businesses as private attorneys after leaving office.

Public Contracting System

Several laws govern public contracting and procurement in Korea. The Act on Contracts to Which the State Is a Party provides for rules and standards for contracts to which the government or a public institution is a party. The Special Provision on Materials Procurement under the Act on Contracts to Which the State Is a Party, introduced in 1992, regulates administrative matters regarding international contracts. Since 1997, the Special Provision of the Enforcement Decree of the Act on Contracts to Which the State Is a Party provides for rules and procedures for international competitive tender. This latter Act contains the WTO Agreement on Government Procurement, a trade agreement signed by 22 WTO member nations in Marrakesh, Morocco, on April 15, 1994. In addition, the Government Procurement Act regulates matters related to the government's procurement business.

As of 2003, the public procurement market of Korea reached KRW 74.4 trillion, accounting for 10 per cent of GDP (KRW 724.6 trillion). Of the total size of the procurement market, national government institutions accounted for KRW 33.9 trillion or 45.5 per cent, local governments and related institutions for KRW 19.3 trillion or 26 per cent and government-invested corporations or other entities for KRW 21.2 trillion or 28.5 per cent.⁴⁰

Korea's public procurement market engages in the purchase of goods and services that are not available in the domestic market. The Regulation on Special Procurement under the Enforcement Decree of the Act on Contracts to Which the State Is a Party applies in these cases and requires international bids and contracts for public procurement to meet certain criteria. As of 2005, foreign material suppliers registered under the government electronic procurement system amounted to 7,091 companies or 3.6 per cent of the total number of registered companies, while registered

foreign companies amounted to 47 companies. Public procurement of foreign material via the government's online procurement system in 2005 amounted to US\$671 million, almost double the amount (\$391 million) in 2001.⁴¹

As a general rule, the Act on Contracts to Which the State Is a Party states that contracts of public institutions shall take the form of open bids (Article 7). However, the same article adds that public institutions may sign a private contract under certain conditions as stated in the Act. Open bids are divided into three different categories—general, limited and designated open bids—while private contracts are divided into group and individual contracts. The Act and the Enforcement Decree of the Act specify in detail cases in which public institutions may select any one of these different types of bids and contracts. In the case of the government procurement agency, the ratio of open bids to the total public procurement volume remained stable, recording 77 per cent, 76 per cent and 76 per cent in 2003, 2004 and 2005, respectively.⁴²

The Enforcement Decree of the Act on Contracts to Which the State Is a Party specifies that a public institution should deliver standard bidding documents to the bidders (Article 36). The law is silent regarding clarifications and amendments during the bidding process. The Enforcement Decree of the Act also provides for standards and rules regarding contract awards. Two or more bids comprise a competitive bid. If there are less than two valid bidders, re-bidding can be requested. If there are no bidders or the awardees cannot enter into a contract, a bid can be repeated. If the bid results in only one bidder and a repeated process results in the same, the bid can be offered to private contractors.

To ensure objectivity in the contractor selection process, the Act on Contracts to Which the State Is a Party sets the rules and standards for (a) estimated and suggested prices, (b) the methods of contracting and (c) the procedures of tender and contract awards. The Decree further lists standards for the selection of the contractor among the bids presented. The standards are based on the principles of cost effectiveness and quality, and the contracting amount must be taken into consideration as well. The Decree also requires tender organisations to announce the awardees without delay at the designated place and time.

In case of a change in the design of the construction of contracts or contracting amounts, the Act on Contracts to Which the State Is a Party allows for modifications of already awarded or ongoing contracts. The Act also states that any other changes as stipulated in the Act may not exceed the real expenses involved.

No law requires the publication of decisions on changes and adjustments of contracts that have been executed. Once a contract is executed, decisions on changes and adjustments of contracts are made between the parties themselves.

Local industries and small- to medium-size businesses may receive priority according to the Act on Contracts to Which the State Is a Party (Article 7). Moreover, the law allows private contracting under certain circumstances as prescribed in the Enforcement Decree (Article 26). The Enforcement Decree also includes special provisions for the protection of local industries or mid- and small-size businesses. Among the special industries protected under the relevant laws are agricultural communities and domestic traditional products.

In September 2002, the Government e-Procurement System (GePS) was introduced as an electronic procurement program through which all public institutions may register, offer, process and close bids. The GePS acts as a nation-wide integrated window for public procurement that digitalises all information on the companies listed in the system and the entire process of public bidding.

The GePS significantly contributes to improving objectivity in the contractor selection process. For example, bidders use standard electronic bidding documents; all of the criteria for the procedure from bidding to contractor selection are met and simultaneously disclosed to the public. The GePS requires any clarifications and amendments to be disclosed five days prior to the bidding date of the contract award, allowing all participating entities to consider the changes. In 2004, electronic bidding through the GePS accounted for 92 per cent of the total bidding for public procurement.⁴³

The GePS has become an exemplary case throughout the world.⁴⁴ It has enabled public institutions not only to retain operational independence, but also to operate highly effectively. Furthermore, the GePS has greatly enhanced the quality and increased the number of business transactions between public institutions and private entities. It is estimated that this electronic procurement system saves KRW 3.2 trillion in public expenditures annually.⁴⁵ The GePS has received high acclaim from the international community. Among other honours, it received the first UN Public Service Award in June 2003, while UN/CEFACT recognised GePS as an international standard.⁴⁶ In May 2004, the OECD indicated that the e-procurement program in Korea appeared to be effective

and exhibited a strong pull-through effect on information and communication technologies deployed in the private sector. In their report on the consideration of Korea's corporate informatisation policy, the OECD categorized the GePS as having reached the level of 'no further action required.'

The contracting system and contracting process of public institutions operates according to the budget plans of the government. Each governmental institution must annually include its contract plans in either a general or a special account. The government procurement agency registers all of its business, including procurement and construction, in its special account. Additionally, the Enforcement Decree of the Act on Contracts to Which the State Is a Party requires the head of each public institution to disclose its plans and the status of its contracts on a quarterly basis through the GePS (Article 92.2). The government procurement agency additionally discloses its annual plans in publications and presents monthly plans for domestic procurement on its homepage.

The tender board is subject to the provisions of the Enforcement Decree of the Act on Contracts to Which the State Is a Party, which states that all public institutions may set up a contract advisory board for fair bids and contracts (Article 94). The same article entitles the head of each public institution to decide on matters concerning the contract advisory board.

Each public institution must report the status of its public contracting to the Ministry of Finance and Economy under Article 33 of the Act on Contracts to Which the State Is a Party. The Ministry collects information on public contracting but does not have the authority to oversee public contracting. In fact, there is no direct oversight mechanism specifically designed for public contracting. The BAI or the National Assembly may inspect the procurement of public institutions only as part of their audits and inspections on the final accounts or the occupational performance of related public officials.

The Public Procurement Service (PPS) purchases and provides goods and services needed for the operation of various public institutions. The PPS also makes contracts for major government construction projects. Under the Government Procurement Act, central and local governments, public schools and education-related institutions must request the PPS to purchase goods and services on their behalf when the transaction exceeds a certain amount (Article 2). These public institutions may also voluntarily request the PPS's services even when the amount of the transaction does not exceed the stated limit. Other government-invested corporations or research institutes may use the procurement agency under the Enforcement Decree of the Government Procurement Act (Article 4). As of 2004, public procurement by the government procurement agency amounted to 30 per cent of the total public procurement volume in Korea.⁴⁷

To enhance flexibility, the Government Procurement Act allows government-invested corporations to choose between the government procurement agency and self-purchases. Responsibility does not differ depending upon the degree of privatisation, whether government-invested corporations or other companies are involved. As of 2005, the central or local government invested in 12,476 companies, accounting for 37.3 per cent of the total number of potential customers of the PPS. However, among those corporations that actually used the PPS, only 788 or 2.4 per cent of the total customers were government-invested corporations.⁴⁸

Pursuant to its internal regulations, the PPS has established the Contract Advisory Board. The board consists of both internal and external figures with extensive knowledge about the Korean procurement system. However, the regulations are silent on the qualification, disqualification or integrity of these tender board members. Their term officially lasts four years with an option of renewal.

As a public institution, the PPS has its budget of revenues and expenditures formulated by the Ministry of Planning and Budget and then approved by the National Assembly. The PPS generates its own revenues and expenses through the procurement business and does not receive any funds from the government. It comes under the jurisdiction of the Ministry of Finance and Economy and thus reports to it as well as to the National Assembly. The PPS provides reports that it submits to the National Assembly through its homepage.

Although there is no special control mechanism for public procurement, several acts allow the public to participate in procurement decisions, including the Administrative Procedure Act, the Petition Act, the Administrative Appeals Act and the Administrative Litigation Act. Moreover, the Anti-Corruption Act allows for public participation if procurement decisions are thought to be corrupt.

The PPS has its own rules on civil participation in the procurement business. Under these rules, the PPS consults the public when formulating standards for bidding and evaluating the procurement

business. It also has an arbitration committee for conflicts that occur in the process of bidding and contracting.

Currently, no law specifically provides for parliamentary lobbying concerning the inclusion or exclusion of projects in plans, programs and budgets. No law allows for political influence on public procurement.

Transparency in public procurement is strengthened in various ways. First, procurement rules, laws, regulations and guidelines can be found on the GePS and are accessible through the Internet. Second, the heads of public institutions disclose their plans and the status of their contracts in the GePS on a quarterly basis (Article 92.2, the Enforcement Decree of the Contracts to Which the State Is a Party). Third, unrestricted dissemination of invitations to tender bids and terms of reference for all public contracting processes must be announced through the GePS (Articles 33 through 36, the Enforcement Decree).⁴⁹ However, according to the Act on the Disclosure of Information by Public Agencies, certain public institutions may protect certain procurement documents from public scrutiny, including documents on national security or provisions otherwise stated in other specific laws and regulations (Article 9).

Measures to secure the integrity of the public procurement sector are limited. The most notable one falls under the Act on Contracts to Which the State Is a Party, which requires public institutions to exclude those who have committed acts of corruption in the past two years from their bidding (Article 27). Such companies also may not become private contractors under the same article of the Act. The GePS discloses and updates a list of those companies that are disqualified as bidders.

However, no law specifies the qualifications of the staff in charge of contracting. The Act on Contracts to Which the State Is a Party requires the staff in charge of contracting to present a security guarantee only in certain cases (Article 6). No provision governs procurement staff rotation or specifies that the staff in charge of tender evaluations be different from the staff responsible for the elaboration of the terms of reference and bidding documents. In the PPS, for example, one public official oversees the entire process, and work is not divided by process but by each case. No law requires the staff in charge of contracting to compile periodical affidavits on their assets and income before and after being in office. Similarly, there is no provision concerning lifestyle monitoring.

Bidders of public institutions are not required to have a code of conduct in place. The PPS, on a voluntary basis since 2001, uses special integrity clauses in all of its bidding and contracting documents. The staff promises not to receive any gift or hospitality while the participating company promises not to infringe on the fairness of the process of the bidding or the contracting. Those companies who fail to comply with this pledge are removed from the list of businesses in the GePS, while staff violating the pledge receive sanctions or penalties under the relevant laws, including the Anti-Corruption Act.

Korea does not have a law that specifically provides for administrative sanctions for criminal offences against public administration in connection with contracting. However, a public official in charge of bidding or contracting may be criminally liable when that official abuses his or her authority, or when he or she solicits or receives bribes. In both cases, the official may be sentenced to suspension or dismissal from office.

The Criminal Act is silent regarding actions detrimental to public resources in public contracting. However, if actions detrimental to public resources in public contracting turn out to be cases involving embezzlement or breaches of trust, the person may face a criminal sentence of up to 10 years of imprisonment or a fine of KRW 30 million (Article 356).

Ombudsman

The Ombudsman was established as an administrative body under the Prime Minister's Office in April 1994, following the passage of the Basic Law Governing Administrative Regulations and Civil Petition Affairs in December 1993. The main function of the Ombudsman is to provide a safeguard against maladministration and to protect the rights and interests of civil society. Its stature was upgraded to a presidential body in October 2005, following the introduction of the Act on the Establishment and Operation of the Ombudsman of Korea. In addition to the general Ombudsman (the Ombudsman of Korea), the National Human Rights Commission of Korea, the KICAC and the Korea Consumer Protection Board collectively act as the de facto special ombudsman, although these institutions do not actually use the word ombudsman.

The Ombudsman consists of 10 members (ombudspersons), each of whom has a voice in the decision-making process, and one standing member who holds the office of secretary general and oversees the affairs of the secretariat. The Act states that the Ombudsman shall maintain independence in its duties (Article 3). The Act requires the 10 ombudspersons of the institution to be appointed from among those who can independently and fairly perform their duties. It prevents them from concurrently holding positions in the legislature, a political party or entities that have special interest in the executive branch or with the president. The Act further requires appointments of the ombudspersons to be based on merit (Article 7). The Act explicitly states that the chairperson shall be a standing ombudsman. Under the Act, the Ombudsman comprises central and local ombudsman offices. The appointees cannot be removed without relevant justification as provided under the Act (Article 10). They are not subject to discharge and suspension unless, for instance, they receive punishment equivalent to confinement or imprisonment. No ombudsman has been removed in this way in the past five years.

As of 2005, the Ombudsman consists of the chief ombudsman, three standing ombudspersons, and six non-standing ombudspersons, all of whom are appointed by the president. Their backgrounds vary, ranging from civil service and academia to NGOs and general civil society.

The Ombudsman acts as a safeguard against improper dispositions and systems within administrative organisations. It has the authority to conduct examinations on grievances submitted by the people. When registering complaints, a person must provide his or her personal information. From 1994 to 2003, the Ombudsman received a total of 4,325 complaints, of which 92 per cent were corrected by the relevant administrative institutions.⁵⁰ However, under the current system, it does not have any statutory authority to conduct investigations on its own initiative. Moreover, recommendations for corrective measures to the relevant government agency have no legal binding force.

From 2001 to 2004, the Ombudsman requested 5,281 corrections of various concerned public administrative institutions, and of these 4,169 requests or 87.5 per cent were accepted by the institutions. The Ombudsman has made efforts to have its requests for corrective measures effectuated by such steps as carrying out written surveys and field inspections. Additionally, it disclosed those public administrative institutions that did not accept its requests in the media and public gazettes as well as through reports to the president. Largely as a result, the acceptance ratio increased from 87.3 per cent in 2002 to 92.1 per cent in 2005.⁵¹

Furthermore, from 2001 to 2004, the Ombudsman suggested 38 systemic changes to several concerned institutions, of which 21 were readily accepted.⁵² To increase the adoption of suggestions in practice, the Ombudsman has held meetings with the various concerned institutions to explore possible routes to improvement.⁵³

According to the Act on the Establishment and Operation of the Ombudsman, the central ombudsman office must, on an annual basis, report on the state of its occupational performance to both the president and the National Assembly. It may also report to the president and the National Assembly when it otherwise deems it necessary. Meanwhile, local ombudsman offices must report their occupational performances to the head of the local government. The local assembly may also request similar reports.

The Act on the Establishment and Operation of the Ombudsman and the Enforcement Decree of the Act allow the institution to establish an advisory body, stating that the members of such a body shall be appointed from among those who have outstanding knowledge and experience in the fields of labour, environment and civil and criminal matters. As of 2005, the Ombudsman was in the process of establishing an advisory board. In addition, the Ombudsman openly discloses information concerning its operations to the public on its homepage, where the public may also make suggestions and express opinions.⁵⁴

The Ombudsman falls under the external inspection jurisdiction of the National Assembly and the BAI. The BAI, however, does not carry out audits or inspections of the Ombudsman on an annual basis. In fact, no law mandates the frequency of an audit and inspection of the Ombudsman, and the BAI does not provide such information either. As for internal audits and inspections, so far, the BAI carried out only one audit and inspection in 2001.

In addition to the Code of Conduct for Public Officials of the Ombudsman, the Act on the Establishment and Operation of the Ombudsman includes provisions for the avoidance of conflicts of interest for members of the Ombudsman office (Article 15). The Public Service Ethics Act also states that the Ombudsman falls under the jurisdiction of the Government Ethics Committee.

Anti-Corruption Agency

The Korea Independent Commission Against Corruption [KICAC], Korea's designated governmental anti-corruption agency, was formally established in January 2002 as an independent governmental organisation under the president, following the passage of the Anti-Corruption Act on 24 July 2001. As a national agency, the KICAC focuses on coordinating national anti-corruption initiatives by improving legal and institutional frameworks and by increasing public awareness about anti-corruption concerns and integrity. The KICAC's work mainly focuses on the public sector, but it also assists businesses in advancing ethics management by providing relevant information and material on its homepage and through its Business Ethics Centre.

The Commission's main functions include the following:

1. Formulating and recommending policies and institutional improvement measures to prevent corruption in public agencies;
2. Surveying the actual state and evaluating the progress of policy steps taken to prevent corruption in public agencies;
3. Developing and implementing education and publicity for the prevention of corruption;
4. Supporting activities carried out by non-profit civic organisations to prevent corruption;
5. Promoting international cooperation for the prevention of corruption;
6. Receiving whistleblowing reports and the like with respect to an act of corruption;
7. Protecting and rewarding whistleblowers; and
8. Addressing matters that the president places on the agenda of the Commission to prevent corruption.

On a local level, it cooperates with local governments and local civil society, it launches provincial tours for receiving reports on acts of corruption, it provides anti-corruption education, and it establishes civil anti-corruption centres. As of 2005, the commission established 23 anti-corruption civil centres in various local areas throughout Korea.

The workload of the Commission can be divided into four areas: policy planning coordination, institution and practice improvement, public relations and cooperation and report inspection. In 2004, the inspection headquarters section added a division to handle protection and rewards. In terms of budget allocation, in 2005, the policy planning section (coordination and institution and practice improvement) received KRW 2.3 billion, 13 per cent of the total budget, the PR and cooperation section, KRW 2 billion or 11 per cent and the inspection headquarters section, KRW 0.6 billion or 3 per cent.⁵⁵

According to the Anti-Corruption Act, the KICAC independently performs the work delegated under its authority (Article 15). The Anti-Corruption Act allows the KICAC to receive reports on corruption. However, the KICAC only handles such reports either by transferring them to the corresponding public institutions or by reporting them to the investigative authorities or the BAI. The KICAC itself does not have the authority to investigate those suspected of acts of corruption.

The decision-making body of the KICAC consists of nine commissioners, including the chairperson. In order to ensure fairness and neutrality, three commissioners are appointed on the recommendations of the president, the National Assembly and the chief justice of the Supreme Court respectively. The Act guarantees the appointment positions of the commission members unless they fall under the following conditions:

1. A person who is not a citizen of the Republic of Korea;
2. A person who is disqualified under Article 33 of the State Public Officials Act, such as those who were released from public offices due to disciplinary punishments and/or those who received court punishments equivalent to confinement or imprisonment.
3. A person who is affiliated with a political party as a member;
4. A person who registers himself as a candidate to run in an election held in accordance with the Public Officials Election Act or
5. A person who has significant difficulty in performing his or her duties due to mental or physical infirmity.

Moreover, the Enforcement Decree of the Anti-Corruption Act requires members of the Commission to be appointed from among those who have integrity and ethics based on experience and knowledge, and qualify as follows (Article 6):

1. Assistant professors or equivalent positions with 8 years or more experience in universities or publicly recognised academic institutions;
2. Judges/public prosecutors or lawyers with 10 years' or more experience;
3. Public officials in the third grade or higher ranks with 5 years or more experience and
4. Persons whose research achievements or work experience are considered equivalent to the criteria specified above and who are highly respected in society or are recommended by a non-profit private organisation.

None of the members, for the last four years since the establishment of the KICAC, have failed to meet these qualifications. The Commission provides profiles of all of its members.

For the past four years, the KICAC has actively engaged in the fight against corruption. As of 2005, the Commission had brought 40 policy recommendations to the concerned public institutions. The Commission held international conferences on anti-corruption practices and participated in international gatherings with the UN, the OECD and the APEC. Since its establishment, the Commission has received a total of 416 reports on acts of corruption, of which 319 cases were referred to the Prosecutor's Office. These reports saved KRW 6.4 billion in public funds over the past four years.⁵⁶

Additionally, the KICAC posts various kinds of publications on its homepage, such as reviews of its occupational performance, current projects, education and increased awareness of anti-corruption concerns. Both digital and conventional methods are used for the dissemination of the Commission's publications.

Currently, KICAC is not explicitly required to report the results of its occupational performance. However, the Commission occasionally consults with or reports to the president. Additionally, it reports to the National Assembly on an annual basis and regularly provides report updates on its homepage.

The Enforcement Decree of the Anti-Corruption Act allows the Commission to set up an advisory body of respected civil figures (Article 16). The Commission thus established the Policy Advisory Board in September 2002. The public may register their suggestions and opinions through the Commission's homepage.

The Commission has its own set of rules, the Rules on Audit and Inspection of the KICAC. It provides detailed standards and procedures. After being established in 2002, the Commission conducted three comprehensive internal audits and 40 internal inspections on its daily occupational performance. The Legal Affairs and Inspection Division of the KICAC then submitted the results of its internal audit and inspection to the BAI.

The KICAC is subject to external inspection by the National Assembly and the BAI. No law, however, stipulates the frequency of audits or inspections of the KICAC, and the BAI does not provide such information, either. The BAI and the National Assembly have annually carried out external audits and inspections of the final accounts of the Commission since its establishment in 2002. Yet an audit on its occupational performance has never been conducted.

Under the Enforcement Decree of the Anti-Corruption Act, members of the Commission cannot participate in the deliberation on and resolution of certain matters (Article 9). The Commission makes efforts to prevent internal violations of integrity-related regulations by carrying out internal education and inspections. To this date, no cases have been reported of such violations.

The Public Service Ethics Act states that public officials of presidential commissions such as the KICAC must disclose their assets and report on foreign gifts they receive. KICAC public officials fall under the jurisdiction of the Government Public Official Ethics Committee.

The Rules on the KICAC Administrative Appeals Committee under this Act require the Commission to establish the KICAC Administrative Appeals Committee and provide for rules on the committee and its operation. This Committee was duly established in 2005. Since it was established in 2005, the KICAC has received two cases.

Legislature

The National Assembly of Korea is a unicameral system composed of 299 members who are elected by universal, equal, direct and secret ballot by the citizens every four years. The

legislature enacts laws and checks the executive branch under the authorities vested in it by the constitution, ranging from approvals of matters such as the national budget, foreign policy, the declaration of war, the dispatch of armed forces abroad and the stationing of foreign forces within the country, to inspections or investigations of state affairs and impeachments. Since February 2003, the National Assembly has had the authority to request a BAI audit and inspection (Article 127-2, the National Assembly Act). The National Assembly maintains formal and operational independence.⁵⁷

While the constitution entitles the president to nominate the chief justice, justices, the president of the Constitutional Court, the prime minister and the chairperson of the BAI, the National Assembly has the right of confirmation of these senior appointments.⁵⁸ In practice, however, the National Assembly has rejected a nomination in only a few cases. The most recent rejection of a prime minister took place in 2003, the first time in 42 years. In the same year, the National Assembly also rejected the president's candidate to head the BAI for the first time in history.

Enacted in July 2005, Article 31-2 of the State Public Officials Act requires the president to hold a hearing before the National Assembly when he or she appoints a member of the State Council. The first such hearing took place in February 2006.

All of the public expenditures of the government require legislative approval. The National Assembly approves the budget of the government on a yearly basis. Article 54 of the constitution entitles the National Assembly to deliberate on and submit a final approval of the annual budget of the government. While the National Assembly may reduce the annual national budget, it may not increase the budget or add a new item to the budget without the government's consent (Article 57, constitution). In addition, if the proposed amount of the annual budget of a constitutionally independent institution is to be reduced, an opinion of the head of that independent institution needs to be obtained through a meeting with the State Council.

In addition, Article 99 of the constitution requires the BAI to submit its reports on year-end accounts of the government to the National Assembly, and Article 45 of the Budget and Account Act requires the government to submit the reports on final accounts as audited by the BAI to the National Assembly. Therefore, the National Assembly, as the last instance, exercises the right to examine and approve the year-end accounts of the government.

The National Assembly comprises the speaker, two vice-speakers, the National Assembly Secretariat, the National Assembly Library and the National Assembly Budget Office (see Appendix 2). The staffing of these institutions is governed by relevant regulations enacted by National Assembly order. The National Assembly Secretariat employs a total of 2,809 public officials, the National Assembly Budget Office has 92 public officials and the National Assembly Library, 275.

The National Assembly has 19 standing committees and may establish special committees on an ad-hoc basis. Among these various committees, the Special Committee on Budget and Accounts carries out preliminary examinations of the budget and final accounts of the state before the plenary session of the National Assembly. The committee has become a standing committee, fully operating since May 2000, with 50 members. The 2005 budget for the committee amounted to KRW 1.2 billion. The Special Committee on Ethics deliberates on qualifications, ethics-related matters and punishments of parliamentarians. It has 15 members and operates throughout the year. The 2005 budget allocated to the committee reached KRW 126 million.

Off-the-books funds of parliamentarians have long remained a serious problem in Korea. The Political Fund Act stipulates that members of the National Assembly must maintain transparent funding, yet scandals still take place regarding illegal and slush funds, funds raised particularly among corporations. In 2004, only 12 such cases, involving a total of 23 parliamentarians, were brought to the courts; the accused had illegally accepted a combined total of KRW 200 billion from corporations.⁵⁹

As a constitutionally independent institution, the National Assembly does not face any external oversight nor does it report to any external entity. The Board of Audit and Inspection Act adds that public officials of the National Assembly are not subject to inspections concerning their occupational performance (Article 24). However, under the Act, the BAI does examine the final accounts of the expenditures of the National Assembly (Article 20).

The National Assembly Secretariat can undergo National Assembly inspections and hearings as stated in Article 61 of the constitution and Articles 2 and 3 of the Act on the Inspection and Investigation of State Administration.

There are several mechanisms through which citizens may participate in the legislative process. Article 64 of the National Assembly Act allows the National Assembly to conduct public hearings when it deliberates on material or professional issues. Also, Article 123 of the Act stipulates that

any person may submit a petition through a parliamentarian. The current 17th National Assembly (2004–present) has received a total of 292 petitions. Of these petitions, however, only 62 cases were processed, while 230 cases are pending at present. Of the former cases, only one case was pursued.⁶⁰

Amended in July 2005, Articles 12 and 13 of the Regulation on the Special Committee on Ethics stipulate that the committee shall have an advisory board consisting of non-parliamentarian figures from the fields of law, academia and media plus the civil community. No law specifically provides for citizen participation in the budgetary process.

With regard to integrity, Article 46 of the constitution stipulates that parliamentarians shall have the duty to maintain high standards of integrity. The article states that parliamentarians shall give priority to national interests, adding that they shall not acquire rights and interests in property or positions through abuse of their positions or assist other persons to acquire the same.

The National Assembly established the Ethics Code for Parliamentarians in 1991, a set of five oaths according to which a parliamentarian pledges to act fairly in the interest of the general public and should not seek his own interest during his time of duty. The National Assembly, in 1993, established the Regulation of Ethics Enforcement of Parliamentarians. This regulation gives parliamentarians the obligation to maintain integrity (Article 4), prevents them from receiving gifts and hospitality related to their duties (Article 5) and requires them not to participate in issues related to their official interests (Article 10). However, unlike other public institutions, the National Assembly has not set up its own code of conduct.⁶¹

Regarding conflicts of interest, the National Assembly Act technically allows for concurrent positions of parliamentarians but specifies those positions that cannot be held (Article 29). The same Article and the Regulation on Ethics Enforcement of Parliamentarians require parliamentarians to report their concurrent positions to the president of the National Assembly. During the 16th National Assembly (2000–2004), 129 out of 273 parliamentarians reported that they held concurrent positions, and 24 of them belonged to standing committees related to their original, non-legislative, professional positions.⁶² The current, 17th National Assembly exhibits a similar portrait. As of June 2005, 139 out of 299 parliamentarians held a total of 227 concurrent positions. In particular, 12 out of the 15 members of the Legislative and Judiciary Committee were lawyers in their non-parliamentarian occupation.⁶³ Effective in June 2006, Article 40-2 of the National Assembly Act prohibits standing committee members from holding concurrent positions that are related to their standing committee positions.

Regarding asset disclosure and the acceptance of gifts and hospitality from foreign entities, the National Assembly has established its own National Assembly Regulation on the Public Service Ethics Act. All those parliamentarians and public officials ranking fourth grade or higher in the National Assembly must register their assets with the National Assembly Secretariat, which then submits the registered information to the National Assembly Public Officials Ethics Committee for further deliberation and examination.

Assets disclosure has so far remained in formal terms only. In 2003, of the 1,130 public officials of the National Assembly who were required to register their assets, 50 people omitted disclosure of their assets by more than KRW 100 million in value, while another 41 people omitted assets of less than KRW 100 million in value.⁶⁴ In 2005, 143 or 19.7 per cent of the 723 parliamentarians and first-grade ranking public officials failed to disclose more than KRW 30 million in value of their financial assets or real estate. However, the National Assembly Public Officials Ethics Committee remained lenient towards these omissions, merely issuing warnings or orders of correction to 41 public officials and lesser sanctions to 57 public officials.⁶⁵

Currently, parliamentarians are not required to record or disclose contacts with lobbyists or similarly registered interest groups.

Proportional party representatives are prevented from switching their political parties mid-term, unless the party that they belonged to merged or dissolved or the parliamentarian was otherwise forced to switch party lines (Article 49 of the Public Officials Election Act). Any parliamentarians who have switched their party affiliation in violation of the article must resign as parliamentarians.

The National Assembly incorporates the provisions of the National Assembly Regulation on the Disclosure of Information. This Act allows any person to request information regarding the National Assembly from the National Assembly Secretariat, the National Assembly Library or the National Assembly Budget Office and requires the National Assembly to establish a committee to deliberate on the disclosure of its information. The National Assembly provides information on its job performance through its homepage, and the standing committees and two special standing committees provide information about their activities on their own homepages.

Whistleblowing against corruption by public officials of the National Assembly is not effective. According to the KICAC, the number of reports of acts of corruption related to constitutionally independent institutions, including the National Assembly, the judiciary, the election commissions and the Constitutional Court, amounted to only seven cases from 2002 to 2004.⁶⁶

The Special Committee on Ethics can issue warnings to those parliamentarians who violate the Ethics Code or the Regulation and impose disciplinary action when it finds a parliamentarian in violation of the provisions as specified in the constitution and the National Assembly Act (Article 155, the National Assembly Act). The National Assembly Act allows parliamentarians to request the Special Committee on Ethics to assess or impose sanctions on parliamentarians. The article requires such requests to be signed by a minimum of 20 parliamentarians and be submitted to the speaker of the National Assembly (Article 156).

Concerns have long mounted over the effectiveness and accountability of the Special Committee on Ethics, as the members, until recently, consisted entirely of those from within the National Assembly. In other words, parliamentarians reported wrongdoings to their own colleagues, deliberated on such reports among themselves only and imposed sanctions on themselves. The current National Assembly has had a total of 45 cases registered with the Special Committee on Ethics, compared to a total of 16 cases during the 16th National Assembly term (2000–2004). Part of this increase can be attributed to cross-reporting between the respective parliamentarians involved. In addition, cases take a long time to proceed to the plenary session of the National Assembly. During the 16th National Assembly term 12 of the 16 cases were closed due to the retirement of the concerned persons. As of April 2006, of the 45 cases reported during the current National Assembly, the committee handled only 24 cases and eventually imposed sanctions on parliamentarians in 14 cases. More notably, the heaviest sanction since the establishment of the committee in 1991 has been a suspension from office for five days.⁶⁷

To resolve this problem, the National Assembly introduced the Advisory Board system into the Special Committee on Ethics in July 2005. However, concerns still remain that the Advisory Board cannot make a substantive difference as long as it does not have any authoritative power but only has an advisory function.

Parliamentarians enjoy immunity from investigation and prosecution. Under Article 44 of the constitution, during the sessions of the National Assembly no member shall be arrested or detained without the consent of the National Assembly, except in the case of flagrante delicto. In addition, no member of the National Assembly shall be held responsible outside the National Assembly for opinions officially expressed or votes cast within the Assembly.

Criticism has steadily risen that courts are too lenient towards corruption attempts and practices of parliamentarians. According to one survey, over a time span of 12 years up until 2005, a total of 73 parliamentarians were prosecuted for violating the Public Officials Election Act, and 70 of the 73 received guilty judgments. However, 53 of the 70 parliamentarians still managed to remain in office because they received sentences just below the threshold that would have subjected them to automatic dismissal.⁶⁸

Electoral Commission

The election commissions are independent agencies in charge of the fair management of the elections, the national referenda and the election for superintendents of education and education boards. Notably, the constitution guarantees the status of the election commissions, and thus they enjoy independent status comparable to the National Assembly, the executive branch, courts and the Constitutional Court of Korea (Article 114).

The election commissions of Korea include the National Election Commission, 16 metropolitan City- and *Do*- level election commissions, 250 *Gu*-, *Si*-, and *Gun*-level election commissions and 3,561 *Eup*-, *Myun*- and *Dong*-level election commissions. According to Article 2 of the Election Commission Act, the National Election Commission supervises local election commissions and has a representative organisation composed of nine commissioners (Article 3). The budget of the National Election Commission covers all operation expenses of the Commission and the local commissions.

The chairperson of the Commission is chosen from among its members (Article 5). Thus far, supreme court justices have concurrently held the chair.. To guarantee the neutral status of the National Election Commission, the nine commissioners must be endorsed by the president, the National Assembly and the chief justice of the Supreme Court, while the Act entitles the National Assembly to hold confirmation hearings for the candidates (Article 4). Commissioners cannot join a

political party or participate in politics (Articles 4 and 5). The same impartiality rules apply to each local election commission with regard to the appointment of the commissioners.

The election commissions do not have the legal authority to commence investigations on their own initiative. Under the *Public Officials Election Act*, the commissions may launch an investigation only when they find evidence of wrongdoings regarding an election or when they receive such a report (Article 272 (2)).

The election commissions have the authority to impose orders to cease or correct or to issue warnings, if necessary, under the Election Commission Act (Article 14(2)). The Public Officials Election Act provides for different sanctions for different types of wrongdoing (Article 230 to 262(3)). The Election Commission Act entitles the commissions to report to the Prosecutor's Office when they find that a wrongdoing damages the fair operation of the election or when one who received an order to correct or cease action does not comply accordingly (Article 14(2)).

The 17th general election in 2004 was highly acclaimed as the cleanest and fairest election in the country's history, and the election commissions made a significant contribution towards this achievement.⁶⁹ The election commissions aggressively implemented and enforced strict rules on public elections. The Commission detected 3,017 violations in the 16th general election in 2000, but this number increased to 6,400 in 2004.⁷⁰

Vote-buying has been a chronic problem in Korea, yet its incidence has decreased sharply. In 2000, a total of 1,393 cases were found. By 2004, the number of cases had significantly dropped to 919. At the same time, in 2000, only 2 cases were reported to the Prosecutor's Office, but this number shot up to 255 in 2004.⁷¹ This demonstrates the Commission's substantial efforts to address acts of vote-buying.

In April 2004, the Public Officials Election Act added provisions for monetary rewards and the protection of whistleblowers. In the 16th presidential election in 2002, only 19 whistleblowing cases were reported, while this increased to a total of 279 cases in the 17th general election.⁷²

Under Article 97 of the constitution and Articles 20 and 24 of the Board of Audit and Inspection Act, each election commission must face an examination of its final accounts of expenditures and inspection of the occupational performances of its public officials. Article 24 of the Board of Audit and Inspection Act states that public officials of the National Assembly, courts and the Constitutional Court enjoy immunity from inspections concerning their occupational performance. However, although they are constitutionally independent institutions comparable with the above-stated institutions, election commissions do not fall under this exemption. The BAI does not conduct audits and inspections of the National Election Commission on an annual basis. In fact, no law stipulates the frequency of audits and inspections of the election commissions, and the BAI does not provide such information.

The Commission also has its own audit and inspection office, which carries out inspections of each election commission office and handles complaints and matters of ethics. It also investigates and settles the corrupt practices reported to or notified by the KICAC.

Different election commissions have different numbers of audits and inspections. The National Election Commission carries out an internal audit and inspection every second year. It also conducts audits and inspections on other election commissions at the city or province level bi-annually and the other election commissions tri-annually.

As an independent agency comparable in stature with the executive branch and the National Assembly, the election commission system is not required to report to any other institution.

The commissions are not required to consult the public.⁷³ However, the Commission's homepage provides a public forum that encourages suggestions and participation. Upon receiving suggestions, the relevant division of the National Election Commission provides relevant replies. So far, there have been few cases in which a suggestion has actually been adopted and implemented.

In accordance with the Act on the Disclosure of Information by Public Agencies, the National Election Commission has its own rule that governs disclosure procedures, the Rule on the Disclosure of Information of the Election Commission. The website provides information on political parties, their activities and their accounting and funding status.

As constitutionally independent institutions, the election commissions have a separate committee for asset registration, reports on gifts, and post-employment restrictions, called the National Election Commission Public Official Ethics Committee.

Judiciary

The constitution of the Republic of Korea stipulates that judges must follow the constitution, laws and regulations to maintain judicial independence according to their conscience and in conformity with the constitution and the Court Organisation Act (constitution, Article 103). The judiciary retains and strictly maintains independence from any external institution.

The Constitution separately establishes the Constitutional Court of Korea (Articles 111–113). As a constitutionally independent and specialised court, the Constitutional Court protects the people's fundamental rights as well as effectively checks governmental powers. The functions of the Constitutional Court include deciding on the constitutionality of laws, ruling on competence disputes between governmental entities, adjudicating constitutional complaints filed by individuals, giving final decisions on impeachment decisions and making judgments on the dissolution of political parties. The organisation and operation of the Constitutional Court of Korea is governed by the Constitutional Court Act.

The Court Organisation Act provides for the qualifications and recruitment procedures of judges. According to the Act, any person can become a judge if he or she passes the National Judicial Examination and completes a two-year training program at the Judicial Research and Training Institute, or if he or she has attained the qualifications of a lawyer (Article 42). The chief justice appoints judges based on the results of the national examination and the candidate's performance during the judicial training period (Article 41).

The Court Organisation Act does not explicitly require that promotions and personnel decisions of judges be based on merit. It only states the minimum number of years of experience required and defers the authority of appointment to the chief justice. The head of each court, including district courts and high courts, for instance, must have more than 10 years of experience in legal affairs at public organisations, while the chief justice and justices of the Supreme Court must be over 40 years of age and must have served 15 or more years in legal affairs at public organisations (Article 44). Judges and apprentice judges are assigned to their posts by the chief justice (Article 44). The chief justice also evaluates the performance of judges and apprentice judges, and he/she may take into account the evaluation in his/her personnel decisions (Article 44.2).

Judges who have been appointed to serve the judiciary cannot be removed without relevant justification under the law, and this is a provision that has been strictly followed. The constitution states that judges cannot be removed from office except by impeachment or a sentence of imprisonment (Article 106). Moreover, judges cannot be suspended from office, have their remuneration reduced, or receive any other unfavourable treatment, except according to specific disciplinary measures.

Concern has been expressed about the independence of individual judges. The constitution requires individual judges to act independently in their occupational performance. Korea's judges themselves point out that fundamentally, personnel decisions of the judiciary are only based on the number of years of employment without any other clearly defined standards for promotion, and that appointments and all other powers are concentrated in and controlled by the chief justice of the Supreme Court. This construct has led to a rigid pyramidal personnel structure, seriously challenging the independent performance of individual judges.⁷⁴

As there has been concern over the closed nature and lack of independence of individual judges, the Supreme Court, in 2003, established the Committee on the Reform of the Judiciary, which operated until 2004. As criticism arose that the work of this committee failed to achieve any significant results, the president in 2005 established another commission to promote reforms of the judiciary. Among the issues under review by this commission are the establishment of a system of ethics and integrity for judges, civil participation in criminal cases and the disclosure of rulings and relevant records.

There are six types of courts in Korea: the Supreme Court, the high courts, the district courts, the Patent Court, the Family Court and the Administrative Court.⁷⁵ The district courts, the high courts and the Supreme Court form the basic three-tier system. The Patent Court enjoys a position on the same level as the high courts and the Family Court, and the Administrative Court operates on the same level as the district courts (see Appendix 3).

The Supreme Court consists of the chief justice and 13 justices. The chief justice appoints one justice as the minister of court administration, a non-adjudicatory function. Each of Korea's high courts, located in five major cities, has an administration bureau for the internal management and supervision of court officials. Each high court has a chief judge and a specified number of judges. The 13 district courts follow the same organisational structure. The budget of the Supreme Court

covers the expenditures of all subsidiary courts. The staffing of the judiciary numbers 2,544 judges, 300 apprentice judges and 12,464 public servants.⁷⁶

The district courts or branch courts retain original jurisdiction over civil and criminal cases. In general, a single judge presides over a trial. However, a panel of three judges will sit for cases deemed of greater importance. Except for those cases that specifically fall under the jurisdiction of the high courts, the district courts retain original jurisdiction over appeals against the judgments or rulings rendered by a single judge of the district courts or branch courts. In these cases, a panel of three judges from the district court, called an appellate panel, will review appeals.

The high courts hear appeals from judgments or rulings rendered either by a panel of three judges of the district courts or by the Family Court or by Administrative Court. The high courts also hear appeals from judgments or rulings in civil cases rendered by a single judge of the district courts or branch courts in cases when the amount in controversy exceeds KRW 50 million. The jurisdiction of the high courts is exercised by a panel of three judges.

As the court of last resort, the Supreme Court hears appeals from judgments or rulings rendered by the high courts, the Patent Court and the appellate panels of the district courts or the Family Court in civil, criminal, administrative, patent and domestic relations cases. It also has the authority to review rulings rendered by the Korean Maritime Safety Tribunal and has exclusive jurisdiction over the validity of the presidential or National Assembly election. The Supreme Court has the authority to render definitive reviews on the constitutionality or legality of orders, rules, regulations and actions taken by administrative entities.

At present, technically no binding body of case law or *stare decisis* exists. Courts are not legally obligated to follow the relevant precedent rulings of the Supreme Court. However, the lower courts generally do follow the rulings of the Supreme Court. Accordingly, case law is followed unofficially.

A total of 238,358 criminal cases were brought to the courts in 2004. Among them, 998 cases involved crimes concerning the duties of public officials, while 2,482 cases were related to embezzlement and breaches of trust.⁷⁷ A case in early 2006 shows that the courts have conflicting interpretations of how the provisions of the Anti-Corruption Act should be applied. In this case, a public official was demoted to a lower position at his work place in retaliation for his whistleblowing. He filed a lawsuit seeking recourse against this action. However, the court ruled against him, concluding that the personnel transfer did not discriminate or violate any laws.

In corruption cases, no law explicitly requires the judiciary to protect witnesses, prosecutors or judges. The Anti-Corruption Act generally does provide for the protection of whistleblowers, although obligations by the judiciary are not explicitly outlined.

Although judges complete a judicial training course before being appointed as judges and continuously take other training courses during their time of service, none of these courses or training programs focuses on the handling of corruption cases.

Internally, the judiciary maintains its own audit regulation, the Regulation on Court Audit. The Supreme Court may conduct ordinary audits on a yearly basis or extraordinary audits on all of the courts' operations, while the head of each court may carry out audits and inspections of the concerned courts. The head of the Ministry of Court Administration, under the Supreme Court, may also perform inspections when they are deemed necessary.

However, as a constitutionally independent body, the court system of Korea is exempt from oversight. The Board of Audit and Inspection Act provides that public officials of the courts are not subject to inspections concerning their occupational performance. However, under the Act, the BAI examines the final accounts of expenditures of all Korean courts. Moreover, the National Assembly may also conduct inspections and hearings on the Ministry of Court Administration.

The constitution and the Court Organisation Act stipulate that trials and the decisions of the courts shall be open to the public. Trials may be closed to the public by court order if such openness endangers or undermines national security or disturb safety and order or are harmful to public morals (Article 109).

Article 39 of the Criminal Procedure Act and Article 208 of the Civil Procedure Act state that judges must provide the legal reasoning for their decisions in their rulings. Other proceedings such as administrative and patent cases also follow the provisions of the Civil Procedure Act.

In addition, courts must comply with the Act on the Disclosure of Information by Public Agencies and the Court Regulation on the Disclosure of Information. Each court has its own division in charge of the disclosure of its information. The Act allows the public to request further information, and each court has a committee to review the appropriateness of such requests and the range of disclosures.

The provisions of the Anti-Corruption Act apply to the judiciary. Pursuant to this Act, the judiciary has its own code of conduct. However, the Code of Conduct for Maintaining the Integrity of Public Officials of the Courts does not apply to judges. Judges must follow the Ethics Code for Judges, which provides that judges may not engage in economic activities that might infringe upon the impartiality of their decisions (Article 6). The ethics code does not contain provisions regarding gifts and hospitality. Unlike the codes of conduct of other institutions, the ethics code does not contain any sanctioning provisions.

As a constitutionally independent body, the judiciary has a separate public-official ethics committee, and all judges and public officials ranking fourth grade or higher must comply with the provisions of asset disclosure, reporting of gifts and post-employment restrictions as required under the Public Service Ethics Act. The Court Regulation on the Enforcement of the Public Service Ethics Act adds that apprentice judges and public officials who rank between fifth grade and seventh grade must also comply. The Public Service Ethics Act limits the disclosure of the information on assets registration to judges higher than the chief judge of the high court.

A survey of people serving the judiciary shows that 10 out of the 60 failed to register all of their assets.⁷⁸ In addition, it was revealed that, from 2001 to 2004, six former judges were employed in large conglomerates. No public official of the judiciary reported receiving foreign gifts in 2004.

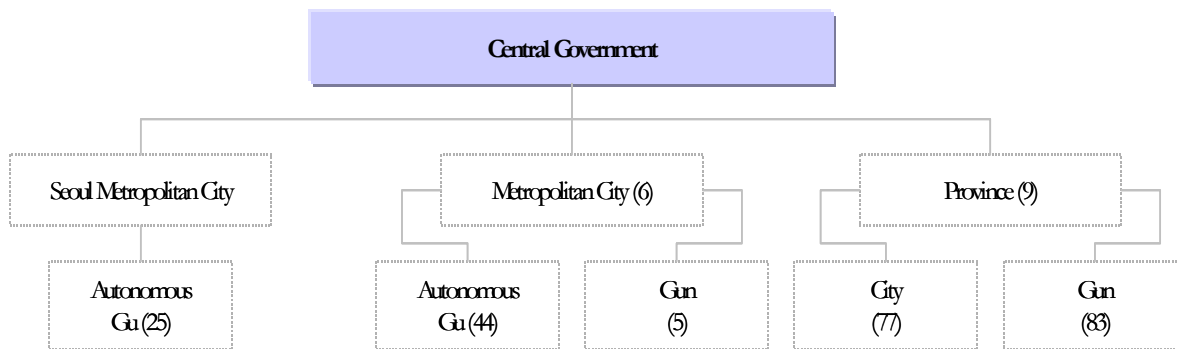
The Court Regulation on the Enforcement of the Anti-Corruption Act requires the courts to have policies and detailed plans to combat corruption (Article 29). Accordingly, each court has an internal division that inspects the status of integrity of the court itself, while the Ministry of Court Administration supervises the courts in addition. Information on this internal oversight, however, remains classified.

Although there are general claims that the Korean judiciary has deep-rooted problems of corruption, there has been no case of successful prosecution of judges or senior judicial officials.⁷⁹ Among the more prominent incidents, one scandal stirred the entire nation in 1998 when eight judges in a district court were found to have long maintained suspicious monetary transactions with several lawyers. The scandal came to an end when the judges either resigned or were suspended from office.⁸⁰ In 2004, another scandal involved a judge in a district court who received sexual entertainment through a lawyer. However, overall, none of the implicated judges was prosecuted. One retired, one was transferred to a different court and yet another was only given a warning.⁸¹

Regional and Local Government

The constitution stipulates that local governments shall, within the limits of applicable acts and subordinate statutes, deal with administrative matters pertaining to the welfare of local residents, manage properties and enact provisions relating to local autonomy (Article 117). The constitution guarantees checks and balances of local autonomies by introducing local councils (Article 118). Among the legislative acts governing local autonomy are the Local Autonomy Act, the Local Finance Act, the Local Public Officials Act and the Local Public Enterprise Act. Korea introduced the local autonomy system by holding the first election of members of local councils in 1991 and the first election of heads of local governments in 1995.

Local governments of Korea include upper- and lower-level local governments. Upper-level governments include the Seoul Metropolitan City, other metropolitan cities and provinces, while lower-level governments include cities, counties (*Gun*) and wards (*Gu*) and autonomous wards (Article 2, Local Autonomy Act). As of January 2005, Korea has seven metropolitan cities, including Seoul, and nine provinces. These upper-level governments collectively encompass 77 cities, 88 counties and 69 autonomous wards. Also, as of June 2004, 199 corporations are directly managed by local governments and 152 corporations are indirectly managed.

Figure 5 Structure of Local Autonomies in Korea (as of 2005)

A local government formulates its own budget bill consisting of general and special accounts, while the local council has the authority to approve the budget and the year-end accounts. Approved budgets and final accounts must be submitted to the MGAHA and be disclosed to the public. The total 2005 budget of local autonomies amounted to KRW 92 trillion,⁸² equivalent to 68 per cent of the budget of the central government.⁸³

Heads of local governments are elected by direct popular vote for four-year terms, while other lower-level public officials are appointed by either the president or the heads. Members of local councils are also elected by direct popular vote for four-year terms. Local councils have 3,496 lower-level council members and 682 upper-level council members, of whom 609 are local representatives and 73 are proportional representatives.

Public officials serving the local autonomies of Korea include local government officials, state government officials delegated to local governments and members of local councils. Local government officials working for local governments are recruited, selected and paid by local governments and are responsible for local affairs. Although governed by the separate Local Public Officials Act in terms of general personnel management, local public officials must comply with the same provisions as state public officials. The number of local government public officials reached 338,470 as of December 2005.⁸⁴

Throughout the last 10 years, local autonomy reforms have continuously undergone stages of development; yet, the immediate benefits of decentralisation have not yet been fully realised, and structural problems remain. Of the official affairs of local governments, matters delegated from, by or on behalf of the central government accounted for 73 per cent and 3 per cent respectively, while local affairs amounted to only 24 per cent. The ratio of tax revenues between the central and local governments was 80 per cent to 20 per cent. While most local governments appropriated their budgets in a generous fashion, 159 local governments (63.6 per cent) could not even afford to pay salaries to their employees without receiving national subsidies.⁸⁵ Local councils have failed to play the role of monitoring the corresponding local governments.⁸⁶ In addition, the legislative power of local governments remains very limited as they are currently subordinated to the legislative power of the central government.⁸⁷

Although the government established a five-year comprehensive plan entitled 'Roadmap for Decentralisation' in April 2004 and is currently carrying out a total of 47 tasks in 7 fields⁸⁸, the plan is focused only on the decentralisation of legislative, financial, administrative and organisational power to local governments. Specific plans to address acts of corruption on the local level do not exist. As in the case of central administrative institutions, the BAI and the Public Prosecutor's Office, the KICAC and the Ombudsman of Korea oversee corruption affairs of local public institutions.

The KICAC evaluates the status of integrity of local public institutions, establishes anti-corruption centres and conducts civic education. As of 2005, it had established 23 anti-corruption centres. Moreover, under Article 21 of the Act on the Establishment and Operation of the Ombudsman of Korea, local autonomous institutions may have ombudsman offices. While local governments are in the process of making ordinances and rules for establishing local ombudsman offices in accordance with the Act, there exist approximately 150 local offices designed to play a role similar to that of the ombudsman, most of which were established around 2000.⁸⁹ However, these ombudsman offices vary in terms of their job performance. Among them, only the Seoul Integrity Contract Ombudsman has been active, handling 50,393 cases since its establishment in 2000; many other institutions have existed in formal terms only.⁹⁰

Local autonomous institutions fall under five different rules of oversight. First, Article 7 of the Act on the Inspection and Investigation of State Administration allows the National Assembly to audit the affairs of local governments that are delegated or funded by the central government. Second, the Board of Audit and Inspection Act requires audits of the budget and final-year accounts of local governments by the BAI (Article 21) and gives the BAI the authority to examine the occupational performance of local governments (Article 24). Third, the Local Autonomy Act stipulates that the minister of the MGAHA may carry out audits and inspections on the state of compliance or violation of applicable laws and regulations by local governments (Article 158). Fourth, the Local Autonomy Act entitles local councils to audit and examine administrative affairs of local governments that do not fall under the audit of the National Assembly (Article 36). Last, the Regulation on Public Administrative Audit and Inspection stipulates that local governments shall carry out audits of and inspections on their own administrative affairs as well as affairs of their subordinate institutions.

However, the mechanisms of oversight on local governments have failed to function. As of June 2005, among the 250 local governments, 150 had not received external audits and inspections for the past three years.⁹¹ In addition, 191 local governments had not yet established a separate internal audit division.⁹² Furthermore, local governments lack expertise in internal audits and inspections. Internal audit and inspection divisions generally remain lenient and generous, imposing light disciplinary punishments or failing to report to the investigative authorities those public officials who have committed acts of corruption.⁹³

As with other public institutions, local public institutions must comply with the Act on the Disclosure of Information by Public Agencies. Article 57 of the Local Autonomy Act adds that meetings of local councils must be open to the public unless the agenda, if disclosed, might contravene local safety, or the council agrees that certain issues must be closed to public scrutiny. No law allows local councils to exclude the press and public.

The Anti-Corruption Act and the Public Service Ethics Act also apply to all local governments and public officials. Each local government has its own code of conduct, and local public officials who are subject to asset registration and post-employment restrictions are as follows:

- Public officials in political service of local governments, such as the heads of local governments and local councilpersons;
- Local public officials ranking fourth grade or higher in general service, and public officials in special service who receive remuneration equivalent thereto;
- Officers of institutions and organisations such as local government-invested public corporations and local government public corporations established under the Local Public Enterprises Act, local government-contributed or -subsidised institutions and organisations and other institutions and organisations carrying out local governmental tasks entrusted to them by local governments;
- Officers of institutions and organisations whose appointments are required to be carried out or approved by the head of the central administrative agency or the head of the local government.

Assets registered by public officials in political service and members of local councils must be disclosed in public gazettes.

Unlike parliamentarians, local councillors do not enjoy immunity from arrest by the Public Prosecutor's Office. The Local Autonomy Act states that investigative authorities must inform the heads of local councils when their members are arrested or confined. A court must also report to the head of the local council when a member is found guilty (Article 34-2). The same provisions apply to chief executives of local governments (Article 91).

In addition to the general legal mechanisms through which a citizen can bring a lawsuit or register appeals, the Local Autonomy Act allows citizens to request local audits and inspections from the corresponding ministers in the case of upper-level local governments, and from the heads of the corresponding upper-level governments in the case of lower-level governments. Those who receive such requests must handle them within 60 days and inform the requesters of the results. In addition, they must also provide the requesters with the opportunity to present relevant evidence and opinions (Article 13-4). Furthermore, local citizens may bring a lawsuit against the heads of the corresponding ministries or the upper-level governments if they fail to properly handle the requests they have registered (Article 13-5). Up to the present, however, citizens have not been active in exercising these rights.

Decentralisation has brought to the forefront integrity issues and acts of corruption of local autonomous institutions. From 1995 to mid-2005, one in four heads of all local governments was

indicted for a violation of the Public Officials Election Act or the Political Fund Act or for bribery or embezzlement. More alarmingly, the number of corruption cases has steadily risen. Furthermore, from 1991 to October 2004, a total of 763 local councillors were indicted, again exhibiting an upward trend. Of the 763 local councillors, 110 people were expelled from office.⁹⁴

Table 4 Number of Heads of Local Governments and Local Councillors Indicted for Corruption

	1991–1994	1995–1999	2000–2003	2004–2005	Total
No. of Heads of Local Governments	-	23	60	78	161
No. of Local Councillors	164	82	224	293	763

Source: Lee, Jae-Myung, Solution for conflict of interest needed for firm settlement of local autonomy (Conference for Local Autonomy and Local Transparency, KICAC, Seoul, 14 December 2005), www.kicac.go.kr, uploaded on 14 December 2005.

Non-Public Sector

Political Parties

The constitution guarantees the freedom of political parties and guarantees a plural party system in Korea (Article 8). The government may provide operational funds to political parties but it may also bring actions against them in the Constitutional Court if the purposes or activities of a political party are contrary to the fundamental democratic order (Article 8). As of July 2006, seven political parties were registered with the National Election Commission. Among them, the Uri Party, the current ruling party, had 142 seats in the National Assembly, the Grand National Party, 123 seats, the Democratic Party, 11 seats, the Democratic Labour Party, 9 seats and the Peoples First Party, 5 seats.

Political parties in Korea must comply with the regulations under the Political Parties Act, the Political Fund Act and the Public Officials Election Act. The Political Parties Act provides for rules and regulations for the parties' necessary organisational arrangement, while the Political Fund Act regulates matters related to the acquisition and utilisation of political funds, thereby laying the foundation for fair and transparent political activities. The Public Officials Election Act regulates matters concerning campaigns for the election of public officials. Election commissions deal with administrative affairs concerning political parties and political funds.

Establishment of a political party requires a minimum of five city- or provincial-level branches (Article 17, Political Party Act) and a minimum of 1,000 members (Article 18, Political Party Act). No regulation restricts the formation of opposition parties. Historically, the number of political parties has sharply increased just before legislative or presidential elections. For example, at the end of 2002, close to the presidential elections, the number of political parties registering with the National Election Commission amounted to 22, and at the end of 2003, before the legislative election in April 2004, a total of 25 parties registered. However, in 2005, with no nationwide elections, only 7 political parties were registered in Korea.⁹⁵

Political parties retain their independence with regard not only to their establishment but also to their operation. Article 37 of the Political Parties Act allows for independent operation on matters of political party member acquisitions, publicity activities, general affairs and political party activities and also the establishment of regional or local party branches. Although the State Council may bring a case against a political party to the Constitutional Court, and the Constitutional Court may order the dissolution of a party, in practice, no such order has ever been imposed.

Political parties, including the four major parties, have established their own ethics committees to examine member qualifications and impose disciplinary sanctions on those who violate applicable acts and their by-laws. Upon the request of the Uri Party in early 2006, the National Election Commission will oversee the party's internal election campaigns in relation to whether any member is violating applicable acts or the party's by-laws. This request came out after the National Election Commission disclosed that, in order to appear to be attracting more support, members of the major political parties paid party membership fees for others or for fake members in violation of Article 31 of the Political Parties Act. Of the 36 cases disclosed, the National Election Commission reported 12 cases to the corresponding courts and another 12 cases to the Public Prosecutor's Office.

Of the many different political parties, as of the end of 2005 none had especially dedicated itself to an anti-corruption agenda. However, of the major political parties, the Democratic Labour Party has been active in anti-corruption and integrity issues, and other parties have gradually increased their attention to corruption-related issues.

The political funding of parties is regulated under the Political Fund Act. This Act covers matters associated with the mobilisation and appropriateness of funding for the general operation of political parties. The Act seeks to help political parties properly obtain necessary funds and also to promote transparency in their revenue raising and expenditures. Political parties must disclose their revenue and expenses and may not use their political funds for private purposes (Article 2, Political Fund Act).

The Public Officials Election Act provides for rules and regulations regarding election-related funds that are spent by candidates and related entities. It sets a ceiling on election-related expenses (Article 121) and requires central or local governments to reimburse all the expenses as reflected in the financial statements of the concerned candidates or parties (Article 122-1). The regulations in both acts do not vary during election periods, except for the provisions regarding the ceiling for donations.

The Political Fund Act introduces four types of political funding: party membership fees, donations from political support groups, individual donations through election commissions and national subsidies to political parties.⁹⁶ The Act limits the annual amount of each kind of political funding and requires excessive funds to be transferred to the national treasury (Article 11). In the case of donations from political support groups, Article 13 of the Act allows the annual ceilings to be twice the normal amount in times of elections (Article 13). Article 25 of the Act requires the government to pay election-related subsidies in addition to operational subsidies to political parties during an election.

Of the different political funds under Article 27 of the Political Fund Act, operational and election-related subsidies are allocated to political parties based on the number of seats they hold in the National Assembly. The same rule applies when the National Election Commission allocates funds to political parties; it also applies to funds that election commissions receive from individuals (Article 23, Political Fund Act). In 2005, five political parties received national subsidies and donations that originated from individuals. As for governmental subsidies, the ruling Uri party received KRW 12 billion, accounting for 59 per cent of the total funds of the party, while the smallest party, the Democratic Labour Party, received KRW 2 billion, amounting to 15 per cent of the party's total funds. In the case of individuals' donations, the Uri Party received KRW 113 million or 5.6 per cent of its total revenue from this source, while the Democratic Labour Party received KRW 19 million or 1.4 per cent of its funds from individuals.⁹⁷

Political parties that receive government subsidies under Article 27 of the Political Fund Act must establish a policy research institute as a separate entity (Article 38 of the Political Parties Act), and they must allocate more than 30 per cent of the governmental operational subsidies to this institute (Article 28, Political Fund Act). No lobby group or think tank affiliated with the parties is subject to different funding rules.

Only individuals can provide political funds in Korea. The current law, in effect since March 2004, prohibits foreigners, corporations and other entities from providing political funds (Article 31 of the Political Fund Act). Moreover, an individual who provides political funds to political support groups may not donate more than KRW 20 million on a yearly basis (Article 11 of the Political Fund Act). In the case of donations through election commissions, an individual may not pay more than 5 per cent of his or her income of the previous year, or a maximum of KRW 1 billion, to political parties.

As of March 2004, individuals donating political funds in excess of KRW 1.2 million (formerly KRW 1 million) through either political support groups or election commissions must identify themselves (Article 2 of the Political Fund Act). In addition, political parties or those who have political support groups must maintain financial statements that include revenue and expenditures and must disclose information on those individuals who donated more than KRW 1.2 million (Article 37 of the Act).

A political party comes into existence when it registers its establishment with the corresponding election commission (Article 4, Political Parties Act). Political parties must report the number of their members, the status of their activities and matters regarding their policies to the election commission on an annual basis, while the policy research institute of a political party must report its activities and provide the same information on its homepage (Article 35). Article 36 of the Act allows the concerned election commission to request further information from political parties, exclusive of a list of party members.

The current Political Fund Act stipulates that donors, political parties and political support groups, as well as accountants of a political party, may be liable if they fail to comply with any of its provisions (Article 50). In addition, Article 48 of the Act states that those in charge of the supervision of the accountants involved, including parliamentarians, may be fined up to KRW 2 million as well. In 2005, the National Election Commission has referred several major political parties to the Public Prosecutor's Office, including the ruling Uri Party, the Grand National Party, the Democratic Labour Party and the Democratic Party, for violations of the Political Funds Act.⁹⁸

Furthermore, an election commission may de-register a political party if it falls under certain conditions stated in Article 44 of the Political Parties Act. Those who fail to provide requested information to the corresponding election commission, provide false information to the commission, or do not provide an annual report to the commission, may be sentenced to imprisonment of up to two years, or a fine of KRW 2 million (Article 57). Generally speaking, many political parties voluntarily dissolve themselves and are de-registered after nation-wide elections, particularly when they have failed to win significant mandates. For example, the National Election Commission de-registered three political parties after the general election in 2000 and 17 political parties after the general election in 2004.⁹⁹

For financial transparency, Article 29 of the Political Parties Act requires political parties to establish a committee on budget and accounts. This committee carries out audits and inspection on their accounts on a yearly basis or more frequently. Political parties have incorporated such provisions in their by-laws and formed the necessary bodies.

Pursuant to Article 35 of the Political Parties Act, the National Election Commission discloses information on year-end accounts of political parties, including information on party membership fees, donations from political support groups, individual donations through election commissions and national subsidies to political parties. Anyone who wants to receive such information may submit a request to the corresponding election commission within three months of the disclosure by the election commission. In addition, citizens may request further information under the Act on the Disclosure of Information by Public Agencies.

Financial transparency constitutes one of the biggest political party issues. In late 2003, one year after the presidential election, it was revealed that during the presidential election campaign period, members of several leading political parties received slush funds from several large conglomerates, including the SK Group, the LG Group, the Hyundai Group and the Daewoo Group. This scandal eventually led to amendments of the Political Fund Act in March 2004 so that currently only individuals can provide political funds, and information on those who donate beyond a certain amount must be disclosed to the public.

However, various problems remain. For example, in August 2004, the National Election Commission reported two former politicians to the Public Prosecutor's Office on charges of the appropriation of political funds for private purposes, and reduced the amount of national subsidies to the political parties that violated the Political Fund Act.¹⁰⁰ Again in August 2005, the commission reported 11 people to the Public Prosecutor's Office on charges of misappropriation or misstatement of political funds, and reduced the amount of national subsidies for the political parties in violation of the Political Fund Act.¹⁰¹ In addition, companies provide political funds under the names of their officials¹⁰², and politicians and political parties fail to make detailed records in their financial statements regarding those who provide lots of political funds.¹⁰³

Political parties are not legally required to consult the general public in their work or operations. However, some political parties such as the Uri Party and the Grand National Party have set up citizen participation systems through which citizens can be involved in the process of selecting candidates for public office.

Regarding internal governance, the Political Parties Act requires political parties to establish representative and executive bodies in order to reflect the opinions of their members (Article 29).

No law requires political parties to address conflicts of interest, gifts and hospitality or post-employment restrictions. Article 19 of the Public Officials Election Act does list the specific conditions for candidates for public posts, yet it does not include any specific provisions regarding ethics.

Media

Article 21 of the constitution guarantees the freedom of speech and of the press, adding that the standards of news services and broadcast facilities and matters necessary to ensure the functions of newspapers should be determined by relevant legislation. The Broadcasting Act and the Act on

the Guarantee of the Freedom and Function of the Press guarantee the freedom and independence of print and broadcast media, while at the same time imposing social responsibilities on them to contribute to the public interest and to maintain fairness in delivering news and opinions. Both acts also protect the rights of viewers and readers. The Act on Press Arbitration and Rescue provides measures and procedures for those whose reputations have been damaged by the press.

Under the Act on the Guarantee of the Freedom and Function of the Press passed in January 2005 broadcasters and publishers of periodicals are asked not only to assume but also to fulfil their social responsibility. In addition, the Act on Press Arbitration and Rescue, passed in January 2005, integrates and strengthens rules and regulations on matters related to damages incurred by the media, provisions that were previously addressed by several different acts.

It is notable that the Act on the Guarantee of the Freedom and Function of the Press prevents a newspaper company from concurrently running a broadcasting business. Also, any owner who holds more than 50 per cent interest in a newspaper company may not hold more than 50 per cent of any other newspaper company. The Act classifies a newspaper company that enjoys a market share of more than 30 per cent or a maximum of three companies that collectively record a market share of more than 60 per cent as a monopoly or monopolies and forbids them from receiving so-called periodical publications support funds. The Act on the Guarantee of the Freedom and Function of the Press provides that a corporation owned by foreigners may not engage in the press business (Article 13), and a company that belongs to a large business group cannot hold more than 50 per cent of a newspaper company (Article 15). Finally, the Act on Press Arbitration and Rescue allows those whose reputations have been damaged by the press or a third party to take measures to correct the report, even if the media company did not harbour such intention or did not violate any law.

Controversies have mounted over the appropriateness and constitutionality of these acts. Proponents argue that the acts promote fairness and public impartiality over periodical publications, while opponents maintain that the acts serve as a legal tool through which the government intervenes and controls the media. In fact, several newspaper companies recently challenged the constitutionality of the acts at the Constitutional Court, and in June 2006 the court found provisions including the monopoly-related provision and the provision that provides that a person damaged from a report may bring a lawsuit against the concerned media company were unconstitutional. Controversy over the acts will continue to persist as the court's decision has led to an unclear situation as to whether the acts now need to be amended entirely or partially.

Ownership of broadcasting or newspaper businesses is restricted in Korea. For example, Article 8 of the Broadcasting Act prevents any investor or person with common interest from holding more than a combined 30 per cent of a broadcasting company, unless otherwise specified. In addition, companies belonging to large business groups or those who engage in newspaper or similar businesses may not own any stake in a broadcasting company.

As public attention increasingly focuses on issues of governance and corruption, the media delivers in-depth and investigative reports on such issues. For example, in 2005, the media provided investigative reports on political funding, asset disclosures of high-ranking public officials and bureaucratic corruption and also covered the introduction of the newly formed high-ranking public official investigative body.

The media also plays an important role at other times. In October 2002, an electronic daily newspaper, for instance, first revealed that the SK Group had concluded an illicit backroom options contract. Starting with this media coverage, the SK scandal that came to light led to the disclosure of KRW 2 trillion in financial irregularities and KRW 1 trillion in slush funds.¹⁰⁴ As this shows, the media has important roles in the law-enforcement process related to corporate corruption.¹⁰⁵

According to annual surveys of journalists and broadcasting businesses conducted by the Korea Press Foundation, few journalists believe that the government or other political powers significantly influence the operation of their publication. In 2003, only 1.4 per cent of the respondents considered the government and political powers to have the greatest influence in the formation and editing of their newspapers. In 2004, the figure decreased further to 0.1 per cent for off-line journalists and 1.0 per cent for on-line journalists.¹⁰⁶

The surveys show that journalists believe advertisers now occupy the top spot in influencing the formation and editing of content in their newspapers. In 2003, 55.8 per cent of the respondents singled out advertisers as the most influential interest group, while the rate increased to 60.4 per cent for off-line respondents and 50 per cent for on-line respondents in 2005.¹⁰⁷

As of 2003, the media market of Korea recorded KRW 10 trillion in sales, accounting for 1.3 per cent of the country's GDP. Major terrestrial broadcasting companies include the Korea

Broadcasting System (KBS), the Munhwa Broadcasting Corporation (MBC) and Seoul Broadcasting System (SBS). Moreover, there are many cable companies and system operators in Korea. Meanwhile, more than 10 major newspapers, including the Chosun Ilbo, Joong-Ang Ilbo, Dong-A Ilbo and the Hankyoreh, deliver their news nation-wide, and there are many local news providers as well.

Among the major broadcasting firms and newspaper publishers, the KBS and Education Broadcasting System (EBS) are public broadcasting companies. Both are 100 per cent funded by the government under the Broadcasting Act and the Korea Education Broadcasting System Act. The MBC is also funded by a public entity, the Foundation of Broadcast Culture.¹⁰⁸ As of the end of 2005, the Ministry of Finance and Economy holds a 30 per cent stake in *Seoul Shinmun*, a nationwide newspaper, which represents the second-largest stake, behind the 39 per cent owned by the newspaper's Employee Stock Ownership Association.¹⁰⁹ Both public and private media companies convey and report the views of the government and its critics.

The Public Officials Election Act regulates election campaigns through the media during election campaign periods. The Act sets a strict upper limit for the time period as well as the length of commercial campaigning. Media companies must act fairly in broadcasting election campaign advertisements. They cannot charge political parties a fee exceeding the lowest market price at that time, and if they run into conflicts in arranging broadcasting times for different political parties, they must consult the corresponding election commission that supervises election campaign commercials.

Under the Public Officials Election Act, election commissions organise debates and policy discussions during election campaigns, and the KBS and the MBC must broadcast these political events (Articles 82-2 & 82-3). The commissions must invite candidates whose parties have more than five seats in parliament or those candidates whose parties obtained more than 3 per cent support in the previous public-official elections. Candidates who receive more than 5 per cent support during current election campaigns must also be included (Articles 82-2 and 82-3, Public Officials Election Act).¹¹⁰ In addition, public broadcasting companies must broadcast information on every candidate, including their past experience and careers, within a time limit of two minutes (Article 73, *Public Officials Election Act*).

As for the oversight of the media, the Act on the Guarantee of the Freedom and Function of the Press requires newspaper companies to register with the Ministry of Culture and Tourism. The Act does not establish any official oversight body. Meanwhile, the Broadcasting Act entitles the Korea Broadcasting Commission to conduct deliberations on issues such as recommending, approving, re-approving or terminating broadcasting businesses. It also checks whether broadcasting companies maintain fairness in the operation of their programs and fulfil their public responsibilities.

The Broadcasting Act gives the president the authority to appoint six members of the commission. Three members are recommended by the speaker of the National Assembly while the remaining three are recommended by the prime minister from among those who have outstanding knowledge and expertise in broadcasting and were recommended by the Culture and Tourism Committee of the National Assembly. Among its many tasks, the commission carries out ex facto examinations on whether broadcasting companies fail to maintain fairness or meet public responsibilities. The commission also examines television advertising before it is broadcast.

Broadcasting companies must obtain the recommendation of the Korea Broadcasting Commission before final approval for a license by the Ministry of Information and Communication (Article 9, Broadcasting Act). Issued licenses are valid for three years for all broadcasting companies; the Broadcasting Commission deliberates on the renewal of the licenses and discloses the results to the public (Article 17, Broadcasting Act). The commission must take into consideration the capability of the company under review to carry out its responsibilities, the appropriateness of the planning, organisation and production of TV-broadcast programmes of the company and its financial, technical and managerial capabilities.

In 2005, the commission denied renewal to a local cable company, the first time it had ever done this with respect to an existing broadcasting company. Since that time several other similar cases of denial have followed.

The Korea Press Ethics Commission, a self-regulatory body for the press, has set up the ethics code and the Guideline for Press Ethics. The ethics code covers basic issues such as freedom of the press, the public responsibility of the press, the independence of the press and the protection of individual privacy. The Guideline for Press Ethics provides for standards of professional behaviour. The Ethics Commission carries out inspections on articles and advertisements, and failure to comply with the code or Guideline can result in notices or warnings. The Guideline prohibits

journalists from receiving gifts, hospitality or monetary gains, yet the commission does not engage in any oversight regarding the status of the integrity of journalists.

Receiving gifts and hospitality has long remained a serious problem among journalists. A 2005 Korea Press Foundation survey revealed that 58.9 per cent of off-line journalists and 46.1 per cent of on-line journalists received gifts or hospitality more than once. More important, 45.8 per cent of off-line journalists and 66.6 per cent of on-line journalists answered that gifts and hospitality affected their reporting.¹¹¹

Fundamentally, it seems that journalists do not have clear ethical standards governing their profession. The Guideline for Press Ethics, for example, states that journalists may not disguise their identities to sources, journalists may not disclose sources without permission and they must maintain anonymity when requested by the source. The Broadcasting Act and the Act on the Guarantee of the Freedom and Function of the Press do not contain provisions on issues regarding disclosure of sources. However, Table 5 indicates that journalists have different ethical standards in reality.

Table 5 Journalists' Perception of Methods of Obtaining Sources (percentage)

	Justified		Not Justified		Don't Know	
	Off-line	On-line	Off-line	On-line	Off-line	On-line
Bother people to obtain information or sources	65.8	73.5	24.1	17.6	10.0	8.8
Use confidential documents of the government or companies	43.9	53.9	41.0	34.3	15.1	11.8
Disguise identity to people who have sources	43.2	39.2	44.8	54.9	12.0	5.9
Employed in a company in disguise to obtain internal information	35.9	39.2	50.2	46.1	14.0	14.7
Use material such as photos and documents without approval	18.2	14.7	67.8	73.5	14.1	11.8
Provide money to get sources	17.7	11.8	72.3	83.3	10.0	4.9
Promise to keep the secret and does not keep the promise	12.9	19.6	77.1	69.6	10.0	10.8

Source: Korea Press Foundation, *The Journalists of Korea* (Seoul: Korea Press Foundation, 2005), 32.

A case in point occurred in December 2005 when the MBC broadcast that a leading scientist had made false reports in releasing the results of genome-related research. Although the report revealed the scientist's unethical behaviour, the journalist of the broadcasting company later confessed that he had threatened researchers to obtain information about the research results.¹¹²

In December 2005, an MBC reporter was indicted for reporting on corruption using illegally obtained sources. The reporter revealed that several business groups had delivered slush funds to various politicians and other high-ranking public prosecutors. The reporter apparently acquired this information from a former agent of the National Intelligence Service, and this scandal culminated in the summoning of those who were involved. In the end, all of the people who either provided the slush funds or who received the funds were eventually freed from suspicion while, instead, the Public Prosecutor's Office indicted the reporter on charges of using illegally obtained sources.¹¹³

Civil Society

There are many non-governmental organisations (NGOs) in Korea. Some of them act on behalf of the public good in general, whereas others act in the interest of their members. Much debate centres around the definition of organisations that do not belong to either the government or the business sector, and making an exact classification within civil society remains a difficult task. According to the 2006 *Encyclopedia of Korean Associations*, a total of 23,017 non-governmental or non-profit organisations operated in Korea as of 2005, compared with 3,900 as of 1997, and 7,600 as of 2000. Among them, 5,556 organisations are classified as entities that monitor the market and the government or address issues that the government does not properly administer. Korea generally refers to these institutions as NGOs or civil society organisations (CSOs).¹¹⁴ The number

of CSOs registered with the central government or local governments amounted to approximately 5,800 by the end of 2005.

Civil society organisations in Korea operate in a multitude of fields, including the economy and political democracy, reunification, medical services, education, nursing, youth care, environment, customer rights, women's rights, the rights of people with disabilities, international cooperation and so on. As laws governing the public sector require public institutions to obtain public participation and input, an increasing number of civil organisations participate in administrative affairs, judicial reforms or the legislative process through legal instruments such as audit requests, appeals, hearings and membership in advisory boards.

CSOs also vary in terms of their size, fund-raising activities and job performance. Generally, civil society organisations are independent in both formal and practical terms. No law provides for the oversight of CSOs, and the government does not wield any direct power over them, except indirectly through financial support that it can provide. As civil society organisations operate through membership fees, the business sector does not directly intervene in most cases, either.

Passed in 2000, the Act on Support for Non-Profit Civil Organisations seeks to support public activities of non-profit organisations.¹¹⁵ Non-profit organisations, for instance, may participate in central or local government-requested projects after registering with the corresponding governing institutions. With the funds provided, the CSOs carry out inspections on the concerned projects.

The MGAHA and local governments started providing financial support to non-profit civil organisations through open competitive bidding in 1999, and the government introduced the Act on Support for Non-Profit Civil Organisations in 2000. As seen in Table 6, the annual amount of support by the government amounted to KRW 15 billion in 1999.¹¹⁶

Table 6 Governmental Support to Non-Profit Civil Organisations under the Act on Support for Non-Profit Civil Organisations

Year	1999	2000	2001	2002	2003	2004
No. of Projects	1,640	1,612	1,790	1,890	1,806	1,440
No. of Beneficiary Organisations	1,838	1,491	1,688	1,804	1,735	1,413
Total Amount of Support (Unit: billion KRW)	15	15	15	15	15	10

Source: 2001-2005 Annual Reports (MGAHA, 2002-2005), www.mogaha.go.kr; Kim, Dong-Chun, Cho, Hyo-Je & Lee, Dae-Hoon, Analysis on Governmental Support for Civil Non-Profit Organisations, (Seoul: MGAHA, Research Report, 2004), www.mogaha.go.kr, p. 44.

The government annually classifies non-profit-supported projects into eight or nine categories. From 2001 through 2004, the 'promotion of a transparent society' was one of these categories. However, the amount of support provided to this category constituted only approximately 2 per cent of total government support for civil society from 2001 to 2003.¹¹⁷ Among the non-profit civil organisations registered with the central government or local governments, there are fewer than 20 anti-corruption-focused organisations, exclusive of their local branches. This number is relatively small compared with the total number of civil society organisations in Korea. However, most civil society organisations in Korea are concerned with corruption-related issues, particularly the behaviour of high-ranking public officials and politicians.

Among the leading civil society organisations addressing governance, accountability, transparency or anti-corruption measures are Transparency International Korea (TI Korea), the People's Solidarity for Participatory Democracy (PSPD), the Citizens' Coalition for Economic Justice, the Citizens' Coalition for Better Government and the Citizens' Association against Corruption. As with other civil society organisations, these anti-corruption organisations collect their funds via membership fees, contributions and other fund-raising activities, including funding requests to central and local governments. Many civil society organisations face financial difficulties and thus the government's financial support constitutes an important source of funding.¹¹⁸

TI Korea, formerly the People's Solidarity against Corruption, is the most active organisation in the fight against corruption. Established in 1999 through a joint initiative of several pre-existing social organisations, it focuses on forming the infrastructure to fight corruption through education, campaigns, publications and international cooperation. In 2005, TI Korea took the lead in bringing together people from the fields of politics, economy, society and NGOs to join the K-Pact. The 2005 budget of TI Korea amounted to KRW 240 million and its membership base exceeded 1,000 people.¹¹⁹

PSPD, the leading civil activist group in Korea, covers a variety of issues such as economic justice and anti-corruption and reform measures in such sectors as the judiciary. It boasts more than 10,000 members; its budget exceeded KRW 14 billion in 2005.¹²⁰ More than 60 per cent of the budget comes from its members, and the PSPD does not receive any funds from the government. The PSPD initiated the law-making movement that led to the introduction of the Anti-Corruption Act and the Act on the Disclosure of Information by Public Agencies; it has also brought several corruption-related lawsuits against controlling shareholders and executives of large business organisations such as the Samsung Group.¹²¹

The Citizens Action Network (CAN) conducts budget monitoring that targets the public sector. It also advocates for the right to access to the decision-making system of society and addresses issues related to corporate social responsibility. Approximately 5,000 people subscribe to the CAN newsletters. Its budget derives from membership fees and contributions, as well as fund-raising activities. More than 800 members pay fees and the CAN does not receive any funds from the government. Its budget amounted to KRW 300 million in 2005.¹²²

Civil society organisations have been leading most of the anti-corruption efforts in Korea. Organisations such as trade unions have also been active in the anti-corruption movement. Overall, recent CSO initiatives include the introduction of the Anti-Corruption Act, National Assembly monitoring, general election campaigns against disqualified candidates and holding businesspersons accountable for malfeasance via shareholder activism.

The Anti-Corruption Act, passed in 2001, was initially proposed for legislation by the PSPD in 1996 and supported by other civic groups such as TI Korea, the Citizens' Coalition for Economic Justice (CCEJ) and the Citizens' Association for Anti-Corruption. From 2000 to 2002, these organisations engaged in public hearings, legislation requests, national assemblyperson signature drives, campaigning, rallies and TV-broadcast discussions to advocate passage of the bill in June 2002. In the end, however, the bill did not include all the provisions they initially sought.

Civil society organisations have also conducted National Assembly monitoring since 1998. After the National Assembly failed to pass the citizen-requested anti-corruption bill, 20 organisations, including the PSPD, the CCEJ, and the Korean Federation for Environmental Movement, formed a coalition. In 2005, 270 civil society organisations, supported by an increasing number of CSOs, engaged in monitoring the National Assembly.

Furthermore, civil society organisations also played a powerful role in the general elections in 2000 and 2004. In the general election in 2000, CSOs announced a list of candidates that they determined were not qualified as parliamentarians and conducted nation-wide campaigns against them. Approximately 1,000 civic organisations joined this campaign. As a result, 59 of a total of 86 candidates lost their elections, and particularly in Seoul, 19 out of the 20 candidates were defeated. In 2004, civic organisations again launched a similar nation-wide election campaign. As a result, 129 out of a total of 206 candidates who civic organisations classified as disqualified or unqualified lost their bids. In both elections, corruption was one of the leading reasons why candidates were blacklisted.¹²³

The PSPD has referred corporate wrongdoings to the Public Prosecutor's Office and brought numerous lawsuits against controlling shareholders of large business groups, mainly for bribery, unfair insider trading and the amassing of slush funds. Companies that have been subject to legal actions brought by the PSPD include Samsung Electronics, Samsung SDI, Korea First Bank, LGCI and Daesang Corporation.¹²⁴

Many civil anti-corruption organisations conduct education and campaigning against corruption and also disseminate anti-corruption material in their publications. Moreover, members of the public may whistleblow acts of corruption and may register their appeals on the homepages of these organisations.

Overall, the relationship between CSOs and the government varies according to the nature of the issues involved. For example, the government often takes a more active position in intervening in such areas as labour disputes or matters related to reunification. On the other hand, anti-corruption issues raised by civil activists are rarely prosecuted, and a more passive stance is taken.

People working for CSOs are generally believed to be conscientious and competent with regard to monitoring corruption. Thus, they are not assumed to be corrupt themselves. Yet, while they demand integrity and good governance of public institutions and the business sector, CSOs have drawn little attention to their own internal governance and integrity systems. CSOs' accountability is generally towards the public, but also towards their members. Thus, they set up annual general meetings and executive committees and conduct annual audits. Yet, it is difficult to generalise

about the status of accountability and governance practice in civic organisations. Recently, for example, some academic papers argue that Korean civil society organisations drift away from their initial goal, failing to listen to their members and thus making them organisations that are 'citizens' groups without citizens'.¹²⁵

Special laws exist that seek to regulate financial contributions to particular civil society organisations or provide for their formation and operation, as well as their special treatment through, for instance, tax deductions. These legislative acts govern only a very limited number of CSOs. Most of them are in practice not subject to any of these acts.¹²⁶

Civil society organisations, including those fighting against corruption, mostly disclose information on their organisation and job performance on their homepages. Publicly available information includes articles of incorporation, other internal laws, major activities, goals and budget and expenses. Some CSOs, however, do not disclose their financial information to the public.

No public information exists regarding the number of CSOs that have set up their own ethics codes. A TI Korea 2003 survey of 349 people in large business groups and 14 CSOs shows that 34.2 per cent of the responding CSOs had their own ethics codes.¹²⁷ Another survey of 304 people working for civil society organisations in 2005 showed that 88.5 per cent of the respondents had ethics codes.¹²⁸ Among the major civic anti-corruption organisations, only TI Korea and the Citizens' Coalition for Economic Justice have codes of conduct, while others simply have their personnel committees handle issues related to conflicts of interest of officers and members of executive committees.

Business Sector

Korea enjoys a free-market economy. Its constitution guarantees the freedom and creative initiative of enterprises and individuals in economic affairs (Article 119). The business sector of Korea is largely independent in both legal and practical terms, while some basic industries are still owned or regulated by the government. Since the 1997 financial crisis, the government has pushed through remarkable reforms to open its market to the world and to privatise many state-owned companies, thereby further advancing its vision of a free-market economy.

Most companies in Korea are owned and managed by the private sector. In the wake of the financial crisis in 1997–1998, the government unloaded its shares in formerly state-owned enterprises, such as POSCO, KT&G, KT and Korea Heavy Industries & Construction. Of the remaining state-owned enterprises, Korea Gas Corporation and Korea Electric Power Corporation have been proceeding with the privatisation process since 2002, but these plans have been currently suspended.

The exact number of companies controlled by the government cannot be identified. Of the 55 largest companies that are subject to the restrictions on cross-shareholdings, 7 companies were state-owned as of 2005.¹²⁹ Generally speaking, the government possesses shares in companies that engage in basic industries. For example, as of September 2005, the government holds a 23.97 per cent stake in the Korea Electric Power Corporation and 26.88 per cent of the Korea Gas Corporation. The government also owns a 23.99 per cent stake in the Korea Development Bank.¹³⁰ At state-owned companies, most of the shares are owned by the government, government-owned banks or other institutions under the control of the government. Therefore, there is no significant disparity between ownership and control for these state-owned companies.

The government abolished 3,065 business-related regulations in 1999. As of 2005, the number of regulations, including newly established ones, amounted to 7,902. In 2005, the World Economic Forum ranked Korea's regulatory business environment in the top 23rd percentile, up from the 46th percentile in 2000.¹³¹ To resolve administrative difficulties relating to business activities, the government has established the Business Difficulties Resolution Center under the Regulatory Reform Committee of the prime minister.

The business sector of Korea generally covers more than 20 industries, including electronic equipment, telecommunications, construction, transport equipment, chemistry, clothing, timber, fishery and agriculture. Among these industries, the electrical and electronic equipment sector occupies the largest stake in the domestic economy, accounting for 26.5 per cent of the total market capitalisation, while the financial sector ranks second with a 20 per cent stake in 2005.¹³² The electrical and electronic equipment business has also taken the lead in the trade economy with approximately 31 per cent of the total export volume in 2005.¹³³ Samsung Electronics, among others, paid KRW 1.4 trillion in corporate taxes in 2004, equivalent to 6 per cent of the total national corporate taxes paid (KRW 21.6 trillion).¹³⁴

Among companies with total assets of more than KRW 2 trillion, controlling shareholder families own an average of only 4.94 per cent of their companies. Most of the remaining shares are widely dispersed among domestic and foreign institutional investors and individuals. Controlling shareholders maintain their corporate control through the combined shareholdings of their affiliates. For example, controlling shareholders of the largest business groups control an additional 46.28 per cent of the voting rights by means of cross-shareholdings held by affiliates of the conglomerate.¹³⁵

The government does not wield direct control over or interfere in companies' management once it discards its shares. Direct regulation instead remains one way the government still exercises influence or even guides companies. For example, KT, the main telecommunication company, completed its privatisation in 2002 but in practice remains subject to many aspects of the supervision of the government under relevant regulations established by the Ministry of Information and Telecommunication.

The Korean business sector has several representative associations, the Federation of Korean Industries, the Korea Employers Federation, the Korea Chamber of Commerce & Industry and the Korea International Trade Association among them. These associations suggest business-related policies to the government and also serve as lobbyists for their members.

Continuing corporate scandals and collapses during and after the financial crisis have attracted public attention to issues beyond mere external business growth. Major issues include corporate governance, ethics management and socially responsible management. As a result, the business sector has substantially increased its commitment to ethics and integrity in business performance and conduct. In 2005, the government, with business sectors and other civil groups, voluntarily signed the K-Pact. In the business sector, the Federation of Korean Industries; the four major large business groups, Samsung, Hyundai Motors, LG and SK and 18 state-controlled companies joined this initiative and promised to pursue ethical management, transparent management and socially responsible management.

Moreover, some other companies have joined global initiatives such as the UN Global Compact. As of December 2005, various Korean companies subscribed to the UN Global Compact principles, including Korea Land Corporation, Korea Electric Power Corporation and Echo-Frontier. As of March 2006, two more companies, the Korea South-East Power Corporation and the Woori Bank, have joined this initiative.

According to a survey conducted in 2005, 101 companies out of a total of 164 that replied to the survey have set up ethics charters. Furthermore, 91 companies with ethics charters have incorporated detailed codes of conduct.¹³⁶ Normally, either ethics charters or ethics codes of conduct provide for anti-corruption and anti-bribery clauses. Leading companies that have adopted them include POSCO and SK Corp.

Ethics charters and ethics codes of conduct apply to officers, employees and directors, yet most do not include provisions directed at controlling shareholders, even though in the Korean context the controlling shareholder of a company participates in the management. In addition, ethics charters and codes of conduct are silent on matters related to subcontractors or suppliers, provided that the latter encourage fair and transparent transactions and avoid bribery.

Overall, it appears that anti-corruption measures are understood more as a part of ethics management than as a part of corporate governance. For example, anti-corruption efforts are often mentioned in ethics charters, and the K-PACT also classifies anti-corruption concerns as an issue related to ethics management and socially responsible management.

Among the many laws governing companies, the Commercial Act regulates the establishment, operation and dissolution of stock companies, both listed and unlisted. Meanwhile, the Securities Exchange Act applies only to listed companies, governing such issues as the issuance and trading of stocks. Listed companies effectively comply with both laws. These laws have continuously been amended to adapt to the changing business environment.

While the Commercial Act and the Securities Exchange Act regulate general matters relating to the organisation and operation of companies, several other acts provide for industry-specific regulations: the Electric Telecommunication Business Act, the Aviation Act, the Banking Act, the Financial Holding Companies Act and the Broadcasting Act. All of these acts are effective in practice.

The Act on Monopoly Regulation and Fair Trade, for instance, regulates unfair business activities, including unfair insider trading and illegal trusts and cartels. It also contains rules and regulations on holding company structures, equity shareholdings by large conglomerates, cross-shareholdings, debt guarantees among affiliates and voting restrictions of financial affiliates. The Fair Trade

Commission, positioned directly under the prime minister, supervises matters related to this important Act.

The Act on the Establishment and Operation of Financial Supervisory Bodies promotes fair and sound financial markets. The Act establishes the Financial Supervisory Commission under the prime minister with the purpose of supervising and regulating financial institutions. It also provides the basis of the Financial Supervisory Service that serves as the working body under the Commission.

In addition, to enhance the fairness and transparency of the financial market, Korea in 2001 introduced the Act on the Report and Use of Special Financial Transactions. The Act establishes the Korea Financial Intelligence Unit within the Ministry of Finance and Economy and requires financial institutions to report suspicious financial transactions that are believed to be acts of money laundering.

With regard to a corporate governance framework, the government has considerably strengthened regulations concerning boards of directors, shareholder rights and transparency. Additionally, many other reforms have taken place to ensure fair competition and sound financial markets. The current regulatory system covering corporate governance is overall very much in line with many aspects of the OECD Guidelines for Corporate Governance.

All companies must register with their corresponding registry offices that fall under the jurisdiction of the corresponding courts according to the Commercial Act. Listed companies are required to submit their financial statements, business reports and disclosures to the Financial Supervisory Service and the Korea Stock Exchange under the Securities Exchange Act. In addition, listed companies and companies with total assets of more than KRW 7 billion must have external audits and submit their audited reports to the Financial Supervisory Service under the Act on External Audit of Stock Companies.

As stated above, the Financial Supervisory Service, the Korea Stock Exchange and the Fair Trade Commission oversee corporate matters such as the issuance and trading of stocks, disclosure, financial transactions and matters infringing on fair business transactions. In addition, the National Tax Service has the authority to impose taxes on companies and examine companies in violation of applicable laws. No law specifically provides for the oversight of corporate corruption.

Material business issues are decided at the board of directors level of a company. The board of directors of a company consists of directors and auditors, and third parties are usually not permitted in meetings without special permission. Under the Securities Exchange Act, listed companies must have outside directors to act on behalf of the general investor body. The minimum ratio of outside directors to the board is 25 per cent for general listed companies, while companies with total assets exceeding KRW 2 trillion must have more than 50 per cent. No law requires companies to consult the public in their business decisions.

According to the Securities Exchange Act, listed corporations are required to disclose relevant business information to the public. Matters regarding mergers or company spin-offs, business transfers, equity investments, insider trading exceeding a certain amount and business transactions with the largest shareholder are subject to disclosure. The public has access to corporate information on the homepages of the Financial Supervisory Service, the Korea Stock Exchange and the Fair Trade Commission at any time of the year.

Listed companies disclose information on the careers, relationships with controlling shareholders, shareholdings in the company, attendance rates, voting statistics and compensation of corporate boards of directors.

Transparency in ownership is addressed as follows: the controlling shareholders and those who have common interests in a listed company must disclose their shareholdings on a quarterly basis and also upon changes of ownership. In addition, shareholdings accounting for more than 5 per cent of a company must be disclosed.

For financial transparency, listed companies disclose their financial statements on a quarterly basis, while their external auditors audit financial statements and submit their audit reports to the public. The CEO and CFO of a listed company are required to verify these financial statements.

Currently, no law requires companies to disclose their status regarding corporate social responsibility. An increasing number of companies have set up ethics charters that include anti-corruption clauses; yet, these ethics charters do not entail codes of conduct. Currently, a small number of large-size companies have declared codes of conduct as well as ethics charters and post them on their homepages. Leading examples include SK Corp, POSCO, LG Electronics, Shinsegye, Hyundai Motors and Kookmin Bank.

To maintain the integrity of the business sector, the Commercial Act and the Securities Exchange Act introduce various legal tools with which stakeholders can seek redress and take appropriate countermeasures against corporate insiders who commit corrupt acts. The means are as follows:

- Right to bring shareholder derivative suits
- Right to claim injunctive relief for directors' illegal activities
- Right to demand dismissal of directors or auditors
- Right to inspect accounting books
- Right to demand appointment of inspectors
- Right to call an extraordinary shareholders' meeting
- Right to make shareholder proposals

When stakeholders bring a case under this legislation, a legal action will take on the form of a civil lawsuit. In addition, a new proposal seeks to allow double derivative suits.¹³⁷ The Criminal Act also requires criminal punishment of those who commit acts of embezzlement, bribery and breach of trust.

In practice, many listed companies have failed to submit accurate financial statements. So far, Hyosung Corporation, Kia Motor Corporation and Korean Airline have admitted financial irregularities. The Securities-Related Class Action Act became substantively effective in 2005, with certain provisions delayed until 2007. According to the Act, companies must acknowledge their past financial irregularities and correct their financial statements to avoid any liability under the act. Individual investors whose economic interests were infringed by certain wrongdoing may bring a class action suit against the company. Causes of action can be insider trading, market manipulation and accounting fraud. A company, if found liable, must pay monetary compensation to all of those investors who are classified as victims in the lawsuit.

So far, there is no legal provision that encourages whistleblowing or protects whistleblowers against reprisals for exposing corruption in the private sector. However, the Anti-Corruption Act provides for the protection of whistleblowing related to state-invested companies. So far, whistleblowing in the private sector is not very common in Korea. The Federation of Korean Industries conducted surveys on business ethics of 500 Korean listed companies in 2002 and 2005. The results show that the number of companies that had whistleblowing systems amounted to 112 in 2002, and remained at 115 in 2005.¹³⁸ Against this backdrop, the case of POSCO draws noteworthy attention. In June 2005, the company set up a whistleblowing policy that provides a monetary reward system for whistleblowers, probably the first of its kind in Korea.¹³⁹

Korean businesses have long maintained controversial relationships with politics. In the past, they provided politicians with slush funds and, in return, enjoyed preferential treatment such as entry into new business ventures. This symbiotic relationship may have weakened, yet slush fund-related scandals still have not disappeared. As recently as 2003, for instance, leading large business groups such as Samsung, SK and Hyundai were found to have provided improper slush funds to presidential campaigns of the leading candidates in excess of KRW 80 billion.¹⁴⁰

Furthermore, problems can be seen in the conflicts of interest between controlling shareholders of a company and general shareholders. Concern has mounted over the improper transfer of corporate wealth or opportunities to the controlling shareholder or those who share common interests. This has recently occurred in cases involving the SK Group, the Hyundai Motors Group and the Shinsegye Group. These conglomerates utilised unlisted companies that enjoyed high profit growth, mostly because of the close business relationships to their affiliates. When these successful affiliates launched equity issues, most of the issued shares were preferentially allocated to members of the controlling families, who then subsequently enjoyed tremendous capital gains when the companies later went public.¹⁴¹ In this regard, critics have expressed dismay not just that the mother companies that initially invested in the unlisted affiliates should have been given the opportunity to participate in the equity issues, but also the controlling shareholder family members.

Civil society organisations have taken the lead in the pursuit and punishment of corporate crimes. The PSPD has reported corporate wrongdoing to the Public Prosecutor's Office and also brought many lawsuits against the controlling shareholders of large business groups, mainly for bribery, unfair insider trading and acquisition of slush funds. Companies brought to the courts by the PSPD include Samsung Electronics, Samsung SDI, Korea First Bank, LGCI and Daesang Corporation.¹⁴²

Opinions concerning corporate crime still vary in Korean society, and those who commit white-collar crime often receive lighter punishment than other individuals. A case in point is the intense

debate over the appropriate legal punishment of the former chairperson of the Daewoo Group. In 1998 and 1999, the Daewoo Group illegally inflated their total assets by KRW 26.9 trillion.¹⁴³ Some argue that society needs to reconsider the tremendous economic contribution that the former flagship enterprise made in the early developmental stages of Korea, while others oppose this logic by saying all crimes should be treated equally. A host of civil cases has been brought to the courts against the chairperson and several directors, and the chairperson was recently sentenced to a 10-year prison term.¹⁴⁴

In more recent cases, courts found the chairmen of the SK and Doosan conglomerates guilty of amassing slush funds and carrying out accounting fraud, yet they only received suspended sentences. In 2003, the two group chairmen of the SK Group were indicted for accumulating slush funds amounting to KRW 1 trillion and financial irregularities of KRW 2 trillion. Although the lower court sentenced them both to prison terms, the appeals court, while upholding their charges, suspended their sentences.¹⁴⁵ In addition, the controlling shareholder family of the Doosan Group was indicted for the embezzlement of KRW 24 billion and acquisition of slush funds worth KRW 10s of billions. However, they merely received a suspended jail sentence from both the first and appellate courts in 2006.¹⁴⁶ In February 2006, right after the ruling of the lower case of the Doosan Group, the chief justice of the Korean Supreme Court criticised Korean courts for legal leniency towards corporate crime. He argued that in order to recover the trust of the public, Korean courts need to be balanced and fair towards general criminal cases and corporate crimes.¹⁴⁷

Korea does not have a business association specifically campaigning against corruption in either the public or the civil sector. The Federation of Korea Industries, a leading association of Korean businesses, joined the anti-corruption movement by signing the Korea Pact on Anti-Corruption and Transparency (K-Pact) and additionally entering the Korean Economic Pact on Anti-Corruption and Transparency in April 2005. The Federation of Korea Industries, the Korea International Trade Association, the Korea Employers Federation, the Korea Chamber of Commerce & Industry, and the Korea Federation of Small and Medium Businesses have all pledged to advance transparent and socially responsible management conduct in the economic and business sector.

International Institutions

As of 2005, Korea is a member of 23 international institutions, including the UN, IMF, ILO and WTO, and also a member of 68 inter-governmental institutions, such as the OECD, APEC, ADB and BIS. Among them, 10 institutions have offices or headquarters located within Korea: the International Monetary Fund, International Organization for Migration, International Vaccine Institute, United Nations High Commissioner for Refugees in the Republic of Korea, United Nations Development Programme, United Nations Environment Program – Northwest Pacific Action Plan, United Nations Industrial Development Organisation – Investment & Technological Promotion Office and United Nations Memorial Cemetery in Korea.¹⁴⁸

These offices conduct research, coordinate matters with the Korean government and domestic businesses or assist Korean businesses in expanding to less-developed countries. As branches of international institutions, they are accountable to their headquarters and do not fall under special oversight of any particular entity in Korea. The establishment, operation, finance and personnel management of the offices of these institutions in Korea are all the responsibility and under the jurisdiction of their respective headquarters. Korea does not have any international institution or representative located in the country that is solely devoted to combating corruption.

Korea signed and ratified the OECD Anti-Bribery Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in January 1999. The Convention states that anyone who offers a bribe to a foreign official may be criminally liable. The government reports its compliance status regarding the Convention to the OECD and, since 1999, has made two reports, in 2000 and 2004. So far five crimes have been reported under the Convention. All of the reported bribery cases involved businesses in the vicinity of the U.S. military bases in Seoul, Korea. In addition, the Korean government signed the UN Convention against Corruption in December 2003, but this has not yet been ratified by the National Assembly.

Evaluation of the NIS

Central public institutions in general in Korea have improved their integrity systems. As corruption is a top priority in the present reform agenda, the current president has shown eagerness and determination to address corruption during his term of office on the one hand and to promote the integrity of public officials on the other. However, constitutionally independent institutions such as the legislature and the judiciary branches have demonstrated more limited levels of enthusiasm, although they too are required by law to establish plans and programmes to guarantee the integrity of their organisations. Meanwhile, on the regional level, local autonomous institutions reveal serious problems in their governance and integrity, with significant increases in the level of corruption.

As for the non-public sector, governance and integrity are matters left to be shaped by external stakeholders in the markets, and issues regarding accountability, transparency and integrity remain largely untouched. Advances regarding governance and integrity in the business and media sectors are taking place, albeit slowly.

The following section focuses on the overall status of the Korean National Integrity System by assessing and highlighting the key issues in the public and non-public sectors.

Public Sector

Accountability

When it comes to accountability, government agencies and constitutionally independent institutions present different pictures. First of all, these institutions fall under the stringent rules and regulations that govern administrative affairs under presidential decrees and legislative acts, for instance, the Administrative Procedure Act and Administrative Appeals Act. Moreover, the president has the obligation to oversee these institutions and vouch for their accountability. At the same time, governmental institutions are subject to oversight mechanisms by the BAI and the National Assembly.

Meanwhile, although Korean administrative agencies are indeed subject to rigid oversight by law, in practice, much can be improved in terms of actual audit and inspection mechanisms. A recent government report, issued in December 2005, stated that for the past three years no administrative institution has carried out audits and inspections of its own organisation; instead the audits and inspections have been only of affiliates or subsidiaries. The report further disclosed that 15 out of 48 central administrative institutions did not have a dedicated internal audit and inspection division. As for the audit and inspection of the supreme audit agency, thus far the BAI has only focused on the appropriateness of budget expenses or on special corruption-related cases, thereby failing to properly fulfil its overall audit and inspection functions, for example, on occupational performance.¹⁴⁹

Independent institutions of course are guaranteed their status under the constitution. Accordingly, they do not have to submit reports on their occupational performance to any higher or external entity and are not subject to external oversight concerning their occupational performance. Moreover, these constitutionally independent institutions are also exempt from mechanisms regarding internal governance. Without external oversight, constitutionally independent institutions are required to establish and maintain internal monitoring mechanisms or checks and balances systems in order to ensure good governance and integrity.

Additionally, regarding integrity mechanisms, the Anti-Corruption Act does not allow the KICAC to exercise its authority over institutionally independent institutions. Instead, it calls upon these institutions to set up their own anti-corruption policies and plans on a voluntary basis.

Unfortunately, there is no evidence indicating that constitutionally independent institutions have voluntarily effectuated systems that handle any integrity or corruption-related issues of their employees.

Transparency

Transparency, or the accessibility of institutional information to the public, of public institutions has improved in law and practice. On the one hand, the revised Act on the Disclosure of Information by Public Agencies now allows the public to obtain information on how public institutions, both administrative and constitutionally independent ones, perform their work. On the

other hand, institutions have improved transparency on their occupational performance, including the handling of civil applications, particularly on their homepages. An increasing number of people have requested public officials to disclose their information; approximately 90 per cent of these requests have been processed either entirely or partially.¹⁵⁰

Table 7 Number of Requests for Disclosure of Information

	No. of Requests	Cases Handled				Pending	Withdrawal
		Total No. of Cases Handled	Entire Disclosure	Partial Disclosure	No Disclosure		
2000	61,586	58,711 (95%)	50,470 (82.0%)	3,839 (6.2%)	4,402 (7.1%)	63 (0.1%)	2,812 (4.6%)
2001	86,086	80,165 (93%)	66,845 (77.6%)	5,997 (7.0%)	7,323 (8.5%)	44 (0.1%)	5,877 (6.8%)
2002	108,147	102,319 (95%)	89,474 (82.7%)	7,064 (6.5%)	5,781 (5.3%)	73 (0.1%)	5,755 (5.3%)
2003	192,295	186,087 (97%)	170,828 (88.8%)	7,443 (3.9%)	7,816 (4.1%)	96 (.01%)	6,112 (3.2%)

Source: 2005 Annual Report, the Ministry of Government Administration and Home Affairs, www.mogaha.go.kr.

Integrity

When it comes to maintaining the integrity of public officials, general information and oversight mechanisms are not sufficiently open to the public. On a broader scale, it remains problematic to handle issues involving the integrity of public officials internally, mainly due to privacy concerns. Thus, their internal governance and integrity lacks a public monitoring aspect. According to the Anti-Corruption Act, the audit and inspection division of each public institution must oversee issues as denoted in its code of conduct. However, these divisions do not provide relevant information to the public. The Code of Conduct Team of the KICAC examines the status of compliance with the codes of conduct, yet it does not provide detailed information regarding their results to the public either. The KICAC, of course, cannot carry out examinations of constitutionally independent institutions. Overall, the status of the integrity of public officials and the appropriateness and effectiveness of relevant oversight and examination of institutions will remain questionable and doubtful unless the public is guaranteed clear and transparent standards for maintaining integrity and unless appropriate punishments are imposed in practice.

Legislation, as ex post facto measures to promote integrity, clearly prohibits improper financial gains by public officials. Yet evidence shows that regulations on asset registration and post-employment have not been particularly effective. The National Assembly, in November 2005, declared that reports submitted by public-official ethics committees belonging to the executive, the legislature, the judiciary and the election commissions showed that public officials subject to the Public Service Ethics Act generally failed to register their assets in a forthright way. Meanwhile the corresponding public official ethics committees remained lenient towards them.¹⁵¹ The restrictions on post-employment are not firmly settled, either. Retired officials often obtain employment at for-profit entities that maintain close relationships with those public institutions where they used to work, while the corresponding public-official ethics committees remain too lax towards such conduct.

As for post-employment of former public officials who were terminated due to acts of corruption, the KICAC tracks those involved in these cases of violation. The number of such former public officials totaled 1,210 for four years from 2002 to the first half of 2005. Among them, 383 people had new jobs in private companies, and 3 among them violated the post-employment restriction of the Anti-Corruption Act. Eventually, the 3 people voluntarily retired from the concerned private companies.¹⁵²

Furthermore, even with this multi-faceted apparatus addressing the integrity of public officials, internal corruption in the public sector still remains a serious problem in Korea. Sufficient evidence exists, for example, that the numbers of public officials who came under disciplinary punishment in violation of the corresponding code of conduct have generally been on the increase for the last three years (see Table 8).

Table 8 Disciplinary Punishment of Public Officials

Year	Months included	Total No. of Cases	Monthly Average No. of Cases
2003	May through December (8)	367	46
2004	January through December (12)	850	71
2005	January through June (6)	407	68

Source: 2005 KICAC Annual Report, p.403.

Note: Figures do not include public officials serving the constitutionally independent institutions.

In addition, the cases of bribery of public officials that were handled by Korean courts reached 3,642 cases in 2001, 3,989 in 2002 and 3,641 in 2003. The amount of imposed fines related to the bribery of public officials from 2001 to 2003 surpassed KRW 8 billion per year.¹⁵³

Law Enforcement

The evidence collected in this report demonstrates the need to strengthen enforcement mechanisms. Consensus exists that enforcement still remains in formal terms only. Table 9 contains the number of those public officials' offences handled by public prosecutors, and how they were subsequently handled by the Public Prosecutor's Office. As can be seen, the ratio of the number of investigations to the number of indictments is significantly lower in cases involving public officials when compared to the general ratio of those who commit crimes. This leads to the conclusion that among those public officials who committed criminal acts related to their official status, fewer were ultimately indicted relative to the general populace.

Table 9 Number of Public Officials' Offences Handled by Public Prosecutors

	No. of Investigations of Public Officials (A)	No. of Indictments of Public Officials (B)	Ratio in Cases of Public Officials (B/A)	General Ratio in All Criminal Cases Investigations/Indictments
2000	4,232	2,236	52	56
2001	3,071	1,087	35	56
2002	3,000	1,253	41	58
2003	3,192	1,162	36	56
2004	2,865	1,092	38	56

Source: Annual Reports, The Public Prosecutor's Office (2001–2005), www.sppo.go.kr.

Korean courts are often criticised for their weak law enforcement regarding high-ranking public officials. In January 2005, an investigative report of a daily newspaper pointed out that high-ranking officials benefited from the weak law enforcement of respective courts. A survey of 337 high-ranking public officials who were brought to the courts on charges of corruption during 1993 through 2005 indicated that the rate of not-guilty rulings for acts of corruption was 7.72 per cent (26 people out of the total of 337), compared with a rate of 0.79 per cent for the general public for all crimes in general. In addition, only 70 of the 337 people or 20.8 per cent were sentenced to real prison terms and 42 out of these were prematurely released through bail, suspensions of imprisonment or pardons.¹⁵⁴

In addition, evidence shows that the whistleblowing system under the Anti-Corruption Act remains ineffective. As witnessed in Table 10, the number of reports on acts of corruption by public officials submitted to the KICAC totalled 137 in 2002, decreasing to 91 in 2005.

Table 10 Number of Public Officials' Offences Handled by Public Prosecutors

	2002	2003	2004	2005
Constitutionally Independent Institutions	5	2	0	3
Central Government Institutions	62	40	18	27
Local Autonomy Institutions	37	38	30	23
Local Education Institutions	5	10	5	5
Other Public Institutions	28	23	22	33
<i>Total</i>	<i>137</i>	<i>113</i>	<i>75</i>	<i>91</i>

Source: 2005 Annual Report, KICAC, p. 308.

Note: Figures do not include reports made to the KICAC not related to corruption.

In fact, this low level of whistleblowing reports could be explained as the result of weak legal protections that still need to be improved or reinforced. The KICAC actually revised the Anti-Corruption Act to strengthen whistleblower protection and monetary rewards. This increased level of monetary rewards and the strengthened protection system could be the reason for more legal reinforcement and the increase in the number of whistleblowing cases from 2004 to 2005. However, concern remains nonetheless that whistleblowers are still not entirely protected as originally intended by law.

One leading case illustrates how public institutions, particularly those designed to address corruption, have failed to protect whistleblowers. In 1995, a public official at the BAI heard that a public administrative agency allowed a large business group that maintained a close relationship with politicians to construct a business facility that would have been illegal under normal circumstances. When he tried to correct the case, he was transferred to another department and the case remained unresolved. In 1996, the public official brought the case to the attention of a civil activist group, but the BAI dismissed him and brought a lawsuit against him on charges of breach of loyalty. After more than 11 years of litigation and appeals, the case still remains under judicial review as of July 2006.¹⁵⁵

In another case, as lately as February 2006, as a result of whistleblowing, a public official was demoted to a lower position at his working place. He brought a lawsuit seeking damages to retaliate against the personnel transfer. However, in the appeal, the court had conflicting interpretations of the intentions of the Anti-Corruption Act, and it ruled against him, concluding that the personnel transfer did not discriminate or violate any laws.¹⁵⁶

More systemic measures are required to effectuate civil participation in the work of the civil service. Though acts and institutions exist to prevent and punish corrupt public officials, matters relating to public officials' integrity still remain with the concerned public institutions, warding off effective civil monitoring. Strict and equal law enforcement remains the most important component for the full operation of integrity-related systems.

Non-Public Sector

Legislation provides for basic rules and standards for the operation and governance of the non-public pillars of the integrity system, including political parties, the media, CSOs and business organisations. Accountability, transparency and integrity of political parties, the media, CSOs or business organisations are generally scrutinised by the public, and thus continuous improvement of internal governance and integrity is crucial for the sustainability of non-public sectors. In reality however, most attention has been paid to formal independence and occupational performance, and thus issues regarding accountability, transparency and integrity have largely remained untouched.

Moreover, each of the non-public pillars currently has its own issues. For political parties, slush funds have persisted and still pose one of the biggest problems in Korea. Thus today, they must take on the responsibility to recover public trust.

The media must maintain its fairness and fulfil its social responsibilities more than ever. An increasing number of news providers, driven by the rapid diffusion of information technology, pressure established media companies to refocus and discover new ways to sustain their competitive edge in the market. Thus, market mechanisms are largely steering the behaviour of participants. Controversy over fairness still remains where journalism ethics need to be improved.

CSOs have taken on the role of monitoring the state and addressing issues that the state fails to handle. Yet, many of them have failed to establish systems for their own internal governance and integrity.

Last, Korean business organisations since the financial crisis have shown remarkable progress in legal and practical terms. Nevertheless, consensus exists that they still have a long way to go to reach the standards of their leading global competitors. The business sector deals with anti-corruption concerns and ethics as a necessity of an advanced society. It has yet to acknowledge and accept these issues in turn as the core principles for its own internal governance and integrity systems.

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- Civil Service Commission, www.csc.go.kr/
- Constitutional Court of Korea, www.ccourt.go.kr/
- Council for the Korean Pact on Anti-Corruption and Transparency, www.pact.or.kr/
- Federation of Korean Industries, www.fki.or.kr/
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- Korea Broadcasting Commission, www.kbc.go.kr/
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- Korea.net – Gateway to Korea, www.korea.net/
- Korea Press Ethics Commission, www.ikpec.or.kr/
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- Ministry of Foreign Affairs and Trade, www.mofat.go.kr/
- Ministry of Government Administration and Home Affairs, www.mogaha.go.kr/
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Ministry of Planning and Budget, www.mpb.go.kr/
National Assembly of Korea, www.assembly.go.kr/
National Election Commission, www.nec.go.kr/
National Tax Service, www.nta.go.kr/
Ombudsman of Korea, www.ombudsman.go.kr/
Office of the President, www.cwd.go.kr/
People's Solidarity for Participatory Democracy, www.peoplepower21.org/
Public Procurement Service, www.pps.go.kr/
Supreme Public Prosecutor's Office, www.sppo.go.kr/
Supreme Court of Korea, www.scourt.go.kr/
Transparency International, www.ti.org/
Transparency International Korea, www.ti.or.kr/
World Bank, www.worldbank.org/

Relevant Laws, Rules, Regulations, Guidelines

Act on Contracts to Which the State Is a Party
Act on External Audit of Stock Companies
Act on Litigations to Which the State Is a Party
Act on Press Arbitration and Rescue
Act on Preventing Bribery of Foreign Public Officials in International Business Transactions
Act on Real Name Financial Transactions and Guarantee of Secrecy
Act on Support for Non-Profit Civil Organisations
Act on the Aggravated Punishment, etc., of Specific Crimes
Act on the Disclosure of Information by Public Agencies
Act on the Establishment and Operation of Financial Supervisory Bodies
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Act on Monopoly Regulation and Fair Trade
Act on the Number of Personnel of the Public Prosecutor's Office
Act on the Personnel Committee of the Public Prosecutor's Office
Act on the Report and Use of Special Financial Transactions
Administrative Appeals Act
Administrative Litigation Act
Administrative Procedure Act
Anti-Corruption Act
Aviation Act
Banking Act
Basic Act on Administrative Regulation
Basic Law Governing Administrative Regulations and Civil Petition Affairs
Board of Audit and Inspection Act
Broadcasting Act
Budget and Accounts Act

Civil Procedure Act
Code of Conduct for Public Officials
Commercial Act
Constitution of the Republic of Korea
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Court Regulation on the Enforcement of the Anti-Corruption Act
Court Regulation on the Enforcement of the Public Service Ethics Act
Criminal Act
Criminal Procedure Act
Discipline of Public Prosecutors Act
Election Commission Act
Electric Telecommunications Business Act
Ethics Code for Parliamentarians
Financial Holding Companies Act
Framework Act on the Management of Government-Invested Corporations
Framework Act on the Management of the Institutions under the Government
Government Organisation Act
Government Procurement Act
Korea Education Broadcasting System Act
Legal Aid Act
Local Autonomy Act
Local Finance Act
Local Public Enterprise Act
Local Public Officials Act
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National Assembly Regulation on the Disclosure of Information
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OECD Guidelines for Corporate Governance
Petition Act
Political Fund Act
Political Parties Act
Public Officials Election Act
Public Prosecutor Compensation Act
Public Prosecutor's Office Act
Public Service Ethics Act
Regulation of Ethics Enforcement of Parliamentarians
Regulation on Contract Public Officials
Regulation on Handling Public Audit Requests and Reports on Corruption
Regulation on Public Administrative Audit and Inspection
Regulation on the Inspection Committee of the Ministry of Justice
Regulation on the Review Committee on Qualifications for Public Prosecutors
Regulation on the Special Committee on Ethics

Rule on Reporting of the Public Prosecutor's Office
Rule on the Administrative Organisation of the Election Commissions
Rule on the Disclosure of Information of the Election Commission
Rules on Audit and Inspection of the KICAC
Securities Exchange Act
Securities-Related Class Action Act
Special Act on the Confiscation Concerning Public Officials' Offences
Standard for Public Audit and Inspection
State Public Officials Act
UN Convention against Corruption
WTO Agreement on Government Procurement

Notes

¹ Details of the NIS can be found in the *TI Source Book* 1997 and 2000 and the *TI Anti-Corruption Handbook* (Berlin: Transparency International [TI], 1997, 2000), www.transparency.org.

² *World Bank Macroeconomic Outlook* (Washington, D.C.: World Bank, November 2005).

³ TI further differentiates between 'according to rule corruption' and 'against the rule corruption'. Facilitation payments, in which a bribe is paid to receive preferential treatment for something that the bribe recipient must do by law, constitute the former. The latter, on the other hand, is a bribe paid to obtain services that the bribe recipient is prohibited from providing in the first place.

⁴ *TI Global Corruption Barometer* (TI, 2004, 2005).

⁵ 1996, 1998, 2000, 2002 and 2004.

⁶ Corporate Illegal Corruption Component (CICC), Corporate Legal Corruption Component (CLCC), Corporate Ethics Index (CEI), Public Sector Ethics Index (PSEI), Judicial/Legal Effectiveness Index (JLEI), Corporate Governance Index (CGI).

⁷ According to the findings of the Korea Independent Commission Against Corruption [KICAC], the overall framework for governance and integrity, exclusive of constitutionally independent institutions, has improved. Out of a total score of 10, the average score of the public sector increased by 2.28 points, from 6.4 in 2002 to 8.68 in 2005. Most notably, central administrative institutions consistently ranked high, showing an increase from 8.02 in 2003 to 8.75 in 2005. Meanwhile, local governments exhibited a significant increase from a score of 7.5 in 2002 to 8.46 in 2005 (upper-level governments only).

⁸ Press Release, Korea Independent Commission Against Corruption, 4 July 2005 [in Korean].

⁹ 'Pusan gambling halls pay KRW 10s of million on a monthly basis to the Police and Prosecutor's Office', *Hankyoreh*, 31 October 2003 [in Korean].

¹⁰ 'Bribery is necessary in Korea', *Chosun Ilbo*, 5 January 2004 [in Korean].

¹¹ 'I could not even remember who gave how much to me', a public official accused of receiving KRW 20 million on a monthly basis, *Hankook Ilbo*, 23 November 2003 [in Korean].

¹² 'The special investigation team releases the results of the 'Lee-Gate' investigation/ The conclusion turns out to be feeble compared to the accusations, *Hankook Ilbo*, 13 October 2001 [in Korean]; 'Lee-Yongho Gate/The special investigation team dissolves...suspicions remain', *Segye Times*, 13 October 2001 [in Korean]; 'The results of the special investigation/ Not lenient but rather incapable, *Hankyoreh*, 13 October 2001 [in Korean].

¹³ 2002 Annual Report (Seoul: Supreme Public Prosecutor's Office [SPPO], 2003), www.sppo.go.kr, uploaded on 11 May 2005 [in Korean].

¹⁴ 2003 & 2004 Annual Reports (SPPO, 2004 & 2005), www.sppo.go.kr, uploaded on 15 November 2005 [in Korean].

¹⁵ Kim, Joongi & Kim, Heejeung, A New Frontier in Corporate Governance: The SK Crisis and Lessons for the Future (Seoul: Hills Governance Center at Yonsei University, Corporate Governance Working Paper No.5, (forthcoming)) [in English].

¹⁶ 'An interview with the female worker who reported the judiciary scandal - "There is a group that protects the saloon"', *Kyunghyang Shinmun*, 3 November 2004 [in Korean]; 'Time to eradicate judiciary corruption (1) Inspection and disciplinary systems should be revised', *Hankyoreh*, 9 December 2004 [in Korean].

¹⁷ This section introduces common provisions for public institutions and officials of Korea. Several acts mentioned in this section, such as the Budget and Accounts Act and the State Public Officials Act, do not apply to local autonomous bodies. However, corresponding acts, the Local Autonomy Act and the Local Public Officials Act, provide for the same mechanism and thus, for the purpose of coherence, this section only refers to those acts that apply to the central government and independent bodies.

¹⁸ The Number of Public Officials by Organization and Occupation (Seoul: Ministry of Government Affairs and Home Administration, 2006), www.mogoha.go.kr, uploaded on 23 March 2006 [in Korean].

¹⁹ Generally speaking, a public official of the fourth grade would hold the position as head of a department of a state public institution, while the position of a first-grade public official would be directly below political public officials. State public officials ranking fourth grade or higher fall under the Public Service Ethics Act, while first-grade ranking public officials are subject to regulations on asset disclosure to the public. The number of public officials ranking fourth or higher in general service reached 5,457 or 6 per cent, including 64 first-grade ranking public officials. Moreover, other public officials who do not belong to the general service but whose ranks are equivalent to the fourth or higher grade in general service also fall under the requirements of the Public Service Ethics Act, as will be explained in the Integrity section of the Public Sector. While judges and prosecutors are subject to the same disclosure requirements, they are not ranked according to any classification system.

²⁰ 2005 Annual Report (Seoul: Korea Independent Commission Against Corruption [KICAC], 2006): 392 [in Korean].

²¹ 'The number of unfaithful assets registrations by public officials is skyrocketing', *Kookmin Ilbo*, 24 September 2005 [in Korean].

²² 'Retired high-ranking public officials rush to profit making companies', *Chosun Ilbo*, 24 October 2005 [in Korean].

²³ Report to the National Assembly (Seoul: Ministry of Justice [MOJ], 2005), www.moj.go.kr, uploaded on 11 October 2005 [in Korean].

²⁴ 'Investigation Report, Only 41 out of 159 high public officials sentenced to real imprisonment', *Dong-A Ilbo*, 12-13 January 2005 [in Korean].

²⁵ Qualifications for commissioners of the Board of Audit and Inspection include (1) a person who has served for 3 years or longer as a public official in the rank of Grade I or higher; (2) a person who has served for 8 years or longer as a public official in the rank of Grade III or higher; (3) a person who has served for 10 years or longer as a judge, prosecutor, military judge advocate officer or an attorney at law; (4) a person who has served for 8 years or longer as an associate professor or higher at an accredited college or university; (5) a person who has served for 5 years or longer as an executive and worked for 20 years or longer in a stock-listed corporation or a registered corporation as specified in the Securities and Exchange Act or in a government-invested organisation as stated in the Basic Act on the Management of Government-Invested Organisations.

²⁶ 2003 & 2004 Annual Reports (Seoul: Board of Audit and Inspection [BAI], 2004 & 2005), www.bai.go.kr, uploaded in March 2004 and March 2005 [in Korean]. In this report, the BAI stated that it rejected cases that were not suitable to be accepted.

²⁷ 'Former high-ranking public officials working for the Ministry of Finance and Economy and the Board of Audit and Inspection show a post-employment rate of 60%', *Kookmin Ilbo*, 7 October 2004 [in Korean].

²⁸ In practical terms, law enforcement agencies of Korea include the Public Prosecutor's Office and the National Policy Agency. Whereas the National Policy Agency provides security services for citizens under the MGAHA, the Criminal Procedure Act requires the police to also act as a law enforcement agency and follow the supervision of public prosecutors regarding investigation of crimes (Article 196). However, this section only covers the Public Prosecutor's Office. In addition, Article 197 of the Criminal Procedure Act introduces special law enforcement agencies, while the Public Prosecutor's Office may appoint law enforcement agencies as stated under the relevant law.

²⁹ 2003 & 2004 Annual Reports (SPPO, 2004 & 2005), www.sppo.go.kr, uploaded on 15 November 2005; 17 November 2005 [in Korean].

³⁰ The Commission was promoted from an advisory to a deliberative body in 2004. Personnel management of the public officials of the Public Prosecutor's Office, other than public prosecutors, is governed by different provisions.

³¹ Ehrlich & Kang, 'Independence and Corruption in Korea', *Columbia Journal of Asian Law*, 16, 1 (2002): 1-69 [in English].

³² 'Series Reports/ The Public Prosecutor's Office yielding to Chaebols', *Hankyoreh*, June 29~July 2, 2005 [in Korean].

³³ In October 2005, when the Public Prosecutor's Office planned to arrest a professor on suspicion of violation of the National Security Act, the Ministry of Justice ordered the prosecutor general to investigate him without physical detention. This generated tremendous legal and academic controversy throughout society. The prosecutor general made a public statement protesting against the minister's exercise of supervisory power and involvement in the affairs of the Public Prosecutor's Office and resigned from office.

³⁴ Report-Examination of the 2005 Budget of the Ministry of Justice (Seoul: National Assembly [Assembly], Legislative and Judiciary Committee's preliminary review report, 2004), www.assembly.go.kr, submitted in November 2004 [in Korean].

³⁵ See Note 28.

³⁶ 2004 Annual Report (SPPO, 2005), www.sppo.go.kr, uploaded on 17 November 2005 [in Korean].

³⁷ Report to the 2005 National Assembly Inspection (MOJ, 2005), www.moj.go.kr, uploaded on 15 October 2005 [in Korean].

³⁸ Press Release, People's Solidarity for Participatory Democracy [PSPD], 29 May, 2005 [in Korean].

³⁹ 'Discipline committees remained lenient to their family members', *Hankyoreh*, 8 December 2004 [in Korean]. The 15 cases include 2 in 1998, 2 in 1999, 2 in 2000, and 9 in 2003.

⁴⁰ Report-Review of the State's Final Accounts (Seoul: BAI, Report to the President and the Prime Minister, 2005), www.bai.go.kr, uploaded 1 August 2005 [in Korean].

⁴¹ Statistics on Procurement Services (Seoul: Public Procurement Service [PPS], 2006), www.pps.go.kr, uploaded on 26 January 2006 [in Korean].

⁴² Statistics on Procurement Service (PPS, 2006), www.pps.go.kr, uploaded on 26 January 2006 [in Korean].

⁴³ Cited in PPS homepage, www.pps.go.kr [in Korean].

⁴⁴ In 2005, PPS made four presentations on the transparency of this electronic procurement system at international meetings organised by APEC and the OECD (Cited on the PPS homepage, www.pps.go.kr [in English]).

⁴⁵ Cited in PPS homepage, www.pps.go.kr [in Korean].

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ This applies to cases in which bidding procedures take place off-line. Private contracts may be disclosed in the Government Electronic Procurement System [GePS].

⁵⁰ Report-Results of the Requests at the 2004 National Assembly Inspection (Seoul: Ombudsman of Korea, Report to the National Assembly, 2005), www.assembly.go.kr, submitted in February 2005 [in Korean].

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ According to the Report on the Results of the Requests at the 2004 National Assembly Inspection, the Ombudsman of Korea transmits online suggestions by the public to the relevant administrative institutions. From 2001 to August 2004, a total of 3,063 public requests were registered, yet few suggestions were adopted. The Ombudsman of Korea explained that this low rate of adoption resulted from the fact that most of the suggestions did not convey any practical alternatives.

⁵⁵ Cited in KICAC homepage, www.kicac.go.kr [in Korean].

⁵⁶ Press Release, KICAC, 12 January 2006 [in Korean].

⁵⁷ The president of Korea may become a member of a political party. In practice, Korea's presidents, including the current one, do have a political affiliation. In this regard, there is some concern that parliamentarians of the political party of which the president is a member may side with the president rather than fulfil their monitoring roles.

⁵⁸ In addition, members of the State Council and heads of the executive ministries are recommended by the prime minister and appointed by the president. Therefore, the National Assembly exercises its power through the prime minister.

⁵⁹ 2003 Annual Report (SPPO, 2004), www.ppo.go.kr, uploaded on 15 November 2005 [in Korean].

⁶⁰ Cited in National Assembly homepage, www.assembly.go.kr [in Korean].

⁶¹ The Anti-Corruption Act requires constitutionally independent institutions to set up their own codes of conduct for maintaining the integrity of their organisation and public officials, while the KICAC recommended a code of conduct to the National Assembly along with other public institutions.

⁶² 'Parliamentarians in violation of the provision preventing members of standing committees from holding concurrent positions', *Dong-A Ilbo*, 31 October 2001 [in Korean].

⁶³ '139 parliamentarians hold 227 concurrent positions', *Dong-A Ilbo*, 4 July 2005 [in Korean].

⁶⁴ '4.5% public officials did not correctly register their assets', *Herald Tribune*, 9 July 2003 [in Korean].

⁶⁵ '20% of parliamentarians and first-ranking public officials of the National Assembly did not register their real estate and financial assets', *Seoul Shinmun*, 4 November 2005 [in Korean].

⁶⁶ 2004 Annual Report (Seoul: KICAC, 2005), www.kicac.go.kr [in Korean].

⁶⁷ Cited on the National Assembly homepage, www.assembly.go.kr [in Korean].

⁶⁸ 'Investigation Report: Only 41 out of 159 high public officials sentenced to real imprisonment', *Dong-A Ilbo*, 12 January 2005 [in Korean]. A parliamentarian will be expelled from office if he or she is sentenced to a fine of more than KRW 1 million for violation of the Public Officials Election Act. Because they receive a fine slightly lower than KRW 1 million, most of the parliamentarians brought to courts for violation of the Act stay in office.

⁶⁹ Report-Examination of the 2005 Budget of the National Election Commission (Assembly, Administrative and Local Autonomy Committee' preliminary report, 2004), www.assembly.go.kr, submitted in November 2004 [in Korean].

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Under the Administrative Procedures Act, the public may participate in the work of public institutions by attending public hearings or submitting opinions prior to the enforcement of administrative plans. However, the Act excludes matters decided upon by constitutionally independent bodies such as the election commissions.

⁷⁴ The judiciary witnessed internal uprisings almost every year after 2000. Among other cases, in April 2002, a senior judge in a district court brought a case to the Constitutional Court. He argued that the current closed and pyramidal personnel management system in the judiciary violates the constitutional principle of the independence of judges. Even afterwards, he continuously strove to change the judicial structure. He retired fruitlessly from office in September 2003.

⁷⁵ There are also special courts, such as the martial courts. The difference between martial courts and non-martial courts is that military officers who are not qualified as judges hear cases in martial courts, whereas in non-martial courts only judges may adjudicate a case. However, even in military trials, the Supreme Court has final appellate jurisdiction.

⁷⁶ The number of judges in Korea is prescribed by law, while the number of public officials serving the courts is stipulated in a regulation enacted by the Supreme Court.

⁷⁷ Cited in Supreme Court homepage, www.scourt.go.kr [in Korean].

⁷⁸ '20% high-ranking public officials failed to register their assets', *Seoul Shinmun*, 4 November 2005 [in Korean].

⁷⁹ In August 2006, in one of the first times in history, an arrest warrant was issued for a senior judge who resigned following allegations that he accepted bribes ('An arrest warrant is issued to a former senior judge', *Chosun Ilbo*, 8, August, 2006 [in Korean]).

⁸⁰ 'Discipline committees remained lenient to their family members', *Hankyoreh*, 8 December 2004 [in Korean].

⁸¹ Ibid.

⁸² Of the local budget, the national subsidy was KRW 15 trillion or 16 per cent.

⁸³ 2004 Annual Report (Seoul: Ministry of Government Affairs and Home Administration [MGAHA], 2005), www.mogaha.go.kr, uploaded on 15 September 2005 [in Korean].

⁸⁴ Number of Public Officials by Organization and Occupation (Seoul: MGAHA, 2006), www.mogaha.go.kr, uploaded on 23 March 2006 [in Korean].

⁸⁵ 'Financial self-sustenance of local autonomies dropped by 7% in 10 years', *Munhwa Ilbo*, 21 April 2005 [in Korean].

⁸⁶ 'Anatomy of the state budget, something must be done', *Kyunghyang Shinmun*, 19 January 2005 [in Korean]; 'an examination of ten years of local autonomy', *Donga-A Ilbo*, 27 June 2005 [in Korean].

⁸⁷ 2005 Annual Report (MGAHA, 2005), www.mogaha.go.kr, uploaded on 15 September 2005 [in Korean].

⁸⁸ The seven fields include rearrangement of administrative power between central and local governments, decentralisation of financial sources, activation of local politics and reform in local elections, strengthened accountability of local governments, activation of civil community, and the establishment of cooperative relationships between local and central governments (2005 Annual Report, MGAHA).

- ⁸⁹ Song, Chang-Suk, 'Ways to activate the ombudsman system in the local autonomy' (Seoul: Korea Local Autonomy Research Institute, *2004 Winter Conference*) [in Korean].
- ⁹⁰ Ibid.
- ⁹¹ 'the Board of Audit and Inspection plans to audit local governments from June 13', *Segye Times*, 11 June 2005 [in Korean].
- ⁹² 'Anatomy of state budget, Something must be done', *Kyunghyang Shinmun*, 19 January 2005 [in Korean].
- ⁹³ Meeting Material-Status and Future Plans of Audit and Inspection (BAI, Material for meetings of relevant government agencies 2004, 2005), www.bai.go.kr, uploaded on 16 February 2004; 31 January 2005 [in Korean].
- ⁹⁴ Lee, Jae-Myung, Solutions for conflict of interest needed for firm establishment of local autonomy (*Conference for Local Autonomy and Local Transparency*, KICAC, Seoul, 14 December 2005), www.kicac.go.kr, uploaded on 14 December 2005 [in Korean].
- ⁹⁵ Statistics-Status of Political Parties in Korea (Seoul: National Election Commission [NEC], 2006), www.nec.go.kr, uploaded on 3 August, 2006 [in Korean].
- ⁹⁶ Effective on 13 March 2006, political parties may not raise funds from political support groups. (Additional Clause 07682, Political Funds Act, 4 August 2005).
- ⁹⁷ Annual Revenues and Expenditures of Political Parties (NEC, 2006), www.nec.go.kr, uploaded on 14 March 2006 [in Korean].
- ⁹⁸ Press Release, NEC, 19 August 2005 [in Korean].
- ⁹⁹ Statistics-Status of Political Parties in Korea (NEC, 2006), www.nec.go.kr, uploaded on 3 August, 2006 [in Korean].
- ¹⁰⁰ 'Moral Hazard in use of political funds/ Massage with national subsidies and golf with support groups' funds', *Dong-A Ilbo*, 18 August 2004 [in Korean].
- ¹⁰¹ Press Release, NEC, 19 August 2005 [in Korean].
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- ¹⁰⁴ Kim, Joongi & Kim, Heejeung, A New Frontier in Corporate Governance: The SK Crisis and Lessons for the Future (Seoul: Hills Governance Center at Yonsei University, Corporate Governance Working Paper No.5, (forthcoming)) [in English].
- ¹⁰⁵ Ahn, Dong Keun, 'Power, Press, Citizen and Public Opinion: Understanding the Social Mechanism of Corruption In Korean Society' *Hankuk Bupae Hakhoi Bo (Studies on Korean Corruption)* 10, 4 (2005): 35-56 [in Korean].
- ¹⁰⁶ Korea Press Foundation, *The Journalists of Korea* (Seoul: Korea Press Foundation, 2005):27 [in Korean].
- ¹⁰⁷ Ibid.
- ¹⁰⁸ No consensus has been reached over whether or not the MBC is a public broadcasting company. However, the Public Officials Election Act considers the MBC to be a public broadcasting company.
- ¹⁰⁹ Annual Audit Report (Seoul: *Seoul Shinmun*, 2006), www.dart.fss.or.kr uploaded on 6 April 2006 [in Korean].
- ¹¹⁰ As for the support ratio, election commissions apply average ratios based on various support ratios examined by media companies during 30 days before the concerned election campaign period based upon National Election Commission's regulations (Article 82-2, Public Officials Election Act).
- ¹¹¹ Korea Press Foundation, *The Journalists of Korea* (Seoul: Korea Press Foundation, 2005): 33, [in Korean].
- ¹¹² 'MBC apologizes to the public, 'Producer's note' threatened researchers' *Kyunghyang Shinmun*, 5 December 2005 [in Korean].
- ¹¹³ 'Public Prosecutor's Office terminates its investigation on the 'Tapping Scandal' / Terminated yet incomplete investigation, *Munhwa Ilbo*, 14 December 2005 [in Korean]. In August 2006, the court found the reporter not guilty of the allegation ('MBC reporter Sang-Ho Lee is found not guilty of his report on the X-file', *Kookmin Ilbo*, 11, August, 2006 [in Korean]).
- ¹¹⁴ NGO Times, *Encyclopedia of Korean Associations* (Seoul: NGO Times, 2006) [in Korean].
- ¹¹⁵ The Act classifies non-profit civil organisations as entities whose function is to benefit many (unspecified) persons; entities that do not allocate gains/benefits from their operations to their members; entities whose members exceed 100 persons and entities that do not act on behalf of political candidates or political parties or focus on specific regions (Article 2).
- ¹¹⁶ The annual amount of financial support to CSOs is to be formulated by the MGAHA and finally decided upon by the National Assembly. The reduction in 2004 was made during the approval process. The total amount of financial support to CSOs in 2005 also amounted to KRW 10 billion.
- ¹¹⁷ 2001-2005 Annual Reports (MGAHA, 2002-2005), www.mogaha.go.kr, uploaded on 24 October 2002 (2001, 2002); 27 June 2003; 24 December 2004; 15 September 2005 [in Korean].
- ¹¹⁸ In the case of fund-raising, a 2005 survey shows that of the 95 non-profit civil organisations registered with the government, 23.2 per cent rely on their government for more than 40 per cent of their entire budget, while 36.8 per cent rely on government for between 20 per cent and 30 per cent of their budget (Kim, Cho & Lee, *Analysis on Governmental Support for Civil Non-Profit Organizations*, (Seoul: MGAHA, Research Report, 2004), www.mogaha.go.kr, uploaded on 14 January 2005 [in Korean]). However, civil society organisations such as the PSPD and the CAN do not receive funds from the government.
- ¹¹⁹ Interview with TI Korea, February 18, 2006.
- ¹²⁰ Cited on the PSPD homepage, www.peoplepower21.org [in Korean].
- ¹²¹ For example, PSPD, on behalf of the company's shareholders, brought a derivative suit against Korea First Bank in 1998, and filed a lawsuit seeking damages against Samsung Electronics in 1998 and an injunction

against the exercise of stock warrants of Samsung SDS. For further details, see PSPD homepage (www.peoplepower21.org).

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¹³¹ Cha, Moon-Joong, *Regulatory Reforms to Improve the Business Environment* (Seoul: KDI, Research Report 2005-08, 2005) [in Korean].

¹³² *Stock* (Seoul: Korea Exchange, December 2005), www.sm.krx.go.kr [in Korean].

¹³³ Press Release-Statistics on International Trade Balance (Bank of Korea, 2006), www.bok.or.kr, uploaded on 26 January 2006 [in Korean].

¹³⁴ Annual Statistics (Seoul: National Tax Service, 2006), www.nta.go.kr, uploaded on 9 March 2006 [in Korean].

¹³⁵ Report on Shareholdings by Large Business Groups (Seoul: Fair Trade Commission, 2005), www.ftc.go.kr, uploaded on 13 July 2005 [in Korean].

¹³⁶ Report-The Status and Future Tasks of Ethics Management of Korean Firms from a CEO's Perspective' (Seoul: Federation of Korea Industries, 2005), www.fki.or.kr, uploaded on 15 June 2005 [in Korean].

¹³⁷ The double derivative suit allows a shareholder of a parent corporation to bring a lawsuit against the directors of its subsidiary company when the parent company suffered liability due to the wrongdoing of the directors of the subsidiary company. It has been argued that Korea needs to institute a double derivative suit to hold potential wrongdoers accountable because otherwise, a mother company can use its unlisted affiliate to amass slush funds or handle financial irregularities. For detailed information on the state of the double derivative suit, see CGCG, *Korean Court Recognizes Double Derivative Suit* (Seoul: Center for Good Corporate Governance [CGCG], Issue Report, 2003), www.cgcg.or.kr, issued on 22 September 2003 [in English]; CGCG, *the Supreme Court Dismisses a Double Derivative Suit for Lack of Standing - Major Impediments for an Action against SK Corp.?* (CGCG, Issue Report, 2004), www.cgcg.or.kr, issued on 13 October 2004 [in English].

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¹⁴⁶ 'Doosan's flush funds, suspended execution confirmed at the appellate court', *Kyunghyang Shinmun*, 22 July 2006 [in Korean].

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¹⁴⁸ The International Vaccine Institute has its headquarters in Korea.

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¹⁵² The number of former public officials who were released for acts of corruption was 350 in 2002, 318 in 2003, 398 in 2004 and 144 in 2005 (2005 KICAC Annual Report: 334).

¹⁵³ KRW 14 billion in 2001, KRW 11 billion in 2002 and KRW 8 billion in 2003 (cited on the Supreme Court homepage, www.scourt.go.kr, uploaded on 31 August 2004). Forfeit is imposed as the same amount of the gains that the concerned public officials enjoyed from the concerned bribery.

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¹⁵⁵ 'Have you heard of the 'Korean version of the Dreyfus case'?', *NGO Times*, 19 February 2006 [in Korean].

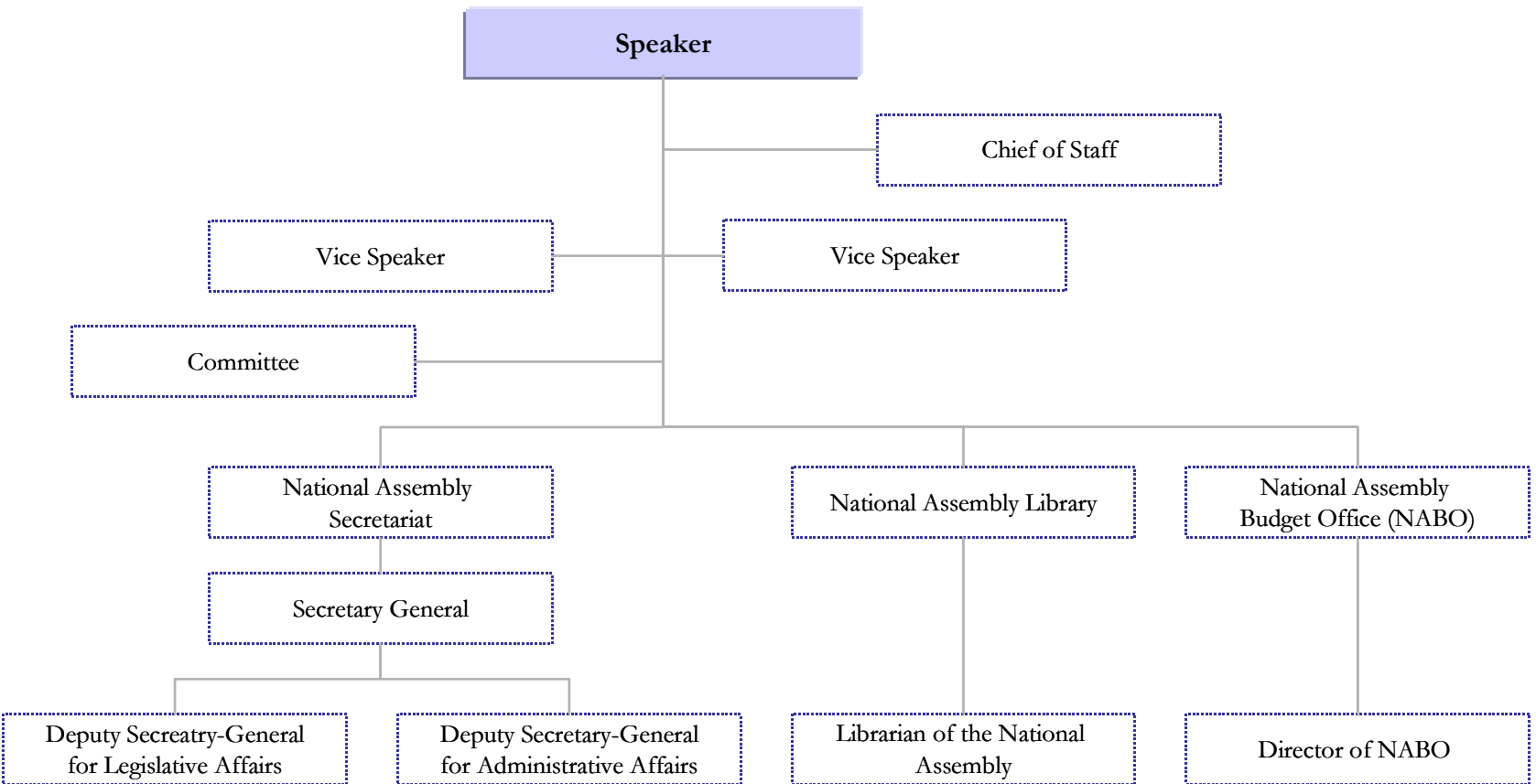
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Appendices

1. Executive Branch under the Government Organisation Act (2005) (unit: million KRW)

Organisation	Staffing	Budget	Remarks
Office of the President	499	59,582	
Presidential Security Service	498	58,715	
National Intelligence Service	-	408,829	Staffing not further specified
Presidential Commission on Small and Medium Enterprises	-	-	Does not have its own employees
Office of the Prime Minister	88	294,024	
Office of Government Policy Coordination	196	-	Budget included in the Office of the Prime Minister's budget
Ministry of Planning and Budget	341	3,213,813	
Ministry of Legislation	191	14,615	
Korea Information Service	147	55,255	
Ministry of Patriots and Veterans Affairs	251	2,204,659	
Ministry of Finance and Economy	558	4,732,444	
Ministry of Education and Human Resources Development	498	27,438,045	
Ministry of Science and Technology	370	1,840,261	
Ministry of Unification	233	594,332	
Minister of Foreign Affairs and Trade	763	901,125	
Ministry of Justice	474	1,530,295	
Ministry of National Defence	622	20,822,600	
Ministry of Government Administration and Local Autonomy	795	21,264,745	
Ministry of Culture and Tourism	430	840,740	
Ministry of Agriculture and Forestry	525	5,206,526	
Ministry of Commerce, Industry and Energy	635	1,650,279	
Ministry of Information and Communication	440	178,091	
Ministry of Health and Welfare	559	8,647,962	
Ministry of Environment	444	1,529,546	
Ministry of Labour	425	693,001	
Ministry of Gender Equality	176	643,775	
Ministry of Construction and Transportation	814	15,422,172	
Ministry of Maritime Affairs and Fisheries	501	2,305,123	
Total sum	11,473	124,134,144	

2. The Organisation of the National Assembly of the Republic of Korea



3. The Organisation of the Judiciary of the Republic of Korea

