

# **Introduction of the Improper Solicitation and Graft Act**

## **I. Background of the Improper Solicitation and Graft Act**

### **Background**

Corruption in the public sector undermines the confidence of the public in the government. About 63% of Korean people believe that Korean society is corrupt, according to the corruption perception survey conducted by the Anti-Corruption and Civil Rights Commission (ACRC) in 2014. It was necessary to address the limitations of the existing anti-corruption laws (the Criminal Act, the Public Service Ethics Act, etc.) and enact a comprehensive law to prohibit improper solicitations and the receipt of graft. The purpose of the Act was to establish a more advanced corruption prevention system by setting codes of conduct and ethics standards of public officials living up to the global standards such as the OECD guidelines.

### **Enactment status**

- The ACRC submitted a report titled A Fairer Society Through Spreading the Culture of Integrity and suggested the need for enacting the Act to the Cabinet Council (June 14, 2011).
- Went through the legislative procedures (May 7, 2012 to July 30, 2013)
- The bill was submitted to the National Assembly (August 5, 2013).
- The bill passed the Legislative Sub-Committee of the National Policy Committee (January 8, 2015) and the plenary meeting of the National Policy Committee (January 12, 2015).
- The bill passed the hearing of the Legislation and Judiciary Committee (February 23, 2015) and the plenary meeting of the Legislation and Judiciary Committee (March 3, 2015)
- The bill passed the plenary meeting of the National Assembly (March 3, 2015)

## **II. Main Content of the Act**

### **1. Scope of application**

- Organizations
  - All the public institutions including constitutional institutions, central administrative agencies, local governments, municipal or provincial offices of education, and public service-related organizations
  - Private and public schools of various levels, educational corporations under Private School Act, and media companies under Article 2.12 of the Act on Press Arbitration and Remedies, etc. for Damage Caused by Press Reports
- Individuals: Public officials or persons performing public duties
  - Public officials or relevant persons: Civil servants of national or local governments; heads and employees of public service-related organizations, public institutions, schools, educational corporations, and media companies
  - Spouses of public officials
  - Private persons performing public duties: Individuals participating in the decision-making process of public organizations
  - General public: Persons who improperly solicit public officials or who offer them prohibited financial or other advantages)

### **2. Prohibition of improper solicitations**

- Concept of improper solicitations
  - No one should solicit, directly or through a third party, a public official or relevant person performing his or her duties.
  - A total of 15 types of improper solicitations are stipulated to explicitly explain which acts constitute the acts of improper solicitation.
  - A total of seven exceptions to improper solicitations including an act of requesting certain actions in public are stipulated, in order to prevent people from being discouraged to duly request their rights.

- Sanctions

- A stakeholder who improperly solicits a public official directly in regard to his or her own businesses is not subject to sanctions.
- Any person who makes an improper solicitation through a third party to a public official or relevant person should be subject to a fine for negligence.
- A public official or relevant person who performs his or her duties as directed by an improper solicitation should be punished by imprisonment for not longer than two years or by a fine not exceeding 20 million won.

- Reporting and handling process of improper solicitation

- (Public official) If a public official or relevant person receives an improper solicitation, he or she should clearly express an intention to refuse the solicitation, and report the fact to the head of the concerned agency, if such solicitations repeatedly occur.
- (Head of the concerned agency) The head of the concerned agency should report to an investigative agency if the report requires further investigation, record and manage main content of and measures taken to an improper solicitation, and if necessary, disclose the improper solicitation on the internal web page.
- (Measures) The head of the concerned agency may take measures such as provisional suspension of performing the duties, designation of a substitute, and transfer of the public official or relevant person who received an improper solicitation.

The head of the concerned agency may let the public official or relevant person continue his or her duties in the event that it is very difficult to find a substitute to replace the public official or relevant person.

### **3. Prohibition of acceptance of financial or other advantages**

#### **A. Prohibition of acceptance of financial or other advantages by public officials**

- Unacceptable financial or other advantages and sanctions

- A public official or relevant person should be subject to criminal punishment if he or she receives financial or other advantages in excess of one million won at a time or three million won in a fiscal year from the same person, regardless of his or her duties or the title of such offer.

A fine for negligence will be imposed when a public official receives financial or other advantages not exceeding one million won if the acceptance is in connection with his or her duties.

- Exceptions include financial or other advantages that are needed to smoothly perform the duties or permitted by social rules.
- Prohibition of acceptance of financial or other advantages by the spouse of a public official
  - The spouse of a public official or relevant person should not receive financial or other advantages that are in connection with the duties of the public official or relevant person.

A public official will face sanctions if he or she or relevant person knows the fact that his or her spouse received unacceptable financial or other advantages but does not report it.

- Exceptions include cases where a public official or the spouse returns the financial or other advantages or manifested a will to refuse the advantage.

#### B. Limits on the amount of honoraria for outside lectures

If a public official or relevant person intends to conduct an outside lecture related to his or her duties, he or she should report it in advance and should not accept an honorarium exceeding the limits provided under the Presidential Decree. Should a public official or relevant person receive an honorarium exceeding the amount as prescribed in Presidential Decree, he or she should report the fact to the head of the concerned agency and immediately return the excessive amount to the provider.

A head of the concerned agency may prevent an outside lecture that a public official or relevant person reported should it be deemed to hinder the public official or relevant person from performing his or her duties in an upright manner.

A fine for negligence will be imposed if a public official receives an honorarium exceeding the prescribed amount, and disciplinary measures will be taken if he or she does not fulfill the duty of reporting the outside lecture in advance.

#### 4. Reporting and handling of violations and protection and rewards for reporters

- Reporting and handling violations

Anyone who discovers that a violation of the Act has taken place or is taking place may report it to the public institution where the violation occurred or its supervisory body, the Board of Audit and Inspection (BAI), investigative agencies, and the ACRC.

The investigative agency should examine, inspect, or investigate the report, take necessary measures such as prosecution or disciplinary measures in accordance with the result of investigation, and notify the reporter of the results and measures taken.

- Protection and rewards for reporters

Protection measures such as prohibiting disadvantageous measures, restoring damage, safeguarding confidentiality, protecting physical safety, and mitigating liability may be provided for reporters.

Monetary compensation and rewards may be provided if the report led to an increase in the revenue of public institutions.

#### 5. Disciplinary actions and punishments

Disciplinary actions should be taken if a public official or relevant person violates the Act. Disciplinary actions may be taken along with punishment or fine for negligence.

##### <Disciplinary Actions and Punishments>

Type	Violations	Sanctions
<b>Improper solicitation</b>	A stakeholder who improperly solicits a public official directly	None
	A stakeholder who improperly solicits a public official through a third party	Fine for negligence not exceeding 10 million won
	A person who improperly solicits a public official for a third party (Private person)	Fine for negligence not exceeding 20 million won
	A public official who improperly solicits another public official for a third party	Fine for negligence not exceeding 30 million won

	<b>A public official or relevant person who performs his or her duties as directed by an improper solicitation</b>	Imprisonment for not more than two years or by a fine not exceeding 20 million won
<b>Graft</b>	<p><b>&lt;Criminal punishment for the receipt of a financial or other advantage in excess of one million won at a time or three million won in a fiscal year&gt;</b></p> <p><b>A public official who receives a financial or other advantage in excess of one million won at a time or three million won in a fiscal year from the same person, regardless of his or her duties or the title of</b></p> <p>* A public official who does not report the fact that his or her spouse received a financial or other advantage</p> <p>* A person who provided a financial or other advantage to a public official or his or her spouse</p>	Imprisonment for not more than three years or by a fine not exceeding 30 million won
	<p><b>&lt;Fine for negligence for the receipt of a financial or other advantage not exceeding one million won&gt;</b></p> <p><b>A public official who received a financial or other advantage not exceeding one million won</b> in connection with his or her duties, regardless of whether such offer is given in exchange of any favors</p> <p>* A public official who does not report the financial or other advantage received by his or her spouse</p> <p>* A person who provided a financial or other advantage to a public official or his or her spouse</p>	Fine for negligence of twice to five times the received amount
	A public official who received an honorarium exceeding the limit for an outside lecture	Fine for negligence not exceeding five million won