



Risk Management: Anti-corruption Measures for the Prosecution Service : Eradicate Corruption

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1. The critical aspect: Independence

First and foremost, it is very important for prosecutors to have independence when investigating or prosecuting the cases. Normally, corrupted acts are related to high rank government officials who have strong influence on the society. So, when law enforcement starts investigation, the suspected are making every effort to hinder the investigation using every possible means at their hands. If prosecutors don't have independence guaranteed by the law, it is really difficult to continue investigation and find out the truth under such influence. Since at the inception of investigation, there cannot be strong evidence, prosecutors cannot strongly argue that it is certain that the suspected committed crime.

Therefore, every country has to take measures to strengthen independence of prosecutors.

The standards for prosecutors articulated by IAP which stipulates “Independence” and “Impartiality” can be a guide to this matter.

2. Asset recovery

(1) The importance of confiscation to get "The Justice"

One of factors which can contribute to eradicate corruption is that law enforcement can trace out every profits produced by commission of crimes. Especially, targeting proceeds from crime is an efficient tool in corruption crime, where the main motive is to acquire benefit. Without this, the commission of crimes cannot be deterred since perpetrators of crimes might think they can enjoy the fruits of crimes after they serve a certain period of punishments which, they think, is a lower cost compared to the criminal gains or they can hire someone with promising to distribute a part of gains who can voluntarily be punished on behalf of them. Therefore, it is critical for us to try every means possible to secure criminal gains by not only strengthening legal measures such as restraint, freezing criminal proceeds before securing conviction.

(2). Strengthening legal measures to trace criminal proceeds.

First, it is necessary that countries have to adopt practical measures which keep offenders from profiting from their crimes. When offenders come to know that there is a slight chance that law enforcement starts investigation, they are trying to hide their criminal proceeds by adopting a variety of ways such as changing the legal titles of real estate or bank accounts, and so on. As a result, when convicted, they have nothing left under their legal possession. Therefore, measures have to be established which can identify assets which offenders have and then, restrain and freeze the assets till securing conviction to prevent them to sell out everything and hide out criminal gains.

3. Enforcing measures to promote International cooperation

With the globalization, corruption is no longer domestic issue. Foreign company, when expanding their business area, often give bribery to foreign government officials or a person-in-charge of companies to get the contract or preferential treatment in the procurement process in other countries. This brought us the difficulties such as sovereignty and jurisdiction matters when investigating crimes. Also, offenders often move out of the country after committing the corruption crimes and enjoy the fruits of crimes in other countries where the power of investigation cannot be reached. As we all know, they take advantage of legal loopholes in

certain country which doesn't have enough regulation against money-laundering. Sometimes they can set up shell companies in the foreign jurisdiction which offer them tax cuts and the protection of secrecy in the banking transactions. At the same time, they put every effort into hiding their criminal proceeds through complicated money-laundering manners. Once there occur criminal profits, through various steps of hiding the origin of the profits, offenders can hide criminal proceeds in the foreign soil and get them back into the country it came from after money-laundering making it look like legal. To cope with these problems, international cooperation must be strengthened. To achieve this goal, we shall strengthen and develop the relationship with other countries concerned to get necessary assistance from each other. Every country when received the request of assistance from other countries,

Therefore, every country has to review their legal and practical measures to further international cooperation and tailor them to act properly when investigating and tracing the criminal gains. However, the current system of international cooperation is so time-consuming that countries cannot get any adequate information and assistance in due course. In the meantime, perpetrators can change the location of proceeds into other country again or spend them all.

4. Other aspects:

(1) Reasonable sentencing

To deter corruption crimes, there must be reasonable sentencing to the criminals. If offenders think that they can get lenient sentencing compared to what they can get from the crimes, they would not cease to commit crimes.

(2) Witness Protection

Corruption investigations require the identification who are in a position to assist in an investigation by providing the information about a corrupt official and his or her activities. Given the secretive nature of many corruption offences, in the majority of cases, persons who have information about them fail to report it to the police, because they fear the consequences

and because they might incriminate themselves. To encourage witness or informant freely giving necessary information to law enforcement, measures have to be taken to protect them.

(3) Criminalization

To combat corruption, the first step is that every country has to establish criminal and other offences to cover a wide range of acts of corruptions, if these are not already crimes under domestic law. Since offenders are trying to find out the weakness of the legal system and to take advantage of these, every country has to review their own legal system and revise the law, when appropriate, to cover every aspect of corruption acts.

Korea has already set up functional domestic measures by enacting "the special code for confiscation out of corruption of public servants". Also, we have to review our system of international cooperation and remove unnecessary steps as many as possible to meet minimal international standards recommended by UNODC, FTAF, Egmont group and other relevant international stakeholder. Strengthen the relationship between other countries which we have to deal with in the pursuing to catch criminal and trace out criminal profits is also needed. In addition, it is very urgent to participate and ratify the related international treaties and conventions. Simultaneously, we have to sign more bilateral treaties with other countries which will enhance the international cooperation.

5. Conclusion

To deter offenders from committing crimes, especially corruption crimes, it is very important for prosecutor to decide cases independently and impartially. Moreover, every country has to be equipped with the capacity to trace and secure criminal proceeds out of crimes. In carrying out this objective, firstly, every country has to review their regulatory and

legal regimes and revise it into a way which can allow law enforcement to identify, freeze and restrain the criminal proceeds more easily before conviction. Also, it is detrimental to establish the efficient system in the matter of international cooperation.