

Synopsis

Procedures for Cross-Border Search and Seizure of Electronic Evidence

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With dramatic innovations in information technology and electronic communications, including cloud computing service, acquiring electronic evidences which are stored in foreign countries in a timely, efficient manner has become a new but significant challenge.

Some countries have enacted laws or entered into treaties to facilitate access to electronic information, such as the Clarifying Lawful Overseas Use of Data Act, or CLOUD Act of the United States, or the Budapest Convention on Cybercrime of the Council of Europe (Budapest Convention).

The Criminal Procedure Act of Korea does not specify an explicit provision for procedures for cross-border search and seizure of electronic evidence. That being said, the Korean Supreme Court held that search and seizure of e-mail data stored in another country is permitted by logging on to the e-mail with legitimately obtained user name and password, and lower courts interpret that trans-border remote search and seizure is authorized under the Criminal Procedure Act by operation of law.

The Supreme Prosecutors' Office of Korea has been, and will always be proactive in interpreting the relevant rules and regulation to ensure that remote search and seizure warrant are issued in a timely, efficient manner.

Furthermore, the Office has long maintained the Forensic Science Investigation Department to analyze acquired electronic evidence, enhance relevant techniques, and to implement international cooperation with regard to electronic evidence.

The Supreme Prosecutors' Office has been deliberating over signing the CLOUD Act agreements with the US and acceding the Budapest Convention. Add to that, the Office is also examining the potential for stipulation the procedures for remote search and seizure of electronic evidence, including the obligations of preservation and disclosure of communications and records.