

**Preliminary Findings of the Research on
Prevention of Corruption and Impeachment of
Head of State/Government in Selected Places**

1. Legal Regulation for Corruption Control

South Korea

1.1 In South Korea, there is no specific law or regulation for corruption control of the President and the Prime Minister (who is appointed by the President with the consent of the National Assembly).

1.2 The President and the Prime Minister, similar to all government officials, are subject to the *Anti-corruption Act*, the *Public Service Ethics Act* and relevant corruption provisions under the *Criminal Act*. Under the *Anti-corruption Act*, the Anti-Corruption Commission is established to receive complaints concerning acts of corruption and monitor certain aspects of the process of investigation. The *Public Service Ethics Act* is used to regulate public financial disclosure by the President, the Prime Minister, Members of the National Assembly and other senior public officials.

1.3 Under the Korean Constitution, the President is entitled to criminal immunity during his or her tenure of office except for insurrection or treason.

1.4 The Prosecutor General heads the Supreme Prosecutor's Office, and is appointed by the Minister of Justice (who is appointed by the President on the recommendation of the Prime Minister) for a two-year term without reappointment. Prosecutors in Korea have limited authority to conduct wiretaps and undercover stings, to plea bargain, and to grant immunity to co-operating suspects and witnesses.

1.5 South Korea has an ad hoc independent counsel system. In order to appoint an independent counsel for a defined corruption case, the National Assembly must pass a bill. The bill prescribes the object of investigation, the range of functions and the period of investigation.

The United Kingdom

1.6 In the United Kingdom (UK), there is no specific law or regulation for corruption control of the Prime Minister.

1.7 The Office of the Prime Minister in the UK is the creation of the constitutional convention, and the role and powers of the Prime Minister depend mainly on convention and political circumstances. The Office is barely acknowledged in legislation.

1.8 In the UK, the principal statutes dealing with corruption are (1) the *Public Bodies Corrupt Practices Act 1889*; (2) the *Prevention of Corruption Act 1906*; and (3) the *Prevention of Corruption Act 1916*. In addition, there is a common law offence of bribery of a public official.

1.9 In 1998, the Law Commission for England and Wales published a report entitled *Legislating the Criminal Code: Corruption*. The report called for a modern statute to replace all or parts of the existing relevant legal provisions and to incorporate the common law offence of bribery.

1.10 In March 2003, a draft bill to reform the law of bribery and corruption was published by the Home Office. A Joint Committee of both Houses was set up to consider the draft bill, resulting in the opinion that the language of the bill was too complex and the definition of corrupt conduct was not sufficiently clear. The Committee also concluded that the draft bill's clause on the waiving of parliamentary privilege required reworking.

1.11 There is some uncertainty on whether the common law offence of bribery of a person holding a public office extends to Members of Parliament because membership of Parliament does not constitute public office for the purpose of the common law.

The United States

1.12 In the United States (US), there is no specific law or regulation for corruption control of the President.

1.13 The *Ethics on Government Act of 1978* requires the President and other senior public officials to make annual financial disclosure. Such requirement is extended to their spouses and dependent children.

1.14 Although the US Constitution does not provide express immunity for the President, the courts have developed a doctrine of official immunity for the President. The President is entitled to absolute immunity in civil suits regarding all of his or her official acts. There are various legal opinions regarding criminal indictment of an incumbent President.

1.15 Originally, the *Ethics on Government Act of 1978* authorised the Attorney General to make an arrangement to appoint an independent counsel to perform all investigative and prosecutorial functions of the Department of Justice if he or she believed that any federal criminal law had been violated by the President or other senior public officials. However, when the independent counsel authority expired in 1999, neither House of Congress passed a renewed legislation.

1.16 Under the current regulations of the Department of Justice, the US Attorney General may appoint an outside special counsel to conduct a particular investigation when the prosecution by the US Attorney's Office "would present a conflict of interest" and such appointment "would be in the public interest."

2. Legal Procedure of Impeachment

South Korea

2.1 The Korean Constitution stipulates that the National Assembly may pass a motion for the impeachment of the President and the Prime Minister if they have violated the Constitution or other acts in the performance of official duties. A motion for impeachment of the President shall be proposed by a majority of the Members of the National Assembly and approved by two-thirds or more of the Members of the National Assembly. A motion for impeachment of the Prime Minister shall be proposed by one-third or more of the Members of the National Assembly and approved by a majority vote in the National Assembly.

2.2 In Korea, the Constitutional Court has jurisdiction over impeachment proceedings. When the National Assembly passes the impeachment motion, the person who is impeached shall be suspended from exercising his or her power until the impeachment has been adjudicated by the Constitutional Court. When a request for impeachment is justified, the Constitutional Court shall pronounce a judgment to the effect that the person who is impeached be removed from public office. A judgment upholding impeachment does not exempt the person who is impeached from other civil or penal liabilities.

2.3 The impeachment process is regulated by the Constitution, the *National Assembly Act* and the *Constitutional Court Act*.

The United Kingdom

2.4 In the UK, impeachment is a formal accusation of 'wrongdoing', usually when a public official is charged with improper conduct in public office, or a crime against the state. A successful impeachment often results in the individual being removed from his or her post. This mechanism means that the House of Commons as a body can accuse officials who have abused their authority and put them on trial before the House of Lords.

2.5 The impeachment process in the UK is mainly governed by parliamentary procedures. However, the last successful impeachment was witnessed in 1806.

The United States

2.6 The US Constitution holds that the President may be impeached in cases involving treason, bribery, and high crimes and misdemeanours. The House of Representatives is given the power to approve such charges by a majority vote. If the charge is approved, the case then goes to the Senate as the trial body. If two-thirds of the Senators present approve the charge, the President will be found guilty and removed from office.

2.7 An impeached President is not exempted from other civil or penal liabilities. Article I, Section 3, Clause 7 of the US Constitution provides that *"Judgement in the cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgement and punishment, according to Law."*

2.8 The impeachment process in the US is governed by the Constitution, precedents and congressional procedures.