



국민권익위원회

Anti-Corruption &
Civil Rights Commission

The Improper Solicitation and Graft Act

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ACRC



**PLEASE TURN OFF
CELLPHONE!!!**

Hello!

AMCHAM!

MY FRIEND!

TAMY OVERBY

- Why we need this law
- Pros & Cons
- Main contents of the law
- **Cases**
- Solutions & Suggestions
- Q&A

Silicon valley?

Far Away

from **D.C.**

Cut red tape & Make a
friendlier business
environment for global
companies

I DO NOT THINK SO!!

One more
regulation?

No

Globaliz-
-ation?

Globalization can be simply described as "success in one place could be possible in another place"

Int'l organization office

- USA 3646
- BELGIUM 2194
- FRANCE 2079
- UK 2048

43

GLOBAL COMPANY

H.Q

- SINGAPOR 4,000
- HONGKONG
1,360
- KOREA (?)

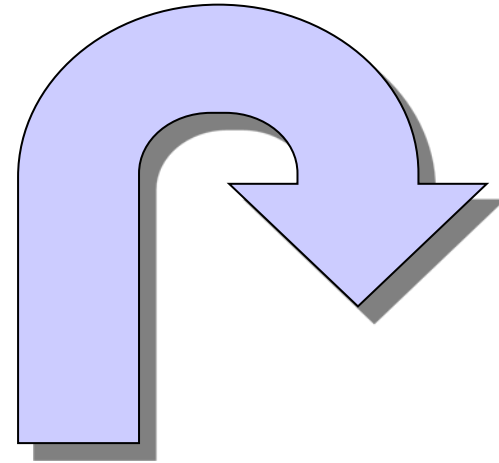
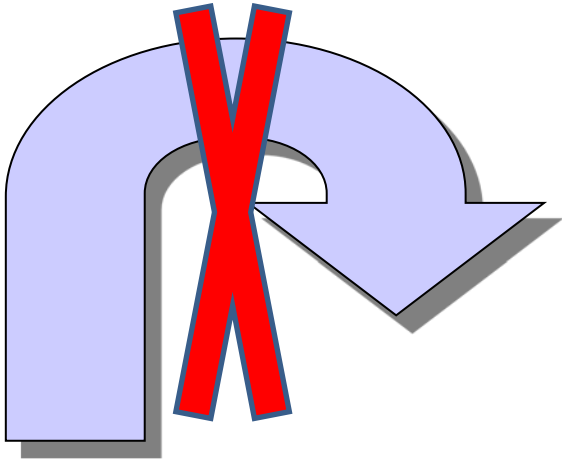
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FDI (2013)

- UK'S 1/9
- GERMAN'S 1/5
- OECD (?)/34
(GDP RATIO)

33rd

difference?



Right understandings

and attitude on this

law for a real

globalization in Korea

I trust you and Amcham.

Why?

Because you will be **the most enthusiastic supporters** on this law and anti-corruption efforts of the ACRC!

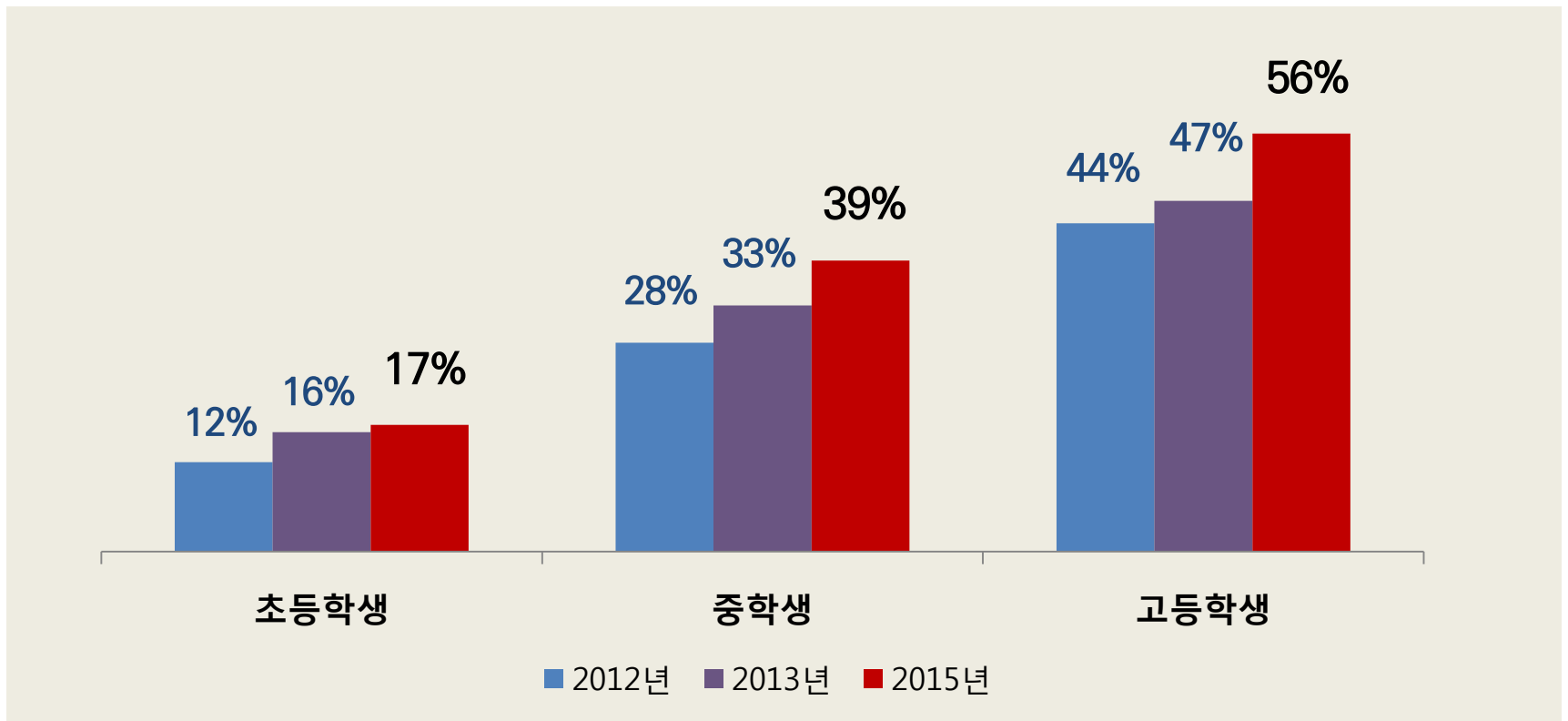


**A SOCIETY OF
CONNECTIONS, TIES...**

BLOOD, ties >

SPIRIT, reason

According to a survey of teenagers on honesty,
Teenagers are willing to stay **in jail for one year**
if they got **1 billion won..**



Pros and Cons

Pros

- ✓ A turning point against Corruption
- ✓ Punishment without proof of a link between a gift and a favor
- ✓ Protecting public officials
- ✓ Level playing field
- ✓ Opportunity to end unnecessary entertainment and expensive gift-giving
- ✓ No free-meals

Cons

- ✓ Negative impact on communication and social relation
- ✓ Weakening consumption and economy
- ✓ Undermining communication between government and companies
- ✓ Abuse of investigation by investigative agency
- ✓ Not effective or impractical

Easily refuse

Accepting unlawful
requests & gifts,

Not a regulation

But a
protective
measure

Solid self-regulating
guideline

FCPA, Code of conduct

Rearrange and
implement staff
training

Complaints & Confusion

NO DINNER
APPOINTMENT
SINCE 9.28

Lack of accessible information

- Published only in Korean

Vagueness of the law

- Ambiguous articles

- Each legal expert
different opinion
- Wait until the first
violator

PR, Difficulties
gathering
information
from gov't.

Main contents of the Act

1. Scope of application

2. Prohibition of improper solicitations

3. Prohibition of graft

1)Public official

2)General public

- Main core of the law

Solicitation



NO!

Graft



NO!


No one shall solicit any public official, etc., performing his or her duties, directly or through a third party, to do any of the following improper acts.

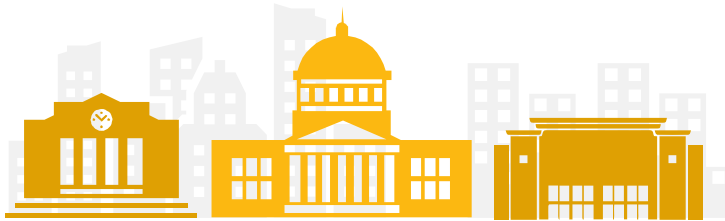
(Article 5(1) of the ACT)

No one shall offer, promise to offer, or express any intention to offer, any unacceptable financial or other advantage to any public official, etc., or to his or her spouse.

(Article 8(5) of the ACT)

1. Scope of application

 40,919 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, and media companies

 Individuals :4M(SPOUSE)



- ✓ 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
 - * Members of various committees; private persons with an authority delegated from public institutions; those on assignment from the private sector to a public institution; individuals conducting deliberation or assessment in relation to public duties
- ✓ General public
 - (Private persons who improperly solicit public officials or who offer them financial or other advantages)

2. Prohibition of improper solicitations

Types

14 types of improper solicitations

1 Exerting influence over authorization, permission, etc.	2 Mitigating or exempting administrative dispositions or punishments	3 Intervening in personnel management such as appointment or promotion	4 Trading in influence over appointment to a position intervening in the decision-making of public institutions	5 Intervening in selecting winners of award or prize granted by public institutions
6 Disclosing duty-related confidential information on tender, auction, etc.	7 Intervening in selecting contract winners, etc.	Violation of laws & regulations + Abusing position or authority	8 Intervening in assignment or provision of subsidies or investment	9 Abnormal transaction practices of goods & services produced or provided by public institutions
10 Handling or manipulating admission or grades at schools	11 Handling matters related to military service including physical examination for conscripts	12 Intervening in assessments and judgments performed by public institutions	13 Manipulating the outcome of administrative guidance, control, etc. or ignoring discovered violations	14 Intervening in investigation, judgment, etc. of a case

Violation of laws & regulations

+

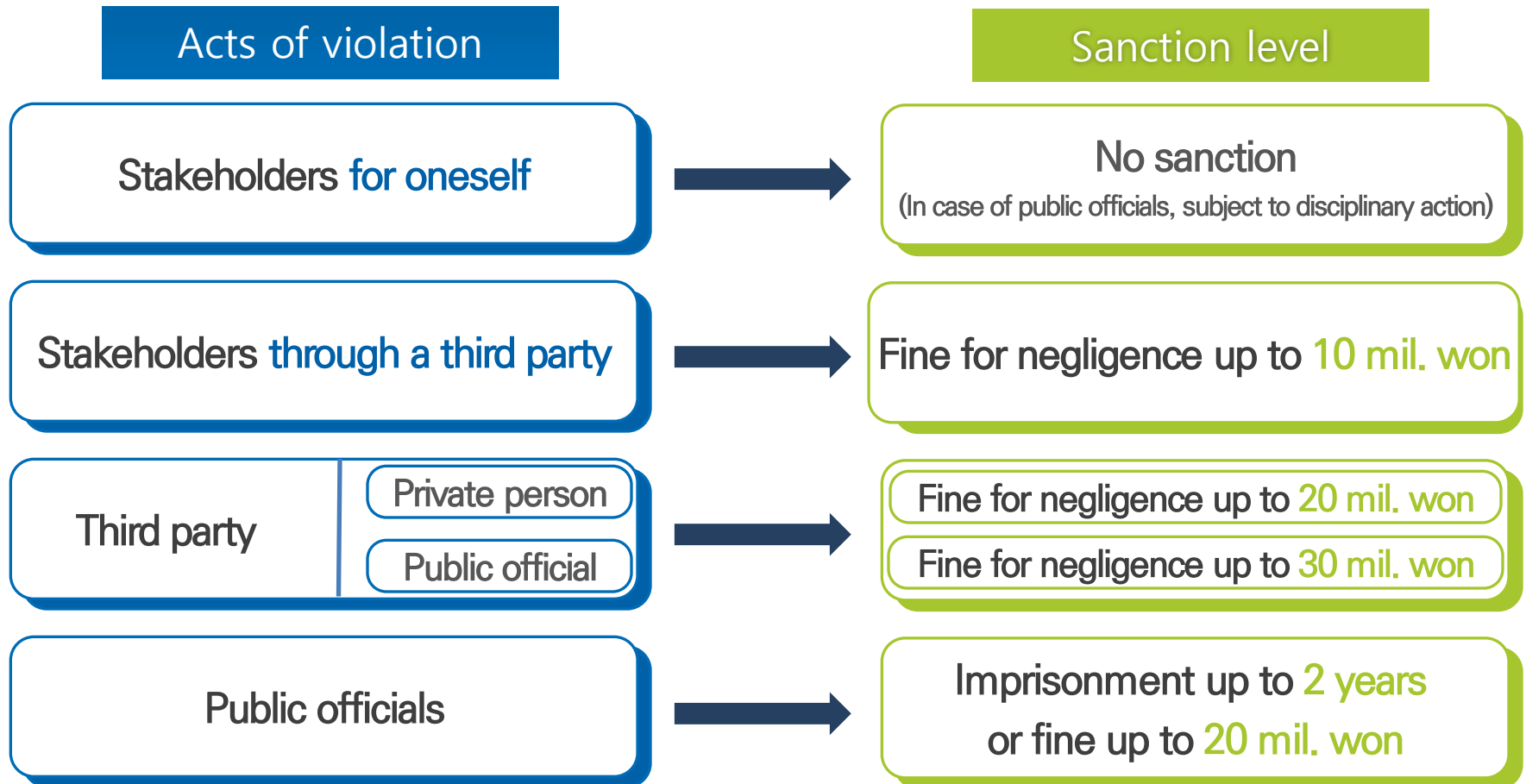
Abusing position or authority

Exceptions

1	2	3	7
Requesting certain actions in accordance with Acts and standards	Requesting certain actions in public	Delivering a third party's complaints by elected public officials for the public interest	
4	5	6	Other acts not recognized as defying social rules
Requesting completion of public duties within a statutory deadline	Requesting or demanding confirmation or certification of a duty or juristic relations	Requesting explanation or interpretation of systems or Acts through inquiry or consultation	

Sanctions

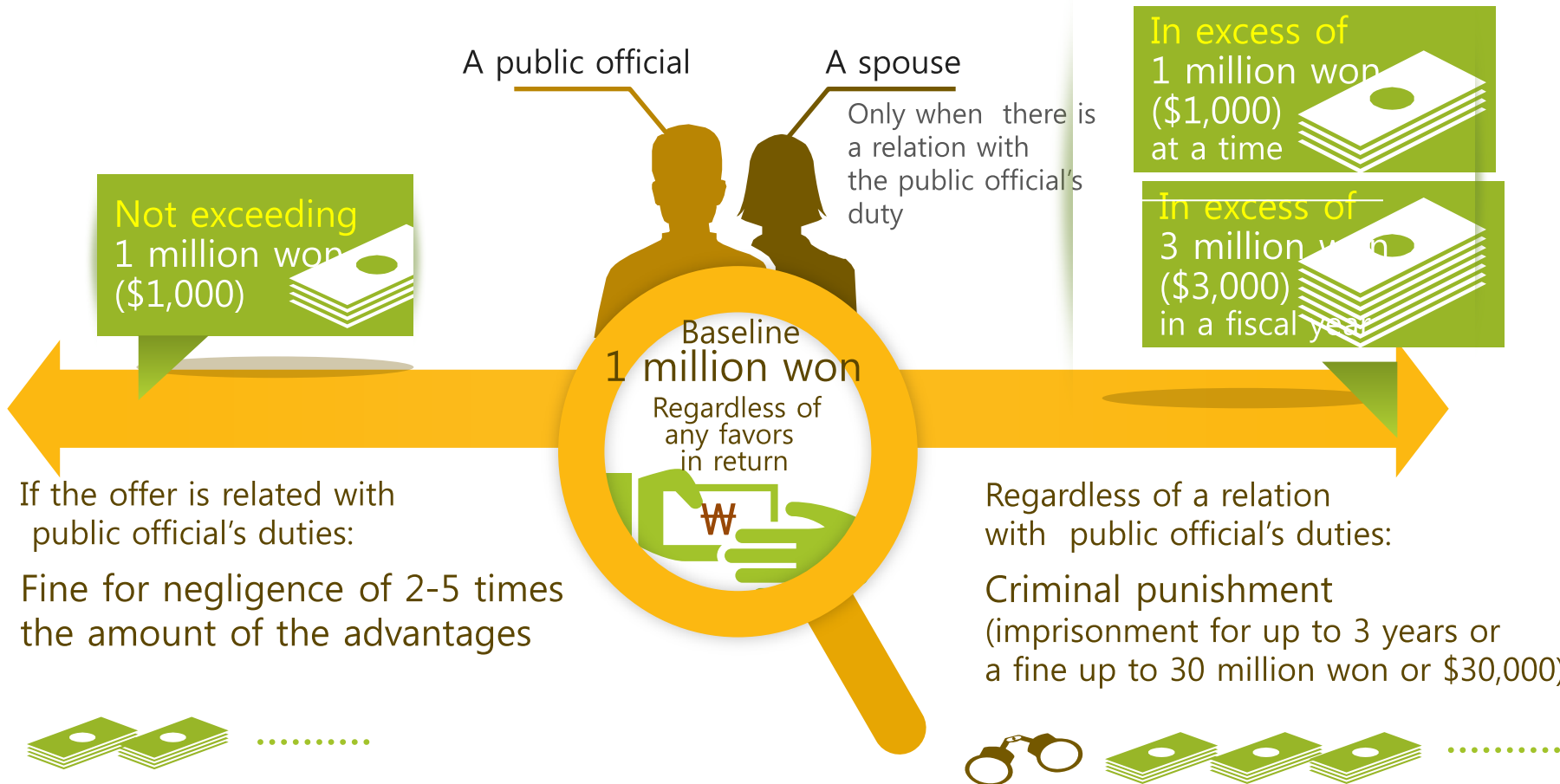
● Sanction level by improper solicitation



3. Prohibition of graft

1) for public official

Criteria for sanctions against the acceptance of financial advantages by a public official or his/her spouse



Baseline
1 million won
Regardless of
any favors
in return



The Act prohibits receiving any type of financial advantages if the offer is duty related.

Unacceptable financial or other advantages

Any financial interest:
Money, securities, real estate, etc.

Entertainment: Food, drink, golf, etc.
Conveniences: Transportation,
accommodation, etc.

Other tangible & intangible
financial benefits:
Exemption of any debt, etc.

Acceptable financial or other advantages(as exceptions)

1. Financial or other advantages offered to **console, encourage or reward** public officials
2. **Food and drink, money** offered for smooth performance of public duties, social relationships, rituals or assistance to festivities & funerals **within the limit of value**
Provided by Presidential Decree
3. Financial or other advantages **offered from a legitimate source of right**
4. Financial or other advantages **offered by relatives of a public official or relevant person**
5. Advantages given to a public official who is in need by **those who have long-term, continuous relationships**
6. Transportation, accommodation, food, etc. **uniformly provided to all participants**
7. **Souvenirs or promotional goods distributed to many & unspecified persons, or prizes** given by a contest or lottery
8. Financial or other advantages **permitted by any other statutes, standards or social rules**

2. Food and drink, money offered for smooth performance of public duties, social relationships, rituals or assistance to festivities & funerals

within the limit of value

Provided by Presidential Decree

Within the limit of value

Provided by Presidential Decree

Receiving **meals** priced higher than
30,000 won,
gifts exceeding **50,000** won,
congratulatory, condolence money
over **100,000** won
are banned.

6. Financial or other advantages that are **uniformly provided** by an organizer of an **official event** related to the duties of a public official or relevant person **to all participants** including transportation, accommodation, food and drink

3. Prohibition of graft

2) for general public

Criteria for sanctions against **the offer** of financial advantages to a public official or his/her spouse



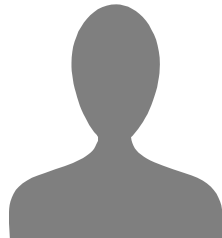
A person who provided
a financial or other
advantages to a public
official or his/her
spouse will be imposed
on a fine for negligence
or criminal punishment.

Responsibility of legal persons

- Where employees, etc. commit violations regarding duties of the legal persons, the legal person as well as the violator shall be punished
- The legal person, etc. shall be exempt where the legal person has given due attention and supervision to prevent such a violation



To ensure integrity of the private sector by reflecting corporate voluntary efforts into the decision process of sentencing punishment or imposing fine



Representative, agent, employee
or other servant of a legal person, etc.



Legal person or
individual employer

*CASE



Those subject to the Act (Case 1)

A is a lawyer of law firm B, member of AMCHAM and a non-standing commissioner of administrative appeals commission set up under the administrative adjudication act. After winning a criminal case irrelevant to administrative appeals, he received a watch worth 1.5 million won from his client.

Did he violate the Act?



Those subject to the Act (Case 1)

NO!

Because the gift is given in relation not to his position of a non-standing commissioner of Administrative Appeals Committee,
but to a lawyer of law firm B.



Those subject to the Act (Case 2)

A is CEO, an AMCHAM member and a commissioner of deliberation committee on city C industrial complex project founded under the ordinance of city C.

Is he a public official or a relevant person who is subject to the Act?



Those subject to the Act (Case 2)

YES!

Any commissioner of a commission set up under laws is subject to the Act.

Laws include acts, Presidential decrees, ordinances of the Prime Minister, departmental/ministerial ordinances, municipal ordinances and municipal rules, as well as public notice and instruction under its superior rules.

Prohibition of improper solicitation(Case 3)

CEO A, an AMCHAM member suffered from a delay of being admitted at public hospital D. He asked his friend B to influence the hospital's chief receptionist C to have him admitted ahead of other people registered on the waiting list.

At B's request, C changed the order of patients on the waiting list to admit A first.

In that case, what punishments will be imposed on A, B and C?

Prohibition of improper solicitation (Case 3)

The case is categorized as an improper solicitation.

A will be fined less than KRW 10 million since he made an improper solicitation through a third party.

B will be fined less than KRW 20 million since he made an improper solicitation for a third party.

C will face a fine of less than 2 year of prison term or less than 20 million won since he admitted A ahead of others under the influence of improper solicitation by B

Prohibition of improper solicitation (Case 4)

Employee B of construction company AA requested public official D in charge of construction approval a construction permission, although AA did not meet the requirements for the construction.

After D refused the request, AA's other employee C made the same request to D.

In that case, what punishment will be imposed on AA, B, C and D?

Prohibition of improper solicitation (Case 4)

The case is categorized as the same improper solicitation in nature and fact.

B and C will face a fine for negligence of less than KRW 20 million since they made an improper solicitation for a third party

- AA will face a fine for negligence under a joint penal provision, but if AA had made considerable monitoring or inspection efforts to prevent violation of the Act, it is exempted from punishments.
- Since D was offered the same improper solicitation from C, he should report to the head of his organization.



Prohibition of receiving financial or other benefits (Case 5)

AMCHAM employees A and B paid KRW 50,000 each for an orchid of 100,000 won and gave it to C who is newly appointed a division director of a central government agency.

What punishment will be imposed on A, B and C?



Prohibition of receiving financial or other benefits (Case 5)

C will face a fine for negligence of two to five times the amount of the gift, since he received a gift of 100,000 won in relation to his public duty. He is also subject to disciplinary actions.

A and B will face a fine for negligence of two to five times of 100,000 won, since even though each of them paid 50,000 won for the present, they joined the act of violation of the Act, thereby considered committing the act of violation.



Prohibition of receiving financial or other benefits (Case 6)

Company manager A and employee B had a lunch with 3 employees of a public organization and the bill per a person amounted to 55,000 won.

Considering the price limit of a meal under the Act, A paid 150,000 won and the rest paid 25,000 won each. The lunch was duty-related.

Did they violate the Act?



Prohibition of receiving financial or other benefits (Case 6)

NO

Since each of them split the bill for the price exceeding 30,000 won per person,

they did not violate the 30,000 won limit for a meal.

If the purpose of the lunch is proven to facilitate the performance of duties, they will not be subject to punishment.



Prohibition of receiving financial or other benefits (Case 7)

Public official was treated to a meal of 45,000 won along with a gift of 5,000 won. Since the total amount was less than 50,000 won,

Is it true that he did not violate the Act?



Prohibition of receiving financial or other benefits (Case 7)

NO!

If he is treated to a meal and a gift, the total value of such offer should not exceed 50,000 won and the price of the meal and the gift should be less than 30,000 won and 50,000 won, respectively.

He was treated to a meal exceeding the limit of 30,000 won.

Thereby, subject to a fine for negligence.

Prohibition of receiving financial or other benefits(Case 8)

Company invited 30 relevant public Officials at its product launch event at a hotel and treated 100,000 won worth of meal and 70,000 won worth of gift to each of them.

Did they violate the Act?



Prohibition of receiving financial or other benefits(Case 8)

YES!

What determines whether the event is official or not is based on its contents, participants, openness, expense.

Given that **the participants were limited to 30 public officials** and that there is no inevitable reason for **hotel dining to be served**, **the company is subject to punishment.**



Prohibition of receiving financial or other benefits (Case 9)

If a public official received a gift of 70,000 won in relation to his public duty, is it okay if he returns only 20,000 won, the amount exceeding the 50,000 won-limit for a gift?

If he received a congratulatory payment of 150,000 won, is it okay if he returns only 50,000 won, which is the amount exceeding the 100,000 won-limit for congratulatory or condolence payments?

Prohibition of receiving financial or other benefits (Case 9)

The limit for a gift given to facilitate the performance of duties is less than 50,000 won. Giving back what exceeds the limit in cash is not allowed.

Meanwhile, as for congratulatory payment, giving back what exceeds 100,000 won is allowed.



Prohibition of receiving financial or other benefits (Case10)

Are companies, organizations, associations, etc. able to invite public officials, journalists, professors to year-end /or annual meetings, conferences, media briefing, serving lunch or dinner (usually at hotels) and providing them with small gifts for complimentary?

Case by case

If the event is official, and financial or other advantages(transportation, accommodation, food and drink) that are uniformly provided by an organizer to all the participants,

those financial advantages(except gift) will be acceptable by the participants. However, it is required to review carefully purpose of event, expenses, participants.

Closing

SOLUTIONS
&
SUGGESTIONS

CHANGE

THE MINDSET

AND

HOPITALITY CULTURE

More lunch &
coffee meetings

Instead of
expensive dinners



합니 다...

Four persimons

Persimmon (감)

four (사)

123RF

123RF



123RF



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010-6521-8901

Thank you!