

Monitoring Anti-Bribery Enforcement in South Korea: Evidence from OECD

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Abstract

This article investigates the implementation and enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) in South Korea by analyzing the Working Group on Bribery's (WGB) four-phase peer-review monitoring system. Since ratifying the convention in 1999, South Korea has developed a legal framework, which is the Foreign Bribery Prevention Act (FBPA). However, there is a significant gap between formal (de jure) compliance and practical (de facto) enforcement. Through successive monitoring phases, the study identifies South Korea as a condition of "maturity without volition". This means that South Korea has good institutional structures but lacks the political and judicial will that is important to prosecute powerful economic actors, specifically Chaebols. While phases 1-3 show that South Korea has rapid legislative adoption, phase 4 highlights that South Korea has a declining performance in enforcement and problems that some cases rely on foreign jurisdictions. These problems derive from high levels of secrecy in case detection, narrow interpretations of foreign public officials, and cultural leniency regarding corporate sanctions. Eventually, the article concludes that transitioning to genuine integrity requires moving beyond impractical compliance. So, the article recommends strengthening the judiciary's understanding of the convention's principle of functional equivalence and fostering a shift toward proactive and practical risk management within the corporate sector. This will bridge the existing enforcement gap.

Keywords

Korea, OECD, Foreign Bribery, Compliance, Working Group on Bribery

Introduction

The evolution of the global anti-corruption regime has been characterized by a transition from a unilateral domestic standard to a multilateral peer-review regime. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) was adopted in 1997 by the Organisation for Economic Co-operation and Development (OECD). This convention is the first multilateral legal instrument that focuses on the supply side of foreign bribery (OECD, 2025a). The target of this convention is on the “supply side” of corruption, focusing on those who offer, promise, or give bribes rather than those who receive them. In other words, this convention pays attention to companies to hold liability for bribing foreign public officials.

The Anti-Bribery Convention requires State Parties (member to the convention) to establish the offence of bribing a foreign public official, to provide effective sanctions, and to ensure that their law enforcement authorities investigate and prosecute without improper influence. Moreover, the convention places particular emphasis on enforcement in practice, including the detection of cases, the conduct of investigations, and the initiation of criminal proceedings, rather than merely on the legislative body. The convention is accompanied by an intensive monitoring process under the Working Group on Bribery (WGB) to evaluate compliance with these obligations (OECD, 2025a). Even though the State Parties have adopted the convention, enforcement of foreign bribery laws remains highly uneven across them. Even though some countries actively investigate and prosecute cases of bribery of foreign public officials, many others have inconsistent or unrelated enforcement (Basarik Kasap, 2024). This shows a key problem in enforcing the law relating to the convention. So, the OECD needs to figure out how to ensure not merely that legal instruments are adopted on paper, but also that they are implemented and enforced effectively in practice.

The importance of OECD is that it plays a part in the international governance of foreign bribery through its WGB. The WGB was established in 1994 to bring together States Parties to monitor and assess the implementation and enforcement of the OECD Anti-Bribery Convention. The WGB seeks to promote compliance by creating transparency about national enforcement practices, mobilizing peer and reputational pressure, and encouraging learning and institutional reform through successive monitoring processes (OECD, 2025b). The WGB conducts a detailed and recurrent monitoring process through 4 phases of assessment, unlike many international monitoring bodies. The process includes on-site visits, completing questionnaires, and participating in plenary discussions with peers. Then, the results from the process are published in comprehensive country reports that assess legal frameworks and institutional structures in enforcing the law. Therefore, the WGB has become one of the most influential peer-review mechanisms in the global anti-corruption regime through these processes.

The OECD Anti-Bribery Convention’s peer-review monitoring process is considered the gold standard for evaluating how countries implement and enforce this gold standard. This evaluation also ensures that the convention’s laws and structures are effective in practice. This 4 phases of monitoring process is compulsory for all Parties to the convention. The core functions of the monitoring process are (1) to ensure compliance in a level playing field; (2) driving legislative and structural reform; (3) promoting

accountability; and (4) applying stricter measures for non-compliance (OECD, 2024). Therefore, the results of monitoring seek functional equivalence, meaning that, even if the legal system is not applicable, the Convention's measures must be comparable across all Parties to the Convention.

The Republic of Korea, South Korea, is an export-oriented country that recovered from the devastation of war and became one of the global industrial powerhouses. South Korea is a member of OECD and ratified the OECD Anti-Bribery Convention in 1999. Since then, South Korea has participated in all phases of the WGB monitoring process. Moreover, South Korea has adopted a series of legislative and institutional reforms, including the criminalization of foreign bribery, the amendments to corporate liability provisions, and the establishment of specialized agencies over successive review cycles (OECD, n.d.-a). Meanwhile, the WGB has expressed concern that Korea has persistent weak enforcement, especially in the last phase. This weak enforcement is shown through the low number of prosecutions, challenges to prosecute independently, and the criminal justice system (OECD, 2018). Even though South Korea is defined as having high formal legal commitment and transparency, it simultaneously struggles to enforce the law, which creates an enforcement gap, particularly in conglomerates (the Chaebols¹) (Hong & Kim, 2025). So, South Korea is a good case study in the struggle to implement the gold standard.

This article, therefore, explores how South Korea's implementation and enforcement of the OECD Anti-Bribery Convention have been assessed through successive monitoring processes conducted by the OECD WGB. This article also emphasizes how international monitoring influences domestic legal evolution and identifies the challenges that impede the transition from *de jure* compliance to *de facto* enforcement.

The OECD Convention and the Theoretical Framework of Compliance

Before the convention, the United States was the first country to criminalize bribing foreign officials through its 1977 Foreign Corrupt Practices Act (FCPA). For other countries, bribery was often viewed as a necessary cost of doing business. Even in some European jurisdictions, such bribes were tax-deductible (Pieth et al., 2014). This created an uneven playing field. The firms from countries with strict anti-corruption laws were at a disadvantage in the competitive field when compared to firms that could freely use illegal payments to secure government contracts. Thus, the convention sought to solve this problem by requiring all Parties to criminalize active bribery and establish effective sanctions to ensure that competition would be based on merit rather than illicit connections (Pieth et al., 2014).

The effectiveness of this multilateral convention is best understood through the lens of Managerial Theory, as mentioned by Abram Chayes and Antonia Handler Chayes in *The New Sovereignty* (Chayes & Chayes, 1995). This theory argues that the traditional view of states as rational actors who comply only

¹ Chaebols (재벌) are large, family-controlled business conglomerates that dominate the South Korean economy. Groups such as Samsung, Hyundai, SK, and LG operate across multiple industries under concentrated family ownership and cross-shareholding structures, and they wield substantial political and economic influence.

under the threat of sanctions is incomplete and suggests that compliance is often the norm rather than the exception. The states generally intend to comply with the treaty obligations but are frequently hindered by three main factors: (1) the ambiguity of treaty language, (2) the lack of bureaucratic capacity to implement complex regulations, and (3) the lag time required for domestic institutions to adapt to new norms (Chayes & Chayes, 1995). Within this theory, compliance is induced not through punishment, but through a horizontal process of justification, discourse, and persuasion. So, the states are persuaded to improve the enforcement performance as part of maintaining their status and legitimacy within the international community, especially in the norms of transparency and successive monitoring.

The case of South Korea is related to the New Sovereignty Theory. Sovereignty is not defined by absolute independence, but it is defined by a state's status and participation that is tightly put together by international institutions (Nam, 2018). As South Korea sought to secure and be a good OECD member, its commitment to the Anti-Bribery Convention became important to reflect its readiness in the global stage. However, while the administrative process has proven effective in legislation, it faces significant obstacles when dealing with certain domestic structures rooted in cronyism that limit corporate accountability.

The OECD Working Group on Bribery and the Peer Review System

The OECD Working Group on Bribery (WGB) serves as the primary engine for the convention's implementation. The WGB oversees and evaluates whether national laws meet the gold standards and how effectively they are enforced in practice. It appoints two lead examiner countries to select experts and conduct an evaluation of the country's performance (OECD, n.d.-b). It evaluates each country's performance and adopts final reports and recommendations by consensus minus one, meaning the evaluated country cannot veto (OECD, 2024). If the country fails to implement the WGB's recommendation, the WGB can employ escalating measures. Lastly, the WGB is responsible for providing regular information through the reports on the OECD website to ensure transparency (OECD, 2024).

The WGB's monitoring power relies on several specific institutional mechanisms. During the on-site visit, each member country is required to provide updates on its domestic foreign bribery cases. This forces law enforcement officials to justify why certain investigations have stopped or why specific prosecutions resulted in low sanctions (OECD, 2024).

The peer-review process is guided by the principles of effectiveness, equal treatment, and efficiency to ensure a level playing field in international business. The primary objective is to ensure that all Parties comply with the convention and related instruments. The process seeks to achieve functional equivalence among Parties, to ensure that measures are comparable across all Parties. Monitoring used peer pressure to improve the Parties' capacity to fight bribery (OECD, 2024). This pressure also encourages countries to rectify their weaknesses. Moreover, monitoring provides a unique forum for countries to consult on implementation difficulties and learn from diverse ways and techniques from their peers. Lastly, the peer review identifies specific gaps by focusing on enforcement efforts and outcomes (OECD, 2024).

The peer-review monitoring system complies with the gold standard. The process is compulsory and conducted in four successive phases.

Phase 1: Evaluation of Legal Frameworks

The principal objective of Phase 1 is to evaluate whether national laws accurately reflect the gold standard. The evaluation in this phase is conducted in a vertical (country-by-country) approach and self-evaluation (OECD, 2024).

Phase 2: Assessment of Enforcement Structures

This phase moves beyond laws to examine the structure of how the country enforces and implements those laws. Then, if the WGB has any suggestions, it will provide a way to improve. A key feature of this phase is the on-site visit, which allows examiners to meet with actors (whether public or private sector) in this field to understand how the law works in practice (OECD, 2024).

Phase 3: Progress and Enforcement Results

This phase concludes the progress that was made from the recommendations of Phase 2. It also highlights potential issues that may arise from changes of any laws or institutional frameworks. The evaluation also considers whether the country has an effort to enforce and what the outcomes are, as well as key cross-cutting issues affecting the broader system (OECD, 2011).

Phase 4: Tailored Enforcement Review

Phase 4 may vary depending on a country-specific approach that considers each nation's particular context and challenges. It focuses primarily on enforcement efforts and their outcomes, follows up on Phase 3 recommendations that remain unimplemented, examines cross-cutting issues, and also recognizes each country's positive progress and achievements (OECD, 2024).

Korea under OECD Peer Review: Enforcement across Four Phases

South Korea is a country that has completed all four phases, with another two follow-up reports. However, South Korea's experience reflects a process of rapid institutional development that has often outpaced some actions to enforce the law.

Phase 1: The Legislative Reform

South Korea ratified the convention on 4 January 1999 and, soon after, enacted the Act on Combating Bribery of Foreign Public Officials in International Business Transactions (FBPA). The timing is significant because the Asian Financial Crisis in 1997 exposed deep-rooted relationships between South Korea and the Chaebols. This generated a broad consensus that corruption is a serious threat to national stability (OECD, 1999).

The government introduced penalties for foreign bribery under the FBPA that, in some respects, were more stringent than those for domestic bribery under the Korean Criminal Code. This reflects its effort to demonstrate a strong reform agenda to the international community. Whereas domestic bribery basically emphasized maintaining the integrity of official duties, the FBPA was explicitly designed to meet the gold standard. In doing so, it shows a clear prioritization of international credibility, even though the government needs to change the domestic legal framework.

Phase 2: Institutionalizing Detection Systems

The Phase 2 evaluation finished in 2007. This marked a period of institutional consolidation. South Korea established the Anti-Corruption and Civil Rights Commission (ACRC) to serve as a central coordinator for prevention and ombudsman services (OECD, 2012). During this time, South Korea also integrated its Anti-Money Laundering (AML) reporting systems with its corruption detection systems (OECD, 2007). This made foreign bribery a predicate offense for money laundering. Even though South Korea improved institutionally, the Phase 2 report noted that the number of actual investigations into outward bribery remained disappointingly low. This means some Korean firms were still paying officials abroad.

Phase 3 and the Military Trap of Enforcement

By the time of the Phase 3 report in 2011, South Korea had secured convictions in nine separate foreign bribery cases. However, a closer qualitative review revealed an important limitation that most of these cases involved bribery of foreign military personnel stationed in Korea. Even though South Korea has the FBPA as the legal actor, it still has complex and cross-border commercial bribery. And this is what the convention was intended to address.

As a result, the OECD WGB encouraged South Korea to move beyond these relatively contained cases and scrutinize the overseas activities of major construction and electronics firms operating in high-risk markets. In response, the government introduced a new information-gathering initiative in May 2021, led by the Ministry of Justice and the Supreme Prosecutors (OECD, 2011). This movement aims to improve the detection and investigation of bribery occurring abroad.

Phase 4: Maturity Without Volition

The Phase 4 report and the 2021 follow-up marked a period of significant tension between South Korea and the WGB. The WGB expressed serious concern that South Korea's enforcement performance had weakened since Phase 3, with only four convictions recorded over seven years (OECD, 2018; OECD, 2021). The report also points out that South Korea has high exportation, leading to a high risk of corruption. Moreover, the report drew attention to what examiners described as a relatively non-autonomous approach within the Korean judiciary (OECD, 2018). The courts often relied on narrower domestic legal traditions rather than interpreting the FBPA in line with the convention's objectives. This makes it more difficult to prosecute the cases that involve third-party beneficiaries or state-owned enterprises.

Across all four phases of the monitoring process, South Korea can be characterized as “mature without volition”. This means there is a system in which the laws and institutions are in place, but the political and judicial willingness to enforce them against powerful economic actors remains limited. This characterization of weak enforcement volition is consistent with how Korean scholars and domestic observers describe the phenomenon. Empirical research by Choi et al. (2018) on Korean sentencing patterns found that Chaebol-affiliated defendants receive jail-sentence suspensions at a rate 9.9 percentage points higher than non-Chaebol counterparts, with average jail terms roughly 19 months shorter, even after controlling for the quality of defense counsel and other sentencing factors. They attribute this pattern, which Korean commentators label “too big to jail,” to structural features of the Korean legal market, including the revolving door between the judiciary and law firms that primarily serve Chaebol clients. Lee and Yoo (2025), examining the SK Group scandal, describe the resulting dynamic as “patterned permissiveness,” in which oversight over Chaebol conduct is selectively withdrawn by prosecutors, regulators, and courts. Hong and Kim (2025) further argue that the Korean government has at times downplayed or reframed direct WGB criticism when communicating with the domestic public, thereby softening the reputational pressure that underpins the peer-review model. Read alongside the OECD findings, these Korean-perspective analyses suggest that the enforcement gap identified by the WGB is not primarily a technical deficiency in the FBPA but a reflection of embedded politico-business relationships that the Korean judiciary has historically been reluctant to disrupt.

Monitoring Phase	Key Outcome	Enforcement Reality
Phase 1 (1999)	FBPA Enactment	Rapid adoption causing the tougher sanction than domestic law
Phase 2 (2007)	Institutional Evaluation	Integration of ACRC and AML, few outbound cases
Phase 3 (2011)	Convictions	9 bribery cases (mostly military bribes on Korean soil)
Phase 4 (2018)	Decline in Performance	Only 4 convictions, showing serious concerns from OECD

Table 1 Enforcement Realities across WGB Monitoring Processes

Discussion: Analyzing the Peer Review and the Reality Gaps

While Korea has completed all four phases of the monitoring process, its enforcement and effectiveness, as measured by Transparency International, have declined from moderate to little or no enforcement since 2013 (Hong & Kim, 2025). The evidence from the OECD official reports reveals a systematic gap between South Korea's institutional performance and the realities of enforcement on the ground. This is sustained by a combination of limited transparency, judicial constraints, and a broader culture of corporate leniency.

The High Degree of Secrecy

One of the most significant challenges is the opacity surrounding how bribery cases are detected. An empirical study examines 174 bribery cases involving 198 convicted individuals. This study found that the source of detection was unknown in 91.5% of cases. It also contrasts with patterns in many other OECD countries, where investigations are more clearly linked to whistleblowers, media exposure, or official audits (Hock et al., 2024). To close this detection gap, South Korea should adopt more transparent reporting standards consistent with the practice of other OECD Parties, including the systematic disclosure of detection sources in concluded foreign bribery cases and the active publication of aggregated enforcement data. Korean scholars have argued that the Korean government's reluctance to report comprehensive information to the WGB has weakened the peer-review process itself (Hong & Kim, 2025). Strengthening whistleblower channels under the Act on the Protection of Public Interest Whistleblowers (PPIWA) and expanding the role of domestic audit bodies, such as the Board of Audit and Inspection and the Anti-Corruption and Civil Rights Commission (ACRC), would move the Korean detection system closer to the whistleblower- and audit-driven models observed in Norway, the United Kingdom, and the United States.

Korean law allows investigators to request banking records from the financial institutions, but procedures and rules may complicate and affect investigations. However, there is no secrecy since financial institutions must notify an account holder within ten days after providing banking records to law enforcement actors (OECD, 2018). So, this may alert the suspects, and they might destroy other evidence or transfer assets. This creates the difficulty in prosecution. However, the authorities may request that notification be deferred for up to one year if it could obstruct any legal procedures (OECD, 2018). This defer has already been used in foreign bribery investigations. This needs to be monitored in the long term to determine whether this issue could obstruct any future cases.

This can be defined as a high degree of secrecy, which is further reinforced by legal provisions since the provisions allow case files to be destroyed soon after conviction. The reason why the case files are destroyed rapidly is that the Act on Management of Public Documents mandates the rapid destruction of case files after conviction if the penalty is less than three years in prison (Hock et al., 2024). As a result, researchers and civil society actors face serious limitations in assessing enforcement effectiveness or identifying challenges. For the WGB, this lack of transparency complicates peer review itself because there is no clear insight into how cases are initiated or why important cases are overlooked. So, it becomes difficult to apply peer pressure and to discuss in terms of policy, which is important for amending or strengthening compliance with the OECD.

However, South Korea has a mechanism to protect whistleblowers. The confidentiality provisions also function as protective measures for individuals who report wrongdoing. The Act on the Protection of Public Interest Whistleblowers (PPIWA) criminalizes the disclosure of the identity or the content of a whistleblower's report (OECD, 2018). Since violations of this confidentiality provision are punishable by up to five years of imprisonment or a monetary fine, OECD monitoring reports describe this as a protective

measure for whistleblowers (OECD, 2018). Even though there is a high degree of secrecy in those cases, there is also a high degree of secrecy in whistleblowing.

The Reliance on Foreign Enforcement

Information provided by foreign law enforcement authorities constitutes an important source of detection in Korean foreign bribery cases. According to OECD reports, there is some information from foreign law enforcement authorities showing that there is detection in Korean foreign bribery cases. Between the Phase 3 and Phase 4 monitoring processes, foreign jurisdictions were the second most significant source of detection, triggering 5 of the 13 investigations opened since 2013. These cases include the CCTV, Hanwha, FELDA, US Relocation and Construction, and UAE Oil matters (OECD, 2018).

This pattern has also appeared in earlier cases. For example, the Telecommunications Services Company Case was detected by the U.S. Air Force Office of Special Investigation (OSI) rather than Korean authorities (OECD, 2011). In several cases, the report shows that Korean authorities rely on the Status of Forces Agreement (SOFA) which involves the U.S. military based in South Korea, to support investigations (OECD, 2011). This shows such weak enforcement by the Korean authorities that it requires a foreign jurisdiction.

Weak domestic enforcement mechanisms have led to the delegation of regulatory authority or outsourcing of it. South Korean companies are primarily investigated and sanctioned by foreign agencies rather than domestic authorities. The primary example is Samsung Heavy Industries. In 2019, the company agreed to pay roughly \$75 million in global penalties to resolve a U.S. Department of Justice (DOJ) investigation that involved Brazilian officials (U.S. Department of Justice, 2019). This case was one of five new cases under review since the OECD's Phase 4 monitoring (OECD, 2021). However, the WGB expressed concern that South Korea's enforcement record has declined since Phase 3 monitoring and noted as "limited progress" (OECD, 2021). So, this case reflects the complex realities of foreign bribery enforcement in South Korea.

During the monitoring process, Korean authorities indicated that this case would likely end without prosecution. The burden is on the investigators to gather enough evidence to proceed beyond mere initial investigation. This highlights a recurring issue identified by the WGB that the outcome of the enforcement is often limited, not because of the absence of allegations, but because of limitations in detection and evidence. Moreover, this case also illustrates the structure of South Korea's enforcement mechanism. Investigations frequently get information from foreign regulators or media reports rather than from a proactive domestic mechanism. When compared to businesses operating internationally, those often get enforcement pressure from external jurisdictions, particularly the U.S., as more urgent than regulatory oversight from South Korean authorities.

There are many other cases, as reported in the OECD, that were closed after judicial processes in other countries. In 2011, the Korean Prosecution Service decided not to initiate formal investigations in three cases because they were already under investigation by foreign law enforcement authorities as domestic bribery cases (OECD, 2014). In the Vietnam Investment case, Korean investigators closed their file based on the principle of non bis in idem following the conviction of the bribe payer abroad (OECD, 2021). The KSA Metro case was also closed after Korean authorities concluded that bribery involvement had not been established, noting that this assessment was “confirmed by another WGB country’s law enforcement authorities” (OECD, 2021). This shows a lack of an effective domestic mechanism to prosecute those kinds of cases fully and effectively.

One of the cases, in 2022, KT Corporation paid fines to the U.S. Securities and Exchange Commission (SEC) of \$6.3 million after a decade-long corruption investigation. The case originates from KT executives who created a slush fund to provide illegal political contributions in South Korea and bribed to secure a government contract in Vietnam. Although these actions fall directly under Korea’s FBPA, the enforcement mechanism largely failed to secure an independent indictment. However, the case continues to be monitored since it was reported by the media and sanctioned by U.S. authorities. This case highlights a recurring pattern that South Korea appears to rely on the U.S. Foreign Corrupt Practices Act (FCPA) (U.S. Securities and Exchange Commission, 2022).

Another famous case that causes embarrassment for the Korean government is the Ban Ki-moon case (Hong & Kim, 2025). Bang Ki Sang is an executive at Keangnam Enterprise and the brother of a former UN Secretary-General. He was involved in a plan to bribe a Qatari official to secure an \$800 million real estate “Landmark 72” building in Vietnam. Bang Ki Sang remained in hiding in Korea for a year because he bribed through a third party, Malcolm Harris. This case was also detected and prosecuted by the U.S. DOJ, same as in the previously mentioned case. At that time, this was not considered a crime under the then-enforced FBPA. U.S. prosecutors eventually forced South Korea to amend the FBPA in 2008 to include third-party beneficiaries (Hong & Kim, 2025). However, this case serves as a reminder that South Korea’s legal change is often amended in response to foreign enforcement rather than as a matter of domestic will.

As previously mentioned, cases identified in OECD monitoring reports highlight that there are limitations in domestic mechanisms for prosecuting foreign bribery. The WGB noted that many cases were brought to the attention of the Korean authorities by foreign governments. So, this reflects limited effort and capacity to detect such bribery cases domestically. Moreover, the OECD reported that one of the cases examined at the time of the Phase 4 report had been proactively detected by domestic law enforcement. Monitoring reports also note that investigators sometimes wait for foreign proceedings to conclude or for formal referrals before initiating action, which may increase the risk that the statute of limitations expires for domestic prosecution (OECD, 2021). So, from the OECD’s findings, South Korea should improve the detection and prosecution of those kinds of cases that fall under the convention to improve the liability of South Korea on the global stage.

Judicial Bottlenecks

OECD monitoring reports identify several legal and procedural issues in Korea that affect the enforcement. These issues primarily relate to the interpretation of foreign public official under the Foreign Bribery Prevention Act (FBPA) and to procedures that may limit the investigations.

The China Eastern Airlines case illustrates how this interpretation may affect prosecution. In that case, the court acquitted the defendants because they could not qualify the payment recipient as a foreign public official, even though the recipient holds Chinese government's ownership share. The court indicated that official documentation obtained through Mutual Legal Assistance (MLA) would have been required (OECD, 2018).

OECD monitoring reports also note concerns regarding the autonomy of the offence. Korean courts have in some instances required proof of the foreign country's domestic law to establish the status of an official (OECD, 2018). According to the OECD, this approach may be inconsistent with the principle that foreign bribery offences should be applied autonomously under the gold standard without requiring proof of the details of the foreign legal system (OECD, 2018).

The reports also identify several procedural bottlenecks that may affect investigations. One of the bottleneck issues involves the statute of limitations. According to the law, the limitation period is seven years for natural persons but five years for legal persons (OECD, 2021). In the US Relocation and Construction case, the legal person case had to be terminated because the limitation period of five years had expired. However, the investigations against individuals could still proceed (OECD, 2018). Even though the case still goes on, the convention focuses on prosecuting legal persons rather than natural persons.

The convention also pays attention to pre-trial resolution. However, the OECD reports also note that South Korea lacks a formal pre-trial resolution or plea-bargaining system (OECD, 2018). Without such mechanisms, prosecutors must rely on full judicial proceedings to resolve cases, and companies may have fewer incentives to self-report potential bribery conduct (OECD, 2018).

A further issue concerns jurisdiction involving North Korean officials. Because the South Korean Constitution does not recognize North Korea as a foreign country, officials from North Korea do not fall within the definition of foreign public officials under the FBPA (OECD, 2014; OECD, 2018). OECD monitoring reports note that this situation may create a legal gap in cases involving bribery connected to inter-Korean economic cooperation areas such as the Kaesong Industrial Zone (OECD, 2011; OECD, 2018).

Cultural Leniency

In the Phase 4 report, the Indonesia Mining Case is illustrated. This case shows that local custom can influence a decision not to prosecute a foreign bribery allegation. In this case, Koreans have gathered money around KRW 1.97 billion as so-called "sumbangan" or donations to a regent in Indonesia, to secure the acquisition of a mining exploration company (OECD, 2018). This directly fell under the convention.

However, the authorities seem not to prosecute. The National Police Agency (NPA) submitted a written opinion stating that the payment did not constitute a bribe but rather a donation (OECD, 2018). The NPA also accepted the defendant's explanation that such payments were traditionally required to obtain a mining license from a "regent" in Indonesia (OECD, 2018). During the OECD on-site visit, as reported in the Phase 4 report, an NPA representative further stated that offering such a donation in exchange for exploration rights was considered merely as local custom in Indonesia, so it cannot be called a bribe (OECD, 2018). Ultimately, this case was ended as the Seoul District Prosecutor's Office (DPO) decided not to prosecute since there is no clear guideline regarding political donation in Indonesia (OECD, 2018). Even though this case can directly fall under the convention, if there is no clear local guideline, the authorities can decide not to prosecute, as in this case.

From this case, the Working Group on Bribery (WGB) raised concerns regarding this interpretation. The WGB has raised Commentary 7 to the Anti-Bribery Convention, which states that local custom or local authorities accepting this kind of payment cannot be defended not to fall within the offence (OECD, 2007; OECD, 2018). The WGB noted that the case reflected a restrictive interpretation of international business and a failure to apply the foreign bribery offence autonomously (OECD, 2018). After this case, South Korea has improved by publishing "Interpretive Notes on the FBPA" in 2019 by the Ministry of Justice, to clarify for investigators and judges that perceptions of local custom do not constitute defenses to prosecution (OECD, 2021). South Korea has an implementation gap, but it still recognizes and addresses it.

Other forms of leniency have also been monitored. Korean jurisprudence has historically recognized an exception for payments or gifts offered as a social courtesy. Earlier concerns also focused on Article 20 of the Criminal Act, which exempts acts conducted in pursuance of accepted business practices or social rules (OECD, 2007). However, the WGB recommended continued monitoring to ensure that this exception is not applied to foreign bribery cases. Finally, in 2006, the Supreme Court decision clarified that this defense does not apply to foreign bribery (OECD, 2007; OECD, 2011).

In conclusion, South Korea's approach to prosecuting foreign bribery has developed in response to OECD suggestions. Earlier interpretations of concepts such as social courtesy and local customs were suggested to reinterpret and identify as factors that could affect the enforcement of foreign bribery. Finally, the Ministry of Justice issued "Interpretive Notes on the FBPA" in 2019. These improvements show efforts to clarify its law and its consistency with the Anti-Bribery Convention.

Conclusion

The OECD peer-review phases demonstrate that Korea has successfully constructed *de jure* compliance in advancing foreign bribery but has yet to achieve *de facto* enforcement. This highlights that institutional structural changes toward international standards may not yet be sufficient to incentivize strict domestic compliance. The enforcement has mainly faced challenges of a narrow interpretation of laws and leniency toward large corporations.

Moving past the condition of maturity without volition means that the country needs to recognize that compliance is not just a technical legal task. It is also cognitive, organizational, and cultural. This is where education and awareness become keys of enforcement. OECD guidance repeatedly highlights targeted training for officials working abroad and for companies operating in high-risk markets. Therefore, in the Korean context, it refers to strengthening judicial and prosecutorial understanding of the convention's principle of functional equivalence. This will help reduce narrow interpretation and limit liability in cases involving state-owned enterprises or third-party beneficiaries. In fact, increased engagement, especially from the Anti-Corruption and Civil Rights Commission and the Department of Justice, could stimulate international corporations to understand compliance systems better. Ultimately, this can lead compliance systems to become more than just a formal requirement. They could become a practical compliance tool in an increasingly cross-national scrutiny environment.

For Korea with its market-dependent economy, credibility depends on demonstrating consistent enforcement of anti-bribery laws, not merely as policy. South Korea's approach demonstrates that consistent monitoring to meet international standards enables states to strengthen domestic mechanisms. However, the domestic institutions must also be willing to adapt to the recommendation. So, it is necessary to address institutional obstacles, strengthen the judicial mechanism, and embed compliance with the authorities. This will bridge the gap between written policies and practical implementation.

South Korea's experience highlights the importance of sustained anti-bribery efforts through the Working Group's assessments. However, this Working Group acts as an external anchor, continuously monitoring the situation. The Working Group also expressed concerns about Korea's implementation, pushing for changes to legislation and investigative procedures, which could be hampered without Korea's efforts to rectify the situation. Furthermore, while all four assessment phases have concluded, the Working Group appears inclined to conduct a fifth phase. The WGB is already designing the next monitoring cycle and has announced a multi-stakeholder public consultation for June 2026 to inform its scope (OECD, 2025c). Based on the thematic trajectory of recent WGB work and the 2021 Recommendation for Further Combating Bribery of Foreign Public Officials, Phase 5 is likely to concentrate on at least four areas that are especially consequential for South Korea. First, non-trial resolutions, such as deferred and non-prosecution agreements, are expected to receive heightened attention, which is significant because Korea remains one of the few major OECD economies that does not recognize such mechanisms and therefore depends entirely on full trials to resolve foreign bribery cases (OECD, 2025c). Second, digital and cross-border bribery risks, including the role of professional enablers, crypto assets, and the use of artificial intelligence in both facilitating and detecting corrupt schemes, are emerging priorities of the WGB. Third, enforcement against legal persons, including the calibration of corporate sanctions and the effectiveness of compliance programs, is expected to remain central. Fourth, the systematic collection and disclosure of enforcement data will likely feature prominently, given the WGB's revised 1999-2024 dataset and its stated concern that uneven reporting weakens the peer review process. For Korea, which entered Phase 4 already lagging on these fronts, Phase 5 will most likely test whether the country can translate its mature legal framework into demonstrable and measurable enforcement outcomes.

In many aspects, the OECD process has already modified Korea's legal framework and clarified global expectations for anti-corruption governance. The next step is not to draft new rules, but to normalize their application. Auditing has already paved the way; what remains is the political and institutional commitment to follow that path.

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