

Overall Score:

88 - Strong

Legal Framework Score:

96 - Very Strong

Actual Implementation Score:

82 - Strong

Category I. Civil Society, Public Information and Media

I-1. Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

There are many CSOs focused on anti-corruption or good governance during the process of the change into plural and democratic societies. For example, Transparency International-Korea is one of anti-corruption organizations.

I founded the Korean Association of Corruption Studies (KACS) in 1995, and served for six years as President of the KACS.

References:

The Constitutional Law protects the right of CSOs: Article 21.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

CSOs are free to accept funding from domestic or foreign sources if the funding is legal.

References:
Constitution of ROK, 1987, Article 23.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | **NO**

Comments:
If the CSO funding source is involved in corruption or criminal funding, CSOs are required to disclose their sources of funding to the relevant agency, such as the public prosecutor.

References:
Constitutional Law, Article 23: Freedom of Property Right.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

92

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:
Good governance/anti-corruption CSOs are allowed to operate freely by the Constitution. It is a basic freedom of people.

References:
The government does not create barriers to the organization because the activity of CSOs are protected by Constitution, Article 21.

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001.

http://search.naver.com/search.naver?sm=tab_hly&where=nexearch&query=%BA%F1%BF%B5%B8%AE%B9%CE%B0%A3%B4%DC%C3%BC%C1%F6%BF%F8%B9%FD+&x=27&y=27

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | **75** | 50 | 25 | 0

Comments:

The CSOs can be engaged in the policy making process in a limited scope since they are required to submit to proper procedures by the government. Furthermore, the government supports them financially with some conditions. They cannot have self-supporting power in the long run. They need purely self support system without government connection, meaning that CSOs should be purely self-supporting and honest non-governmental organizations that can be respected by the people.

Recently, immoral management practices by NGOs have raised serious concerns in Korean society. For example, CSO leaders have been involved in corrupt practices such as embezzlement, so that they are now unable to influence government policy making.

References:

Current NGOs and Problems in the process of Management, <http://mybox.happy-campus.com/enff112sja/2474394>

Shaping Public Opinion on Political Matters, http://academic.naver.com/view.nhn?doc_id=16509127

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

There were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

References:

Namkoong Keyun, "An Evaluation of NGO's Anti-corruption Efforts in Korea," in KCSR, Vol.6, Jan.2002, 105-124.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

There were no CSO activists imprisoned because of their work relating to corruption.

References:

Namkoong Keyun, An Evaluation of NGO's Anti-corruption Efforts in Korea" in KCSR (Vol.6, Jan.2002), 105-124.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

There were no documented cases of CSO activists covering corruption being assaulted during the specific study period

References:

Namkoong Keyun, An Evaluation of NGO's Anti-corruption Efforts in Korea" in KCSR (Vol.6, Jan.2002), 105-124.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

There were no documented cases of CSO activists being killed because of their work covering corruption during the specific study period.

References:

Namkoong Keyun, An Evaluation of NGO's Anti-corruption Efforts in Korea" in KCSR (Vol.6, Jan.2002), 105-124.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

100

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Trade unions are permitted by law (Labor Law), regardless of political ideology, religion or objectives. They are protected from any external intervention.

References:

Constitution of the ROK , Article 33 guarantees that workers shall have the right to independent association, collective bargaining and collective action."

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Trade unions are common and are an important part of the political process and political discourse in Korea. Recently, a trade union was changed into a political party. They even won several seats as lawmakers, regardless of whether or not they were fully supported by citizens.

References:

Namkoong Keyun, An Evaluation of NGO's Anti-corruption Efforts in Korea" in KCSR (Vol.6, Jan.2002), 105-124.

Constitution of ROK, Article 33.

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

The freedom of the media is guaranteed in the Constitution, but note that it can be limited in cases of violation of the basic order and social safety, like other freedoms.

References:

The Constitution of the ROK, Article 21 refers to freedom of media.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

The Constitution of the ROK, Article 21 refers to freedom of speech.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

According to an interview with a public official who works at a media-related bureau, the government does not create barriers to forming a print media entity. Therefore, we agree to a score of 100.

References:

Kim, Young Jong (2001), Corruption Studies Seoul," Soongsil University Press, 438-477.

Interview with related public official, Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone Interview (02-3704-2701), Oct. 16.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

There is a system of coordinating mechanisms if an application for a print media license is denied or a license is revoked.

References:

ACCR (Anti-Corruption and Civil Right Act, Article 10,11).

The commissioner of the ACCR may recommend that the related agency change their decision. If that is not enough, they can appeal to the Administrative Judge Committee based on the Administrative Appeal Act (Article 4).

The Committee has been established under the office of the Prime Minister.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the Newspaper Act, it takes one month to obtain a print media license.

References:

Newspaper Act, Article 12, 13.

http://ko.wikipedia.org/wiki/%EB%8C%80%ED%95%9C%EB%AF%BC%EA%B5%AD_%EB%AF%B8%EB%94%94%EC%96%B4_%EA%B4%80%EB%

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost is reasonable and not too expensive, because of regulation.

References:

Citizens can apply to get the print media license.

<http://elaw.klri.re.kr/>

Constitution 119, Monopoly Regulation and Fair Trade Act, Article 23

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the dividing up of broadcast bandwidth is viewed to be somewhat unfair.

References:

Refer to the constitution of ROK, Article 21.

Interview with related public official, Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone Interview (02-3704-2701), Oct. 16.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

The Civil Rights Commission may adjudicate the petitions on the basis of ACCR Act, and encourages the changing of petitions. The other mechanism refers to rendering to administrative judgment commission under prime minister of government.

References:

ACCR Act 10.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The time it takes to obtain a broadcast license could be related to political judgment, depending upon the case of petitioner. Political concerns sometimes may come into into the decision to grant broadcast licenses. Of course, it is difficult to find direct evidence of this, but the media reports that this does happen.

References:

Citizens can obtain media license within a reasonable time period, <http://elaw.klri.re.kr/>

http://www.allinkorea.net/sub_read.html?uid=10309§ion=section23

<http://www.ringblog.net/1244>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

License applications also may require a visit to a specific office, such as a regional or national capital, or the Minister of Cultural and Tourist Information of the government.

References:

Broadcasting Act, Act No. 8569, July 27, 2007, Article 9 and Article 12. They should submit the related documents for permission for registration from government to the responsible office. They need a minimum of 0.5 billion won (US\$421,553) for basic capital.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

75

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

Interview with related public official Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone Interview(02-3704-2701) on Oct 16. The public official also agrees to the score.

References:

Government does not prevent citizens from accessing content published on line.

http://ko.wikipedia.org/wiki/%EB%8C%80%ED%95%9C%EB%AF%BC%EA%B5%AD_%EB%AF%B8%EB%94%94%EC%96%B4_%EA%B4%80%EB%

Interview with related public official Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone Interview (02-3704-2701), Oct. 16.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

Comments:

Generally, the government does not censor citizen-created content on-line because it is protected by the Constitution, Article 18.

In April 2009, the government passed legislation which requires internet users to enter their name and residence information when they use mainstream websites. This violation of anonymity affects journalists and bloggers writing on heavily trafficked pages, as well as users wishing to upload videos to Youtube (see: <http://cpj.org/2009/05/cpj-concerned-by-south-korean-pressure-on-media.php#more>). Following this ruling, well-known blogger Minerva was prosecuted for spreading false statements against the government. The case was later successfully appealed.

References:

Kim, Young Jong, Corruption Studies Seoul: Soongsil U., Press, 2001

http://ko.wikipedia.org/wiki/%EB%8C%80%ED%95%9C%EB%AF%BC%EA%B5%AD_%EB%AF%B8%EB%94%94%EC%96%B4_%EA%B4%80%EB%

Interview with related public official Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone Interview (02-3704-2701), Oct 16

CPJ report. April 2009, <http://cpj.org/2009/04/south-korean-blogger-acquitted.php>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

83

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Broadcasting Act, Article 3, 4

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The government official whom I interviewed claimed that the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories. However, the Committee to Protect Journalists wrote a letter to the President in May claiming that journalists at state-run broadcast media outlets were being fired or suspended for expressing opinions or covering stories against state interest.

References:

Broadcasting Act, Article 3, 4

Committee to Protect Journalists, letter to the President May 2009, <http://cpj.org/2009/05/cpj-concerned-by-south-korean-pressure-on-media.php#more>

<http://elaw.klri.re.kr/>

Interview with related public official Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone Interview (02-3704-2701), Oct 16

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Generally, the media may report on corruption. However, the Committee to Protect Journalists wrote a letter to the President in May claiming that journalists at state-run broadcast media outlets were being fired or suspended for expressing opinions or covering stories against state interest.

References:

Kim, Young Jong, Corruption Studies (Seoul: Soongsil U. Press, 2001)

<http://elaw.klri.re.kr/>

Committee to Protect Journalists, letter to the President of South Korea, May 2009, <http://cpj.org/2009/05/cpj-concerned-by-south-korean-pressure-on-media.php#more>

Interview with related public official Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone Interview (02-3704-2701), Oct 16

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

Political parties or independent candidates do not receive fair media coverage. Voters and candidates at election time have complained of unfair media coverage.

During the period, candidates were not equally treated by the ruling party.

References:

http://www.reportnet.co.kr/knowledge/pop_preview.html?dn=99002

Interview with related public official Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone (02-3704-2701), Oct 16.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

Voters and candidates at election time complained of unfair media coverage.

References:

Constitution, Article 11

http://www.reportnet.co.kr/knowledge/pop_preview.html?dn=99002

Interview with related public official Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone (02-3704-2701), Oct 16.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There were no journalists imprisoned related to their work covering corruption during the study period. Journalists have a big impact on public opinion.

References:

Kim, Young Jong, Corruption Studies, Seoul: Soongsil U. Press, 2001

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

According to interview with Im, Won Sun, in the past year, no journalists investigating corruption have been physically harmed. In fact, journalists in Korea have strong power in a sense, so it is almost impossible for them to have been physically harmed.

References:

Kim, Young Jong, Corruption Studies Seoul: Soongsil U., Press, 2001

http://ko.wikipedia.org/wiki/%EB%8C%80%ED%95%9C%EB%AF%BC%EA%B5%AD_%EB%AF%B8%EB%94%94%EC%96%B4_%EA%B4%80%EB%

Interview with related public official Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone (02-3704-2701), Oct 16.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Kim, Young Jong, Corruption Studies, Seoul: Soongsil U.Press, 2001

http://ko.wikipedia.org/wiki/%EB%8C%80%ED%95%9C%EB%AF%BC%EA%B5%AD_%EB%AF%B8%EB%94%94%EC%96%B4_%EA%B4%80%EB%

Interview with related public official Im, Won Sun, Director of Bureau, Minister of Culture, Sports, and Tour, Telephone (02-3704-2701), Oct 16.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

84
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

Citizens have a right of access to government information and basic government records.

References:

Information Disclosure Act (Law No. 8871) Article 1, 3, 5, and 6 refer to a right of access to government information and basic government records.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

Citizens also have a right of appeal if access to a basic government record is denied.

References:

Information Disclosure Act (Law No. 8871) article 18-21 refer to a right of appeal if access to a basic government record is denied

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

Citizens should request information from the relevant government institution. They may also appeal to the Official Information Disclosure Council of Government if their initial request is denied by the specific institution.

References:

Official Information Disclosure Act (Law No. 8871) article 22-23 refer to the established institutional mechanism through which citizens can request government records.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

96

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

From Transparency International's National Integrity System report on Korea 2006: The Korean government also operates an integrated online system, e-Government, which allows the public to track civil applications and obtain relevant data that are registered with administrative institutions."

References:

The Information Disclosure Act of ROK , article 11 regulates responses to requests for access to information within 10 days after the application is presented.

Transparency International's National Integrity System Report on Korea, 2006

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

From Transparency International's National Integrity System report on Korea 2006: The Korean government also operates an integrated online system, e-Government, which allows the public to track civil applications and obtain relevant data that are registered with administrative institutions."

References:

The information disclosure act, article 17, http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1219&PROM_NO=08871&PROM_DT=20080229&HanChk=Y

Transparency International's National Integrity System report for Korea 2006

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

From Transparency International's National Integrity System report on Korea 2006: The Korean government also operates an integrated online system, e-Government, which allows the public to track civil applications and obtain relevant data that are registered with administrative institutions."

References:

http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1219&PROM_NO=08871&PROM_DT=20080229&HanChk=Y

Transparency International's National Integrity System Report on Korea 2006

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The information disclosure act requires that appeals regarding access to information requests be resolved immediately.

References:

http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1219&PROM_NO=08871&PROM_DT=20080229&HanChk=Y

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The reasonable costs for appealing decisions regard information access involve such expenses as copy fees, mailing expenses and low taxes, etc.

References:

http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1219&PROM_NO=08871&PROM_DT=20080229&HanChk=Y

The information disclosure act requires that appeals regarding access to information requests be resolved immediately.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The reasons for denying an information request are not always given. The reasons that are given depend upon the cases. Whether or not there are substantial reasons for denial is decided by the Information Commission of Government based upon the Information Disclosure Act.

References:

In specific situations, the government may deny an information request. Refer to Article 9 of the Information Disclosure Act.

<http://likms.assembly.go.kr/law/jsp/Law.jsp?>

[WORK_TYPE=LAW_BON&LAW_ID=A1219&PROM_NO=08871&PROM_DT=20080229&HanChk=Y](http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1219&PROM_NO=08871&PROM_DT=20080229&HanChk=Y)

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁹⁴Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

The age of universal and equal adult suffrage has been 19 years since 2005 when it was established as the basic voting age.

References:

Constitutional Law, Article 7 and 114

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

There are several legal frameworks that require that elections be held at regular intervals such as the presidential election law and the election law of lawmakers for national assembly.

References:

There are regular intervals between elections. Public Official Election Act, No. 8232, Jan. 3, 2007, Article 12

Interview with Shin, Dong Phil, Public Official, Public Relations and Information Official, National Election Commission by telephone (82-11-716-0989), Oct.16

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

According to election law, all adult citizens over 19 years old can vote.

References:

<http://www.nec.go.kr/>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

We have undergone an almost total election revolution in the last several years. The system has been managed by the National Election Commission by the use of an electronic election system.

The efficiency and effectiveness of the election system has been rapidly improved.

References:

<http://www.nec.go.kr/>

Constitution, Article 24

Interview with Shin, Dong Phil, Public Official, Public Relations and Information Official, National Election Commission by telephone (82-11-716-0989), Oct.16

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

The National Election Commission has confirmed that elections are held according to a regular schedule based upon related election laws.

References:

<http://www.nec.go.kr/>

Interview with Shin, Dong Phil, Public Official, Public Relations and Information Official, National Election Commission by telephone (82-11-716-0989), Oct.16

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

95

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Citizens have the right to form political parties without interference from the government. The Constitution also guarantees the right to form multiple political parties.

References:

The Constitution of ROK, amended on Oct. 29, 1987, article 8, refers to this right to form political parties.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

All citizens have a right to run for political office according to the Constitution and the Political Party Act.

References:

The Constitution of ROK, amended on Oct. 29, 1987, Article 8, refers to the right to run for political office.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

The Political Party Act discusses how to form a political party in practice.

The registration process is also included in the act. Relatively speaking, it is easy to form new parties. You can register at the National Election Commission with the relevant applications (Article 7). But you need to pay minimum costs for facilities and practical expenses.

You should open at least five offices in your local area as well as a central office (Article 17). Each local office should have at least 1,000 members to form a political party. New parties may find it difficult to gain political influence because of a lack of people's support. There have been cases of political parties in Korea disbanding for this reason. It is hard for new parties to attract members because new members are very sensitive about issues regarding political support and popularity.

References:

The Constitution of ROK amended on Oct. 29, 1987, article 8 refers to the right to form political parties.

Political Parties Act, No. 8232, Jan. 3, 2007, refers to the comments in Article 2 (Definition): For the purposes of this Act, the term political party" means a national voluntary organization that aims to promote responsible political assertions or policies and to take part in the formation of the nation's political intentions for the national interests by recommending or supporting candidates for public positions.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

References:

The Constitution of ROK, amended on Oct. 29, 1987, article 8, says that all citizens can run for political office.

Interview with Shin, Dong Phil, Public Official, Public Relations and Information Official, National Election Commission by telephone (82-11-716-0989), Oct.16

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

As of Sept 4, 2009, we have a total of 292 lawmakers out of 299 legal representatives. The opposition party's representation has 124, while the ruling party's representation total is 168.

References:

The constitution of ROK amended on Oct. 29, 1987, article 8 refers to a practice that an opposition party is represented in the legislature.

Interview with Shin, Dong Phil, Public Official, Public Relations and Information Official, National Election Commission by telephone (82-11-716-0989), Oct.16

His comment and mine should be identified. Therefore, the score seems very reliable.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

100

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The election agency is protected from political interference.

References:

The Constitution of ROK, article 114 refers to protection of the Agency for Fair Elections.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Refer to the Constitution, Article 114

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The election agency has a full-time, professional staff for conducting public affairs.

References:

Constitution, article 115

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access election reports online at the National Election Commission Election Information Center.

References:

<http://www.nec.go.kr/>

National Election Commission, Election Information Center, refers to reports, <http://elecinfo.nec.go.kr/>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There are several cases where offenders were penalized. A total number of 299 lawmakers were elected as of September, but that number fell to 292. This is because 7 of the lawmakers have already lost their positions due to election offenses.

There was a final adjudication of three of these legislative election offenders at the Supreme Court. They lost their positions due to serious election offenses. Their names are Seuh, Chung Won; Yang, Jung Yae; and Kim, Noh Shik. See, <http://news.donga.com/fbin/output?n=200905150169>

From Transparency International's National Integrity System report for Korea 2006:

The 17th general election in 2004 was highly acclaimed as the cleanest and fairest election in the country's history, and the election commissions made a significant contribution towards this achievement. The election commissions aggressively implemented and enforced strict rules on public elections. The Commission detected 3,017 violations in the 16th general election in 2000, but this number increased to 6,400 in 2004.*

References:

<http://www.nec.go.kr/>

<http://news.donga.com/fbin/output?n=200905150169>

Transparency International's National Integrity System report for Korea 2006

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

100

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

<http://www.nec.go.kr/>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

The Public Official Election Act regulates how to contest election results. Results of a presidential election or a lawmakers election can be appealed to the Supreme Court; local government/CEO election results can be contested at the Appellate Court.

References:

<http://likms.assembly.go.kr/law/jsp/Law.jsp?>

[WORK_TYPE=LAW_BON&LAW_ID=A1493&PROM_NO=09466&PROM_DT=20090212&HanChk=Y](http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1493&PROM_NO=09466&PROM_DT=20090212&HanChk=Y)

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

In general, election appeals are settled by the Supreme Court.

References:

The Public Election Law

http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1493&PROM_NO=09466&PROM_DT=20090212&HanChk=Y

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

In Korea, the military and security forces remain neutral during elections. They can be severely punished if they violate the relevant election act. Actually, there is no specific reason for them to support any specific parties or candidates.

References:

The Public Election Law, http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1493&PROM_NO=09466&PROM_DT=20090212&HanChk=Y

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1493&PROM_NO=09466&PROM_DT=20090212&HanChk=Y

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

The election observers are very active and strong, so they are able to effectively monitor elections. Government has not barred election observers in the past.

References:

http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1493&PROM_NO=09466&PROM_DT=20090212&HanChk=Y

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The National Election Commission, along with provinces, cities and counties, along with the Local Government Election Management Committee all work on election management.

References:

the Constitution of ROK, Article 114-116 establish a constitutional institution for an election monitoring agency which is called the Election Commission for the Purpose of Fair Management of Elections.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

100
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

Limits are placed on individual donations to political parties to prevent there being too much individual influence on the parties.

References:

There are limits on individual donations to political parties of approximately US\$800(\$1= Won 1250) per year, <http://news.donga.com/fbin/output?n=200907070177>

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

There are limits on corporate donations to political parties.

References:

Political Funds Act, Article 31

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | NO

Comments:

There are strict limits on a political party's total expenditures to prevent the possibility of political corruption.

References:

Political Fund Act, Articles 12,19, and 40

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

The disclosure of donations to political parties are handled by the National Election Commission, according to the Constitution.

References:

National Election Act, Act 34 refers to disclosure of donations.

http://cafe.naver.com/kjh791215.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=2825

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

Comments:

The National Election Commission is charged with auditing political party expenditures. The Political Funds Act, Article 34, requires that accountants who work for a political party should report their party's expenditures to the National Election Commission.

References:

National Election Commission , Article 40

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

The National Election Commissioner has the power to monitor the financing of political parties.

References:

Political Funds Act, Article 34, National Election Commission, refers to the political financing monitoring organization.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

In law, there are limits on individual donations to political candidates. An individual can donate a maximum of 20 million won (US\$841) per year to political candidates.

References:

Political Fund Act 11, 12

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

Limitations are placed on corporate donations to individual political candidates to prevent corruption that might be caused by a corporation's impact on the candidates.

References:

The Political Funds Law, section 2, 008.02.29, Law No. 8880; and Section 31

<http://blog.naver.com/puhaha0122?Redirect=Log&logNo=80072998095>

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

Comments:

It is a requirement to disclose the donations to individual political candidates. This disclosure is managed by the National Election Commission.

References:

Refer to the Political Funds Law, Sections 34-44

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

Comments:

The National Election Commission audits the campaign financing of individual candidates.

References:

Political Funds Act, Section 40

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The National Election Commission is authorized to monitor the financing of individual political candidates.

References:
Political Funds Act, Section 41

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

83

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:
The limits on individual donations to political parties are effective.

References:
http://cafe.naver.com/kjh791215.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=2828

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:
The government attempts to strictly control companies' donations to political parties. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations.

References:
http://cafe.naver.com/kjh791215.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=2828

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. For instance, it is prohibited for any business organization to donate political funds to the political parties, but sometimes businessmen make donations for their favorite parties or leaders.

References:

http://cafe.naver.com/kjh791215.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=2828

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

If necessary, public prosecutors or the investigation bureau of National Election Commission may investigate the cases. The National Election Commission may present the election violation case to the public prosecutor, if necessary. Then the public prosecutor directly investigates the case to see whether or not it involves a violation of election law.

In the initial steps of the investigation, the National Election Commission has a power to collect the related materials and evidence.

References:

http://cafe.naver.com/kjh791215.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=2828

http://academic.naver.com/view.nhn?doc_id=16344978

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There are many cases of penalties being imposed on offenders, such as the case of Park, Yeun Cha, who provided ex-President Rho with political funds and committed bribery. This is an important case related to violations of the Political Funds Act. Park was sentenced by the judicial court to a prison term of 3.6 years and a 30 billion won (US\$25,246,132) fine.

References:

Political Funds Law, Section 52

http://academic.naver.com/view.nhn?doc_id=16344978

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Political funds must be audited by accountants of the political parties and reported to the National Election Commission.

References:

Political Funds Law of ROK, Article 38

http://academic.naver.com/view.nhn?doc_id=16344978

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

90

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

The laws regarding political donations are very strict. For example, donor cannot donate more than 20 million won (US\$16,840) per year according to Article 11 of Political Funds Act in Korea.

References:

The Political Funds Law regulates the limits on individual donations to political candidates.

http://academic.naver.com/view.nhn?doc_id=16344978

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

The limits on corporate donations to individual candidates are effective.

References:

http://www.kimhae.com/0_kimhae/board/read.asp?m_no=14310&table=board_news

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The National Election Commission has independent power to investigate suspected election offenses. But it is limited in its ability to enforce the results of these investigations and impose penalties. That is why they need to send the case to the public prosecutor.

References:

<http://mybox.happycampus.com/day32105/2094825>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The National Election Commission has independent power to investigate suspected election offenses. But it is limited in its ability to enforce the results of these investigations and impose penalties. That is why they need to send the case to the public prosecutor.

References:

<http://mybox.happycampus.com/day32105/2094825>

http://academic.naver.com/view.nhn?doc_id=16344978

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its

judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

The regulations are effective because the finances of individual candidates' campaigns are audited.

References:

file:///D:/Documents%20and%20Settings/user/Ö%20T/Law(öÁ %20 p-).xml

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

63

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It depends upon the circumstance. Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

References:

http://cafe.naver.com/kjh791215.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=2825

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Financial records of political parties may be disclosed according to the Official Information Disclosure Act. A record might take a few weeks to be disclosed, depending upon the individual case.

References:

http://cafe.naver.com/kjh791215.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=2825

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The costs of accessing the financial records of political parties are not too expensive. Applicants pay reasonable expenses such as mailing costs, copy costs, and other work fees etc when they request the information on the basis of the Official Information Disclosure Act.

References:

http://cafe.naver.com/kjh791215.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=2825

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

http://cafe.naver.com/kjh791215.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=2825

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

69

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access data relating to financial support and expenditures on the basis of the Official Information Disclosure Act. The time period to access the records differs, depending upon the cases. However, citizens can access records to the financing of individual candidates' campaigns. It takes about a couple of weeks.

References:

Political Fund Act, Articles 34-35, Wholly Amended by Act No. 7682, Aug. 4, 2005; Amended by Act No. 7851, Mar. 2, 2006; Act No. 7908, Mar. 24, 2006; and Act No. 7938, Apr. 28, 2006

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It takes one or two weeks to access the financial records of individual candidates (their campaign revenues and expenditures), depending upon individual cases because this is a sensitive issue.

References:

Political Fund Act, Articles 34-35

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of accessing the financial records of individual candidates (their campaign revenues and expenditures) is not too much if citizens request it on the basis of the Official Information Disclosure Act. The cost can differ, depending on cases. But I would say it would cost less than \$ 100 including application fee, copy, and other fees.

References:

The Political Fund Act, Articles 34-35

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

Political Fund Act, Articles 34-35

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

III-1. Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

75

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The chief executive can be held accountable for his actions, but responsible in terms of political perspective. The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive does not hold regular interviews with journalists although he sometimes will, if necessary.

References:

Yu,JongHae, Organization Theory, Seoul: Parkyoungsa, 2000

www.parkyoungsa.co.kr

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The judiciary can review the actions of the executive.

References:

Administrative Litigation, Act No. 6627, Jan. 26, 2002, Section 1

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

There are very few cases of the judiciary reviewing the actions of the executive. The Constitution was amended in 1987, and hasn't been changed since then. As a matter of fact, the independent judiciary system has not been changed much.

The first reference, although seemingly out of date, is still relevant. The author is a scholar of constitutional studies.

References:

Kang, Kyoung Keun, "The Role of Judicial Independence in Anti-Corruption: the Case of Korea", *The Korean Association for Corruption Studies*, Vol.4, 1999, 1-10

http://kin.naver.com/detail/detail.php?d1id=13&dir_id=130502&docid=5122574&qb=6rWt66y07LSd66as7JeQIOuMgO2VnCDsggzrspxsi6zsggw=&enc=utf8&pid=fVJgudoi5Uhssc54cWlsss-117415&sid=Ss7TCfnRzkoAAAxzEZI

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Actually, the use of the executive orders is limited because of Government Organization Act. The Act defines the use of executive orders as well as the function of each ministry. The Government Organization Act regulates the function and role of chief executive, so that his executive orders are implemented within the related act. His orders work within the limitations under the President (Article 16, 18).

References:

Constitution, 1987, Article 96, Wholly Amended by Act No. 8852, Feb. 29, 2008; Amended by Act No. 8867, Feb. 29, 2008

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The President cannot be punished during his tenure of office. However, it should be noted that he can be punished in case of insurrection or treason even during his tenure of office. The highest public prosecutor may investigate the case if necessary.

References:

Constitution, 1987, Article 84:

The President shall not be charged with a criminal offense during his tenure of office except for insurrection or treason.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

There are no regulations regarding the exemption of ministerial-level officials for crimes they commit.

References:

Constitution, 1987, Article 11:

(1) All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

94

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Public Service Ethics Act, 1993, Article 10, Disclosure of Registered Property:

(1) Each public service ethics committee shall open to the public the registered matters concerning the property of such public officials out of those liable for registration under its jurisdiction falling under any of the following subparagraphs, as well as the property of such officials' spouses and lineal ascendants and descendants, as well as the contents of the report on the changed matters as provided in Article 6, by inserting them in the Official Gazette or public bulletins, within one month after the time limit for registration or report expires:

State public officials in political service, such as the President, the Prime Minister, members of the State Council, members of the National Assembly, Director General and Directors of the National Intelligence Service;

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Ministerial-level officials are also required to file a regular asset disclosure form every year regarding increases or decreases of their property.

References:

Public Service Ethics Act, 1993, Article 10

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

There are regulations that govern gifts and hospitality that are offered to members of the executive branch.

References:

Enforcement Decree of the Public Service Act, No.20191, 2007, Articles 28-30

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

The Board of Audit and Inspection (BAI) is tasked with auditing asset disclosures.

References:

State Property Act, No.7325, 2004, Articles 1,5 and 11

Constitution, Article 97

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

Practically, this regulation does not work very well, though.

References:

There are restrictions on entering the private sector which are related to an official's previous position within two years after he leaves his position.

Article 17 (Restriction on Employment of Retired Public Officials in Related Private Enterprises, etc.):

(1) No public official or officer or employee of a public service-related organization who was engaged in a grade of position or field of duties as prescribed by the Presidential Decree may be employed for a period of two years immediately after his/her retirements by a profit-making private enterprise of a specified scale or larger (hereinafter referred to as the profit-making private enterprise") connected closely with the business which he/she performed at the competent department within three years immediately before his/her retirement, or the corporation or the organization established for the joint profits and mutual cooperation, etc. with the profit-making private enterprises (hereinafter referred to as the "association"): Provided, That this shall not apply if such employment is approved by the competent public service ethics committee.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

Actually, there are strong recommendation by non-governmental organizations to extend the prohibited periods for restricting post-government private sector employment for heads of state and government and ministers.

Sometimes the regulations do not seem very effective, even though, practically speaking, some exceptions exist. Some opinions state that the prohibited periods (currently two years) should be made longer, say five or ten years

From Transparency International's National Integrity System Report 2006:

According to the 2004 report of the Government Public Official Ethics Committee, 97 retired public officials were found to have breached restrictions on post-employment in 2002, 98 in 2003 and 132 in 2004. Although they obtained prior approval by the Committee, many of them turned out to be employed at companies that engaged in businesses related to those public institutions where they were formerly employed

"As for the Public Service Ethics Act, the provisions regarding assets registration and post-employment fail to provide clear guidelines, rules and standards that would discourage and ultimately prohibit officials from enjoying unfair financial gains. In addition, high-ranking public officials continue to be reluctant to comply fully with asset registration and post-employment restrictions."

References:

<http://www.peoplepower21.org/>

Transparency International's National Integrity System Report, Korea 2006

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

Public Service Ethics Act, Article 15, Report on Receipt of Gifts from Foreign Governments, etc.:

(1) If a public official (including members of local councils and educational committees; hereafter the same shall apply in Article 22) or an officer or an employee of any public service-related organization has received any gift from a foreign country or a foreigner (including foreign organizations; hereinafter the same shall apply) in connection with his/her duties, he/she shall report it without delay to the head of the agency or organization to which he/she belongs, and hand over such gift thereto.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

Executive branch asset disclosures (defined here as ministers and above) are inspected annually by the Board of Audit and Inspection (BAI).

According to Transparency International's National Integrity System report for Korea 2006: No law provides for lifestyle monitoring, yet high-ranking officials of the executive branch often face intense media scrutiny or criticism by civil activist groups in controversies over real estate speculation or entertainment scandals."

References:

Board of Audit Inspection

Transparency International's National Integrity System report for Korea 2006

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

88

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

The asset disclosure records are reported in the official bulletin published by government.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the asset disclosure records of the heads of state and government within a reasonable time period. But this is based upon Official Information Disclosure Act. Records can be obtained online or through visiting the office directly. Government is required to respond to a citizen request within 10 days. The government usually publishes the assets of the officials in the official gazette, focusing on a brief summary of the information.

References:

Official Gazette

Information Disclosure Act

Interview with Im, Jung Sook, Public Official, Public Service Ethics Section, Ministry of Administration and Safety, phone call (822-2100-3356), Oct 20

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access asset disclosure records if it is not private information, meaning it is not purely individual information regarding the assets.

Citizens can access the records by a few ways such as internet access or through a direct visit the related office. The related office authority make a decision whether or not citizens' requests are viable within 10 days. Then they should give the notice to the applicants. Copies of these files coast a reasonable fee of about 250 won per copy. But as I mentioned before again and again, it is prohibited to reveal their private and essential information such as ID number, private phone number, exact residence address, and family related information etc.

References:

Public Service Ethics Act regulation states that citizens can access the asset disclosure of the high ranking public officials including the head of government.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Citizens may not access certain information because of Private Information Protection Act.

References:

Interview with Im, Jung Sook, Public Official, Public Service Ethics Section, Ministry of Administration and Safety, phone call (822-2100-3356), Oct 20

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Constitution of ROK (1987), Article 10:

All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals."

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party and government are basically separate but sometimes they work together very closely. The ruling party kind of works cooperatively regarding policy making. But it is very difficult for them to misuse the government's functions for their political interests.

References:

Kwon, Young Sung, Introduction to Constitution, Seoul: Bubmunsu Publing Co., 2007

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

50

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Constitution, 1987, Article 111:

(1) The Constitutional Court shall have jurisdiction over the following matters:

1. The constitutionality of a law upon the request of the courts;
2. impeachment;
3. dissolution of a political party;
4. competence disputes between State agencies, between State agencies and local governments, and between local governments; and
5. constitutional complaint as prescribed by Act.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The supreme court may adjudicate any laws passed by the legislature, focusing on the legitimacy of the laws. If they rule that the laws are in violation of the Constitution, then the function of the related laws will be suspended tentatively until the legislature amends them. (Constitution, Article 107,110)

The laws are not frequently reviewed by the Constitutional Court. As an example of a law that was reviewed, the Constitutional Court said in April 2009 that the current special act regarding traffic accidents had violated the Constitution (see http://www.carlife.net/bbs/board.php?bo_table=information&wr_id=3829&sca=%C4%AE%B7%B3&page=5). Practically, it takes a long time(sometimes more than one year) to expect judicial reviews even though the related parties made a petition to review.

References:

Constitution, 1987, Article 107:

The Supreme Court shall have the power to make a final review of the constitutionality or legality of administrative decrees, regulations or actions, when their constitutionality or legality is at issue in a trial.

http://academic.naver.com/view.nhn?doc_id=13263900

Year Book of 2007, The Judiciary

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

From the National Integrity System (NIS) report:

In theory, they are investigated and prosecuted for criminal allegations, but practically they frequently enjoy immunity (Article 44) from investigation and prosecution except election law violation cases: 'Parliamentarians enjoy immunity from investigation and prosecution. Under Article 44 of the constitution, during the sessions of the National Assembly no member shall be arrested or detained without the consent of the National Assembly, except in the case of flagrante delicto. In addition, no member of the National Assembly shall be held responsible outside the National Assembly for opinions officially expressed or votes cast within the Assembly.'

References:

Transparency International's National Integrity System report for Korea 2006

The Constitution and the Criminal Procedure Act states that anybody can be subject to criminal proceedings.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

82

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

The Public Service Ethics Act states that members of the national legislature are required to file an asset disclosure form.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

Lawmakers also are controlled by the Public Service Ethics Act and there are legal restrictions on entering the private sector for two years after they leave office. But, in fact, it is difficult to find the cases of violations regarding post-government private sector employment. Also, there is no strong sanction enforcement mechanism for these cases.

References:

National Assembly Act, Article 29

Public Service Ethics Act, Article 9:

1. The public service ethics committee in the National Assembly shall preside over matters concerning the members of the National Assembly, other public officials under the control of the National Assembly, and retired public officials of the National Assembly.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Public Service Ethics Act

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

The Public Service Ethics Committee, belonging to National Assembly (Article 9), refers to the independent auditing of members' assets.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations restricting post-government private sector employment for national legislators are not effective. The legislators are restricted from entering the private sector for two years after their terms end, just like other governmental officials. However, there is no way to investigate them.

According to my interview with an official from the National Assembly, no one has violated this regulation so far this term. But it is difficult to find the cases of violation. It seems that the system is not perfectly effective, but it works somewhat.

From Transparency International's National Integrity System Report 2006: According to the 2004 report of the Government Public Official Ethics Committee, 97 retired public officials were found to have breached restrictions on post-employment in 2002, 98 in 2003 and 132 in 2004. Although they obtained prior approval by the Committee, many of them turned out to be employed at companies that engaged in businesses related to those public institutions where they were formerly employed."

References:

Public Service Ethics Act.

Interview with Choi, Yong Kyung, official of National Assembly, telephone, Oct. 9, 5:30 p.m.

<http://news.naver.com/main/read.nhn?mode=LSD&mid=sec&sid1=001&oid=021&aid=0000182667&>

Transparency International's National Integrity System Report 2006

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations that govern gifts and hospitality for lawmakers are limited in their effectiveness. According to my interview, a total of 72 items or gifts have been reported being received by lawmakers so far. This means that this regulation is somewhat working. However, there is no way to investigate any lawmakers who do not purposely report gifts that they have received to the related office.

Also, Transparency International's National Integrity System report speaks to the legacy of legislators accepting large gifts:

Off-the-books funds of parliamentarians have long remained a serious problem in Korea. The Political Fund Act stipulates that members of the National Assembly must maintain transparent funding, yet scandals still take place regarding illegal and slush funds, funds raised particularly among corporations. In 2004, only 12 such cases, involving a total of 23 parliamentarians, were brought to the courts; the accused had illegally accepted a combined total of KRW 200 billion from corporations."

References:

National Assembly Act , Article 158, officially regulates lawmakers' ethical behavior, but enforcement of it is weak.

Interview with Choi, Yong Kyung, Official of National Assembly, telephone, Oct.9, 5:40 p.m.

Transparency International's National Integrity System report for Korea 2006

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Once per year, the committee audits the asset disclosures of the legislative branch.

The National Integrity System report for Korea 2006 also details an internal monitoring process of asset disclosures from the legislative branch: Lastly, according to Article 61 of the constitution and Articles 2 and 3 of the Act on the Inspection and Investigation of State Administration, the National Assembly may conduct National Assembly inspections and hearings on public sector institutions on a yearly basis or otherwise when deemed necessary. The National Assembly provides the resulting reports of these inspections on its homepage. These types of hearings occur frequently."

References:

Public Service Ethics Committee of National Assembly has a power of inspection regarding lawmakers' assets.

Transparency International's National Integrity System report for Korea 2006

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

75

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

Citizens can access the asset disclosure records of members of the national legislature on the basis of the Official Information Act. However, they can only access general information on the lawmakers' assets.

References:

Public Service Ethics Act, Article 10, Disclosure of Registered Property

Information Disclosure Act

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records are open to all citizens. One can access the records by a few ways such as internet access or direct visit to the related office. The related office authority make a decision on the viability of citizens' requests within 10 days. Then they should give the notice to the applicants.

Citizens can access the asset disclosure records of members of the national legislature but the information is limited. Remember that the citizens may access the asset disclosure records of members of the national legislature within a limited scope to protect the representatives' private information.

Also, the legislature has its own organization and committee that is charged with ethical management of the members. I would say that the legislature system does not work well when compared to the executive branch's monitoring.

References:

Public Service Ethics Act, Article 10, Disclosure of Registered Property

Interview with Im, Jung Sook, Public Official, Public Service Ethics Section, Ministry of Administration and Safety, phone call (822-2100-3356), Oct 20

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are open to all citizens and can be obtained at little cost of about 250 won per copy. One can access the records by a few ways such as internet access or direct visit to the related office. The related office authority make a decision on the viability of citizens' requests within 10 days. Then they should give the notice to the applicants.

But as I mentioned before, it is prohibited to reveal their private and essential information such as ID number, private phone number, exact residence address, and family related information etc.

This regulation can be applied to all government agencies including State Owned Enterprises, Taxes and Customs etc.

References:

Public Service Ethics Acts, Article 10, Disclosure of Registered Property

The Information Disclosure Act, Article 9, regulates cases of exceptions to disclosure rules. The Information Disclosure Commission makes these decisions.

Interview with Im, Jung Sook, Public Official, Public Service Ethics Section, Ministry of Administration and Safety, phone call (822-2100-3356), Oct 20

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The disclosure records are accessible to citizens in the Official Gazette. For example, they can find the relevant officials' general records regarding the amount of their property, their names, addresses, and positions, etc. However, they may not access officials' ID numbers and their families' related information.

Legislators are known to hide or underestimate their assets. From the National Integrity System report:

Assets disclosure has so far remained in formal terms only. In 2003, of the 1,130 public officials of the National Assembly who were required to register their assets, 50 people omitted disclosure of their assets by more than KRW 100 million [US\$84,302] in value, while another 41 people omitted assets of less than KRW 100 million [US\$84,302] in value. In 2005, 143 or 19.7 per cent of the 723 parliamentarians and first-grade ranking public officials failed to disclose more than KRW 30 million [US\$25,290] in value of their financial assets or real estate. However, the National Assembly Public Officials Ethics Committee remained lenient towards these omissions, merely issuing warnings or orders of correction to 41 public officials and lesser sanctions to 57 public officials."

References:

Official Gazette

Transparency International's National Integrity System report for Korea 2006

Interview with Im, Jung Sook, Public Official, Public Service Ethics Section, Ministry of Administration and Safety, phone call (822-2100-3356), Oct 20

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has

an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

83

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Citizens can access the records of legislative processes through the Official Information Disclosure Act.

References:

Public Ethics Act, 1993, articles 9 and 15 etc.

Official Information Disclosure Act

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is possible to access the records any time since it is recorded in electronic system. The cost will be reasonable. You need visit the related agency of government office and you need to pay reasonable fees regarding the matter.

References:

Official Information Disclosure Act

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

Comments:

It is possible to access the records any time since it is recorded in electronic system. The cost will be reasonable. You need visit the related agency of government office and you need to pay reasonable fees regarding the matter.

References:

Official Information Disclosure Act

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

73 III-3. Judicial Accountability

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

From Transparency International's National Integrity System report for Korea 2006:

The Court Organisation Act provides for the qualifications and recruitment procedures of judges. According to the Act, any person can become a judge if he or she passes the National Judicial Examination and completes a two-year training program at the Judicial Research and Training Institute, or if he or she has attained the qualifications of a lawyer (Article 42). The chief justice appoints judges based on the results of the national examination and the candidate's performance during the judicial training period (Article 41)."

References:

Hearing Act, No.8867, 2008, Article 1:

Selecting for Judges of the Supreme Court are required to pass the hearing meeting at the National Assembly.

Transparency International's National Integrity System report for Korea 2006

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

From the 2006 National Integrity System report:

Concern has been expressed about the independence of individual judges. The constitution requires individual judges to act independently in their occupational performance. Korea's judges themselves point out that fundamentally, personnel decisions of the judiciary are only based on the number of years of employment without any other clearly defined standards for promotion, and that appointments and all other powers are concentrated in and controlled by the chief justice of the Supreme Court. This construct has led to a rigid pyramidal personnel structure, seriously challenging the independent performance of individual judges"

References:

Hearing Act, No.8867,2008, Article 1:

Selecting for Judges of Supreme Court are required to pass the hearing meeting at National Assembly

Transparency International's National Integrity System report for Korea, 2006

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

Hearing Act, No.8867, 2008, Article 1:

Selecting for Judges of the Supreme Court are required to pass the hearing meeting at the National Assembly.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

88

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

Their final opinions regarding formal judgements are explained on the basis of logical rationale.

References:

They must express their own opinion and signature in the process of final decision making.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Members of the national level judiciary are required to give their own opinions in their final judicial decision making.

References:

Kwon, Young Seung, Constitution, Seoul: Bubmunsa, 2007

Constitution, Article 101

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The judicial disciplinary commission is organized with a total 7 members including chair. The chair person will be appointed as a national level judiciary. The independence of the judiciary is guaranteed in the constitution: Judges shall rule independently according to their conscience and in conformity with the Constitution and laws.

From Transparency International's National Integrity System report:

Internally, the judiciary maintains its own audit regulation, the Regulation on Court Audit. The Supreme Court may conduct ordinary audits on a yearly basis or extraordinary audits on all of the courts' operations, while the head of each court may carry out audits and inspections of the concerned courts. The head of the Ministry of Court Administration, under the Supreme Court, may also perform inspections when they are deemed necessary."

References:
Constitution 1987

<http://www.scourt.go.kr/news/NewsViewAction.work?gubun=6&seqnum=458>

Transparency International's National Integrity System report, Korea 2006

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The judiciary is independent and separated from other governmental agency according the Constitution. There is also an independent agency called the Disciplinary of Judges Act (Law 8058).

References:
Constitution, 1987, articles 103 and 101:

The Judicial Organization Law protects the independence of the Judiciary Discipline Agency.

Disciplinary of Judge Act (consists of seven committees and three reserve candidates with three years term)

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The judicial disciplinary commission is organized with a total 7 members including chair. The chair person will be appointed as a national level judiciary. They make a decision focusing on whether or not any judiciary violate the laws.

If necessary, the judicial disciplinary agency can investigate the cases. It seems true that they do not initiate investigations aggressively, but it depends on the cases. Overall, their sanctions are relatively fair. Recently (Oct.6 2007) it was reported that one of judiciary member was punished for two month suspension. The above site will be useful for the sources.

References:
<http://www.scourt.go.kr/news/NewsViewAction.work?gubun=6&seqnum=458>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The judicial disciplinary commission is organized with a total 7 members including chair. The chair person will be appointed as a national level judiciary. They make a decision focusing on whether or not any judiciary violate the laws.

There are different kinds of penalties such as warning, dismissal, suspension, and reduction of salary etc. and their sanctions are relatively fair. Recently (Oct.6 2007) it was reported that one of judiciary member was punished for two month suspension. The above site will be useful for the sources. However, the committee does not seem to be so strict regarding their cases.

References:

<http://www.scourt.go.kr/news/NewsViewAction.work?gubun=6&seqnum=458>

The Judicial Disciplinary Commission under the Supreme Court has been organized to impose penalties.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

89

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

Members of the national-level judiciary are required to file an asset disclosure form every year regarding the decreasing or increasing value of their property.

References:

Members of the national-level judiciary are required to register and disclose on the basis of the Public Service Ethics law (1993).

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Enforcement Decree of the Public Service Act, No.20191, 2007, Articles 28-30

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

It is confirmed that the Public Service Committee under the Supreme Court controls the independent auditing of the asset disclosures. Also, the Board of Audit Inspection has the power to examine the final accounts of expenditures if they involve in corruption. The Public Service Committee is focusing on management of the members' property and whether or not they have legally increased or decreased it.

References:

Public Service Ethics Act (1993)

The Public Service Ethics Committee under Judiciary controls the independent auditing of the asset disclosures of the national level judiciary.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

National-level judges need to wait two years after leaving office to enter a private sector position related to their previous position.

Public Service Ethics Act (1993)

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations are generally enforced, though some exceptions exist.

In some cases, national level judges seem to benefit well in private sector employment. In general, there is a custom to treat them as if they were in the current position for a year. They are granted the privileges of their former post. Therefore, it is reported that many customers use them to promote their interests because people suppose that they are influential in judicial process. So, they are popular with people. They open their own licensed attorney's office after their retirement. They might have benefits such as more customers because they are already well known to many people.

The National Integrity System report states: In addition, it was revealed that, from 2001 to 2004, six former judges were employed in large conglomerates."

References:

<http://ko.wikipedia.org/wiki/%EC%A0%84%EA%B4%80%EC%98%88%EC%9A%B0>

Transparency International's National Integrity System report for Korea in 2006

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

In Korea, we have still a custom of former judges being granted the privileges of their former post. The media has been calling for the passage of special acts to prohibit this custom.

References:

http://www.heraldbiz.com/SITE/data/html_dir/2008/10/21/200810210276.asp

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Judges are required to annually register and disclose their assets. The Public Service Ethics Committee under the Supreme Court regularly audits national level judiciary assets on the basis of the law.

References:

The Public Service Ethics Act require that national-level judiciary asset disclosures be audited.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

75

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Citizens can access the asset disclosure records of senior members of judiciary, but is limited to do so. For example, citizens can not access the detailed information of them such as tag number of their vehicles and exact address of their asset etc.

References:

The Public Service Ethics Act does allow the disclosure of records to be available to citizens. However, important details may be left out except in special cases such as legal investigations.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the asset disclosure records of judges within a reasonable time period. But this is based upon Official

Information Disclosure Act. Records can be obtained online, in the official gazette or through visiting the office directly. Government is required to respond to a citizen request within 10 days. The government usually publishes the assets of the officials in the official gazette, focusing on a brief summary of the information.

It is very difficult to access judicial asset disclosure records because of the Private Information Protection Act. But the asset disclosure records of members of nation-level judiciary should be disclosed by the Public Service Ethics Act in the government's bulletin.

References:

Official Information Disclosure Act

Private Information Protection Act

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the records by a few ways such as internet access or through a direct visit the related office. The related office authority make a decision whether or not citizens' requests are viable within 10 days. Then they should give the notice to the applicants. Copies of these files coast a reasonable fee of about 250 won per copy. But as I mentioned before again and again, it is prohibited to reveal their private and essential information such as ID number, private phone number, exact residence address, and family related information etc.

As stated earlier, key components of these forms may be inaccessible due to the private information protection act. Basically, accessing the full judicial asset disclosure records is not allowed by the government except in certain cases; for example, if the police need these disclosures for the purpose of an investigation.

References:

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

As stated earlier, key components of these forms may be inaccessible due to the private information protection act. Basically, accessing the full judicial asset disclosure records is not allowed by the government except in certain cases; for example, if the police need these disclosures for the purpose of an investigation.

An abbreviated version of judges' asset disclosures is available online. However, key information is excluded as per the privacy of information act. In addition, the NIS report states: A survey of people serving the judiciary shows that 10 out of the 60 failed to register all of their assets."

References:

Private Information Protection Act

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

Transparency International's National Integrity System report for Korea, (2006) says that 20 percent of high-ranking public officials failed to register their assets; Seoul Shinmun, Nov. 4, 2005 (in Korean).

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

100

40a. In law, the legislature can amend the budget.

YES | NO

Comments:

The National Assembly has the power to remove some budget items.

References:

Constitution, 1987, Article 57:

The National Assembly shall, without the consent of the Executive, neither increase the sum of any item of expenditure nor create any new items of expenditure in the budget submitted by the Executive.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

The lawmakers play two roles in the decision-making process: 1) passing the bill; 2) inspecting the budget after it is implemented.

References:

Constitution, Article 58:

When the Executive plans to issue national bonds or to conclude contracts which may incur financial obligations on the State outside the budget, it shall have the prior concurrence of the National Assembly.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

The lawmakers of the national assembly have the sufficient capacity to monitor the budget process through either special officials or committees of public budgeting.

There are budget specialists in the legislature, which provide lawmakers with opportunities to monitor them.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

50

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The public budgeting process involves political compromise as emphasized by Wildavsky. In case of Korea also public budgeting is made by political parties or interest groups lobbying etc. In terms of this context, the process is basically transparent, but frequently, negotiations take place in closed sessions. Ordinary citizens can access the budgeting process but the impact is weak because basically they have not a strong power which may influence the budgeting.

References:

Aaron Wildavsky, New Politics of Budgetary Process, New York: Longman, 2003

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.



Comments:

Citizens may provide input by advising, discussing, and conveying their opinions, but they are not directly involved in budget decisions. The 2008 Open Budget Index reports that although the South Korean government makes the majority of key budget reports, reviews and plans available to the public these documents are often incomplete or released late. In addition, opportunities for citizen participation in budget debates could be increased.”

References:

<http://elaw.klri.re.kr/>

2008 Open Budget Index: South Korea. International Budget Partnership. http://openbudgetindex.org/files/cs_southkorea.pdf

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.



Comments:

Citizens cannot access an itemized list of budget allocations because of prohibitive barriers. Many times, information on budget allocations is hard to access, incomplete or made publicly available long after the funding has been allocated.

References:

2008 Open Budget Index: South Korea. International Budget Partnership. http://openbudgetindex.org/files/cs_southkorea.pdf

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

83

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The departing head of the ministry submits formal budget reports to the head of financing.

The 2008 Open Budget Index states: Access to the highly detailed budget information needed to understand the government's progress in undertaking a specific project or activity is fairly forthcoming. South Korea has codified the right to access government information through the Public Organization Disclosure Act, and citizens are generally able to enjoy this right in practice, though it can be difficult to attain financial and non-financial information related to expenditures."

References:

Kwon, Young Sung, Introduction to Constitution, Seoul: Bubmunsa Publing Co., 2007

2008 Open Budget Index. South Korea. International Budget Partnership. http://openbudgetindex.org/files/cs_southkorea.pdf

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

Almost all the parties are represented in the committee.

References:

<http://budget.na.go.kr/index.jsp>

Chairman of Committee refers to Shim Jae Chul.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

Comments:

In fact, the legislative committee has no direct power to investigate financial irregularities. But they can collaborate with other government agencies such as the Board of Audit Inspection or Public Prosecutor.

References:

<http://elaw.klri.re.kr/>

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

Constitution, 1987

There is a legislative committee that oversees the expenditure of public funds.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ~~81~~ Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Constitution, 1987.

National Public Officials' Law

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

Civil servants are also required to serve citizens with sincerity, kindness, accountability, fairness etc.(Article 55-64).

References:

State Public Officials Act, Article 26, Principles for Appointment

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

There is an independent redress mechanism for the civil service called a Public Service Commission in Central Government of ROK. If they have grievances they can report the commission by requesting correction.

From Transparency International's National Integrity System report Korea 2006: Public officials retain certain rights of redress regarding their employment. Public officials of central governmental institutions may register appeals to the Request Review Committee under the government's public official committee (Korea Civil Service Commission), while public officials serving constitutionally independent institutions may register their appeals to the appeal review committees under the secretariat offices of their institutions (Article 9, State Public Officials Act). These committees review requests concerning the unfair treatment of public officials, including decisions on their employment status. The State Public Officials Act stipulates that a public official who is dissatisfied with a decision by his or her employer must submit a request to the concerned committee before bringing an administrative lawsuit to court (Article 17)."

References:

There is a system of redress mechanism for the civil service which is called the Discipline Act for Public Officials (1970), Article 24

Transparency International's National Integrity System report Korea 2006

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

Article 25: All citizens shall have the right to hold public office under the conditions as prescribed by Act.

References:

The State Public Officials Act requires that civil servants who are convicted of corruption are prohibited future government employment for a number of designated years.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

83

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants are protected from political intervention both legally and in practice.

References:

Kim, Young Jong , New Public Personnel Administration, Seoul: Hyung Seul Publishing Co. 1998

Kim, Pan Seok, Directions for the Development of the Korean Public Personnel Administration," The Korea Public Administration Journal, Vol.11, No.1, 2002

<http://www.kipa.re.kr>

State Governmental Official Act, 55-67. Protection of their Status

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

From Transparency International's National Integrity Systems report: As a general rule, the appointment of public officials is based on written tests and occupational performance under the State Public Officials Act (Article 26). In Korea, rules on recruitment, career development and appointment tend to be strictly enforced and followed."

References:

Kim, Young Jong , New Public Personnel Administration, Seoul: Hyung Seul Publishing Co., 1998

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

Transparency International National Integrity Systems report Korea 2006

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

From Transparency International's National Integrity Systems report: As a general rule, the appointment of public officials is based on written tests and occupational performance under the State Public Officials Act (Article 26). In Korea, rules on recruitment, career development and appointment tend to be strictly enforced and followed."

References:

Kim, Young Jong , New Public Personnel Administration, Seoul: Hyung Seul Publishing Co., 1998

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

Transparency International's National Integrity Systems report Korea 2006

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants have clear job descriptions based upon related regulations.

References:

Kim, Young Jong , New Public Personnel Administration, Seoul: Hyung Seul Publishing Co., 1998

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

In practice, civil servant bonuses constitute a big portion of total pay, such as 500-600 percent per year.

References:

Kim, Young Jong , New Public Personnel Administration, Seoul: Hyung Seul Publishing Co., 1998

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

Kim, Young Jong , New Public Personnel Administration, Seoul: Hyung Seul Publishing Co., 1998

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants' complaints are pursued by an independent redress mechanism without political sensitivity.

References:

Kim, Young Jong , New Public Personnel Administration, Seoul: Hyung Seul Publishing Co., 1998

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Kim, Young Jong , New Public Personnel Administration, Seoul: Hyung Seul Publishing Co., 1998

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants who are convicted of corruption are prohibited from future government employment, depending on the cases. If he or she is convicted with a heavy punishment, they are prohibited from serving until the recovery of their status. But if the case and the punishment given are judged as being less serious, they are not prohibited from future government employment.

References:

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

Employees at the rank of grade 4 and above are required to file an asset disclosure form.

References:

Public Service Ethics Act, Article 3, Persons Liable for Registration:

(1) Any public official who falls under any of the following subparagraphs (hereinafter referred to as the person liable for registration") shall register property under the provisions of this Act:

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

The Disciplinary Committee of Civil Servants or Judges are required to recuse themselves from the decision making process if they may be affected by the case — for example, if their family members or relatives are involved.

However, this is not a perfect system in relation to the policy making process.

References:

There is no regulation or law that requires civil servants to recuse themselves from policy decisions. However, there are some other similar regulations.

Disciplinary for Public Officials Act, Article

Criminal Procedure Act, 18

Civil Procedure Act, 43

Local Government Officials Disciplinary Act, 7

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

Public Service Act, 1993, Article 17, Restriction on Employment of Retired Public Officials in Related Private Enterprises, etc.

No public official or officer or employee of a public service-related organization who was engaged in a grade of position or field of duties as prescribed by the Presidential Decree may be employed for a period of two years immediately after his/her retirements by a profit-making private enterprise of a specified scale or larger (hereinafter referred to as the profit-making private enterprise") connected closely with the business which he/she performed at the competent department within three years immediately before his/her retirement, or the corporation or the organization established for the joint profits and mutual cooperation, etc. with the profit-making private enterprises (hereinafter referred to as the "association"): Provided, that this shall not apply if such employment is approved by the competent public service ethics committee.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Public Service Ethics Act, 1993, Article 15, Report on Receipt of Gifts from Foreign Governments, etc.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:

Public Service Ethics Act, Article 4

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

According to the Public Service Ethics Act, civil servants are prohibited from getting a job within two years after retirement if the position is closely related to their previous job. However, the cooling-off period is short or sometimes ignored.

From Transparency International's National Integrity System Report 2006: According to the 2004 report of the Government Public Official Ethics Committee, 97 retired public officials were found to have breached restrictions on post-employment in 2002, 98 in 2003 and 132 in 2004. Although they obtained prior approval by the Committee, many of them turned out to be employed at companies that engaged in businesses related to those public institutions where they were formerly employed."

References:

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

Transparency International's National Integrity System Report 2006

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Generally, the regulations are effective, but sometimes they are ignored.

References:

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

<http://news.naver.com/main/read.nhn?mode=LSD&mid=sec&sid1=001&oid=001&aid=0000316433&>

Public officials in Korea are limited to receive only gifts that are valued under 30,000 won (US\$25) in cases that are unrelated to their major positions.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to ensure that the regulations are followed during the decision-making process in all government agencies at the micro-level.

References:

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

There is no regulation or law that civil servants must recuse themselves from policy decisions. But there are some other related regulations.

Disciplinary for Public Officials Act, Article

Criminal Procedure Act, 18

Civil Procedure Act, 43

Local Government Officials Disciplinary Act, 7

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

Kim, Young Jong, Korean Public Administration and Corruption Studies, Seoul: Hyung Seoul Publing Co., 2003

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

75

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

Citizens can access the asset disclosure records of senior civil servants through electronic publication Gwanbo” — the official gazette.

References:

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

Kim, Young Jong, Korean Public Administration and Corruption Studies, Seoul: Hyung Seoul Publishing Co., 2003.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are able to access asset disclosure records within a reasonable time period. But this is based upon Official Information Disclosure Act. Records can be obtained online or through visiting the office directly. Government is required to respond to a citizen request within 10 days. The government usually publishes the assets of the officials in the official gazette, focusing on a brief summary of the information.

References:

Interview with Jung Sun Ok, Official of Ethics Section of Government, in charge of the electronic system, telephone, Sept. 3, 2009

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the records by a few ways such as internet access or through a direct visit the related office. The related office authority make a decision whether or not citizens' requests are viable within 10 days. Then they should give the notice to the applicants. Copies of these files coast a reasonable fee of about 250 won per copy. But as I mentioned before, it is prohibited to reveal their private and essential information such as ID number, private phone number, exact residence address, and family related information etc.

References:

Interview with Jung Sun Ok, Official of Ethics Section of Government, in charge of the electronic system, telephone, Sept. 3, 2009

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

Kim Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access asset disclosure records if it is not private information, such as ID number, private phone number, exact residence address, and family related information etc.

References:

Protection of Private Information Act

Interview with Jung Sun Ok, Official of Ethics Section of Government, in charge of the electronic system, telephone, Sept. 3, 2009

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

88

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The ACRC Act regulates the protection from recrimination or other negative consequences of civil servants who report cases of

corruption, graft, abuse of power, or abuse of resources. Whistle-blowers are protected by this act.

References:

ACRC Act, 62, 64 and 65

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

ACRC Act strongly protects whistle-blowers from threats by others.

References:

Anti-Corruption Act, 2005, Article 33, Protection of Personal Safety of Whistle-Blowers, etc.

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

Kim, Young Jong, Korean Public Administration and Corruption Studies, Seoul: Hyung Seoul Publishing Co., 2003.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Anti-Corruption Act, 2005, Article 33, Protection of Personal Safety of Whistle-Blowers, etc.

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The ACRC Act strongly protects whistle-blowers from threats by others.

References:

Anti-Corruption Act, 2005, Article 33, Protection of Personal Safety of Whistle-Blowers, etc.

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

81

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Anti-Corruption Act, 2005, Article 33, Protection of Personal Safety of Whistle-Blowers, etc.

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Most of the internal reporting mechanisms can receive regular funding from government and budgeting on the basis of the ACRC Act.

References:

Anti-Corruption Act, 2005, Article 33, Protection of Personal Safety of Whistle-Blowers, etc.

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Anti-Corruption Act, 2005, Article 33, Protection of Personal Safety of Whistle-Blowers, etc.

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

One recent corruption case involved the Korean Road Construction Public Enterprise. The whistle-blower received a 0.3453 billion won reward from ACRC, <http://www.hankyung.com/news/app/newsview.php?aid=2009101449541>

References:

Anti-Corruption Act, 2005, Article 33, Protection of Personal Safety of Whistle-Blowers, etc.

Kim, Young Jong, Korean Public Administration and Corruption Studies, Seoul: Hyung Seoul Publishing Co., 2003.

<http://www.hankyung.com/news/app/newsview.php?aid=2009101449541>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

The ACRC Act and several other organizations regulate and protect anti-corruption reporting.

There is an internal mechanism for multiple national government agencies that provide communication tools through which civil servants can report any incidents of corruption. This does not require the use of any specific forms so it is easy to do. However, it is important for those who report corruption to include their information in order to prevent false reports.

References:

Oh, Seok Hong, Public Personnel Administration, Seoul: Park Young Sa Publishing Co., 2009

Kim, Young Jong, Korean Public Administration and Corruption Studies, Seoul: Hyung Seoul Publishing Co., 2003

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

90
IV-3. Procurement

51. Is the public procurement process effective?

70

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

There is a formal regulation regarding conflict solving between official public duty and private interests for public procurement. The most important system refers to regulations of the electronic system to address conflicts of interest for public procurement officials. They use formal regulations for managing conflicts of interest between official public duty and private interests for public procurement officials.

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Government Procurement Act, Act No. 4697, Jan. 5, 1994; Amended by Act No. 7394, Mar. 24, 2005; Act No. 723, Dec. 14, 2005

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

These regulations are enforced by the Ministry of Strategy and Finance.

References:

Ministry of Strategy and Finance, <http://www.mosf.go.kr/>

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

There is no mechanism that monitors the assets, incomes and spending habits of public procurement officials.

From Transparency International's National Integrity System report:

The Ministry collects information on public contracting but does not have the authority to oversee public contracting. In fact, there is no direct oversight mechanism specifically designed for public contracting. The BAI or the National Assembly may inspect the procurement of public institutions only as part of their audits and inspections on the final accounts or the occupational performance of related public officials."

References:

Transparency International's National Integrity System report Korea 2006

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

From Transparency International's National Integrity System report:

As a general rule, the Act on Contracts to Which the State Is a Party states that contracts of public institutions shall take the form of open bids (Article 7). However, the same article adds that public institutions may sign a private contract under certain conditions as stated in the Act."

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

Transparency International's National Integrity System report Korea 2006

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

The electronic procurement methods refers to how to apply to and approach the procurement system, so that there is no opportunity to instigate a review of the decisions.

References:

Refer to electronic procurement methods"

http://cafe.naver.com/newpps.cafe?iframe_url=/ArticleRead.nhn%3Farticleid=1525

<http://blog.naver.com/jini6441?Redirect=Lq&logNo=110057307873>

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

Procurement bidders must register in the electronic procurement system that is conducted by the government.

References:

electronic procurement methods, <http://www.g2b.go.kr>

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Act on Contracts to Which the State Is a Party, Article 27, requires a mandatory cooling off period for two years for companies who are found guilty of major violations of procurement regulations (i.e. bribery).

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

100

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

From Transparency International's National Integrity Systems report:

Although there is no special control mechanism for public procurement, several acts allow the public to participate in procurement decisions, including the Administrative Procedure Act, the Petition Act, the Administrative Appeals Act and the Administrative Litigation Act. Moreover, the Anti-Corruption Act allows for public participation if procurement decisions are thought to be corrupt."

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/ 80508/2007-01-01/9p

Enforcement Decree of the Act on Litigation to Which the State is a Party

Transparency International's National Integrity Systems report for Korea 2006

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

Enforcement Decree of the Act on Contracts to Which the State is a Party, Article 33, regulates the detailed information of public procurement process.

Depending on the case, the agency will announce the designated information process that will be used. Sometimes they publish the details in the newspapers for those citizens who are interested in the process. However, if the details of the original contracts are altered by the parties involved, there is no requirement that those changes be published.

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

Transparency International's National Integrity System report for Korea 2006

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Depending on the case, the agency will announce the designated information process that will be used. Sometimes they publish the details in the newspapers for those citizens who are interested in the process.

In addition, there is an online forum set up to help to connect public institutions and potential bidders.

From Transparency International's National Integrity System report from 2006: In particular, the Public Procurement National Integrity System Country Study 2006 Republic of Korea 23 Service (PPS) has established a nation-wide online system called the Government e-Procurement System (GePS) under which public institutions can submit offers for bids or contracts and obtain information on companies that want to conduct business with them.

"The GePS has become an exemplary case throughout the world.⁴⁴ It has enabled public institutions not only to retain operational independence, but also to operate highly effectively. Furthermore, the GePS has greatly enhanced the quality and increased the number of business transactions between public institutions and private entities. It is estimated that this electronic procurement system saves KRW 3.2 trillion [US\$2,697,690,213] in public expenditures annually."

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

Transparency International's National Integrity System report Korea 2006

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The Enforcement Decree of the Act on Contracts to Which the State is a Party, Article 33, regulates the detailed information of public procurement process. Depending on the cases, the agency will announce the designated information process. Sometimes they will publish the details in the newspapers for those citizens who are interested.

References:

Act on Contracts to Which the State Is a Party, 2006-10-04/8050/2007-01-01/9p

<http://www.g2b.go.kr>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

All businesses are equally eligible to compete for privatized assets.

State Property Act, No. 7325, Dec. 31, 2004

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

There are no regulations regarding the conflicts of interest for government officials.

State Property Act, No. 7325, Dec. 31, 2004

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

There are no regulations regarding conflicts of interest regulations for government officials involved in privatization.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

95

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

Citizens can access privatization regulations as guaranteed in the Constitution. They even have the right to petition for access to these regulations.

References:

State Property Act, No. 7325, Dec. 31, 2004

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The new administration announced its intention to privatize many government-owned companies in 2009, including Korea Development Bank (KDB), Woori Financial Group and the Industrial Bank of Korea (IBK). The Korean Times Reports: President Lee Myung-bak has pledged to return public firms to the private sector, saying their role has diminished as the country has pursued a more competition-oriented society. Also, their excessive expansion is creating unfair competition with private firms, he said."

Privatizations are supposed to be published in the government gazette but this is not always the case. Privatizations are also advertised in newspapers. See this announcement in the Korean Times:
http://www.koreatimes.co.kr/www/news/biz/2008/08/123_29154.html

References:

Na Jeong-ju Privatization of State-Firms to Gather Steam" Korean Times. February 25, 2009 http://www.koreatimes.co.kr/www/news/nation/2008/04/240_19622.html

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The government is required to publicly announce the results of privatization decisions. National Property Act Article 36 requires this information is made public. In addition, it should be noted that this is a privatization decisions are also categorized as official information and subject to the Information Disclosure Act. Therefore, citizens may request that the government disclosure this information.

Recently, POSCO, KORAIL, and KTP have been privatized.

References:

The National Property Act, Article 36 refers to the procedures for decisions about privatization.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Citizens can access easily privatization regulations within a reasonable time period.

State Property Act, No. 7325, Dec. 31, 2004

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

References:

State Property Act, No. 7325, Dec. 31, 2004

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁹²National Ombudsman

56. Is the national ombudsman effective?

82

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

Ombudsmen are protected from political interference both legally and in practice.

References:

ACRC, article 11

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The ACRC Act, Articles 12 and 13, guarantees and protects the status of the ombudsman.

References:

ACRC, Article 18

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The ACRC Act, Article 12 and 13 guarantees and protects the status of the ombudsman. Interviews have confirmed that this is generally followed in practice.

References:

ACCR article 12, 13, and 18

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The ACRC organization has a professional, full-time staff that is supported by government budget.

References:

ACCR article 22 and 36

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The commissioners are protected by the ACRC Act in regard to their independence. Their three-year term is guaranteed by the government, and they can be reappointed for one more term. The Act regulates the independence of the agency.

References:

ACRC articles 13 and 16

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Please refer to interview. The agency does receive regular funding from government because all of the staff are regular government officials.

References:

ACRC, article 9

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agency is required to report annually to the National Assembly and the president. Interested citizens may access the report, according to the Public Information Disclosure Act. They may access reports in the agency's year book, etc.

References:

ACRC, Article 47

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

As a matter of fact, this agency has limited power because it does not have direct investigative powers regarding incidents of corruption. It may request the public prosecutor to conduct an investigation.

References:

ACRC, Article 32

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The ACRC commissioners may request that penalties be imposed on offenders by other organizations such as the public prosecutors and the Board of Audit Inspection etc.

References:

ACCR, Article 59

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The government might or might not act on the findings, depending on the particular case.

References:

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the agency sometimes does not act on citizen complaints within a reasonable time period.

References:

ACCR Act, Article 59

The agency must finish the case within 60 days.

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

92

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

Citizens can access reports of the ombudsman based upon official information disclosure as well as ACCR Act if they need to.

References:

ACRC, Article 12

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

ACRC Act regulates how citizens may access the agency the reports of ombudsman within 60 days. The agency should give notice to the petitioner regarding the results of ombudsmen reports within 60 days. But in practice, the case might be different.

References:

ACCR Act, 60

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to Official Information Disclosure Act, it should not be too expensive to get the information. But citizens do pay for costs such as mailing fees, copy fees, and some other minor expenses.

References:

Government Information Disclosure Act, Articles 15 and 16

http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1219&PROM_NO=08871&PROM_DT=20080229&HanChk=Y

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

The act establishes the Anti-corruption and Civil Rights Commission to serve as the ombudsman.

References:

ACRC, Anti-Corruption & Civil Right Act, Article 11

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

94

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Board of Audit and Inspection Act, Article 10, Prohibition of Political Activities:

A Commissioner shall not be allowed to be affiliated with a political party or to participate in political activities.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

According to Transparency International's National Integrity System report for Korea, 2006: Under the Board of Audit and Inspection [BAI], the chairperson cannot be removed without relevant justification, except when impeached, when sentenced to a punishment equivalent to imprisonment or when he/she becomes unfit to perform his or her duties for an extensive period due to mental or physical infirmity (Article 8) In 2003, the National Assembly, for the first time, rejected the president's appointment of the head of the BAI."

However, the Open Budget Index from 2008 states: "The independence of South Korea's Supreme Audit Institution is somewhat limited. While the SAI has the discretion to decide which audits to undertake, the head of the SAI may be removed by the executive. "

References:

Board of Audit and Inspection Act, Article 4, Chairman

Transparency International's National Integrity System report for Korea, 2006

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Board of Audit and Inspection Act, Article 17, Personnel:

(1) The Secretariat shall have one secretary-general, two deputy secretaries-general and other necessary officials.

(2) The fixed number of personnel shall be determined by the Board of Audit and Inspection Regulations with the approval of the President to the extent of the budget.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Appointments support the independence of the agency, not political concerns.

References:

Constitution, 1987, Article 97:

The Board of Audit and Inspection shall be established under the direct jurisdiction of the President to inspect and examine the settlement of the revenues and expenditures of the State, the accounts of the State and other organizations specified by Act and the job performances of the executive agencies and public officials.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Board of Audit and Inspection Act, Article, 18

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

From Transparency International's National Integrity System report: In addition, the BAI's [Board of Audit and Inspection] Open Audit System allows public participation in the process of audit preparation and implementation; it also discloses the audit results contribute to public awareness and public needs. The BAI has also established a nationwide, toll-free hotline to receive petitions and complaints from the people. The hotline can also be reached by facsimile or on the Internet. In addition, the BAI's homepage provides sections through which the public may present evaluations and opinions on the audit agency."

References:

Board of Audit and Inspection Act, Section 8, Report of Inspection, Article 41-42

Transparency International's National Integrity System report for Korea 2006

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The government acts on the findings of the audit agency because corruption involving budgeting is a serious problem.

References:

Constitution, Board of Audit and Inspection Act, 99-100

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | **75** | 50 | 25 | 0

Comments:

The Board of Audit and Inspection (BAI) has the power to independently investigate and penalize any party in a government agency. However, political influence in tenure decisions can play a role in which investigations the BAI decides to take on. The Open Budget Index from 2008 states: The independence of South Korea's Supreme Audit Institution is somewhat limited. While the SAI has the discretion to decide which audits to undertake, the head of the SAI may be removed by the executive."

From Transparency International National Integrity System report for Korea 2006: "In general, central administrative institutions must receive audits and inspections by the BAI on an annual basis, while audits and inspections of the secretariat offices of constitutionally independent institutions or presidential commissions, such as the KICAC and the Ombudsman of Korea, are infrequent."

References:

Constitution, Article 97

Board of Audit and Inspection Act, Articles 36-37

2008 Open Budget Index: South Korea. International Budget Partnership. http://openbudgetindex.org/files/cs_southkorea.pdf

Transparency International National Integrity System report for Korea 2006

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Government Information Act

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

From Transparency International's National Integrity System Report: The BAI [Board of Audit and Inspection] provides these reports in a timely manner on its homepage except those that, if disclosed, may infringe upon individual privacy or public interest. Reports after August 2003 include the full content of audits and inspection results.”

References:

Government Information Disclosure Act, Article 11

Transparency International's National Integrity System Report Korea, 2006

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

From Transparency International's National Integrity System Report: The BAI [Board of Audit and Inspection] provides these reports in a timely manner on its homepage except those that, if disclosed, may infringe upon individual privacy or public interest. Reports after August 2003 include the full content of audits and inspection results.”

References:

Government Information Disclosure Act, Article 11

TI's National Integrity System report Korea, 2006

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Board of Audit and Inspection Act, Act No. 1495, Dec.13, 1963; Amended by Act No. 2245, Dec. 31, 1970; Act No. 2446, Jan. 25, 1973; Act No. 4937, Jan. 5, 1995; Act No. 5681, Jan. 21, 1999; Act No. 5998, Aug. 31, 1999; Act No. 6101, Dec. 31, 1999; Act No. 6622, Jan. 19, 2002; Act No. 7176, Mar. 5, 2004; Act No. 7521, May 26, 2005; Act No. 8050, Oct. 4, 2006; Act No. 8132, Dec. 28, 2006

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

98
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

National Tax Office Act, Article 4

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

National Tax Office Act, Articles 38 and 39

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the customs and excise agency has a professional and full time staff based on consistent government budgeting. All customs employees should have specific licenses or backgrounds in the area of customs information. The budget size as of 2007 refers to 357063 million won and in 2010, the total of public officials is 4470.

References:

National Customs Office Act, Amendment 2009, 6.2 No. 21521

[http://kin.naver.com/qna/detail.nhn?](http://kin.naver.com/qna/detail.nhn?1id=6&dirId=601&docId=47045993&qb=6rSA7IS47LKt7Jil7IKw6rec66qo&enc=utf8§ion=kin&rank=2&sort=0&spq=0&pid=f3y/CB331xossbh8LoRssv-344191&sid=S3yqtKh1fEsAAFaONTw)

1id=6&dirId=601&docId=47045993&qb=6rSA7IS47LKt7Jil7IKw6rec66qo&enc=utf8§ion=kin&rank=2&sort=0&spq=0&pid=f3y/CB331xossbh8LoRssv-344191&sid=S3yqtKh1fEsAAFaONTw

Interview with Public Official, Chang, Young Sun at Customs 82-42-481-7663, Interview Date and Time: Feb.18/2010 1:30 PM
Current Time

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the customs and excise agency receives consistent government budgeting. The budget size as of 2007 was 357,063

million won.

References:

National Customs Office Act, Amendment 2009, 6.2 No. 21521

Interview with Public Official, Chang, Young Sun at Customs 82-42-481-7663, Interview Date and Time: Feb.18/2010 1:30 PM
Current Time

<http://kin.naver.com/qna/detail.nhn?>

1id=6&dirId=601&docId=47045993&qB=6rSA7IS47LKt7Jil7Kw6rec66qo&enc=utf8§ion=kin&rank=2&sort=0&spq=0&pid=f3y/CB331xossbh8LoRssv-344191&sid=S3yqtKh1fEsAAFaONTw

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

National Tax Collection Agency, Articles, 8,9 and 10

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In Korea, family-controlled conglomerates, or chaebols, dominate the economic sphere. Heads of these corporations are known to receive more lenient penalties for financial crimes. (See a brief analysis here: <http://www.nytimes.com/2008/07/16/business/worldbusiness/16iht-samsung.1.14535273.html>)

For example, in April 2008, Lee Kun-hee, the chairman of Samsung, was charged with tax evasion and breach of trust. The total amount of tax evasion totaled 113 billion won (US \$114million); he is also accused of selling stocks at a discounted rate to his son, in order to keep the company within the family. Nine other Samsung officials are also implicated. Lee had been under investigation for bribery, but the charges were dropped when the statute of limitations expired. These charges were later dropped. (see: <http://www.cn-c114.net/578/a330872.html>)

References:

National Tax Office Act, Articles 38 and 39

Choe Sang-Hun Former Samsung chief gets suspended jail sentence for tax evasion" New York Times. http://www.nytimes.com/2008/07/16/business/worldbusiness/16iht-samsung.1.14535273.html?_r=1

"Samsung's Chair charged with Tax Evasion" The Economist. http://www.economist.com/displayStory.cfm?Story_ID=E1_TTDSNGTN

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

National Customs Office Act, Amendment 2009, 6.2, No. 21521

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In June 2008, Intel Corporation was charged 26 billion won (US\$25.4 million) for violating antitrust laws. This ruling marks the culmination of a two-year investigation by the Korea Fair Trade Commission.

References:

National Customs Office Act, Amendment 2009, 6.2, No. 21521

<http://www.nytimes.com/2008/06/05/business/worldbusiness/05intel.html?scp=1&sq=south%20korea%20intel&st=cse>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

90

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

Board of Audit and Inspection Act, Article, 41

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency overseeing state-owned companies has a full time staff.

References:

Paik, Wan Ki, Public Administration, Seoul: Bakyongsa, 1992, 259-271.

Yu, Jong Hae, Public Administration, Seoul: Pakyoung Sa Publishing Co., 2008

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Institute of Korea Public Administration, A Study of Public Enterprise focusing on Better Management, 1995

Yu, Jong Hae, Public Administration, Seoul: Pakyoung Sa Publishing Co., 2008

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

If the agency that overseeing state-owned companies needs an investigation to be conducted, they request that the Board of Audit and Inspection or the public prosecutor initiate that investigation.

A recent investigation was undertaken after a bribery scam between state-owned Korea Hydro Nuclear Power and a California vendor was uncovered. The Korean government's investigation was initiated after the California vendor was convicted of bribery conspiracy in American courts. (http://www.koreatimes.co.kr/www/news/nation/2009/02/117_39128.html)

References:

Board of Audit and Inspection Act

Kim Tong-hyung Probe Into Kickback Case Involving Nuclear Operators Expanding" Korean Times. February 2009. http://www.koreatimes.co.kr/www/news/biz/2009/02/123_39142.html

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

When necessary the agency of government (Ministry of Finance and Economy) overseeing state-owned companies imposes penalties on offenders. But in fact, the penalties are not always effective. Sometimes the ministry is too tolerant considering the negative productivity of the state own companies and political activities of the CEOs of these companies.

References:

Institute of Korea Public Administration, A Study of Public Enterprise focusing on Better Management, 1995

Yu, Jong Hae, Public Administration, Seoul: Pakyoung Sa Publishing Co., 2008

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

80

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Government Information Disclosure Act

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

Every year they regularly update the financial records of state-owned companies.

References:

Government Information Disclosure Act

Yu, Jong Hae, Public Administration, Seoul: Pakyoung Sa Publishing Co., 2008

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

The auditing system has been changed and put into effect from traditional accounting into international accounting standards.

References:

Interview with Dr. Kim, In Young, CPA (+822-863-3242), Oct.12, 2009, 8:30 a.m.

<http://blog.naver.com/lbh1394?Redirect=Log&logNo=10046606612>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records of state-owned companies take around two weeks to obtain. Citizens can make information requests online or by visiting the office directly.

References:

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of accessing the financial records of state-owned companies will be reasonable.

References:

Ku, Ik Seo 822-2100-3423, Kim, Jung Sik 822-2100-4301 Interview Date and Time Feb.16 9:30-10:00 AM

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

In October, 2009, President Lee Myung-bak announced a lessening of government input in the operations of publicly-owned corporations. This is part of his greater initiative to encourage traditionally lower performing state-owned companies to compete with those of the private sector. The Korean Times quotes the president as saying, "The administration is considering ways to give a significant amount of discretionary power to chief executive officers who display excellence and are competent in their work," Lee said during a ceremony marking the launch of the Korea Land and Housing Corporation (KLHC)." (read the full article here: http://www.koreatimes.co.kr/www/news/nation/2010/01/116_53095.html)

State Properties Act, Article 15, Authority of Office of General Administration:

(1) In order to administer and dispose of state property appropriately, the office of general administration may require an office of administration to report the circumstances on the administration of the state property under its jurisdiction or to submit materials concerning such circumstances, and may require public officials belonging to the office of general administration to inspect such circumstances, or may take any other necessary measures.

(2) The office of general administration may require an office of administration to abolish or modify uses of the state property under its jurisdiction and to transfer the control of the state property to any other office of administration or other accounts (hereinafter referred to as the "administrative exchange") or to the office of general administration.

(3) If an office of administration makes an objection to such measures as referred to in paragraph (2), the office of general administration shall settle such objection with the approval of the President via the deliberation of the State Council.

References:

Board of Audit and Inspection Act, Article 41

State Properties Act, Article 15

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

90
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

94

70a. In law, anyone may apply for a business license.

YES | NO

References:

Commercial Law, article 172

<http://jisikworld.com/search/?rq=11&qt=%2B%C8%B8%BB%E7%2B%BC%B3%B8%B3>

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

There is a way to appeal to the relevant office if a business license request is denied.

<http://jisikworld.com/search/?rq=11&qt=%2B%C8%B8%BB%E7%2B%BC%B3%B8%B3>

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the Doing Business 2010 report, it takes eight steps to set-up a business. Completing these steps can take anywhere from 12 to 24 days.

References:

Doing Business: 2010, <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=104>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost to start a business is upwards from 55,000 won (US\$46) in total, including taxes for registration with the Commercial Registry Office in the Seoul District Court.

References:

Doing Business 2010, <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=104>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Environmental Policy Act, Amendment, 2008.3.28, No. 90378

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Environmental Policy, 2008.3.28, No.9037

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

If basic regulatory requirements for meeting are accessible transparent.

Enforcement Decree of the Industrial Accident Compensation Insurance Act, Presidential Decree, No. 20142, June. 29, 2007

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

67

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Public Health Control Act, Act No. 5839, Feb. 8, 1999; Amended by Act No. 6155, Jan. 12, 2000; Act No. 6400, Jan. 29, 2001; Act No. 6616, Jan. 19, 2002; Act No. 6726, Aug. 26, 2002; Act No. 7147, Jan. 29, 2004; Act No. 7428, March 31, 2005; Act No. 7455, March 31, 2005; Act No. 8003, Sept. 27, 2006

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Environmental Dispute Adjustment Act, Wholly Amended by Act No. 5393, Aug. 28, 1997; Amended by Act No. 6831, Dec. 26, 2002; Act No. 7428, Mar. 31, 2005; Act No. 7796, Dec. 29, 2005; Act No. 7919, Mar. 24, 2006

References:

Framework Act On Environmental Policy, Act No. 4257, Aug. 1, 1990; Amended by Act No. 4492, Dec. 31, 1991; Act No. 4567, Jun. 11, 1993; Act No. 4830, Dec. 22, 1994; Act No. 5392, Aug. 28, 1997; Act No. 5454, Dec. 13, 1997; Act No. 6097, Dec. 31, 1999; Act No. 6846, Dec. 30, 2002; Act No. 7561, May 31, 2005; Act No. 8471, May 17, 2007

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

<http://elaw.klri.re.kr/>

Industrial Safety And Health Act, Wholly Amended by Act No. 4220, Jan. 13, 1990; Amended by Act No. 4622, Dec. 27, 1993; Act No. 4826, Dec. 22, 1994; Act No. 4916, Jan. 5, 1995; Act No. 5247, Dec. 31, 1996; Act No. 5248, Dec. 31, 1996; Act No. 5453, Dec. 13, 1997; Act No. 5454, Dec. 13, 1997; Act No. 5886, Feb. 8, 1999; Act No. 6104, Jan. 7, 2000; Act No. 6315, Dec. 29, 2000; Act No. 6590, Dec. 31, 2001; Act No. 6847, Dec. 30, 2002; Act No. 7428, Mar. 31, 2005; Act No. 7467, Mar. 31, 2005; Act No. 7920, Mar. 24, 2006; Act No. 8372, Apr. 11, 2007; Act No. 8373, Apr. 11, 2007; Act No. 8475, May. 17, 2007

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁸⁷Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

These articles provide a definition of corruption in the laws.

References:

Anti-Corruption Act, Articles 1 and 2

ACRC Act, Articles 1-4

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

Extortion is also referred to in Article 4 of the ACRC.

References:

ACRC Act, Article 4

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Criminal Act, Article 133, Offer, etc. of Bribe:

(1) A person who promises, delivers or manifests a will to deliver a bribe as stated in Articles 129 through 132 shall be punished by imprisonment for not more than five years or by a fine not exceeding twenty million won.

(2) The preceding paragraph shall apply to a person who, for the purpose of committing the crime specified in the preceding paragraph, delivers money or goods to a third party, or receives such delivery with the knowledge of its nature

References:

ACCR Article 4

Criminal Act, Article 129, Acceptance of Bribe and Advance Acceptance:

(1) A public official or an arbitrator who receives, demands or promises to accept a bribe in connection with his duties, shall be punished by imprisonment for not more than five years or suspension of qualifications for not more than ten years

Criminal Law

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

ACCR Act, 4

Criminal Act, Article 129, Acceptance of Bribe and Advance Acceptance:

(1) A public official or an arbitrator who receives, demands or promises to accept a bribe in connection with his duties, shall be punished by imprisonment for not more than five years or suspension of qualifications for not more than ten years.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

It is illegal to bribe a foreign official.

References:

ACRC Act, Article 4

Criminal Act, Article 133, Offer, etc. of Bribe:

(1) A person who promises, delivers or manifests a will to deliver a bribe as stated in Articles 129 through 132 shall be punished by imprisonment for not more than five years or by a fine not exceeding twenty million won [US\$16,821].

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

Using public resources for private gain is a serious problems in this country.

References:

ACRC Article 4

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

ACCR, Article 4

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

Comments:

All accounting activities have been required to be registered under real names since 1994 during the presidency of Kim, Young Sam.

References:

ACCR, Article 4

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Conspiracy is a more important typology of crime in a sense rather than a single crime.

References:

ACCR, Article 4

Criminal Act, Article 30

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

78

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

In practice, the agency is protected from political interference.

References:

ACCR Act, Article 16

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

According to the Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16, they just started this new system, so it is still in the test stage in a sense. But it seems that commissioners are appointed by the government based on something like political considerations.

There is a debate regarding recent the appointment of chairman Mr. Lee, about whether or not he is a real professional. There is a report expressing concerns about his party loyalty.

References:

ACRC Act, Article 16

<http://www.acrc.go.kr/>

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

In practice, the anti-corruption agency might not be protected from political interference. The official agreed with this score.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agency is made up of full-time public officials. They are selected and appointed by different ministries of the government. In practice, though, they might not be protected from political interference.

References:

ACRC Act, Articles 20-23

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

According to the interview with Mr. Kim, the agency receives regular funding because it is staffed by public officials belonging to central government. They are national government officials, not local government officials, so they therefore receive their funds from the national government.

References:

ACCR Act

<http://www.acrc.go.kr/>

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

According to the interview with Mr. Kim, currently, the agency must report annually to the National Assembly and president. However, it would be better to require that reports to be filed at least twice a year. Citizens can access the agency's reports under the terms of the public information disclosure act.

References:

ACRC Act , Article 11

<http://www.acrc.go.kr/>

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

Interview with Kim, Hyung Kook: Unfortunately, the ACRC Commissioners belong to the central government (Prime Minister), so they do not have independent investigative powers, although they can request cooperation from the relevant agencies.

References:

Kim, Young Jong, Corruption Studies Seoul: Soongsil University Press, 2001

<http://www.acrc.go.kr/>

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | **75** | 50 | 25 | 0

Comments:

They do not have independent powers to investigate. However, according to the National Integrity System report from 2006, the public prosecutor's office has been successful in investigating and prosecuting corruption: "The number of people arrested by the Public Prosecutor's Office for acts related to corruption amounted to 1,724 in 2002, 1,609 in 2003 and 1,146 in 2004"

In a recent case in May 2009, prosecutors summoned former President Roh and members of his family to investigate their dealings with Park Yeon-cha. The family is believed to have accepted \$6million in bribes from this wealthy businessman and political backer. Roh denied all charges, saying his wife accepted \$1million, but it was not a bribe. Roh later committed suicide out of the shame of the investigation.

The reasonable time refers to 60 days. But the agency does not always work within that period depending upon the situations or unable to enforce the case.

References:

Kim, Young Jong, Corruption Studies Seoul: Soongsil University Press, 2001

<http://www.acrc.go.kr/>

Kim Yun-sik "Corruption in Korea" opinion piece published in the Korean Times. http://www.koreatimes.co.kr/www/news/opinion/2009/07/137_48563.html

Kim, Young Jong, New Korean Public Administration and Corruption Studies, Seoul: Hyung Seoul Publishing Co., 2003

Interview with Kim, Hyung Kook, Public Official of ACRC, International Relations Division, telephone, 82-360-6571, Oct.16

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

63

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Actually, it takes a long time to act on complaints, depending upon the cases.

The anti-corruption system and data have not changed too much in Korea, except for some new agencies.

References:

ACRC Act, Article 60

<http://www.acrc.go.kr/>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Citizens may submit their petitions to the anti-corruption agency. However, the anti-corruption system and data have not changed too much in Korea, except for some new agencies.

References:

Kim, Young Jong, Corruption Studies, Seoul: Soongsil University Press, 2001

<http://www.acrc.go.kr/>

Kim, Young Jong, New Korean Public Administration and Corruption Studies, Seoul: Hyung Seoul Publishing Co., 2003

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

According to new ACRC Act, the commission has a maximum of 15 members who adjudicate incidents of corruption. However, they do not have independent powers to investigate cases and instead request that public prosecutors do so.

References:

ACRC Commission, new act

ICAC, old act refers to this agency

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

80
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

83

77a. In law, there is a general right of appeal.

YES | NO

Comments:

There is a system of appeals. Everyone has a general right of appeal, based upon the relevant acts.

References:

Constitution, Articles 13 and 27

Court Organization Act., Article 3

Criminal Procedure Act

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Interview with Kim, Eunsil: There is a regulation regarding appeals from the first adjudication to the second adjudication if they are needed. In criminal cases, violators should appeal within one week after the first adjudication (Article 358); in civil cases, violators should appeal the adjudication within two weeks.

References:

Criminal Procedure Act, Articles 338 and 343

<http://elaw.klri.re.kr/>

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, Phone (822 -10-4010-0107), Oct.16

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Interview with Kim, Eunsil: The cost of using the appeals mechanism might vary, depending on the particular cases.

References:

<http://elaw.klri.re.kr/>

Constitution of ROK

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, Phone (822 -10-4010-0107), Oct.16

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

From Transparency International's National Integrity System report for Korea in 2006:

Courts are not legally obligated to follow the relevant precedent rulings of the Supreme Court. However, the lower courts generally do follow the rulings of the Supreme Court. Accordingly, case law is followed unofficially."

References:

<http://elaw.klri.re.kr/>

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, Phone (822 -10-4010-0107), Oct.16

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

100

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Interview with Kim, Eunsil: Judicial decisions are enforced by the state.

References:

<http://elaw.klri.re.kr/>

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, Phone (822 -10-4010-0107), Oct.16

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

69

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, Phone (822 -10-4010-0107), Oct.16

The independence of the judiciary is guaranteed both theoretically and in practice.

References:

The Constitution, Article 103:

Judges shall rule independently according to their conscience and in conformity with the Constitution and laws.

<http://100.naver.com/100.nhn?docid=83483>

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There has been recent concern over the independence and transparency of the judicial branch. From Transparency International's National Integrity System Report Korea 2006:

"The president in 2005 established another commission to promote reforms of the judiciary. Among the issues under review by this commission are the establishment of a system of ethics and integrity for judges, civil participation in criminal cases and the disclosure of rulings and relevant records."

However, recent interviews confirm that this situation may be improving.

References:

The Constitution, Article103:

Judges shall rule independently according to their conscience and in conformity with the Constitution and laws.

<http://100.naver.com/100.nhn?docid=83483>

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | **NO**

Comments:

Interview with Kim, Eunsil: Practically, the distribution of cases to judges is reasonably conducted even though it is done through an internal mechanism.

References:

The public does not know how the cases have been assigned to the judges because the process is conducted purely within the organization.

Constitution, Articles 102 and 103

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, Phone (822 -10-4010-0107), Oct.16

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

Both national-level judges and general judges are well-protected from removal without relevant justification.

References:

The Constitution, Articles 104 and 108

<http://100.naver.com/100.nhn?docid=83483>

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, Phone (822 -10-4010-0107), Oct.16

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

Interview with Kim, Eunsil: There were no documented cases of judges being physically harmed because of adjudicating corruption cases.

References:

The Constitution, Article 103:

Judges shall rule independently according to their conscience and in conformity with the Constitution and laws.

Kim, Young Jong, *New Korean Public Administration and Corruption Studies*, Seoul: HyungSeul Publishing Co., 2001.

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, by Phone (822 -10-4010-0107) call on Oct.16

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

Interview with Kim, Eunsil: No judges have been killed because of adjudicating corruption cases, so we agree with the score.

References:

The Constitution, Article 103:

Judges shall rule independently according to their conscience and in conformity with the Constitution and laws.

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, Phone (822 -10-4010-0107), Oct.16

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

86

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Interview with Kim, Eunsil, Adjunct Professor, Judicial Training Institute, by Phone (822 -10-4010-0107), Oct.16.

References:

The Constitution, Article103:

Judges shall rule independently according to their conscience in conformity with the Constitution and laws.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Women can have access to the judicial system, because all people are equal before law. The Constitution guarantees the equal right of women.

References:

The Constitution, Article 103: Judges shall rule independently according to their conscience and in conformity with the Constitution and laws.

Constitution Article 11 ensures equal rights before the law: All citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status."

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

We manage the legal counsel system, which is supported by the state, both in practice and financially.

References:

The Constitution, Article 27

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

According to the Criminal Procedure Act and Constitutional Law, any defendants in criminal cases should have a legal assistance right from government, which means providing adequate legal counsel. The state should provide adequate legal counsel for defendants in the following cases: someone who is over 70 years old, handicapped defendants, children, and those who are unable to select legal counsel because of economic reasons.

References:

Refer to the Constitution of ROK, Article 12 and Criminal Procedure Act, Article 33

Please refer to www.klac.or.kr

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In general, it is very difficult to hire lawyers because of expensive fees. Therefore, many people frequently give up bringing a law suit. But there is a free system to help victims that is conducted by a special public corporation. But many people do not know this system well.

References:

Criminal Procedure Act

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In practice, a small retail business can afford to bring a legal suit. Government provides a free legal assistance system to support with Korean Legal Aid Corporation. But in practice, the small retail businesses frequently have given up to bringing legal suits because of inconvenience and lack of information about government aid.

References:

Criminal Procedure Act

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Courtrooms are always accessible to citizens because it is required by the relevant law.

http://kin.naver.com/detail/detail.php?d1id=6&dir_id=60515&docid=3334644&qb=67KV7JuQ7J2YIOqzteqwnOyerO2MkA==&enc=utf8&pid=fqKj2z331x0sstlVf04ssv-148991&sid=SqMMD@-tokoAAENSGDs

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

75

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The appointments to law enforcement agencies are made according to professional criteria. But sometimes party loyalties may be considered in particular cases.

A opinion piece published in the Korean Times in January, 2009 criticized some of the president's recent selections for his second cabinet. The piece describes the appointees as ardent loyalists of the president, and questions the past judgement of the appointed head of police and others: The new police chief, for instance, called for using tear gas to suppress candlelit vigils last year and even putting a bounty on the arrest of protestors. The prosecutor-general has vowed to "gouge out" all leftist forces from this country. The incoming top spy has been the President's right-hand man since Lee was the Seoul mayor."

References:

Police Act, Article 6

The duties of each officer ranking are described in detail on the Korean police website: http://www.police.go.kr/KNPA/about/ab_rankandrole_01.jsp

Old Faces, New Style" Korean Times. January 2009. http://www.koreatimes.co.kr/www/news/opinion/2010/01/202_38095.html

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

In practice, law enforcement agencies receive a sufficient budget. But there is a problem in that they might sometimes require bribery from citizens.

References:

Law enforcement agencies are sufficiently budgeted to fulfill their basic mandate.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The police agency is not seen as very effective and its independence depends on who is the head of the Police Office.

References:

A law enforcement agency can operate independently of the political process.

<http://ko.wikipedia.org/wiki/%EA%B2%BD%EC%B0%B0>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The Police Disciplinary Committee, which works under the Police Committee, may take care of complaints. In addition to this more formal investigation committee, the Korean police agency also maintains an online civil request board. Citizens may post complaints or ask procedural questions through public posts. The police seem slow to respond to questions and some of the posts require a login and password to view.

References:

Police Act, Articles 4 and 6

ACCR Act

<http://elaw.klri.re.kr/>

Korean Police Civil Board: http://www.police.go.kr/KNPA/civil/cv_counseling_list.jsp

Act on the Performance of Duties by Police Officers: Article 1, Purpose:

(1) The purpose of this Act is to prescribe matters necessary for the performance of the duties by police officers (limited to national police officials; hereinafter the same shall apply) in order to protect the freedom and rights of citizens and to maintain social and public order.

(2) The authority of a police officer prescribed by this Act, shall be limited to a minimum degree necessary for the officer to perform his duties, and shall not be abused.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Police Disciplinary Committee, which is under the Police Committee, may take care of complaints. The online public civic board is a more informal forum for citizens to make requests or lodge complaints. The police are slow to respond to these online inquiries and some requests are blocked from public access.

References:

Article 5, Establishment of Police Committee:

Police Civic Board: http://www.police.go.kr/KNPA/civil/cv_counseling_list.jsp

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

In fact, public prosecutors may have power to investigate all police corruption cases. Actually, police should be under the direction of public prosecutors, based upon the current Public Prosecutor Act.

References:

ACRC Act, 2008

<http://elaw.klri.re.kr/>

The Public Prosecutor Act

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

There are several mechanisms for initiating investigations into allegations of corruption by law enforcement officials. First, police headquarters or the disciplinary committees themselves investigate the corruption cases. Second, public prosecutors may take the case and investigate it independently. Third, the Board of Audit Inspection or the ACRC Commissioners can work on the cases.

In February 2010, the Korean Times reported that the Seoul Metropolitan Police Agency announced that it would monitor the phone call records of police officers as it is believed that police officers provide tips ahead of raids in return for monetary bribes. If the call log of an official is suspect, the police agency will scrutinize that official's bank account.

References:

Police Act, Article 9

Police Under Greater Scrutiny" Korean Times. http://www.koreatimes.co.kr/www/news/nation/2010/02/117_60088.html February 2010.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Even law enforcement officials are not immune from criminal proceedings.

References:

Police Act, Articles 22, 24, and 26 and other refer to the question. Police officials are not immune from criminal proceedings.

<http://ko.wikipedia.org/wiki/%EA%B2%BD%EC%B0%B0>

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement officials are not immune from criminal proceedings. Many cases involving law enforcement officials (even very high-ranking ones) have been reported in the media.

For example, in July 2008, a coalition of civil activists filed a lawsuit against the police claiming that excessive force was used in the break-up of their protest of American beef earlier that month. The Korean Times reports: "In all-night rallies over the weekend, dozens of people were injured while scuffling with riot police when trying to approach Cheong Wa Dae, with some of them getting injured."

References:

Refer to Constitution of ROK, Criminal Law, and the Police Act

Rahn Kim Injured Citizens File Lawsuit Against Police" Korean Times. July 2008 http://www.koreatimes.co.kr/www/news/nation/2008/06/117_25229.html

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.