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**Executive summary**

**Note by the Secretariat**

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## II. Executive summary

### Republic of Korea

#### 1. Introduction: Overview of the legal and institutional framework of the Republic of Korea in the context of implementation of the United Nations Convention against Corruption

The Republic of Korea signed the Convention on 10 December 2003 and ratified it on 27 March 2008. The Convention entered into force for the Republic of Korea on 26 April 2008.

Article 6 of the Constitution states that generally accepted rules of international law and international conventions when they have been ratified by an act and have come into effect shall form an integral part of the Republic of Korea's domestic law and shall override any other contrary provision of domestic law. Judicial decisions, although not legally binding, are strongly adhered to by the courts.

The Republic of Korea has been assessed regarding its implementation of the OECD Anti-Bribery Convention, as well as by the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG). The Republic of Korea is a member of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and is party to the Council of Europe's Conventions on Extradition, Mutual Legal Assistance and Transfer of Sentenced Persons.

#### 2. Chapter III: Criminalization and law enforcement

##### 2.1. Observations on the implementation of the articles under review

###### *Bribery and trading in influence (arts. 15, 16, 18 and 21)*

Articles 133, 129 and 130 of the Criminal Act criminalize active and passive bribery of public officials. The definition of public official is contained in Article 2 of the State Public Officials Act and Article 2 of the Local Public Officials Act and covers a wide range of subjects, including appointed and elected officials, as well as the judiciary and prosecutors. Additionally, Article 4 of the Act on Aggravated Punishment extends the definition of public officials to the personnel of certain State-owned or controlled enterprises. Although Article 3 of the Enforcement Decree of the Act on Aggravated Punishment exempts some categories of State or government-managed enterprises from the coverage of the bribery provisions of the Criminal Act, these groups are covered by Article 357 of the Criminal Act on breach of trust.

The Republic of Korea extensively criminalized active bribery of foreign officials and officials of public international organizations in the Act on Combating Bribery of Foreign Public Officials in International Business, whose Articles 2 and 3 cover all elements of the offence as envisaged by article 16, paragraph 1. The passive offence is not criminalized; however, the Republic of Korea can prosecute passive bribery of foreign public officials under the provisions of the Criminal Act on breach of trust. Foreign public officials can also be prosecuted for money-laundering where corruption crimes serve as predicate offences.

Trading in influence is criminalized in Article 133 of the Criminal Act with reference to Article 132, which covers bribery of a public official in connection with the affairs that belong to another public official. Although the giving and soliciting of undue influence *to or by any other person* are not explicitly criminalized, the “Bill on the Prevention of Illegal Solicitation and Conflict of Interest” would punish illegal influence-peddling and making a request for such influence-peddling.

The Republic of Korea partially criminalized bribery in the private sector in Article 357 of the Criminal Act (Receiving or Giving Bribe by Breach of Trust). Aggravated punishment for bribery is applicable to employees of financial institutions.

*Money-laundering, concealment (arts. 23 and 24)*

Money-laundering and concealment are criminalized in the Act on Regulation of Punishment of Criminal Proceeds Concealment (Articles 3 and 4) (“Proceeds Act”). Some elements envisaged in UNCAC article 23 (b) (ii) (i.e., participation, association, conspiracy to commit, aiding, abetting, facilitating and counselling) are covered by Article 32, paragraph 1, Article 30 and Article 31, paragraph 1 of the Criminal Act.

There are some limitations as to the qualification of certain corruption offences in the Criminal Act (Articles 355 and 356 regarding embezzlement) as predicate offences to money-laundering (subparagraph 1 of Article 2 of the Proceeds Act). Pursuant to a revision of the Proceeds Act in May 2013, Article 357 of the Criminal Act became a predicate offence for money-laundering.

With regard to jurisdiction over predicate offences outside the Republic of Korea, dual criminality is required when foreign nationals commit serious offences abroad, but not in the case of Korean nationals.

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

Embezzlement of property in the public and private sectors is covered by Articles 355-359 of the Criminal Act. The Korean authorities reported that the cited measures cover all aspects of embezzlement, misappropriation or other diversion of property in the public and private sectors.

Abuse of functions is legislatively addressed in Articles 123 (Abuse of Authority) and 124 (Unlawful Arrest and Unlawful Confinement) of the Criminal Act.

The Republic of Korea has considered the criminalization of illicit enrichment. Although the offence per se is not established, the Public Service Ethics Act requires certain public officials to register their property, subject to investigation and prosecution for failure to do so.

*Obstruction of justice (art. 25)*

The Republic of Korea partially criminalized obstruction of justice in Articles 257, 260, 276 and 283 of the Criminal Act, which deal with the acts of threat, violence and use of physical force in general without specifically addressing corruption offences. The promise, offer or giving of an undue advantage in order to induce false testimony could be covered as aiding and abetting perjury (Article 32 of the Criminal Act).

Interference with the exercise of official duties by justice or law enforcement officials is criminalized in Articles 136 and 144 of the Criminal Act.

*Liability of legal persons (art. 26)*

The Republic of Korea established the criminal liability of legal persons for money-laundering (Article 7 of the Proceeds Act) and foreign bribery (Article 4 of the Act on Combating Bribery of Foreign Public Officials in International Business Transactions). Legal persons can be also civilly liable for other corruption-related offences. The provisions on the liability of legal persons do not preclude the punishment of natural persons who committed corruption offences.

*Participation and attempt (art. 27)*

Articles 30-31 of the Criminal Act criminalize the participation in any capacity in corruption offences.

The Republic of Korea has criminalized the attempt to commit almost all major UNCAC offences in Articles 25 (Criminal Attempts), 359 (Attempts), 355 and 357 of the Criminal Act, although attempted obstruction of justice is not covered.

Preparation for an offence is not punishable in the absence of special laws to that effect. Only the preparation for money-laundering and concealment is punishable under Article 3(3) of the Proceeds Act.

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

Articles 129, 130 and 133 of the Criminal Act and Article 2 of the Act of Aggravated Punishments prescribe punishments for corruption offences. Notably, there is an elaborate method of calculating the sanctions for bribery based on the amount of bribe. The Republic of Korea clarified that judges issue sentences according to the scope of punishment prescribed in relevant laws and in consideration of the Sentencing Guidelines suggested by the Sentencing Committee.

Members of the National Assembly generally do not enjoy immunity from criminal prosecution, although they cannot be arrested or detained without the consent of the Assembly, except in cases of *flagrante delicto*. An acting President cannot be criminally prosecuted, but can be impeached by the National Assembly. Corresponding investigations can be conducted while the President is still in office, and former Presidents have been prosecuted for corruption offences. No special immunities or privileges apply to members of the judiciary.

Korean law allows appeals, re-appeals and petitions for adjudication of non-prosecution dispositions. Persons who report a crime can also file a constitutional complaint against a prosecutor's decision not to prosecute (Article 10 of the Prosecutors' Office Act, Article 260 of the Criminal Procedure Act, Article 68(1) of the Constitutional Court Act).

Defendants are guaranteed the right to be present at any stage of the criminal proceeding if their presence would contribute to the fairness of the procedure (Articles 276-277-2 of the Criminal Procedure Act). Defendants also have a right to be present when their presence is relevant to their ability to defend against the

charges (Article 27(1) and (4) of the Constitution). Conditions for release on bail are established in Articles 98-99 of the Criminal Procedure Act.

Based on Articles 121, 122 of the Administration and Treatment of Correctional Institution Inmates Act, parole can be granted to inmates that underwent punishment in terms of Article 72 of the Criminal Act.

Articles 73-3, 78 and 79 of the State Public Officials Act and Articles 65-3, 69, 70 of the Local Public Officials Act cover proceedings for the reassignment, removal and suspension of public officials accused of corruption.

Public officials convicted of corruption can be disqualified from employment in a profit-making organization under Articles 69, 33 of the State Public Officials Act, Articles 61, 31 of the Local Public Officials Act, and Articles 83, 82 of the Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission (“ACRC Act”). In all cases involving public officials, both disciplinary actions and prosecution proceedings can be taken simultaneously.

Korean laws provide for measures conferring mitigation/remission of punishment or concession/compensation through the granting of rewards to cooperating offenders in corruption cases (Article 53 of the Criminal Act, Article 16 of the Act on Protection of Specific Crime Informants).

*Protection of witnesses and reporting persons (arts. 32 and 33)*

Witnesses and victims are protected by Article 3-17 of the Act on Protection of Specific Crimes Informants, which applies to informants in corruption cases based on Article 19 of the Act on Special Cases concerning the Confiscation and Return of Property Acquired through Corrupt Practices. Protection measures may include non-disclosure of personal information, providing personal safety measures and funds for relocation and change of occupation. Witnesses can be examined via video systems (Article 165-2 of the Criminal Procedure Act). The Republic of Korea also developed a comprehensive Master Plan for Protection and Support of Crime Victims.

Protection of whistle-blowers may be provided under the ACRC Act and the Act on the Protection of Public Interest Whistleblowers. Protections may include personal safety measures, identity protection and a prohibition of disadvantageous measures being taken against whistle-blowers. The Republic of Korea’s legislation is being amended to expand the category of public interest violations under the Whistleblower Protection Act.

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

Confiscation of proceeds of crime, as well as property, equipment and instrumentalities used or destined to be used in corruption offences, with due protection of the rights of bona fide third parties, is covered by the Criminal Act (Article 48) and the Proceeds Act (Articles 8-10). Additionally, there are confiscation provisions in the Act on Special Cases Concerning the Confiscation and Return of Property Acquired through Corrupt Practices (Articles 3-6) and the Act on Special Cases Concerning Forfeiture for Offences by Public Officials (Articles 3-6). Criminal proceeds include income derived from such proceeds, and value-based confiscation is possible.

The above-listed laws, together with the Act on Reporting and Use of Certain Financial Transaction information, also address the identification, freezing or seizure of criminal proceeds and instrumentalities.

Measures on the administration of frozen, seized and confiscated property are contained in the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, the Criminal Procedure Act (Articles 477-479) and the Regulation on Process of Seized Items of the Prosecutors' Office.

Bank secrecy restrictions cannot hinder the investigation of corruption offences. Financial institutions shall share information with law enforcement agencies upon receiving a corresponding court warrant (Article 4 of the Act on Real Name Financial Transactions Guarantee of Secrecy).

*Statute of limitations; criminal record (arts. 29 and 41)*

The Republic of Korea has adopted legislation for calculating and suspending the statute of limitations depending on the punishment applied to a particular crime (Articles 249 and 253 of the Criminal Procedure Act).

Korean law generally allows foreign criminal records to be considered at sentencing in criminal trials (Article 38 of the Act on International Judicial Mutual Assistance in Criminal Matters).

*Jurisdiction (art. 42)*

Matters of jurisdiction are covered by Articles 2, 3, 4, 6 of the Criminal Act and, in relation to money-laundering, by Article 7-2 of the Proceeds Act. In addition to territorial jurisdiction, the Republic of Korea establishes jurisdiction over nationals who commit crimes outside the Republic of Korea, as well as offences against the Republic of Korea and its nationals outside its borders, which includes money-laundering.

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

Contracts concluded as a result of corruption become null and void (Article 103 of the Civil Law). Individuals and legal persons implicated in corruption can be restricted from participating public procurements (Article 39 of the Act on the Management of Public Institutions).

The Republic of Korea has provisions providing for the return of property confiscated from corrupt criminals to the victims of crime (Article 6(2) of the Act on Special Cases Concerning the Confiscation and Return of Property Acquired through Corrupt Practices). Victims of corruption can also bring private actions in civil courts and obtain compensation (Article 750 of the Civil Act).

*Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

The Republic of Korea has several specialized authorities to combat corruption, including the Anti-Corruption and Civil Rights Commission (ACRC), the Financial Intelligence Unit (FIU) and special investigative units in the Public Prosecutor's Office (PPO). The ACRC supports law enforcement activities by receiving corruption reports, referring cases for investigation, and providing whistle-blower protection. Special investigative units mandated to investigate corruption offences

also exist in the Korean National Police Agency (KNPA). Additionally, the Board of Audit and Inspection (BAI) examines accounts of the State and inspects the work of government agencies and their employees.

The Republic of Korea has adopted legal provisions imposing obligations on public officials, offices and the FIU to report or refer suspected corruption offences to law enforcement authorities (Article 7 of the Act on Reporting and Use of Certain Financial Transaction Information). Investigative authorities can request reports from public authorities and officials under Article 199 of the Criminal Procedure Act and Article 7-4 of the Act on Reporting and Using Specified Financial Transaction Information. A national case management system can be accessed by all major law enforcement agencies, including PPO, KNPA and FIU.

Cooperation between law enforcement authorities and the private sector is encouraged by Articles 14 and 26 of the Act on the Protection of Public Interest Whistleblowers. Articles 68-71 of the ACRC Act contain a detailed procedure for providing awards to reporters. Additionally, measures to encourage cooperation with financial institutions exist (Article 5 of the Act on Reporting and Use of Certain Financial Transaction Information).

## **2.2. Successes and good practices**

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The availability and use of detailed statistics on the investigation, prosecution and related aspects of corruption offences, as well as actual case examples allow an adequate assessment and monitoring of the implementation of Chapter III.
- Elaborate sentencing guidelines provide safeguards against the arbitrary exercise of discretionary powers by courts.
- The aggravated punishment for bribery has three layers of penalties, depending on the amount of the bribe.
- The legislative provision on the return of property confiscated from a corrupt criminal to the victim is positively noted.
- A comprehensive Master Plan for Protection and Support of Crime Victims touches upon all the aspects of victim protection and support.
- The existence of special investigative units responsible for the investigation and prosecution of economic crimes and corruption offences in the PPO and KNPA are noted.
- The important preventive role and related functions exercised by the ACRC are conducive to the fight against corruption.
- A special procedure permits direct reference to prosecution authorities for complaints against specified high ranking officials (Article 59 of the ACRC Act).
- A high level of cooperation and interaction between different law enforcement agencies was noted, particularly a practice of professional secondments.

- The national case database used by the KNPA, PPO and FIU plays a pivotal role in enhancing cooperation and information exchange between law enforcement agencies.

### 2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Consider explicitly criminalizing the giving and soliciting of undue influence *to or by any other person*.
- Consider clearly stipulating in the Criminal Act that Article 357 will apply in the cases of active bribery of the persons who work *in any capacity* for a private sector entity; also in cases when an undue advantage is promised, offered or given indirectly for the persons themselves or *for other persons* in order that they breach their duties, act or refrain from acting.
- Include among predicate offences for money-laundering *all UNCAC offences without limitation as to their particular elements*.
- Amend the obstruction of justice provisions regarding *the elements of promise, offering or giving of an undue advantage in order to induce false testimony*.
- Consider the possibility of introducing clear legislative provisions providing for *criminal and/or administrative liability of legal persons for corruption offences*.
- Criminalize *attempts to commit the crime of obstruction of justice*.
- Consider adopting corresponding amendments to the legislation to *clearly bring UNCAC offences within the coverage of the “Act on the Protection of Public Interest Whistleblowers”*.

### 3. Chapter IV: International cooperation

Extradition and mutual legal assistance (MLA) are principally governed by the Extradition Act, the Act on International Judicial Mutual Assistance in Criminal Matters (“MLA Act”), as well as bilateral and multilateral treaties on extradition and MLA. Extradition and MLA are also available in the absence of a treaty on the basis of reciprocity (Articles 4 of the Extradition and MLA Acts, respectively). The Republic of Korea has further adopted administrative manuals on extradition and MLA. In cases where a treaty is in place between the requesting and requested States, the treaty precedes the domestic law pursuant to Article 3-2 of the Extradition Act and Article 3 of the MLA Act.

Articles 44-48 of UNCAC are self-executing and could be applied directly by the Republic of Korea without any implementing laws. The Republic of Korea can use the Convention as the legal basis for international cooperation, though it has had no experience in doing so.



### 3.1. Observations on the implementation of the articles under review

#### *Extradition (art. 44)*

Extradition shall be afforded only if the act constitutes a criminal offence under Korean law and the legislation of the requesting State, and the offence is punishable by imprisonment for at least one year or more severe penalties. All UNCAC offences are subject to at least one year's imprisonment in the Republic of Korea, and are thereby extraditable pursuant to the Extradition Act.

The Republic of Korea has granted the majority of extradition requests, including in corruption cases related to embezzlement and bribery. Of the 43 incoming extradition requests from 2008-2012, the Republic of Korea granted 17 and has refused three. There have been no extradition requests invoking the Convention.

The Republic of Korea has signed bilateral extradition treaties with 31 countries, three of which have not yet entered into force. Effective as of 29 December 2011, the Republic of Korea acceded to the European Convention on Extradition, which enables the Republic of Korea to engage in extradition proceedings with 50 countries.

Under the Republic of Korea's treaties, the consent of the person sought is required for simplified extradition procedures to be applied. Extradition proceedings follow a slightly modified procedure than other criminal cases. For example, there is no right of appeal. However, the statutory timeframe of disposing of criminal cases in two months is generally followed. Once a defendant's whereabouts is known, the criminal process for extradition takes approximately two months.

While nationality is a discretionary ground for refusal under the Extradition Act, the Republic of Korea can and does extradite its citizens. Of the 39 extradited offenders since 1991, 28 were Korean nationals. The Republic of Korea has never denied extradition on the grounds of nationality. The Extradition Act does not impose an obligation to prosecute nationals where extradition is refused. However, most extradition treaties the Republic of Korea has concluded impose an obligation to prosecute nationals where extradition is refused. The conditional extradition or surrender of nationals is not recognized in the Republic of Korea.

Fair treatment protections are afforded under the Constitution, Criminal Procedure Act and Extradition Act, including the right to counsel and non-punishment for other offences, as well as the treaties.

The Republic of Korea appears to have a practice of consulting with requesting States before refusing extradition, though the matter is not directly addressed in the Extradition Act or the bilateral treaties.

#### *Transfer of sentenced persons; transfer of criminal proceedings (arts. 45 and 47)*

The Republic of Korea is party to the Council of Europe Convention on the Transfer of Sentenced Persons and has signed bilateral treaties with six countries. There have been several cases of prisoner transfer.

*Mutual legal assistance (art. 46)*

The Republic of Korea made the following notification upon ratification of the Convention:

“The Republic of Korea, pursuant to Article 46 (13) of the Convention, notifies the Secretary-General of the United Nations that the Minister of Justice is designated as the central authority for mutual legal assistance under the Convention. It also notifies the Secretary-General, pursuant to Article 46 (14) of the Convention, that requests for mutual legal assistance under the Convention should be made in, or accompanied by a translation into, the Korean or the English language.”

The Republic of Korea has signed bilateral MLA treaties with 28 States, three of which have not yet entered into force, and also acceded to the European Convention on Mutual Assistance in Criminal Matters.

The Republic of Korea has never refused assistance in a criminal matter and has received 383 requests from 2008-2012. There have been no incoming or outgoing MLA requests invoking UNCAC or UNCAC offences.

Although the criminal liability of legal persons is recognized in the Republic of Korea only for money-laundering, there are no issues in giving assistance in cases involving legal persons because the dual criminality requirement is flexibly applied by the Republic of Korea. Non-coercive and other assistance could be provided in the absence of dual criminality, though no such cases have arisen.

Banking records may be produced upon the issuance of a domestic production order by a court if required to execute an MLA request. There have been no cases where financial information was withheld on the ground of bank secrecy.

The MLA Act and most of the treaties the Republic of Korea has signed impose requirements of safe conduct, confinement and return of prisoners on requesting States, and the Republic of Korea reportedly follows such measures in practice.

While there have been cases of witness transfers to foreign countries, the Republic of Korea has never sent a detained witness abroad.

The receipt of and response to MLA requests is done through diplomatic channels. The Republic of Korea would not accept MLA requests through INTERPOL. Urgent requests can be expedited through informal or direct communications with the Ministry of Justice. Requests made by telephone are rarely accepted, though the Republic of Korea accepts requests via fax or e-mail.

The Republic of Korea permits hearings to take place by videoconference and in the presence of foreign judicial authorities, and has done so in several cases.

Korean law would not require the disclosure of information that is exculpatory to an accused if such information was received pursuant to an MLA request.

Confidentiality is only addressed in the MLA Act for outgoing requests, although the Republic of Korea would be required to comply with confidentiality requests under its bilateral treaties.

The Republic of Korea can provide non-public government records, including criminal records, on a case-by-case basis depending on the grounds for the request.

*Law enforcement cooperation; joint investigations; special investigative techniques  
(arts. 48, 49 and 50)*

Korean law enforcement institutions engage in a wide range of international cooperation, including the provision of technical know-how and the exchange of information, expertise and personnel with other countries.

The Republic of Korea's FIU is a member of the APG and the Egmont Group of FIUs. It actively exchanges AML/CFT information with foreign counterparts through these channels and bilateral MOUs with 56 other FIUs. The FIU also supports the provision of MLA and responds to information requests from foreign counterparts. The FIU renders assistance on anti-corruption and asset recovery, among other topics, internationally and conducts training and provides know-how to other countries, including low capacity countries in Asia-Pacific.

The Korean Prosecution Service (KPS) has posted seven legal attachés at Korean embassies and has received attachés from abroad. At the Legal Research and Training Center in the Ministry of Justice in the Republic of Korea, judges and prosecutors from Asian and African countries are trained through exchange programmes. The International Cooperation Center (ICC) established in KPS actively promotes the international cooperation of the prosecution. KPS dispatches around 80 prosecutors annually to other countries and invites foreign legal experts and prosecutors through grant programmes via the Republic of Korea's International Cooperation Agency (KOICA). KPS has signed 20 bilateral MOUs with 16 countries and the World Bank. ICC also supports the establishment of an asset recovery network for Asia-Pacific. The Korean Supreme Prosecutors' Office operates a Digital Forensic Center in order to combat crimes committed through modern technology.

The Ministry of Justice engages in international cooperation, including by conducting training at its Legal Research and Training Center, drawing on foreign development budgets from the Korean Office of Development Assistance (ODA).

KNPA cooperates with foreign counterparts, including through the exchange of personnel, hosting annual training courses and attending international conferences and meetings. KNPA has entered into MOUs with 18 countries.

ACRC, while not a law enforcement agency, has also cooperated substantially with foreign anti-corruption bodies and provided training courses, attended seminars and hosted foreign study tours. ACRC has in place seven MOUs with foreign counterparts and is part of the International Association of Anti-Corruption Authorities.

At the regional level, the Republic of Korea is a dialogue partner country of the Chiefs of Police of the Association of Southeast Asian Nations (ASEANAPOL).

The Convention can be the basis for mutual law enforcement cooperation, though there has been no experience in this regard.

The Republic of Korea participates in joint investigative teams on the basis of arrangements, such as MOUs and diplomatic channels, and has had experience with joint investigations in corruption cases at the international level.

Special investigative techniques are used often by Korean law enforcement agencies in domestic cases and internationally, on a case-by-case basis, as permitted by

Korean law. A court warrant is needed to conduct investigations that might violate privacy, such as wiretapping and location tracing. Evidence derived from special investigative techniques is admissible pursuant to the Criminal Procedure Act.

### **3.2. Successes and good practices**

The following successes and good practices in respect of the implementation of Chapter IV of the Convention are highlighted:

- The Republic of Korea provides a wide range of cooperation in MLA and extradition cases and has adopted a number of measures that could be considered good practices, as evidenced, for example, by the large number of requests the Republic of Korea has successfully executed for assistance in criminal matters.
- The Republic of Korea provides a wide range of legal assistance under its MLA Act and treaties, as evidenced by the large number of requests the Republic of Korea has executed and the measures the Republic of Korea follows on MLA.
- The Republic of Korea cooperates and consults with requesting States where possible to clarify any ambiguity or legal uncertainty in a request. This was considered a good practice, as borne out by the absence of any refusals to date.
- The workflow process in the Ministry of Justice was considered to be conducive to rendering full and timely assistance in criminal matters.
- The activities and functions of the FIU support the Republic of Korea's ability to render a full range of MLA and law enforcement cooperation and represent a good practice in the fight against corruption internationally.
- The Republic of Korea engages in international cooperation as a provider of technical assistance. Examples are the trainings conducted by Korean institutions at various levels, such as FIU, KPS, KNPA and ACRC.
- The number of MOUs entered into by different institutions, including FIU, KPS and KNPA, are evidence of substantial cooperation by Korean institutions.
- The Digital Forensic Center in the Korean Supreme Prosecutors' Office and the centralized database among law enforcement agencies represent good practices in enhancing law enforcement cooperation.

### **3.3. Challenges in implementation**

The following steps could further strengthen existing anti-corruption measures:

- While the Republic of Korea may apply its bilateral and multilateral treaties directly and these treaties prevail over domestic law, the Republic of Korea may nonetheless wish, in the context of ongoing legal reforms, to review its Extradition and MLA Acts to more specifically address the relevant UNCAC obligations. This is of particular importance where there is no provision in the domestic law corresponding to an UNCAC measure or the domestic law

contains an obligation that is only applicable to a partner country but not to the Republic of Korea.

- The Republic of Korea may wish, in the context of the full implementation of the Convention, to review the existing treaties to ensure consistency with UNCAC and the Republic of Korea's international obligations.
- The Republic of Korea is encouraged to make the requisite notification to the United Nations that it would accept UNCAC as a legal basis for extradition.
- Although several treaties address the prosecution of nationals, for greater legal certainty (especially concerning non-treaty partners) the Republic of Korea should include such a provision in the Extradition Act and conduct a full review of its treaties.
- The Republic of Korea may wish to consider including a requirement to consult with requesting States before refusing extradition in its Extradition Act and to review its treaties.
- The Republic of Korea may wish to monitor the application of the dual criminality principle to ensure that non-coercive assistance is rendered in line with the Convention.
- The provisions of the MLA Act concerning safe conduct, confinement and return of prisoners could benefit from further review and possible legislative amendment to ensure that the Republic of Korea would provide the same legal safeguards as it requires from requesting States.
- While the rule of specialty is addressed in the treaties, the Republic of Korea is encouraged to consider adopting relevant measures in the MLA Act, as there has been no practice in this regard.
- Notwithstanding any treaty obligation, the Republic of Korea may consider adopting a specific measure in the MLA Act to ensure it adheres to incoming confidentiality requests in the same manner as requesting countries.
- In the interest of greater legal certainty, especially concerning non-treaty partners, the Republic of Korea may wish to include a requirement to provide reasons for refusing assistance in its MLA Act, in addition to the treaties.
- The Republic of Korea may wish to include a requirement to consult before refusing or postponing assistance in its MLA Act and to conduct a full review of its treaties.
- In addition to including relevant provisions in its treaties, the Republic of Korea may wish to legislatively establish the safe conduct provision for prior acts of witnesses and other transferred persons.