Whistleblower Protection & Reward System in Korea

[Workshop 2A: Drafting and implementing of whistleblower protection laws]

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Korea Independent Commission Against Corruption
Dear distinguished delegates and experts!

It is my pleasure and honor to be given this opportunity to explain the whistleblower protection and reward system of Korea.

I sincerely hope that my speech will shed light on the Korean government’s anti-corruption efforts. Also, it is my humble wish that our experience can provide any insight or input to all those who are eager to build up a transparent and corruption-free world.

In my presentation, I am going to briefly touch upon the significance of whistleblowing and give you an overview of the Korean whistleblower protection and reward system.

1. Whistleblower System: its significance and international trend

Whistleblowing is a good system that can effectively control corruption. It encourages members of an organization to place each other under surveillance.

In nature, irregular behaviors always go underground. Inexperienced eyes find it very hard to catch them. In this sense, internal members can be a good instrument to detect corrupt acts in their field because they work in the vicinity of a crime scene and thus have an easy access to compelling evidence.
In a society where whistleblowing is common, whistleblowers can work as collective deterrents to immoral or illegal activities in the entire society, thereby increasing its transparency level.

Therefore, it has become one of the important responsibilities of the government to provide an environment where anybody can reach the authorities without fear and hesitation. In this light, predictably, the whistleblowing system will play a more important role as our society becomes more complex and specialized in the future.

Internationally, it was since the mid 1980s when the necessity of whistleblowing system was recognized and efforts to set up protective legislations for whistleblowers were subsequently activated among governments. Recently, the importance of whistleblower and witness protection was emphasized by the participants at the 11th International Anti-Corruption Conference held in Seoul in May 2003.
2. Overview of the Korean System

The Korean whistleblower protection system was adopted for the first time in its history under the Korean Anti-Corruption Act with the creation of the Korea Independent Commission Against Corruption (KICAC) in January 2002.

Before the system, those who wanted to reveal organizational wrongdoings had no legal protection and no option but to go to the media or supportive groups risking their careers or lives.

Now, the new system provides official outlets and procedures for disclosing corrupt practices. Furthermore, whistleblowers can be financially rewarded if their acts bring about benefits to related public authorities. This means that a significant change happened in viewing “disclosure of organizational corruption,” which has long been regarded as an act of betrayal.

The records support this development. Whistleblowers increasingly have come to our Commission. Among the total number of reporting cases, those filed by whistleblowers account for 27.7% in 2002 and 34.2% in 2003.
In terms of credibility and intentions, internal informers’ allegations have been evaluated as more useful. More (5 to 10 %) of their cases were transferred to investigation authorities and resulted in law enforcement. Also, they contributed to the reversion of 81 % of the total 8.4 billion won (7.1 million in USD) that was taken back to the national treasury.

So far, I’ve briefly outlined the Korean whistleblower protection and reward system. The whistleblowing system, first adopted in Korea, has proved its effectiveness in controlling corruption, though it is not complete yet.

To improve its weak points, our commission will follow up with diversified undertakings. Focuses will be made on strengthening reprisal punishment, shifting the subject of documentation, and facilitating personnel measures.

Also, to increase financial rewards for whistleblowers, efforts are underway to abolish or raise the ceiling of reward payment. Incentives to encourage whistleblowing will be devised and positive views on such an act will be generated through frequent and active education campaigns.
Almost two-year experience has taught us some valuable lessons. Phase-in of the system might not be a good idea since incomplete protection in early stages could damage well-intentioned informers and thus discourage future whistleblowers.

To guarantee protection against reprisals from beginning to end, diversified measures must be devised by policy experts. At the same time, supportive efforts should be made to create a friendly and encouraging environment for potential whistleblowers.

I’ve come to the end of my portion. From now, Director Kim will brief you about main features of our system and what’s been done and achieved by our Commission.

Thank you.
3. Main Features of the Korean Whistleblower Protection and Reward System

Thank you Mr. Chairman. Now I am going to briefly explain the Korean Whistleblower Protection System.

To facilitate the system, we devised it to have two basic elements: protection and financial reward.

Protection System

There are three types of protection:

First, Identity Protection
The Korean law prohibits disclosing or implying the identity of a whistleblower without consent. Violators are subject to disciplinary measures or penal punishment such as imprisonment of 5 years or less.

Second, Employment Protection
When disadvantages or discrimination occurs to whistleblowers, our Commission officially asks for reinstatement or transfer and requests the authority to take disciplinary measures against the offender or
impose a fine of 10 million won (8,480 in USD) or less on a person who revenges against a whistleblower.

Third, Physical Protection
If a whistleblower and his inmate or relative feels threatened, our commission provides physical safety with the help of the competent police agency.

Financial Reward System

When a reporting leads to financial gain or cost-saving to the national treasury, 2 to 10 % of such benefits or maximum 200 million won (160,000 USD) goes back to the whistleblower as a form of reward.
4. Reviews & Follow-up Activities

According to the reports as of the end of September 2003, five informants experienced revenges such as dismissal or demotion. Our commission addressed such cases by requesting reinstatement and transfer or arranging new employment opportunities.

On the two violators, approximately 8.5 million won (about 7,000 USD) of fine for negligence was imposed. The four informants who asked for physical safety got appropriate support. In 30 cases, the commission warned against the potential “witch-hunting” or mental harassment as preventive measures. Approximately 1.2 billion won (1 million USD) was taken back to the national treasury and 65 million won (55,000 USD) was awarded to the two of those who blew whistle.

Despite short history, protection & reward mechanism has already become an underlying element of the Korean whistleblower system. However, there is much to be done to make it better. Cultural resistance and lack of experience produced ineffective laws and implementations. Our Commission is doing something to improve such legislative and institutional weaknesses.
First, to prevent the exposure of a whistleblower, our Commission is working to beef up security by allowing proxy representation and pseudonym in court.

Second, it has been frequently reported that whistleblowers suffered isolation in their organizations. To broaden the definition of “reprisal” to include the “infliction of mental distress” is being attempted. For another, an informant has to prove that reprisal occurred after the whistleblowing. To ease this burden, our Commission is drawing up measures to hold a challenged party responsible for the documentation of the non-occurrence of organizational reprisal.

Third, current instrument seems insufficient to deter reprisal practices. Our Commission is looking for ways to obtain power to coerce the requested party into submission and add provisions to criminalize those who commit reprisal against a whistleblower.

Fourth, records of reward payment are pretty low due to the strictness of the current system. Reward money can be executed only after the collection of penalties. Therefore, we will work to ease the system so that candidates can get rewards transferred if only court rulings are made. We are also considering raising the ceiling on rewards and increasing the reward rate.
Fifth, a whistleblower has to obtain necessary documents and records to back up his claims. This could breach the duty of maintaining job-related secrecy. Our Commission is considering a new provision that allows the exemption from such duty for a well-intentioned and reasonable disclosure.

Thank you.