

Regional Risk Spotlight: An Interview with Michael Kim of Kobre & Kim on South Korea's Anti-Money Laundering Laws

By Megan Zwiebel

While anti-corruption compliance is a focus for many companies, anti-money laundering laws are an additional worry for those in the financial services and gaming industries. And while U.S. laws may be the primary concern for U.S.-based companies, other countries have enacted similar regimes to combat money laundering and meet international standards. The Anti-Corruption Report recently spoke with Michael Kim, a former Assistant U.S. Attorney for the SDNY and U.S.-qualified lawyer practicing in Kobre & Kim's Seoul office, about South Korea's anti-money laundering laws and how anti-corruption compliance can overlap with AML compliance there. See "*Former FinCEN Director James H. Freis, Jr. Discusses the Intersection between Anti-Money Laundering and Anti-Corruption Law (Part One of Two)*" (Feb. 6, 2013); *Part Two* (Feb. 20, 2013).

South Korea's AML Laws

ACR: Why and when were AML laws passed in South Korea?

Kim: AML laws in South Korea are the result of a struggle to dispel corruption and will be emphasized more in light of public demand to establish a strong anti-corruption system. There had been hesitation to create an anti-money laundering regime because legislators were concerned that AML laws might be an obstacle to economic development. However, after recent corruption scandals – one of which even involved a former president – and in order to meet international standards, the current AML laws were enacted in 2001 and have recently been amended.

ACR: What does South Korea's AML framework currently look like?

Kim: South Korea is a member of the Financial Action Task Force (FATF), which is an intergovernmental body established to set standards for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system. South Korea became a member of the FATF on October 14, 2009, and follows its proposed recommendations. For example, South Korea adopted a FATF-recommended requirement that financial institutions and casinos file currency-transaction reports (CTRs) in 2005. In 2007 this requirement was refined to require a more risk-based approach such that simplified due diligence is applied to low-risk customers and enhanced due diligence is applied to high-risk customers.

ACR: What are the relevant laws for AML in South Korea?

Kim: There are four main laws that companies should be aware of with regard to AML.

First, the Act on Reporting and Using Specified Financial Transaction Information (also known as the Financial Transaction Reporting Act or FTRA) applies to financial transactions and establishes a reporting mechanism which theoretically enables the analysis of certain financial-transaction information.

Second, there is the Act on Regulation and Punishment of Criminal Proceeds Concealment (also known as the Proceeds of Crime Act or POCA) which imposes penalties on the concealment of proceeds generated from criminal activity.

Third, South Korea has the Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction (also known as PFOPIA). This law implements the International Convention for the Suppression of the Financing of Terrorism and criminalizes financing terrorism.

Finally, there is the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc. (also known as the Drug Trafficking Act) which governs illegal drug trafficking under international cooperative regimes and implements related international conventions.

ACR: How is money laundering defined?

Kim: Generally, under Korean laws, money laundering is defined as “concealing illegal asset and Disguising the acquisition or disposition of illegal asset.” In order to be criminal, the laundered money has to come from a set of predicate offenses listed in POCA, PFOPIA and Drug Trafficking Act. There are over 90 such offenses including racketeering, bribery, counterfeiting, larceny, robbery, fraud, embezzlement, drug trafficking, copyright infringement, insider trading and market manipulation.

ACR: What are the sanctions for money laundering?

Kim: Under POCA, money laundering is punishable by no more than five years in prison or a fine of 5 million won [approximately \$4,464]. Money laundering related to narcotic crimes is punishable by up to seven years in prison or a fine not exceeding 30 million won. Under PFOPIA, money laundering related to terrorism is punishable by up to 10 years in prison or a fine not exceeding 100 million won.

In addition, POCA and the drug-trafficking laws provide for forfeiture of the proceeds of money laundering or property of equivalent value in addition to the above sanctions. However, there is no civil forfeiture or administrative forfeiture in South Korea.

ACR: Who has responsibility for enforcing these laws?

Kim: When criminal investigation is necessary, the information is collected by the Korean Financial Intelligence Unit (KoFIU) or the Anti-Corruption and Civil Right Commission (ACRC) and then delivered to the Public Prosecutor’s Office (PPO). In addition, the PPO has a special investigation team in charge of high-profile corruption cases which can include AML cases. So, in some respects, the AML laws and anti-corruption laws are enforced in tandem.

ACR: What kind of reports does the FTRA require?

Kim: The FTRA requires financial institutions subject to the law to submit suspicious transaction reports (STRs), currency transactions reports to the KoFIU, and also to perform customer due diligence (CDD).

ACR: When are STRs and CTRs required?

Kim: STRs are required for certain financial transactions in which there is a justifiable basis to suspect that illegal assets or money-laundering activity are involved.

CTRs are required for deposits or withdrawals in cash or cash equivalents of 20 million won (approximately \$17,000) or more (excluding foreign currency transactions) on any single day, except: (i) payments or receipts of cash equivalents to or from other financial institutions, national governments, local governments, and other public institutions; and (ii) routine payments or receipts of cash equivalents that do not carry the risk of money laundering.

ACR: What does the FTRA require in terms of customer due diligence?

Kim: Financial institutions are required to identify a name, resident registration number, address and other contact information for anyone that opens a new account or engages in a financial transaction involving \$10,000 or more in foreign currency or 20 million won.

If the transaction raises suspicions of money laundering, the financial institution must engage in enhanced due diligence (EDD) and identify the beneficial owners of any funds transferred and the purpose of the transaction.

Also, financial institutions may reject transactions with customers who refuse to provide information.

See "JPMorgan Chase Anti-Money Laundering Consent Orders Highlight the Role of Risk in Structuring Compliance Programs" (Jan. 23, 2013).

Effectiveness of the Law

ACR: *How effective do you think the AML laws are in South Korea?*

Kim: They are semi-effective. In theory, data is meant to flow from financial institutions to a financial crime analysis center that can then look at it and find evidence of money laundering. In practice, the reports just contain raw data and the financial institutions or casinos aren't processing it in any way and don't provide any narrative or context for it. And South Korea doesn't have the systems in place to do the processing themselves. If evidence of money laundering is found, it is only incidental to some other ongoing investigation.

ACR: *Are there other aspects of the law that make enforcement difficult?*

Kim: One aspect of the law that makes it less effective than the laws in other countries, particularly the U.S., is limited corporate criminal liability. In the U.S., there is an extensive set of laws that make the entity subject to AML laws liable for huge fines if they violate the law. Although there has been a limited amount of enactment of corporate criminal liability in Korea, for the most part, criminal liability is enforced only against individuals. In essence, the law copies one part of what works well in the U.S. but not the important element of liability and penalties.

See "A Rare Jury Conviction for a Bribe-Taker Proves the Worth of FBI Foreign Corruption Units" (May 24, 2017).

Interaction With Anti-Corruption Laws

ACR: *How do the AML laws in South Korea interact with the anti-corruption laws there? Are they separate legal regimes or enforced in tandem?*

Kim: In South Korea, the AML laws and anti-corruption laws are separate legal regimes. The AML laws are as discussed above. Meanwhile, the Criminal Code, the Act on the Creation and Operation of the Anti-Corruption and Civil Right Commission and the Prevention of Corruption, the Act on the Prohibition of Improper Solicitation and Provision/Receipt of Money and Valuables (commonly referred to as the Anti-Graft Act or the "Kim Young-Ran Act"), and Foreign Bribery Prevention Act (which is Korea's equivalent of the FCPA) primarily consist of anti-corruption laws.

ACR: *How effective are the anti-corruption laws?*

Kim: While there has been a crackdown in domestic bribery, many South Korean companies operate in foreign jurisdictions that are extremely high risk for corruption. And South Korea does not have an effective law that deals with foreign bribery. There is a sense that enforcement of foreign bribery laws similar to that in the U.S. and the U.K. might put South Korean companies at a competitive disadvantage. The U.S. and U.K. can enforce those laws and companies will still come and do business there because they need to be in that jurisdiction – that is not necessarily the case in South Korea. A lot of countries, even developed countries like South Korea, are very concerned that if they put companies that operate there at a disadvantage internationally by preventing them from bribing other countries' officials, it will cause an economic backlash.

ACR: In your view, what is the connection between AML laws and anti-corruption laws?

Kim: Without AML laws, anti-corruption laws are not very effective as to substantial corruption. Anti-corruption laws without accompanying AML laws that are strongly enforced often end up with crackdowns only on low-level, public corruption. I think it is very hard to have an effective anti-money laundering program while not enforcing laws against corrupt activity that is international in nature versus purely domestic, because the large-scale fraud and corruption really is cross-border, and not government officials being paid to do very specific, local things.

[See “Regional Risk Spotlight: Samuel Nam of Kim & Chang Discusses a South Korean Anti-Corruption Landscape in Flux” (Jan. 27, 2016).]

AML and Anti-Corruption Synergies in South Korea

ACR: How can a company leverage the similarities between South Korea’s AML laws and the FCPA in its compliance programs?

Kim: Bribery is one of the predicate offenses under POCA, and it constitutes a violation of the FCPA at the same time. Recently, the Anti-Graft Act (so-called Kim Young-Ran Act) was enacted and this broadened the definition and scope of corruption. Although violation of the Anti-Graft Act is not included in the predicate offenses under POCA, it can still constitute a violation of the FCPA. In this regard, a compliance program designed for FCPA compliance prevents violations related to corruption more broadly than an AML compliance program.

On the other hand, there are nearly 90 predicate offenses for money laundering, which include bribery, fraud, embezzlement, breach of trust, narcotics trading, infringement of copyright, and violations of the Financial Investment Service and Capital Markets Act (such as insider trading, market manipulation, and unfair

trading). Thus, if a company adopts an AML compliance program relevant to its business, it can cover other illegal conduct in some respects.

ACR: Are there synergies in terms of monitoring, due diligence, and risk assessment between these two areas of compliance?

Kim: Based on the information above, in South Korea, companies can expect synergies in terms of monitoring, due diligence, and risk assessment by establishing both FCPA compliance programs and AML compliance programs.

ACR: Can you give an example of how those synergies might work?

Kim: One example would be the situation where a client deposits money with a financial institution and then decides that it wants to close the account. The institution obviously has to return the money, but the client could ask the institution to send the money to a third party rather than returning it to the client directly. This is a prime way to launder money because the third party can claim that it got the funds directly from a bank and there is no direct linkage to the client. To prevent this type of transaction, as part of their compliance programs, firms will have a policy against third-party transmittals designed to prevent money laundering. But because third parties often play such a large role in corruption schemes, it can also be an effective control for preventing bribery.

ACR: Are there synergies in terms of due diligence?

Kim: Certainly. As part of AML controls most financial institutions not only have “know-your-customer” (KYC) controls that fulfill the CDD and EDD requirements of the law, but go beyond those requirements and require that clients provide a significant amount of background information and documentation, and that the financial institution understands the sourcing of funds. That kind of documentation can be useful in rooting out corruption as well.

ACR: Are KYC programs generally effective?

Kim: I don't think there have been many instances where those types of laws have prevented money laundering, because people who want to launder money will eventually find some institution that will accept the representations they make. There is only so much investigation financial institutions can be expected to do without interfering with their primary business.

See "*Risk-Based Solutions to Complying with Anti-Money Laundering, Export Controls, Economic Sanctions and the FCPA*" (Jan. 22, 2014).