



What Multinational Companies Should Know About Unprecedented Extraterritorial Activities by the South Korean Police

A rise in cross-border crime has prompted Korean authorities to aggressively expand their extraterritorial activities, and multinational companies are seeing more enforcement activity from Korea as a result. How can potential targets mitigate their risks and stand up to prosecutorial overreach? Our team explains below.

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The South Korean Police have recently been aggressively expanding their extraterritorial activities with novel techniques, raising their profile as an investigative agency with multinational companies.

Counsel familiar with handling international government actions, including joint actions by Korean, U.S. and other enforcement agencies, can help potential targets mitigate their risks and stand up to prosecutorial overreach.

How has the reach of the Korean Police changed?

The Korean Police have in the past regularly sought cooperation from their counterparts in other jurisdictions through a formal process under a Mutual Legal Assistance Treaty ("MLAT"), which takes considerable time and resources. The recent spike of cross-border crime originating from Korea, with suspects fleeing overseas, dispersing assets to multiple jurisdictions and involving foreign entities or individuals in criminal schemes, has posed significant challenges for the Korean Police in using the MLAT process.

To cope, the Korean Police are deploying more creative methods. One example is sending out-of-the-blue Request for Information ("RFI") letters to foreign companies. These letters typically list various information needed from the company without detailing much about the background or nature of the investigation.

Companies receiving such letters are left wondering many questions: (i) whether the letter is legitimate, (ii) why the company was contacted, (iii) the background of the underlying investigation, (iv) whether the company must comply, (v) whether and to what extent the company is being targeted in the investigation, (vi) or if the company is being asked to cooperate as a third party. The answers to these preliminary questions are critical to the company's decision on the next steps and controlling the risk of the inquiry from further disrupting the company's business.

What should companies consider in their response?

Companies should find counsel familiar with handling inquiries and investigations by Korean law enforcement, including Korean Police. In addition, these inquiries may arise from a joint investigative effort by Korean law enforcement and their foreign counterparts, especially the U.S., meaning companies may need to prepare for scrutiny from multiple fronts.

In responding to the inquiries, companies may consider taking a proactive approach, including:

Testing the Enforcers' Reach: It may be possible to challenge the legal basis of an enforcement action, especially given that law enforcement's extraterritorial reach is generally more tenuous. Even if a company intends to cooperate fully, noting a jurisdictional issue can be a good negotiating tool to narrow the scope of a RFI, for example.

Seizing Control of the Narrative: While conventional wisdom may favor playing one's cards close to the chest, it can sometimes be advantageous to shape the agency's views of a situation early in the process. This might involve proactively setting the facts supporting a counter-narrative to agencies from the early stages.

Going On the Offensive: Companies can also look for opportunities to take agencies head-on by challenging the enforcement process by using techniques involving strategic cross-border filings, information demands and cost-shifting applications.

As Korean law enforcement begins to test its reach overseas, many foreign companies are subject to inquiries and investigations with unfamiliar bases and unclear risks. Companies should deploy counsel with experience responding to these inquiries and any potential joint investigations with other countries to assert their interests and mitigate their risks.

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About Kobre & Kim

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Has extensive experience representing clients in government investigations regulators and enforcers such as the Korean Police, the Korean Prosecutors' Office, the Korean Financial Supervisory Service and the KFTC, often in conjunction with U.S. and other authorities, such as the U.S. Department of Justice (DOJ).

Includes former DOJ prosecutors based around the world, who work with native Korean-speaking lawyers and a former inspector in the Korean National Police that are part of a Seoul-based team.

We work alongside a client's regular outside legal team as their special counsel for discrete projects.