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Subject: Kobre & Kim Update - Government Raids in Korea: What You Should Do When Faced with One

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## Government Raids in Korea: What You Should Do When Faced with One



21 July 2016

An on-site raid for evidence is a common tool for Korea's enforcement authorities – particularly when the public prosecutor's offices are taking the lead in high profile cases. This may surprise practitioners with US backgrounds, where authorities generally rely on voluntary subpoenas and witness interviews to collect evidence in an investigation. On occasion, the investigation might be at the behest of a foreign government, such as the US or UK. This means that corporations operating in Korea must prepare for the possibility of a raid by establishing a protocol and training staff. The key for company executives both on and off site is to respond calmly, ensure the raid is being conducted in accordance with the law, and alert Korean counsel to deal with the immediate occurrence and aftermath.

Below are the steps that should be taken when facing a government raid in Korea – and can be adopted in many other jurisdictions where similar risk exists.

### Carefully Examine the Search Warrant to Ensure Its Validity.

Except in an exigent circumstance (which is almost never the case in the corporate context) no on-site search may be conducted without first presenting a valid search warrant.

- Request that the on-site authority present the search warrant and review the warrant carefully.
- If the search is being conducted after sundown, the warrant would normally have to authorize a nighttime search.
- If multiple persons are subject to the warrant in addition to the corporate entity, the warrant must be presented to each and every person before the search may begin.

### Monitor the Search and Seizure of Electronic Data.

The default rule is for the authority to identify relevant documents or data and collect such documents in either hard copy format or as an electronic copy to a new storage device.

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- Collection of the hardware that contains the electronic data, or imaging the entire hard drive or database, is allowed only in narrow, exceptional circumstances.
- Closely monitor the search for electronic data and request that your IT staff observe the process.

#### Understand and Follow Post-Search Procedures.

It is important to understand search protocol and procedures. Contacting Korean counsel will assist in better understanding what evidence has been obtained and how that information can be used.

- The searching authority must compile a list of evidence collected. The searched person has the right to examine the list. Carefully review the list so that the items may be properly returned or destroyed at the end of the investigation.
- If there is an item that does not belong to the searched premise, a request can be made to the authorities to note.

Remember, calling Korean counsel early is critical when facing an on-site government search in almost all jurisdictions, and this certainly holds true in Korea. The process allows for an attorney to be present, but the authority searching need not wait for the attorney to arrive at the location. This means that you must contact Korean counsel as soon as possible when the authorities appear with the warrant to address the situation immediately and minimize any potential damage caused by the raid.

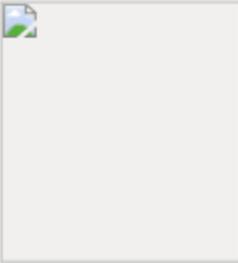
Raids directed at companies operating in Korea are common, but not many companies are mindful of the risk and prepared for one. Advance preparation is essential to ensure the raids are conducted and managed properly.

#### About Kobre & Kim:

- Focused solely on disputes and investigations.
- Team is led by a former U.S. Department of Justice prosecutor.
- All team members are fluent in Korean and English.
- The only foreign-licensed firm in Korea with offices in the offshore jurisdictions (in addition to various locations in the US, Europe, and Asia).



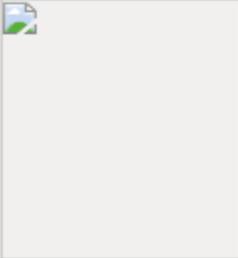
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