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Understanding the Extradition Rules between Korea and the U.S.



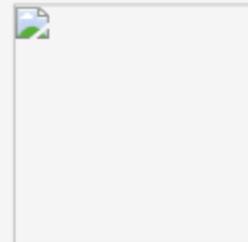
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Given the rising trend, both in the U.S. and in Korea, of using criminal law to regulate economic activities, it is commonplace for U.S. and Korean law enforcement authorities to request extradition of criminal defendants. Heightened awareness of the extradition rules between the two countries is of vital importance, as personal liberty may be at stake when the foreign government faces little hurdle to have someone forcibly detained and extradited.

The general rule under the U.S.-Korea extradition treaty holds that a criminal defendant who is alleged to have committed (or attempted to commit) an offense that is punishable by more than one year in prison under the laws of **both** countries is subject to extradition. This general rule is subject to several exceptions, such as:

- Both countries may decline to extradite on a discretionary basis. To this end, both the U.S. and Korea have statutes that describe the circumstances under which each country would refuse to extradite;
- If a person was already convicted or acquitted of a crime, the same crime cannot serve as the basis for extradition; or

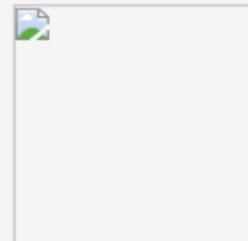
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• Political offense, or a crime under military law that is not a criminal offense under ordinary criminal law, cannot serve as the basis for extradition.

The extradition process has a much lower burden of proof, and is much more informal, than a criminal trial. Although there will be an opportunity to litigate the merits of the case after extradition, simply being detained and transferred to another country to face a trial in an unfamiliar legal system is itself a significant imposition from the perspective of an individual defendant. To avoid such drastic consequence, it is critical to carefully assess the legal and compliance risk, and be familiar with the status in both countries which could potentially provide basis for an exception to extradition.

This is an excerpt from an article, authored by Kobre & Kim attorney S. Nathan Park, which was first published in The Wall Street Journal Korea. Read the full article in Korean [here](#).

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- Led by a former U.S. Department of Justice prosecutor.
- All team members are fluent in Korean and English.
- Offices in New York, London, Hong Kong, Washington DC, San Francisco, Miami, Cayman Islands and British Virgin Islands.

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