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# Duty of Confidentiality in Korea

By SUH-YOUNG SHIN\*

## I. Introduction

Confidentiality is an attorney's special right as well as a fundamental duty.<sup>1</sup> In the United States, professional rules of conduct for attorneys have been established to guide how a lawyer should act in relation to a client regarding communication between the client and the lawyer.<sup>2</sup> The rules are fairly comprehensive for attorneys in independent practice.<sup>3</sup> However, when it comes to in-house counsel, sources that attorneys can depend on are scarce.<sup>4</sup> In the Republic of Korea, where the rules of ethics for attorneys in general are very broad and somewhat ambiguous, it is doubly difficult for in-house counsel to determine how to respond (or *whether* to respond) when the corporation for whom they work engages in unlawful conduct.<sup>5</sup>

This note will study the problems arising under the current Korean rules regarding ethical standards for attorneys in light of the recent scandal involving Samsung Corporation. The Korean rule will be analyzed and compared to the American code of professional ethics and conduct. The note will then discuss difficulties of directly adopting the U.S. rules governing attorney-client privilege and

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1. GEOFFREY C. HAZARD, JR. & ANGELO DONDI, *LEGAL ETHICS: A COMPARATIVE STUDY* 10 (2004).

2. *See generally* MODEL RULES OF PROF'L CONDUCT (2008).

3. *Id.*

4. JOHN DZIENKOWSKI, *EVOLVING ISSUES FOR CORPORATE LAWYERS AND IN-HOUSE COUNSEL* 2 (2003).

5. Jungbum Kim, *It's Still Early to Discuss Disciplinary Actions against Kim*, THE LAW TIMES, Nov. 19, 2007, available at <http://www.lawtimes.co.kr/LawEdit/Edit/EditContents.aspx?kind=ba04&serial=34669>.

confidentiality into Korea considering the historical, societal, and legal context surrounding Samsung, or *chaebol* (major conglomerate business groups in Korea) at large.

## II. The Samsung Scandal

A huge scandal surrounding Samsung, the largest corporation<sup>6</sup> in Korea, erupted in the late 2007. Kim Yong-Chul, Samsung's former<sup>7</sup> top in-house counsel, made a public announcement that Samsung allegedly maintained slush funds to bribe prosecutors, judges, and government officials to hide tax evasion arising from the illegal handling of the father-to-son transfer of equity in Samsung Life, from the chairman of the company to his son.<sup>8</sup> An investigation was launched after the announcement of the transfer, with the appointment of a special prosecutor.<sup>9</sup> The scandal ignited a heated debate within the Korean legal community, as well as among the general public, regarding whether Kim should be subject to discipline by the Korean Bar Association for disclosing his client's confidential information.<sup>10</sup>

Kim claimed that he should not be subject to the duty of confidentiality for attorneys because his relationship with Samsung was that of an employee and employer, rather than an attorney and his client.<sup>11</sup> However, the president of the Korean Bar Association underscored the fact that Kim was not a mere staff member of Samsung who dealt with mundane legal issues but was deeply involved in previous suits regarding the father-to-son transfer of Samsung shares.<sup>12</sup> According to the Korean Bar Association, such involvement constituted legal representation by an attorney, making

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6. *Samsung Group*, [http://en.wikipedia.org/wiki/Samsung#\\_note-4](http://en.wikipedia.org/wiki/Samsung#_note-4) (last visited Mar. 6, 2008).

7. He was apparently fired due to some undisclosed conflict.

8. Samsung denied all the allegations.

9. Bomi Lim, *South Korea Lawmakers Seek Independent Samsung Probe*, Bloomberg.com, Nov. 23, 2007, <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=akIPxF1M7Rqs>.

10. *Id.*

11. *Q&A on Kim's Additional Disclosure*, CHOSUN ILBO, Nov. 26, 2007, available at [http://news.chosun.com/site/data/html\\_dir/2007/11/26/2007112601044.html](http://news.chosun.com/site/data/html_dir/2007/11/26/2007112601044.html).

12. Jaehong Kim, *The Disclosure of Samsung Scandal*, THE LAW TIMES, Nov. 12, 2007, <http://www.lawtimes.co.kr/LawNews/News/NewsContents.aspx?serial=34291> (last visited Oct. 27, 2008).

Samsung Kim's client<sup>13</sup> and thus subjecting Kim to the duty of confidentiality. On the other hand, many non-governmental organizations in Korea argue that Kim should not be penalized for disclosing Samsung's alleged wrongdoings.<sup>14</sup> They enthusiastically support Kim's disclosure and praise his courage in standing up against what they perceive as a big, greedy conglomerate.<sup>15</sup>

This incident gives rise to several legal questions. Are in-house attorneys like Kim subject to the same professional rules of conduct as attorneys in independent practice when it comes to the duty of confidentiality? More specifically, in the instant case, would Kim be regarded as an attorney and Samsung his client, or merely an employer and an employee? Moreover, if we assume that in-house counsel are subject to the same ethical standards as independent attorneys, would in-house counsel be allowed to disclose their employer's secret information regarding bribery and tax evasion?

### III. Applicable Laws

#### *A. The Professional Rules of Conduct in Korea*

Section 23 of the Korean Bar Association Code of Conduct and Ethics states that "[a]n attorney should not reveal any information learned through the representation of his or her client . . . However, the attorney may disclose information, to the extent necessary, in order to uphold the public interest or to protect his or her own rights."<sup>16</sup> The Korean standard allows disclosure of information in exceptional cases, where disclosure would be beneficial to the public or to protect the attorney's own rights.<sup>17</sup> However, even in those cases, disclosure must be limited "to the extent necessary."<sup>18</sup>

The language of the rule makes it difficult to determine when disclosure is permitted. The rule is broad and its language rather vague.<sup>19</sup> In particular, the Korean rule does not provide any guidance

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13. *Id.*

14. Lawyers with the Citizens, *A Statement by Lawyers with the Citizens*, Apr. 18, 2008, available at [http://www.independent.co.kr/news\\_01/n\\_view.html?id=22092&kind=menu\\_code&keys=1](http://www.independent.co.kr/news_01/n_view.html?id=22092&kind=menu_code&keys=1) (last visited Nov. 9, 2008).

15. *Id.*

16. KOREAN BAR ASSOCIATION CODE OF ETHICS AND CONDUCT § 23 (2000).

17. *Id.*

18. *Id.*

19. Byung-Tae Kang, *Rules of Ethics and Conscience*, HANKOOK ILBO, Nov. 8,

as to what situations would fit “upholding public interest.”<sup>20</sup> The Code of Conduct and Ethics consists of seven chapters and thirty-eight sections of rules for attorneys, only one of which, Section 23, deals with an attorney’s duty of confidentiality, and that section does not help decide the inquiry into whether Kim’s conduct is permissible.<sup>21</sup>

### ***B. Special Role of Lawyers***

Lawyers have an official status as licensed fiduciaries in the public interest, charged with encouraging compliance with legal norms.<sup>22</sup> As the Preamble to ABA Model Rules states, “As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession . . . A lawyer should . . . help the bar regulate itself in the public interest.”<sup>23</sup>

However, Hazard and Dondi, prominent scholars in the field of legal ethics, state that there is no “legal basis of any such obligation . . . to protect third-party interests.”<sup>24</sup> Surely it would be ideal for lawyers to always be ethical, looking out for justice and public interest. In fact, lawyers are prohibited from “knowingly counseling or assisting a client to commit a crime or fraud.”<sup>25</sup> However, Hazard and Dondi note that lawyers are in a rather peculiar position.<sup>26</sup> In fact, the Preamble to Model Rules acknowledges “conflicting responsibilities” for lawyers.<sup>27</sup> Specifically, “[v]irtually all difficult ethical problems arise from conflict between a lawyer’s responsibilities to clients, to the legal system and to the lawyer’s own interest in remaining an ethical person while earning a satisfactory living.”<sup>28</sup> According to the Model Rules, the most

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2007, available at <http://news.hankooki.com/lpage/opinion/200711/h2007110818365024440.htm>.

20. *Id.*

21. *Id.*

22. HAZARD & DONDI, *supra* note 1, at 159.

23. MODEL RULES OF PROF’L CONDUCT pmb. ¶ 6 (2003).

24. HAZARD & DONDI, *supra* note 1, at 223.

25. MODEL RULES OF PROF’L CONDUCT R. 1.2 cmt. ¶ 9 (2003).

26. However, Hazard and Dondi still believe that justice and truth in legal profession are still pursuable and achievable.

27. MODEL RULES OF PROF’L CONDUCT pmb. ¶ 9 (2003).

28. *Id.*

important value to be held by lawyers is loyalty to clients,<sup>29</sup> and one of the most important ways to maintain loyalty to clients is by abiding by the duty of confidentiality.<sup>30</sup> The trust within the relationship guarded by the duty of confidentiality and loyalty is the fundamental right and duty of an attorney.<sup>31</sup> Therefore, even when a client commits a crime or fraud “in furtherance of which the client has used the lawyer’s services,” the Model Rule does not demand that the lawyer reveal information relating to the representation of the client.<sup>32</sup> Rather, the rule states that the lawyer “*may* reveal information . . . to the extent the lawyer reasonably believes necessary . . .”<sup>33</sup> (emphasis added).”

The Korean rule, in contrast, is more lenient than its American counterpart in terms of the requirement to keep the duty of confidentiality when the public interest is implicated, putting the social duty of attorneys to the public before their fiduciary duty to clients. Thus, the special role of lawyers as described above would be difficult to be maintained, for lawyers in Korea are expected to be loyal more to the public as a whole rather than to their clients.

It is only natural that different legal systems have different expectations for lawyers, as each legal system is embedded in a particular society and culture, and lawyers have corresponding role to that society.<sup>34</sup> However, in the context of the duty of confidentiality for attorneys in Korea, it would be useful to compare to the counterpart rules established in the United States. Studying the American rule and standard and comparing them with the corresponding Korean rules will shed light on what ideal rules of professional responsibility for attorneys would look like.

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29. HAZARD & DONDI, *supra* note 1, at 8-9.

30. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2003).

31. Mary J. Daly, *The Ethical Implications of the Globalization of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the 21<sup>st</sup> Century*, 21 FORDHAM INT'L L.J. 1239, 1277 (1998).

32. MODEL RULES OF PROF'L CONDUCT R. 1.6(b)(3) (2003).

33. *Id.* at R. 1.6(b) (2003) (emphasis added).

34. HAZARD & DONDI, *supra* note 1, at 16-18.

### *C. The U.S. Rule*

#### *i. ABA Model Rules of Professional Conduct*

Since it is difficult to determine whether Kim's conduct was permissible under the rather broad Korean rule, it would be helpful to analyze the case upon the American rule on the duty of confidentiality, which is much more comprehensive and detailed.<sup>35</sup> Rule 1.6 of the Model Rules, a general rule on the duty of confidentiality, is much more specific than its Korean counterpart. The rule stipulates that:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services; (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.<sup>36</sup>

Samsung surely did not give its consent to disclosing the information, so under subsection (a), Kim should not have revealed information relating to his representation of Samsung. However, under the subsection (b), it could be argued that Kim's actions were to mitigate or rectify substantial injury to the financial interests of another that was reasonably certain to result or had resulted from the client's commission of a crime or fraud. For the Chairman of Samsung to arrange the transfer of shares of stock between various subsidiaries of Samsung in order to leave a large inheritance for his son while avoiding Korean gift or estate tax is certainly prohibited under Korean law.<sup>37</sup> An illegal transfer of shares would negatively

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35. See generally MODEL RULES OF PROF'L CONDUCT R. 1.6 (2003).

36. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2003).

37. Chang-Ryul Kwak, *Yongchul Kim Calls Joongang Ilbo and Samsung Group's Separation a Mere Disguise*, CHOSUN ILBO, Nov. 28, 2007, available at [http://news.chosun.com/site/data/html\\_dir/2007/11/26/2007112600951.html](http://news.chosun.com/site/data/html_dir/2007/11/26/2007112600951.html).

affect other shareholders, and evading tax would damage public confidence and the economy in general. Therefore, it may be argued that the chairman of Samsung had engaged in illegal conduct, and Kim's disclosure of that conduct would fall under the exception<sup>38</sup> to the general confidentiality rule.

Nevertheless, as noted above, the special role and duty of a lawyer mandate that a lawyer's primary duty is to his or her client and not to society as a whole.<sup>39</sup> Therefore, even though the disclosure of information may be permitted in some circumstances, the rule explicitly states that the disclosure should be limited "to the extent the lawyer reasonably believes necessary."<sup>40</sup> It should be noted that the duty of confidentiality and loyalty clearly does not extend to covering up or assisting illegitimate wrongdoings of a client.<sup>41</sup> However, the Supreme Court of the United States has found disclosure of client information proper only in limited circumstances such as when the client committed perjury during trial.<sup>42</sup> The Comment to Model Rule 1.6 states that "where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure."<sup>43</sup> Kim does not appear to have tried to persuade Samsung to take appropriate action to obviate the need for disclosure. Rather, he waited several years after he left Samsung to reveal the confidential information.

However, Model Rule 1.6<sup>44</sup> does not help to resolve Kim's main argument that he is not subject to the duty, as his relationship is that of employee/employer with Samsung. In Europe (as in Korea), where the civil law system is employed, it has been decided that the attorney-client privilege only applies to independent lawyers and not to members of the legal department of an organization.<sup>45</sup> Under that reasoning, client information in Kim's possession would not be subject to the attorney-client privilege and thus he would not have the duty to withhold or protect the information. On the other hand, the

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38. See generally Mark L. Tuft, *For Your Eyes Only*, 25 L.A. LAWYER 26 (2002) for a general overview of the duty of confidentiality.

39. HAZARD & DONDI, *supra* note 1, at 14.

40. MODEL RULES OF PROF'L CONDUCT R. 1.6(b) (2003).

41. *Nix v. Whiteside*, 475 U.S. 157, 176 (1986).

42. *Id.* at 166-71.

43. MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. ¶ 14 (2003).

44. *Id.* at R. 1.6 (2003).

45. Case no. 155/79, *AM&S Europe Ltd. V. Commission*, 1982 E.C.R. 1575 (1982).

American rule would hold otherwise. Rule 1.13 (b)<sup>46</sup> stipulates that in-house lawyers with an organization as a client are bound by legal ethics. It states that a lawyer can disclose information when:

... a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization . . . .<sup>47</sup>

Even as an in-house attorney, in effect an employee of the corporation, under the American system, Kim would be bound by the legal ethics code.

As with the analysis under Rule 1.6, Samsung's actions do come within the kinds of behavior mentioned in the rule: bribery, tax evasion, and stock manipulation are all violations of law that can be imputed to the organization and are likely to result in substantial injury to the financial interest of the organization. However, Kim was not prudent in how he went about solving the problem. This rule allows disclosure of information but "only if and to the extent that the lawyer reasonably believes necessary to prevent substantial injury to the organization."<sup>48</sup> The rule mandates that "the lawyer shall refer the matter to a higher authority in the organization" before disclosing the information.<sup>49</sup> Had Kim been in an American jurisdiction, he would have been subject to discipline for publicly announcing Samsung's wrongdoings instead of speaking with a higher authority, such as the CEO of the company or the board of directors.

It is crucial to point out the distinction between individual clients and clients that are organizations. Rule 1.13(a) explicitly explains that a lawyer "employed or retained by an organization represents the organization acting through its duly authorized constituents."<sup>50</sup> The Comment to the rule states that "an organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents."<sup>51</sup> It nonetheless

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46. MODEL RULES OF PROF'L CONDUCT R. 1.13 (2003).

47. *Id.*

48. *Id. at R. 1.13(c)(2)* (2003).

49. *Id. at R. 1.13(b)* (2003).

50. *Id. at R. 1.13(a)* (2003).

51. *Id. at R. 1.13 cmt.* (2003).

emphasizes the fact that it “does not mean, however, that constituents of an organizational client are the clients of the lawyer.”<sup>52</sup> Then, one might argue that because the chairman of Samsung was not a direct client of Kim’s, and it was the chairman, not the organization itself, who demanded bribery and participated in the tax evasion, Kim does not have any ethical duty under this rule to protect the information.<sup>53</sup> The circumstances, however, are more complex. Even though it is true that the chairman was not directly Kim’s client, the actions taken by the chairman are violations of law that “reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization.”<sup>54</sup> Therefore, Kim is, again, on the hook of Rule 1.13. As discussed above, he should have consulted with higher authorities within the organization before going public.

Although Rule 1.13 deals generally with the case of attorneys with an organization as a client, there are many subtle differences between in-house lawyers and outside attorneys with organizations as clients.<sup>55</sup> The starkest difference is that in-house counsel are employees of the organization, subject to the internal hierarchy and operations of the entity.<sup>56</sup> In-house attorneys are dependent on their “powerful client” for their income.<sup>57</sup> This translates into a circumstance where it may be more difficult for in-house attorneys to directly challenge issues or even to bring them to higher authorities as Rule 1.13 requires. Moreover, the highest authority within a corporation is almost always the board of directors.<sup>58</sup> As in-house counsel often have a seat on the board, the situation could arise in which the attorney would face the board which made the decision that the attorney seeks to contest.<sup>59</sup> Such frustration and unease would likely be compounded in Korea where it is institutionally and culturally unacceptable to question your superior.<sup>60</sup>

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52. MODEL RULES OF PROF’L CONDUCT R. 1.13 cmt. (2003).

53. HAZARD & DONDI, *supra* note 1, at 220-21 (stating that under the civil law system, attorneys represent both the corporation and its officials).

54. MODEL RULES OF PROF’L CONDUCT R. 1.13(b) (2003).

55. DZIENKOWSKI, *supra* note 4, at 3-4.

56. MODEL RULES OF PROF’L CONDUCT R. 1.13 cmt. (2003).

57. HAZARD & DONDI, *supra* note 1, at 217.

58. Susanna M. Kim, *Dual Identities and Dueling Obligations: Preserving Independence in Corporate Representation*, 68 TENN. L. REV. 179, 181 (2001).

59. *Id.* at 182.

60. *But see* Daly, *supra* note 31, at 7. The author presents a different view on the position of in-house counsels in a corporation. She writes that they take rather a “proactive” role whereby they engage not only in solving legal issues but also in

## *ii. Restatement of Agency*

Agency law also provides rules relevant to the instant facts. The Restatement of Agency, Section 8.05, covers the duty of confidentiality of all employees, which presumably includes in-house counsel.<sup>61</sup> The rule states that “[a]n agent has a duty . . . not to use or communicate confidential information of the principal for the agent’s own purposes.”<sup>62</sup> It is likely that the duty of confidentiality under the Restatement would not be applied as stringently as the duty of confidentiality under the Model Rule, for as discussed earlier in Section B, lawyers have a special role and fiduciary duty toward their principals (clients). However, agency law, too, “prescribes that, unless the proposed action is illegal, an agent is obliged to follow the directions of the principal.”<sup>63</sup> As to the scope of agency law, the duty not to communicate covers information gathered during the period an employment relationship existed.<sup>64</sup> Therefore, even if Kim was no longer Samsung’s employee when he disclosed the information, because the information had been obtained in the scope of his employment, he is still bound by the agency law of confidentiality.

## **IV. Proposal for Modifying the Korean Rule**

### ***A. Legal Ethics in a Social Context***

Under the current broad and vague language of the Korean rule on the duty of confidentiality for attorneys, it is very likely that many instances of disclosure would be condoned in the name of the “public interest.”<sup>65</sup> In Korea, as a less individual-oriented society (as compared to the United States), more things can pass under the public interest rationale, rather than being screened by an explicit rule of law. That is, in Korea, much can be condoned and sacrificed for the interest of the society as a whole. That being said, it would be advisable to propose adopting a rule similar to the U.S. rules of professional conduct, which is much more specific, illustrative, and protective of the special role of attorneys.

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general planning and management.

61. RESTATEMENT (THIRD) OF AGENCY § 8.05 (2006).

62. *Id.*

63. HAZARD & DONDI, *supra* note 1, at 177.

64. RESTATEMENT (THIRD) OF AGENCY § 8.05 (2006).

65. KOREAN BAR ASSOCIATION CODE OF ETHICS AND CONDUCT § 23 (2000).

However, it would be a difficult task to directly adopt the American rules in Korea. Not only are the legal systems different, but the societies and cultures are fairly disparate. According to Hazard and Dondi, “[l]egal ethics . . . is an amalgam of all these normative sources – law, social convention, and morality.”<sup>66</sup> Legal ethics can be only thought of in the context of the larger society, culture, and history. Hazard and Dondi call the context “concrete realities,” meaning “specific circumstances of place, time, participants, viewpoint, and course of events.”<sup>67</sup> Therefore, it is crucial to consider the “concrete realities” in which in-house attorneys in Korea operate in seeking to delineate the terms of their duty of confidentiality.

## ***B. The Korean Context***

### *i. Chaebol*

In order to see the concrete realities for in-house attorneys in Korea, it is necessary to discuss the nature of these corporations, especially the largest ones known as *chaebol*.<sup>68</sup> It is generally accepted that it was the *chaebol* that brought the rapid economic success in post-war Korea between the 1970s and 1990s.<sup>69</sup> The Korean government was highly protective of the business groups throughout that period and employed various measures to aid the growth of the *chaebol*. The government caused banks to provide low interest loans, extended tax cuts on imports and exports, and designated<sup>70</sup> focus industries for each company to specialize in.<sup>71</sup> These protective measures have been criticized, however, and symbiotic relationships that developed between the business groups and the government, ranging from cooperation to collusion and corruption, are thought to be the major cause of the financial crisis in Korea in the late 1990s.<sup>72</sup> Nevertheless, it is an undeniable truth that

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66. HAZARD & DONDI, *supra* note 1, at 3.

67. *Id.* at 3-4.

68. *Chaebol* is a Korean word for a large corporation with diverse business activities.

69. Chaebol, <http://en.wikipedia.org/wiki/Chaebol> (last visited Mar. 7, 2008).

70. However, at the same time, the conglomerates are known for their expansive scope of industries.

71. Boong-Kyu Lee, *Don Quixote or Robin Hood?: Minority Shareholder Rights and Corporate Governance in Korea*, 15 COLUM. J. ASIAN L. 345, 349 (2002).

72. Hwa Jin Kim, *Living with the IMF: A New Approach to Corporate*

the business groups have brought wealth and development to the country.<sup>73</sup>

*ii. The Protective View*

Following the outbreak of the share transfer scandal, a significant view in Korea is that the Samsung Group should be protected, regardless of their alleged wrongdoing, due to the impact it would have on the economy as a whole if a large corporation is damaged by criminal allegations.<sup>74</sup> Naturally, there always are voices of pessimism about the negative effects on the economy as a whole when any legal decision against a business group comes out.<sup>75</sup> In fact, Samsung's yearly profit constitutes as much as 17 percent of the Korea's GDP.<sup>76</sup> This lends to a discussion of what is the "public interest" to be protected in the present case.<sup>77</sup> While Kim argues that it was in the public interest for him to reveal the information,<sup>78</sup> those who believe that Samsung should be protected assert that it would be against public interest to penalize Samsung.<sup>79</sup> Consequently, they claim that for the purposes of protecting real public interest, Samsung's alleged wrongdoing should be condoned and it is rather Kim's disclosure that should be condemned.<sup>80</sup>

This view is reflected in a public survey conducted in Korea in late December 2007 following the outbreak of the scandal.<sup>81</sup> Samsung was voted to be the most valued company among all the business groups in terms of public regard.<sup>82</sup> Moreover, Samsung's chairman

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*Governance and Regulation of Financial Institutions in Korea*, 17 BERKELEY J. INT'L L. 61, 69 (1999).

73. *Supra* note 6.

74. J. Kim, *supra* note 5.

75. Lee, *supra* note 71, at 350.

76. Yoonkyung Kim, *Foreign Press Watches the Samsung Scandal*, HANKOOK ILBO, Nov. 28, 2007, available at <http://news.hankooki.com/lpage/economy/200711/h2007112811005121540.htm>.

77. See KOREAN BAR ASSOCIATION CODE OF ETHICS AND CONDUCT § 23 (2000).

78. Kim, *supra* note 12 at 3.

79. Chul-oh Song, *Increasing Concern for Impact on the Economy*, HANKOOK ECONOMY, Dec 5, 2007, available at <http://www.wownet.co.kr/news/wownews/view.asp?bcode=N07010000&artid=M200712050003>.

80. *Id.*

81. Sunki Chung, *Chairman Kunhee Lee, the Most Admired CEO*, BREAKNEWS, March 6, 2007, [http://www.breaknews.com/sub\\_read.html?uid=61995&section=section42&section2=%20-%2047k%20-](http://www.breaknews.com/sub_read.html?uid=61995&section=section42&section2=%20-%2047k%20-) (last visited Oct. 27, 2008).

82. *Id.*

was found to be the most respected business group leader.<sup>83</sup>

Another issue that factors into deciding how to deal with the Samsung scandal are concerns about the potential consequences in case Kim's action is condoned. Companies would be reluctant to hire in-house attorneys, which would be detrimental to the legal community as a whole.<sup>84</sup> Hazard and Dondi elaborated a similar view, stating that if attorneys are permitted to disclose client information when they seek "justice" instead of sticking to what their client desires, then corporations are much more likely to "closely scrutinize the political outlook of lawyers they might engage."<sup>85</sup>

### *iii. The Anti-Chaebol View*

Another widespread opinion regarding this matter is that Kim did something courageous and valuable.<sup>86</sup> This view emphasizes the need to fight the deep-rooted corruption of business groups.<sup>87</sup> As discussed earlier, the protectionist measures toward conglomerates and the intricate web of operations within the groups have been cited as the reason the Korean economy plummeted in 1997.<sup>88</sup> Since the financial crisis of the late 1990s, the government, together with economists, legal experts, and companies, have devised reform measures with a focus on regulating the market with stricter rule of law.<sup>89</sup> The efforts have been generally well-received, and the economy has made a rapid recovery.<sup>90</sup> However, many say that the reform and restructuring were far from perfect.<sup>91</sup>

The biggest criticism about the reform measures is that corporate

83. *Id.*

84. *The Bar Association Fears Less Demand for In-House Counsels: Confidentiality over Truth*, THE HANKYOREH, Nov. 9, 2007, available at [http://www.hani.co.kr/arti/society/society\\_general/248901.html](http://www.hani.co.kr/arti/society/society_general/248901.html).

85. HAZARD & DONDI, *supra* note 1, at 285-86.

86. Boshik Choi, *Lawyer Kim Yong Chul's Finger*, CHOSUN ILBO, Nov. 13, 2007, available at [http://news.chosun.com/site/data/html\\_dir/2007/11/13/2007111301164.html](http://news.chosun.com/site/data/html_dir/2007/11/13/2007111301164.html).

87. *Id.*

88. *The Chaebol Drag Each Other Down*, THE ECONOMIST, Dec. 11, 1997, available at [http://www.economist.com/displaystory.cfm?story\\_id=109064](http://www.economist.com/displaystory.cfm?story_id=109064).

89. Christopher Hale, *Addressing the Incentive for Expropriation within Business Groups: The Case of Korean Chaebol*, 30 FORDHAM INT'L L.J. 1, 24 (2006).

90. John M. Holcomb, *Corporate Governance: Sarbanes-Oxley Act, Related Legal Issues, and Global Comparisons*, 32 DENV. J. INT'L L. & POL'Y 175, 219 (2004).

91. Craig Ehrlich & Dae-Seob Rang, *U.S. Style Corporate Governance in Korea's Largest Companies*, 18 UCLA PAC. BASIN L.J. 1, 60 (2000).

behavior is still not transparent, and conglomerates still are perceived by many as not playing by the fair market rules.<sup>92</sup> Rule of law in the Korean business sector is not perfectly market-oriented; it is still dependent on relations with the government and family ties between subsidiaries within a business group.<sup>93</sup> Citizen groups and many non-governmental organizations have been striving to establish more transparent rules of law.<sup>94</sup> Against this backdrop, Kim's disclosure, regardless of any legal issues involving his duty as an attorney, is viewed by many as an effort to cure the problems. This view maintains that business groups like Samsung should play by fair rules and be subject to judicial discipline, as appropriate and necessary.<sup>95</sup>

## V. Conclusion

The Samsung scandal illustrates not only the vagueness of the Korean version of professional rules of conduct for attorneys, but also how the legal system in Korea is deeply entangled with notions of economic prosperity and public policy. The legal issues concerning whether an in-house counsel may or may not reveal confidential information, where a corporation engages in improper conduct, are difficult to resolve if one relies on the Korean rule of confidentiality.

Studying the American rules of professional conduct, with a separate rule on attorneys with organizations as clients, sheds some light on how to evaluate Kim's disclosure of Samsung's alleged conduct. Under the American rules, Kim should have informed a higher authority within the corporation first. Moreover, he should have limited his disclosure to the extent that was reasonably necessary. However, the Korean rule is very vague, merely hinting at what was necessary to protect the public interest.

Modifying the Korean rule based on the American rule would seem ideal, as there are many potential problems with attorneys within an organization as their clients and employers (as discussed), and more specific rules would minimize those problems. However, there are obstacles when one attempts to adopt the rules directly. Especially considering how corporations are perceived in Korea, and how the economy as a whole is dependent on large corporations, one

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92. J. Kim, *supra* note 5.

93. *Id.*

94. Lawyers with the Citizens, *supra* note 14.

95. Lee, *supra* note 71, at 355.

must realize that devising a rule of law for in-house counsel who work for/in those corporations is not possible in isolation from the societal context.

However, one must never forget that it is attorneys that we are dealing with. Attorneys have a special role within a society. While attorneys stand for the administration of justice and the public interest, it is also crucial to note their duties toward their clients. Effective rules of professional conduct should reflect the special role of attorneys as well as the society they operate in.

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