

**Comparative studies of White-collar crime in Korea
and Canada especially regarding MOVC (Multiple
Ordinary Victims Crime)**

**by
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Abstract

In liberal democracies with advanced industrial/technological economies, the recent emergence of highly complex business frauds often utilizing social networks and information dissemination have victimized large numbers of ordinary citizens. These crimes have become particularly controversial in the Republic of Korea, not only because of widespread victimization but also their links to political corruption and major business enterprises. A new term for these types of crime is Multiple Ordinary Victims Crime (MOVC). New criminal code categories similarly have been proposed in other countries. MOVC criminal justice investigation procedures consequently also have had to be adjusted for gathering potentially incriminating information. Because of the common use of the internet and online banking for complex fraud cases or MOVCs, investigative access to cell phones and other similar devices obtaining judicial warrant access to them has become critical. Yet such information requires strict adherence to strict procedural criteria for prosecutors' ability to use this information in the indictment and trial stages. The major hypothesis in this thesis is that MOVC cases often involve global or cross national financial and business transactions, and, despite fundamental cultural differences such as oriental and occidental and legal systems such as common law and code-based law, liberal democratic criminal justice systems laws and investigative procedures likely have converged. To explore this hypothesis, the Canadian and Korean criminal justice models and illustrative cases for investigating and prosecuting complex business frauds such as contemporary Ponzi, wireless and cryptocurrency schemes are utilized. Semi-structured interviews with six ROK investigators and prosecutors and six Royal Canadian Mounted Police (RCMP) officers and prosecutors provide in-depth qualitative information on both common and distinctive national challenges in the investigation of MOVCs in these culturally diverse countries. These data suggest necessarily tentative support for the above major thesis hypothesis given the inherent limits of the findings based on a two-country comparative case study and qualitative research design.

Keywords: White-collar crime, complex fraud schemes, Republic of Korea criminal justice, Canadian criminal justice, Ponzi schemes, phishing scams, civil and criminal forfeiture, prosecutorial roles, police roles, semi-structured interviews, expert practitioners' perspectives

I dedicate this thesis to my parents who are the source of my strength, courage, and patience.

Thank you, my beloved mother and father,

for your unwavering support and love throughout my life.

I praise the Lord because I have parents who constantly pray for me.

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List of Acronyms

BNA Act	British North American Act
CA	Criminal Act
CC	Crown Counsel
CJS	Criminal Justice System
CPA	Criminal Procedure Act
DP	Democratic Party
GCC	General Criminal Code
ITO	Information To Obtain
MOVC	Multiple Ordinary Victim Crimes
PPP	People Power Party
RCT	Rational Choice Theory
ROK	Republic of Korea
SA	Special Act
SEC	Security Exchange Commission

Chapter 1. Introduction

Corporate crime, organized crime, and white-collar crime, more generally, have become extremely difficult to successfully prosecute in advanced liberal democratic and industrial countries. A major theme in this thesis is that the increasing prosecutorial challenges for these types of white-collar crimes are explained by the rapidly evolving structure of the global economy including the key role of the internet in financial and business transactions. Specifically, it is argued that the role of the internet in global financial transactions is inherently and increasingly confusing in part because of the relatively new hardware such as global multi-server routing of information, and software technologies such as encryption. The deep web and dark web are recent constructs that describe the ability of individuals and corporations to hide or disguise illegal or problematic business practices both domestically and internationally. That the ability to undertake illegal business practices for financial gain has increased because of this global structure and represents another major theme of this thesis. It will be argued further that this illegal opportunity structure is even more challenging for police, investigators, and prosecutors in countries with only recent histories of liberal democratic institutions and processes. Arguably, these challenges typically exist in the East Asian and Southeast Asian countries such as the Republic of Korea (ROK). I focus on the ROK in part, not just because of nationality, but in part because of my experiences as a senior investigator in the largest Korean Prosecutors' Office, the Seoul Central Prosecution Office. Many countries in these regions, most obviously the Republic of China (Taiwan), Japan, and the ROK, have undergone enormous economic and social changes since the 1970s, especially in the last 25 years. The ROK has experienced: double-digit economic growth based largely on manufacturing exports and pervasive domestic services industries; the emergence of a highly educated population with internationally prestigious national universities; rapid and overwhelming metropolitan development of its cities with accompanying mass transportation systems and high technology national and international communications; and, full integration into global trading institutions such as the World Trade Organization (WTO). This was referred to as the "Miracle of Han River"; The Han River is the second longest river in South Korea and a symbol of Seoul because it flows through the center of the city. A related theme is the key role of major multinational and conglomerate businesses. Like other Asian rapid economic growth countries, these organizations in the ROK have often been associated

with powerful family-founded and ultimately family-governed businesses (even though they are publicly traded in domestic and global stock markets) called the Chaebol (e.g., Samsung, Hyundai). In Japan, the term for these conglomerates is Zaibatsu (e.g., Sony, Mitsubishi) in Japan. These business organizations have been dominant in their countries' economies and have had and continue to exert enormous political influence both domestically and internationally.

Primarily through several major case studies, this thesis will focus on two specific corporate or white-collar crimes – Ponzi scams and phishing scams, specifically in the ROK and the United States as well as the challenges posed to criminal justice investigation organizations in Canada. Police investigations, typically, have been directed by prosecutorial divisions of these countries' criminal justice systems. Investigators have often faced extraordinary procedural requirements in legally obtaining sufficient information concerning illegal or criminal practices, typically focused on fraud, antitrust, and tax evasion. In far fewer cases, major white-collar crimes have involved related political crimes such as violations of electoral funding, undue political party influence laws, and public zoning/business practices. The inherent complexity of business crimes and related political crimes has required prosecutors to obtain judicial approval to fully investigate these offences. Most importantly, police and prosecutorial investigative procedures of potential incriminatory evidence involve judicially approved warrants with strict legal criteria protective of citizens' rights against potentially excessive pre-charge intrusions. Typically, though, individuals involved in these businesses and related political crimes were aware of the importance of utilizing highly sophisticated methods to avoid incriminatory evidence being accessed by the police and prosecutors. Ponzi scams and wireless scams, particularly, have employed complex and highly deceptive techniques. I will argue that police-prosecutorial investigators in liberal democracies such as Canada and the ROK will increasingly encounter identical procedural challenges regarding complex fraud schemes.

1.1. The concept of MOVIC

Fraud has been the most common crime in the ROK (See figure 1). This fraud ratio and trend are substantially higher than in Canada (See figure 2). However, it is important to know that while theft is the most common crime in Canada, the criminal

code section 331 definition of theft included taking goods fraudulently. This possibly accounts for the lower ratio in Canada. Nonetheless, fraud is high in both countries.

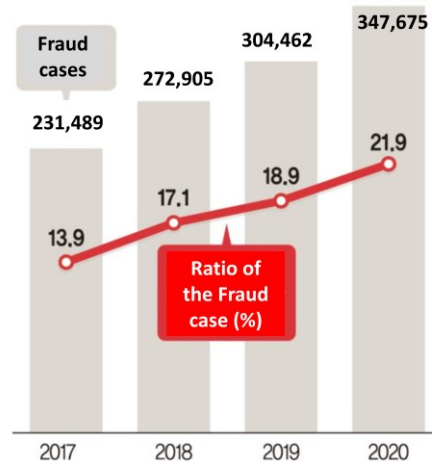


Figure 1. The ratio of fraud cases to other crimes in the ROK
Source : Park et al, 2021

Text box 2 chart

Police-reported offences contributing to the Crime Severity Index, percentage contribution, by province or territory, 2021

percentage of index

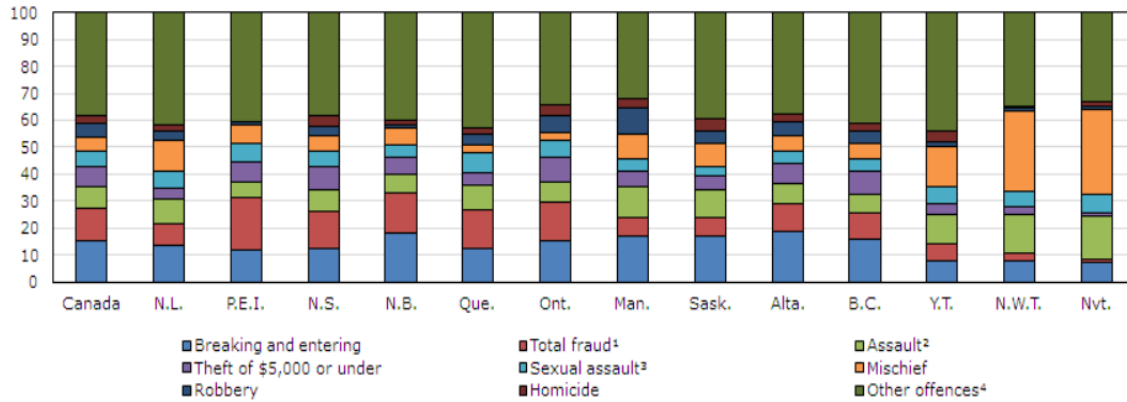


Figure 2. Ratio of police-reported offences in Canada and its provinces in 2021.
Source : Moreau, 2022

In the ROK, this crime trend has resulted in the creation of a new white-collar crime category, *Multiple Ordinary Victim Crimes (MOVC)* designating crimes that financially victimize large numbers of ordinary individuals. In investigating these crimes, a major focus of police efforts has typically been obtaining possibly incriminating information from suspects' cell phones and personal computers. The police investigators are further challenged when multiple perpetrators or sophisticated group structures (e.g.,

organized crime) are involved. For example, the Luna case illustrates these police investigatory challenges. Briefly, since this case will be discussed in detail later, the convicted offenders employed a very sophisticated and updated contemporary form of the traditional (more than century-old) Ponzi scam. Luna involved a cryptocurrency exchange and complex organizational structure, which was used to fraudulently deceive victims into investing by promising extraordinary returns on their monetary investment. In contrast, the wireless scam involves a simple structure (i.e., the perpetrator individually contacts each potential victim with a simple deceptive approach to obtain money). Usually, not a large amount of money is sought, however, for the more vulnerable or credulous individuals, often the elderly, even smaller monetary losses can have substantial negative victim impacts.

Another key example of the highly complex and sophisticated MOVC is illustrated in the ROK trials associated with the Samsung heir, Lee Jae Yong, conviction. Again, briefly, this case involves multiple shareholders' loss of stock values because of fraudulent manipulation of Samsung stock. This case will be discussed in detail below.

Another notorious case centered in Malaysia and involved the 1MDB Malaysian sovereign fund directed by senior government officials including a prime minister and multinational financial organizations. It was international in scope, involving figures in finance, politics, and the entertainment industry, and it led to criminal investigations in many different countries. The United States Department of Justice referred to the 1MDB scam as the "largest kleptocracy case to date" and called it "one of the world's greatest financial scandals" in 2016. In this case, millions of Malaysian citizens were victimized by the loss of enormous amounts of sovereign fund investments (Kelleher, 2019).

Despite these widely media-publicized and notorious cases, there has been a paucity of systematic reviews of such cases that have attempted to extrapolate any common patterns regarding police and prosecutorial challenges in bringing forth sufficient information for the charge, conviction, and possible general deterrence. This pattern is evident, especially in economically dynamic and emerging liberal democratic Asian contexts such as ROK.

1.2. Methodology, Key Hypotheses, and Rational Choice Theory

This thesis will explore several scholarly sources and media articles and describe the above theme in ROK and in other national contexts such as the United States. Given the methodological and other limits of this Master's thesis, I will be using corporate crime cases and case studies in ROK from 2010 to 2020. In addition, I will utilize my fifteen years of experience as a Senior Prosecution Investigator (i.e., participant observer-based data) to describe non-confidential information involving the role of the police and prosecutorial investigators. A specific description focuses on the evolving MOVC case law and evidence-gathering procedural police challenges (e.g., obtaining warrants for searching cell phone data). In addition, to obtain in-depth practice descriptive perspectives, I will interview five police officers and prosecutors in Canada and five investigators and prosecutors in Korea with a semi-structured questionnaire; seven broad questions are utilized to identify the specific procedures regarding MOVC Ponzi and wireless scams. This interview data and the three case studies: Samsung Bio, FTX, and Luna Coin cases - will illustrate the potential face validity of the main hypothesis and the related hypothesis of this thesis. Again, I will argue that police-prosecutorial investigators encounter identical procedural challenges regarding MOVCs. This hypothesis is based on the general theoretical theme concerning the dominance of global economic integration of liberal democratic and advanced industrial economies over different legal systems (e.g., common law and continental code-based law) and occidental and oriental cultural values.

A key assertion in this thesis is that the complexity and sophistication inherent in the planning and executing of MOVC overwhelmingly require individual coordination according to the traditional Rational Choice Theory (RCT) of crime. Sutherland's theory of white-collar crime and the related Rational Choice Theory have predominated virtually all subsequent hypotheses regarding MOVCs. Arguably, with few exceptions, defendants appeared to have fully understood the cost and benefits of their illegal activities. This is particularly obvious in the above-discussed large business contexts and when organized crime was involved. It is beyond the scope of this thesis to explore any variations in the RCT and Sutherland's classic types of individuals involved in traditional white-collar crimes (Shover & Hochstetler, 2006). There have been, for example, largely theoretical speculative discussions of the motives of notorious white-

collar criminals such as Bernie Madoff and his massive Ponzi stock scheme which he perpetrated across decades. A key issue has been whether Madoff fits the criteria of a psychopath. His ability to manipulate thousands of families, “friends”, acquaintances, celebrities, and, most critically, professional stock investors, the Security Exchange Commission (SEC), and federal and state criminal justice investigators supports the psychopath theory (Springer, 2020). As will be evident in the case study chapter, the level of fraudulent, sophisticated, and long-term planning and its execution required enormous financial and, often, computer expertise. These capacities are all reflective of Sutherland’s key propositions of his RCT model of white-collar crime. Again, in this thesis, it will be asserted that this RCT theoretical perspective is essential in understanding both simple and complex MOVCS. Yet, it is this complexity that has resulted in enormous challenges for police investigation and prosecutorial success in obtaining convictions for such crimes and their general deterrence in all liberal democratic countries.

1.3. Chapter Outline

Since the focus of this thesis is police-prosecutorial investigatory MOVCS challenges in ROK, Chapter 2 involves an overview of the Korean and Canadian Criminal Justice System and describes the proposed MOVCS changes to the ROK Criminal Code. These themes will be discussed in the context of the political trends that possibly explain these changes. As well, the key hypotheses of this thesis will be discussed further in the ROK context. Chapter 3 consists of a detailed description of the ROK criminal justice system’s roles in investigating and prosecuting these MOVCS crimes. Specifically, this includes the description of the roles of the police investigator and the prosecutorial investigator in the Seoul Central Prosecutors’ Office concerning complex corporate crimes, the role of the prosecutor in these crimes, the role of the judges, and MOVCS sentencing options. Chapter 4 involves a detailed description of high-profile case studies including several of the cases mentioned above. Chapter 5 identifies the potential common challenges evident from the scholarly reviews and case studies including a description of how incriminating evidence was hidden from police investigators. An important focus is on how the internet was employed to both participate in corporate criminality and how this information was obtained and utilized by the police and prosecution. Chapter 6 presents the results of semi-structured interviews of four

ROK police and prosecutorial investigators and six Royal Canadian Mounted Police (RCMP) and prosecutors on the challenges identified in the previous chapters. Again, the main hypothesis concerning the proposed MOVC criminal code changes in the ROK context, derived specifically from the theoretical context of its economic miracle and liberal democratic transformation briefly mentioned above.

In the concluding Chapter, the implication of these common patterns in ROK and Canada will be discussed along with the limits of the generalization of the findings regarding the key hypotheses.

Chapter 2. Overview of the Korean and Canadian Criminal Justice Systems

2.1. Changes in the types of White-Collar crime in Korea and the General Hypothesis

As mentioned, ROK underwent a fundamental restructuring of its economy through the late 20th century. This change can be seen in its GDP, the universally accepted criterion for economic development: the ROK GDP per capita in 1970 was only \$279 but by 1997, it had increased 44-fold to \$12,416 (Bank of Korea, statistics system). However, like other massive growth economies in Asia at the end of the 1990s, ROK experienced major economic challenges. For example, at the beginning of the IMF(International Monetary Fund) crisis in 1997, Koreans were overwhelmingly shocked by the bankruptcy of many of its major national/multinational business conglomerates, including *chaebols* such as the Hanbo, Jinro, and Kia Groups. All had been among Korea's top thirty companies that went bankrupt during the Asian economic crisis. Subsequently, even the largest and, apparently, the most well-financed chaebols such as Samsung, Hyundai, LG, and SK had to undergo restructuring. This included major government bailout funding. This 1998 to 1999 period of financial and business turmoil and IMF-influenced structural reforms, arguably, affected the paradigm of ROK white-collar crime (Chang, 2003). Before this period, most white-collar crimes in ROK involved fraudulent accounting, embezzlement, or breach of trust forms. In addition, historically in Korea, major white-collar crimes have involved politically related corruption. Typically, these crimes were initially based on traditional integrated financial and political connections between chaebol leaders and the leading political figures established in the long post-World War II dictatorial governments. In other words, many business regulations and related criminal laws occurred in the context of a far simpler industrializing economy where the chaebols and political leaders were institutionally integrated. In effect, there was a very limited set of major white-collar crimes in the ROK Criminal Code. However, after the IMF relief loan, the major ROK companies adopted international accounting standards. These changes substantially increased foreign multinational corporations' investment in ROK (Chang, 2003). These traditional forms of white-collar crimes subsequently decreased. Arguably, this occurred because of the introduction of standard corporate legal regulations and criminal justice enforcement. In

recent years, however, the evolution of computer business/ financial, and social networks, has allowed new forms of white-collar crime to increase. This type of crime has overwhelmed numerous ordinary citizens because of the complexity of the type of information (e.g., sophisticated and target media based) used to convince them to invest in fraudulent schemes. In addition, these fraudulent schemes have confronted the ROK criminal justice system with unprecedented challenges to police investigation and criminal prosecution. In response, the Korean National Assembly has introduced new criminal justice policies.

2.2. Specialized Criminal Acts regarding Business and Financial Transactions

In the ROK Criminal Justice System, the Korean Criminal Code can be divided into two elements: the General Criminal Code (GCC) and the Special Acts (SAs). The GCC is composed of two major laws: the Criminal Act (CA), also known as Korean Penal Code and the Criminal Procedure Act (CPA). The CA specifies the application scope of criminal law, the definition of each crime (40 types), each possible punishment, and the duration or amount of the punishment. The CPA specifies procedures for police investigations, prosecutorial decision-making, judicial procedures, and the judicial sentencing process (Y. Kim, 2019).

The second major section of the ROK Criminal Justice System, the SAs, stipulates an array of related but distinctive criminal acts. The prosecutorial and judicial procedures followed are the same, but sentencing criteria differ. The distinctive or more specified crimes include the Punishment of Violent Acts, the Aggravated Punishment Act, the Specific Financial Crimes Act, the Protection of Victims, and the Punishment of Sexual Violence crimes. However, there is some ambiguity because a crime is regulated by the SAs, and can also be regulated by CAs, which obviously entails the need for rules to define which major Acts have priority. For example, embezzlement is defined in both the CA section 35 and the SAs Act on the Aggravated Punishment of Specific Economic Crimes (AAPSEC) section 3. If the amount of profit from the crime is the same, the *lex specialis* doctrine i.e., “the special regulation first rule is then applied. SAs, therefore, supersede CA sections for similar types of crimes. Similarly, if the two laws govern the same factual situation, the SA *lex specialis* principle supersedes the law of the more

general categories in CA's *lex generalis* or general matters legal structure (D. Park, 2021).¹

The main difference between the CA and SAs is generally statutory punishment severity. Again, while the requirements for an "*actus reus*", component of the crime action are the same as the CC, the severity of the statutory punishment is different (i.e., the range of fines and length of prison sentences in the SAs are much higher than the CA). For instance, looking again at the example of embezzlement, under Section 355 of the CA it is stipulated that "if a person who keeps another person's property embezzles or refuses to return the property, he or she will be sentenced to up to five years in prison or fined up to 15 million won." In contrast, under the SA-AAPSEC, individuals who have been convicted of embezzlement under Section 355 of CA and the amount of profit is five billion won or more, can be sentenced to imprisonment with labour for an indefinite term or not less than five years. The purpose of this type of SA, therefore, is to respond to financial crimes with more severe punishments according to the liability principle (D. Park, 2021). Clearly, such sentencing differences are important in the CJS processing of MOVCS in the ROK.

The ROK National Assembly in 2007 legislated another key law regarding MOVCS, the SA Capital Markets and Financial Investment Business Act. Arguably, its enactment illustrates one of the main hypotheses in this thesis: is there the need for governments to respond to complex business crimes associated with rapid and complex economic and social changes by passing such specified laws for such crimes? In other words, it can be asserted that such comprehensive and specialized financial laws are fundamental in the contemporary advanced industrial and technological economies of countries such as the ROK. This Act specifies numerous sections focused on enhancing the fairness, reliability, and efficiency of the capital market by promoting financial innovation, fair competition, protection for investors, and fostering financial investment businesses. From the criminal justice perspective, this act substantially increased the regulation of insider trading and stock price manipulation. Again, its sections are far

¹ The relationship between these principles was derived from a higher order legal principle; "*generalia specialibus non derogant*" or the general does not derogate from the specific (Park, 2021).

more detailed than the CA parallel sections, especially for major money market crime (D. Kang, 2022).

The main theme of this thesis is that the rapid economic development in the last 30 years has coincided with a parallel political development, which, arguably, is the key to explaining the shift in the structure of major white-collar crime in Korea. The corollary hypothesis is that the white-collar crime trend is increasingly manifested in complex corporate fraud, like the long-standing trends in major Western liberal democratic and advanced industrial nations. For example, in the U.S., beginning in the second half of the 19th century to the early 20th century, major white-collar crimes focused on the creation of corporations that were either monopolistic or oligopolistic. Laws such as the Sherman Anti-Trust Act (1896) were designed to make monopolies and oligopolies civilly and criminally illegal. However, by the contemporary period, beginning in the second half of the 20th century, civil and criminal laws focused on U.S businesses, especially major global corporations, that engaged in complex domestic fraud, (e.g., Enron), enormously complex tax avoidance as well as illegal international financial deals (e.g., Boeing aircraft sales). In addition, large-scale Ponzi schemes (e.g., Bernie Madoff in 2007) challenged the integrity of the U.S. stock market. As well, the 2007-2008 fraudulent bank-based derivative mortgage schemes induced the stock market crash and the biggest U.S. recession since the great depression following the 1929 stock market crash. More recently, a new fraud trend involving the use of the Internet to defraud ordinary individuals has resulted in new criminal laws being legislated (Balleisen 2017). As mentioned, the parallel trend in Korea is the emergence of Multiple Ordinary Victims Crime (MOVC).

2.3. Conceptualization of Multiple Ordinary Victims Crime (MOVC) in Korea

The Multiple Ordinary Victims Crime (MOVC) construct has not been evident in criminological theories and in criminal law. However, it has recently been utilized distinctively and routinely in the ROK Public Prosecutor's Office. I believe that the MOVC construct has theoretical utility and relevance in criminal law beyond Korea. This term was created in 2019 to describe a group of financially focused offences where multiple ordinary Korean citizens have been victimized, typically through fraud schemes. These schemes have included enormous amounts of money, primarily because of the

asymmetry of information between perpetrators and victims. The former individuals rely on complex financial information dissemination to potential victims who typically lack the skills to fully understand the inherent risks, let alone the complex fraudulent structure of the financial benefit proffered. Prior to MOVC, there were no distinctive criminal categories in the Korean Criminal Code regarding these fraudulent ranges of crimes such as contemporary electronic-based Ponzi schemes, voice phishing (i.e., illegal telecommunication fraud), and illegal cryptocurrency schemes. In 2019, the Supreme Public Prosecutor's Office introduced the MOVC category, and the Korean Parliament in 2021 then began the process of establishing a new special Criminal Code defined as 'Act on the Prevention and Relief of Damage to Multiple Fraud Crimes'. It did so because the multiple fraud crimes too often caused identifiable victims, but also potentially affected large unspecified numbers of people. In Korea, currently, various fraudulent financial techniques have been regulated by distinctive laws for voice phishing, Ponzi schemes creating fund-raising businesses without permission, and fraud. In other words, even though these types of crimes have several common characteristics, recent developments show a complex and highly specialized financial industry that utilizes new and mutated fraud schemes. These reformulated crimes include person-to-person (P2P) loans, financial technology (Fintech), and cryptocurrencies. These MOVC have increased overwhelmingly, if not exponentially (Holik, & Brown-Hruska, 2018). It appears, though, that regulations concerning these emerging types of multi-fraud crimes have been insufficient in mitigating this trend, specifically in Korea, if not in other national jurisdictions. Arguably, therefore, it is important to identify the specific criminal law and criminal justice investigation challenges related to MOVCs.

The ROK Parliament is currently in the process of adding these MOVCs to its Criminal Code. Again, MOVC refers to a type of white-collar crime where monetary damage is inflicted on "ordinary" citizens (i.e., individuals with minimal knowledge and analytic skills to fully understand complex financial schemes). The main theme of this thesis is that MOVC reflects the addition of typical embezzlement of ordinary citizens through complex Internet schemes, which arguably have not been sufficiently covered by the ROK Criminal Code. More specifically, regarding deterrence, the law aims to provide potential victims protection, and victim compensation. In other words, the major policy issue in Korea is that this complex fraud trend will substantially increase the

number of victims as the Internet expands in its ability to confuse and deceive ordinary citizens by defrauding them. It will be argued further that inadequate deterrence sections in the current Criminal Code contributed to this increase. It is important to review the history of events that appeared to motivate the need for MOVCs.

The political issue regarding MOVC began approximately in 2009, because of the angry reaction of victims and the public to the 'Cho-hee-pal Fraud case'. He created a company that supposedly rented medical device products. Investors bought so-called "financial rental accounts" with the promise that they would receive 2-3 percent of the profits of the products sold. In effect, the buyers were supposed to buy an account, not an actual medical device. However, there was no medical device.

Cho-hee-pal created the classic Ponzi Scheme structure: he provided individual investors with the promised rental-based dividends using the next wave of investors' money to purchase a "financial rental account." He pushed each wave of investors to promote the two supposed medical devices (massage machine and steamer) to immediate family, friends, and acquaintances. The scheme began in Daegu (Korea's third-largest metropolitan area). This scheme was then promoted quickly and successfully throughout Korea. Cho-hee-pal obviously had anticipated the Ponzi inflection point where there would not be sufficient new investors to cover the payment of the promised dividends. He called it "D-day". As this point approached, he told the investors that their payments were to be placed in a "virtual" account that investors could not access. Cho-hee-pal and his accomplices fled to China where he apparently died (K. Lee, 2016).

While this fraud was a standard form of a Ponzi scheme, the scale of the crime was unprecedented; the number of victims was more than 30,000, and the amount of money was 3 trillion Won (approximately three billion Canadian dollars). A major factor in reaching so many victims was this company's ability to create a novel structure of small branch offices throughout Seoul and Daegu to market its fraudulent scheme to the broadest potential target victims. The importance of this case was that it highlighted the regulatory need to define the actual product being invested in with regard to all product investor marketing schemes. Very importantly, for example, this case was instrumental in developing a new law concerning fund-raising business schemes without formal government approval (K. Lee, 2016). However, it subsequently became evident that

additional, more specific, regulations were needed to avoid businesses circumventing this law. The current adjustments to the MOVC law are attempting to close these “loopholes.”

2.4. Canadian Criminal Code regarding fraudulent crimes

According to the Department of Justice in Canada, the founding principle of Canada’s legal system is Legal pluralism. This construct refers to a legal system based on multiple sources of laws: the English common law system which was inherited during the historical period (1763-1867) when Canadian colonies were governed by Westminster authorities in London as part of the British Empire, and the French civil law system originally used in Quebec when it was part of the French Empire, and more recently from principles adopted from Indigenous law systems (Dickinson & Young, 2014).

The common law has historically been based on case law precedents. However, with the development of liberal democracies (e.g., USA) since the 18th century, judges are guided in their procedural and sentencing decisions by a combination of legislative criteria such as the Criminal Code and prior case precedents regarding these criteria. Judges have the authority in their decisions to proclaim and modify existing legal principles based on their interpretations of legal precedents and changing societal conditions (e.g., the Internet, abortion). In contrast, Civil code law systems are based on detailed all-encompassing principles to address virtually all legal issues, both criminal and civil. Civil law courts, therefore, always first consult a civil code to guide their decisions on procedural sentencing and appeal decisions, then, second, consult prior case decisions to determine whether their decisions are consistent. The civil code is based on the early Roman Law and the French Code Napoléon (Napoleonic Code) or Continental Law that evolved out of Roman Law. In Canada, the Civil Code only exists in Quebec for civil cases. The common law is applied in the remainder of Canadian provinces and territories for both civil and criminal cases. However, as mentioned above, the Criminal Code and judicial precedent are applied across Canada, including Quebec (Maure, 2006).

According to the British North American Act (BNA Act), passed by the British Parliament in 1867, the early written portion of the Constitution of Canada was created,

whereby the federal parliament was granted exclusive authority over criminal laws and procedures. However, the BNA Act outlines different roles for the federal government and provincial governments in the administration of criminal and civil justice. Provincial laws typically apply to property and civil rights (i.e., the province has complete authority over provincial crimes e.g., non-indictable charges with two years less a day incarceration sentences and civil courts). More specifically, provinces have control of the administration of criminal courts (outside the creation of criminal procedure) and provincial prisons housing those offenders convicted of less serious charges carrying sentences of less than two years, as well as those held on remand awaiting trial or sentencing. For almost all other criminal offences, provincially administered courts using federally appointed judges, and provincial prosecutors process serious cases. All federal and provincial legislation and case decisions are subject to appellate review through the provincial court system, with the federally created Supreme Court of Canada having the ultimate authority since the Statute of Westminster was passed in 1931 (Maure, 2006). The Criminal Code was enacted by the Canadian Parliament in 1892. Specifically, The Constitution Act (former BNA Act) of 1867's section 91(27) allows legislators the authority to make criminal laws which now include the Controlled Drugs and Substances Act, the Youth Criminal Justice Act, and numerous other ancillary acts have all been codified in the federal statutes (Maure, 2006). In the past century, the Canadian Criminal Code has undergone numerous modifications and additions based on Supreme Court of Canada decisions and parliamentary political parties' decisions.

The rights of the accused have been historically protected by common law principles, and by the Charter of Rights and Freedoms since 1982. Key common law rights include the onus on the prosecution to convince a judge or jury of a defendant's guilt beyond a reasonable doubt, the rejection of evidence obtained in violation of the accused's Charter rights such as arbitrary search or seizure, and the accused not being compelled to testify against themselves in a criminal trial.

2.5. The Concept of Fraud in the Canadian Criminal Code

According to Section 380 of the Canadian Criminal Code, "deceit, falsehood, or other fraudulent means" to obtain money or property are the bases of being charged with the crime of fraud. Fraud, therefore, includes the swindling of money or property from a person or from the general public using deceit, dishonesty, or other fraudulent means.

The Criminal Code specifies a wide variety of fraud-related crimes including Fraudulent Manipulation of Stock Exchange Transactions, Prohibited Insider Trading, Falsification of Books and Documents, and Identity Theft/Trafficking in Identity Information. The essential elements of fraud in Canadian criminal law focus on "dishonesty" and "deprivation." (R v Theroux, 1993, SCC). The most serious fraud penalties are for amounts over \$5,000, which can result in sentences of up to 14 years in prison as well as fines proportionate to the victim(s), including the state (tax fraud), and losses.

According to Nightingale (1996), the common law in Canada was determined largely by contract laws principles, most importantly, *caveat emptor* (buyer be aware). Dishonesty, deceitfulness or any other form of fraudulent activities or criminalized only when victims were unable to protect themselves from such activities.

2.6. The fundamental difference in Criminal Justice System between the two Countries

In ROK, investigators in the Public Prosecutors' Office have a fundamental role relative to police officers. In Canada, the investigation process is usually conducted by Police Officers: federal RCMP, provincial police (including RCMP) and, depending on the type of fraud, municipal detachments. Only when the investigation stage is completed, (sometimes with the advice of specialist evidence-gathering police officers or Crown Counsel) does the prosecutor, depending on the province usually called Crown Counsel or Crown Attorney, is the decision to prosecute made (Larsen, 1998). However, in ROK, another step occurs: a prosecutorial investigation. This is the fundamental difference. The Korean Public Prosecutors' Office typically conducts a subsequent investigation including interrogating the suspects, interviewing the victims, collecting evidence, and analyzing evidence. And, for major corporate and political crimes with damages of more than 500 million Korean Won (about 500,000 CAD) or corruption-related bribe cases, prosecutorial investigators conduct the initial stage, with or without the assistance of the police.

Given this fundamental difference in the constitutionally defined criminal justice systems between Canada and the ROK, it is important to describe both how the ROK criminal justice system evolved historically and how it is currently structured in further detail.

Chapter 3. ROK Criminal Justice System

The Korean judicial system consists of a three-tiered system: district courts, high courts, and the Supreme Court. The Public Prosecutors' Office has three matching tiers: district prosecutors' office, high prosecutors' office, and Supreme prosecutors' office.

The current ROK criminal justice system (KCJS) historically evolved initially from the Japanese colonial occupation period. The European continental code-based criminal law and related criminal justice systems influenced Japan's "modernization" period during the *Meiji* Restoration period beginning in 1868. The restoration of a centralized national political system under the key role of the sacred Emperor and a National Assembly, the Diet. This domestic political system was based partly on liberal democratic institutions such as political parties, however, the Emperor and the newly emerging urban based military and capitalist business elites became prominent. To a degree, these elites adapted aspects of the British and German political, economic, and imperial policies. The criminal justice system (CJS) reflected the influence of the German continental code-based law. Not surprisingly, the Japanese introduced this criminal justice system in its imperial colonies, especially Korea, which Japan virtually annexed as part of Greater Japan in 1909. (Jung, 2016).

In this colonial CJS, the role of the prosecution assumed a central investigative position along with its traditional functions concerning charge indictment and trials. This role was then reinforced with the emergence in 1948 of the ROK and its constitution. Before describing this role in detail, it is important to discuss the historical context that has resulted in complex challenges that have been associated with the offices of the national prosecutor.

3.1. Central CJS Role of the Prosecutor's Office

The basic issue has been the autonomy of the prosecution from political influences, particularly related to political parties, national parliamentary criminal justice oversight committees, national government ministries, and, most importantly, the President's office (referred to as the Blue House, the President's residence). Much of the media and public focus has been on the prosecution's decision-making at the investigative stage. As will be evident below, the constitution gives the prosecution the

right to supersede the routine police role in the investigative process but is usually limited to cases where major crimes have been involved. In effect, in these cases, the prosecution has its own investigators who work in conjunction with the police but typically direct the process, taking actions such as: obtaining judicially approved warrants; determining other evidence-gathering decisions, even conducting initial interviews with accused and witnesses, and case information dissemination, importantly interviews with the media. Historically, scandals associated with the prosecution office have centered on the balance of power among the above key political institutions. Often at issue has been this central role of the prosecution as well as the right of the media to inform the public about key controversial prosecutorial decisions. Media and academic critics of the KCJS have typically focused on the largely secretive, subtle, and complex influence relationships among not only political institutions and bureaucratic criminal justice agencies but also business institutions such as the Chaebols. Obviously, such connections exist in all liberal democratic countries, however, each country has its own history of how such relationships evolved. As mentioned above, in ROK, major business institutions have been primary in creating the economic or the “Miracle of Han River”. Businesses, therefore, in general, when accused of alleged white-collar crimes often have raised suspicions in the media and public concerning potentially or allegedly undue ethical or problematic, if not illegal, influences on prosecution decision-making. However, a related political issue in this thesis is that these suspicions reflect the actual complexity of contemporary business-financial transactions and prosecutorial decision-making. This complexity, arguably, has increased exponentially in the context of the ROK’s key role in the rapidly evolving internet and global markets/ investors system. This hypothesis is captured by the concept of the “grey zone” of business transactions, practices that are not prima facie illegal or clearly defined as such in criminal laws. This context is likely inherently and particularly confusing to many victims of MOVCS, most probably, non-business/financial individuals.

3.2. The ROK Law and Prosecution Role

The initial role of the prosecutor was established in 1947 by the 'Prosecutor's Office Organization Act' prepared by the Supreme Prosecutor's Office. However, this act was quickly replaced by a new 'Prosecutor's Office Act' (July 1948), which was promulgated on December 20, 1949. This act states that “The Minister of Justice, as the

highest supervisor of prosecutorial affairs, generally directs and supervises prosecutors. For specific cases, only the Prosecutor General shall command and supervise.” The Minister of Justice (MJ) is the highest supervisor or decision-maker in the prosecutorial office. However, the actual primary role of the general prosecution decision is made by the Prosecutor General (PG). The President typically selects from 2-5 nominees for the PG role. The MJ directs the committee that selects nominees. The two mandatory criteria to be nominated are being a licensed lawyer and having a minimum of 15 years of work experience as a lawyer. Additional criteria are reputable standing in the legal profession, and often, extensive experience in senior roles in the Prosecution Office. The PG is responsible for implementing Ministry of Justice administrative policies, including advising the president in the selection of all prosecutors and their appointments to all positions. Prosecutors are assigned to the three administrative levels which parallel the three Criminal Courts levels (District Court, High Courts, and Supreme Court). There is a Chief Prosecutor for each District Prosecutor’s Office who supervises administrative staff and the prosecutors responsible for individual cases.

These prosecutors traditionally and, until recently, also supervised the local/judicial police officers concerning the investigation of cases of alleged criminal offences. Currently, this role has been modified; prosecutors now collaborate and coordinate with the police in these investigative functions (Suh, 2022).

The organizational structure of the district offices varies somewhat depending on their geographic location. Most importantly, and not surprisingly, the largest prosecutor's office is Seoul Central District Prosecutor’s Office because of the population density in Seoul and it is the center of most business and industry. There are approximately 1,000 personnel in this office including 200 prosecutors and 600 investigators. They are divided by roles and two main administrative divisions; General Administration (GA) and Investigative Administration (IA). The IA division includes 30 subdivisions according to the type of crime (e.g., Anti-corruption, National Security, Tax fraud, Drugs, Homicide). Each subdivision has 5-10 prosecutors. Each subdivision is led by directors who assign individual cases to each prosecutor in their division. (See Figure 3, Korean Prosecutors’ Office Organization Chart)

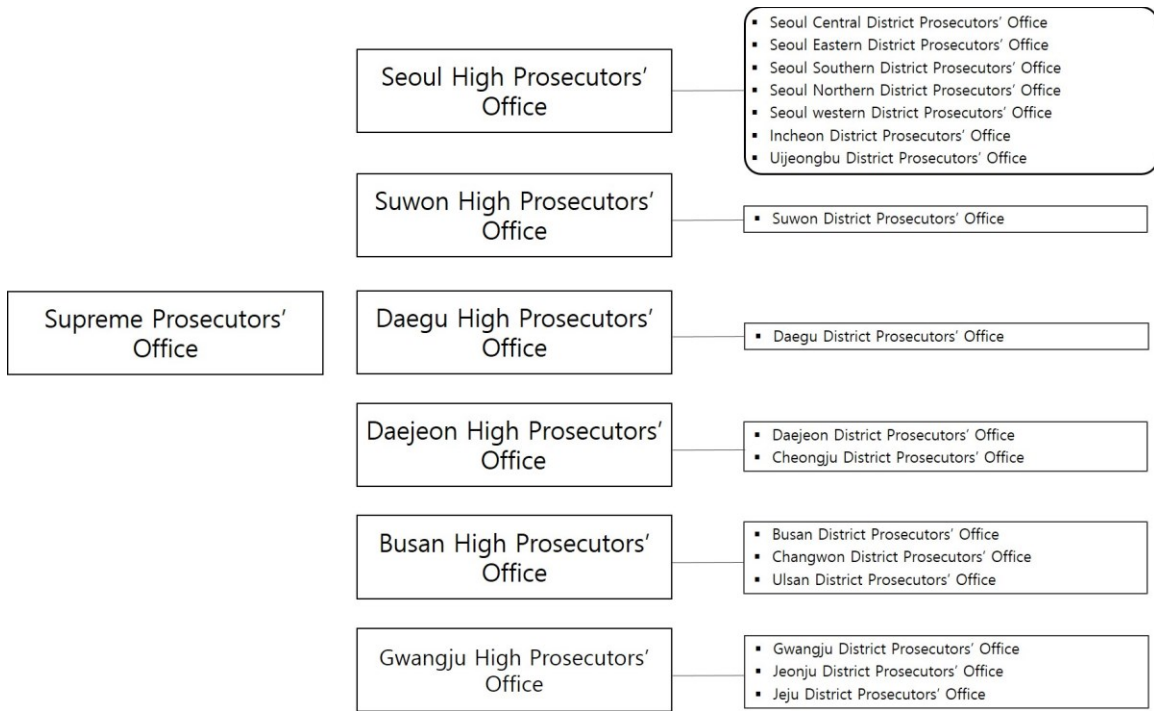


Figure 3. Korean Prosecutors' Office Organization Chart

3.3. Investigator Role

Within each subdivision in the Seoul Central District Prosecutor's Office, there are usually two investigators who work for each prosecutor. This role entails several functions. The interrogation of suspects concerning a broad range of questions, both incriminatory and exculpatory, is the most important. Police and prosecutors typically ask standard investigatory questions universally in liberal democratic countries, while maintaining the equally typical rights, protecting individuals against coercion and ensuring access to defence counsel. In addition, investigators interview witnesses and victims, where possible. The interview information is integrated into the forensic evidence (e.g., for fraud cases especially, cell phones and other personal electronic devices, bank account records, other monetary transactions, company databases, and email databases) gathered as well by the prosecution investigators along with any police gathered evidence. A summary report including relevant documents is then provided directly to the Prosecutor to file for potential trial evidence.

3.4. The political context of prosecutorial function.

One not uncommon concern of some prosecution officials about the New Public Prosecutor's Office Act was that when different political parties took control of the government, the PG power was insufficient to prevent external political pressure. Again, it is important to emphasize that the Minister of Justice, as a member of the President's cabinet, is the most prominent commanding and supervising authority externally as well. In other words, it is expected that the Minister of Justice has a definitive role in blocking external political pressure on prosecutors regarding their decision-making, particularly involving politically problematic cases and controversial grey area cases. The premise, therefore, is that the Minister of Justice would appoint a PG who could meet the delegated protective role. In effect, the Minister of Justice and the Prosecutor General ideally form a combination function to exclude interference, especially from individuals associated with political parties. This concern with external interference was evident during the transition from a dictatorship structure to a full liberal democratic system in the ROK.

After the military dictatorships of Park Chung-hee and Chun Doo-hwan, the Constitution was amended in 1987 under the Roh Tae-woo administration. At this time, the Constitution stipulated the prosecutor's right to request a warrant. This was intended to more strictly control the right to request a warrant, which had previously been abused under political pressure. The 9th Amendment to the Constitution (current Constitution: October 29, 1987) stipulates, "When arrest, detention, confiscation, or search is carried out, a warrant issued by a judge must be presented at the request of a prosecutor in accordance with lawful procedures (Article 12 of the same Act). Article Paragraph 3 or "All citizens shall not be infringed on their freedom of residence. When conducting a search or confiscation of a residence, a warrant issued by a judge must be presented at the request of a prosecutor (Article 16 of the same law)". These constitutional provisions regarding the autonomy of the prosecution system have subsequently remained in effect without any major changes.

Again, regarding the prosecutor's investigatory role, the Constitution specifically grants the prosecutor the authority to request a warrant (Article 12, the Constitution Of The Republic Of Korea).

The Prosecutor's Office Act requires prosecutors, who are representatives of the public interest, responsible for (1) Matters necessary for criminal investigation, prosecution, and maintenance of prosecution, (2) Command and supervision of judicial police officials in relation to a criminal investigation, (3) Requests for the legitimate application of laws and regulations to the courts, (4) Directing and supervising trial execution, (5) Conducting litigation and administrative litigation with the state as a party or intervenor, or directing and supervising its execution, (6) Assigning duties and authorities) for matters that fall under its control in accordance with other laws and regulations. (Article 4 Paragraph 1 of the Prosecutor's Office Act).

The prosecutor, therefore, is responsible for all aspects of the criminal procedure including investigation, prosecution, trial, and sentencing input to the judicial panel. Obviously, the last function provides the prosecution with powerful authority (i.e., actively influencing punitive sentencing according to Criminal Code guidelines).

Regarding the investigatory role of the police in ROK, police officers were fully directed by the prosecutor's decision-making in each case before 2019. However, recently, the Criminal Procedure Act was amended, and the relationship became more collaborative rather than dominant to ensure the integrity of the investigations of judicial police officials and their behaviours regarding their roles.

First, investigations are often conducted as compulsory investigations using physical force, such as arrest, detention, seizure, and search. Accordingly, there is an obvious possibility of violating the basic rights of not only the suspect, but also other citizens caught up directly or inadvertently in this initial stage. As a fully qualified and experienced lawyer, the prosecutor, therefore, is the legal expert in charge of the entire investigation process. Second, administratively, the ROK is a unitary CJS in a relatively small national geographic area with a relatively large population in a high-density metropolitan context. A national CJS investigation network and command system that functionally combines various types of judicial police management led by prosecutors was created to maximize the efficiency of criminal investigations. Given this assumption, it is likely that this centralized investigation structure can be effective in responding to the MOVC complexities discussed above. These complexities are described in more detail in several cases in the following chapter.

Chapter 4. Key MOVC cases

4.1. Corporate Fraud History and key legal and concept definitions

The ability of individuals and organizations or companies to engage in the contemporary forms of white-collar crime likely can be dated back to the beginning of capitalist economic systems. They emerged with the advent of non-state banks and monetary exchange currencies with their beginning in the city-states in the Renaissance period in Europe (e.g., the Banco de Medici in Florence between 1397-1494) (Rostow, 1978). Obviously, capitalist economies and related currency systems have evolved enormously in over six centuries, however, the basic themes remain the same: individuals and companies compete in providing goods and services to markets to maximize profits and investments. As discussed above, the contemporary currency market has been revolutionized by the emergence of the global internet, and at least partially “disrupted” by cryptocurrencies.

The emergence of the cryptocurrency financial marketplace is relatively new and extremely difficult for virtually all but a small number of experts in this market. This highly sophisticated currency structure makes it even more difficult than traditional currency markets to fully comprehend the risks of being criminally victimized. The abstract financial constructs that are the basis of the cryptocurrency market, assertedly, are the primary reason for this difficulty in making rational choice-based decisions about these risks. First, cryptocurrency was initiated as a revolutionary alternative to traditional currency and banking institutions: typical national and main international currencies (e.g., the US dollar, the European Union euro, the People’s Republic of China yuan(renminbi), Korean won, and Japanese yen) are governed by explicit rules concerning their exchange values and the monitoring of the underlying national assets by national financial institutions (central banks e.g., Federal Reserve in the U.S, European Central Bank in EU, Bank of Korea) and international financial institutions (e.g., International Monetary Fund, World Bank, Asian Development Bank). These institutions daily exchange monetary and fiscal (i.e., national governments’ spending, borrowing, and revenues) information in order to publicly inform investors about risk levels associated with national currencies and numerous additional financial and

business investments. This includes governments (e.g., sovereign investment funds such as Norwegian Norges Bank, Saudi Public Investment Fund) and private/public multinational capital investment companies (e.g., J.P Morgan and Chase, Blackrock, Goldman Sachs, Barclays, and Rothschilds) as well as individuals investing in currency valuations. Again, the key policy imperative has been transparent and daily visible monitoring of most major financial and business information according to explicit laws that have civil and criminal repercussions if violated by businesses, individuals, and even countries.

More generally, though, it has been argued in this thesis that traditional economic systems have become enormously complex, and, therefore, individuals have become more likely to be victimized by several forms of white-collar fraud crimes. Several cases will be described that provide examples of the inherent complexities of contemporary international business and related financial contexts in countries such as the ROK and the US. Given the focus on ROK, the first case involves the Samsung Biologics Case.

4.2. Samsung Biologics Case

The Samsung Biologics accounting fraud case was selected because it illustrates a particular challenge to law enforcement investigators. This criminal case emerged during the impeachment and subsequent criminal trial of President Park Guen-Hye discussed above. In effect, the political scandal was critical to how the Samsung criminal case was initiated. Before discussing this case in detail, it is important to state that it is an example of the prosecutorial issue of whether to proceed according to criminal laws and procedures or not. I will argue that this case occupies the grey area between these two types of law, civil and criminal. There is a current debate in Korea concerning this case questioning whether Samsung's practices should be regulated solely by market factors, not criminal laws. In other words, did the initial evidence in this case justify a potential indictment? The following description of the history of this case demonstrates how difficult complex white-collar criminal contexts, especially those involving major multinational corporations, can be in contemporary advanced industrial and liberal democratic environments. The political context was important in initiating the prosecutorial investigation of this case.

As discussed above, Korean liberal democracy emerged primarily during the last 30 years. Two major political parties – Democratic Party (DP, Minju-dang) and conservative People Power Party (PPP, Kukminei-him) – have dominated successive Korean parliaments and governments. There have always been close contacts and personal relationships between each of these political parties and major Korean corporations, particularly, the Chaebols. It was during the impeachment trial of President Park, Guen-hye for alleged corruption that the Samsung case became a political issue. In 2016, the Seoul Central Districts Prosecutors' Office began its investigation of the relationship between President Park and Choi Soon-Sil. The latter was President Park's personal friend and confidant. Simultaneously, major media such as JTBC and Hankyoreh reported that Choi had confidential documents on her person and provided confidential information to the president. As a result, The Supreme Prosecutors' Office of Korea (SPO) filed charges against Choi and two former presidential aides, based on the accusation that Park colluded with these aids in certain criminal activities, including bribery, embezzlement, and corruption (Agence France-Presse, 2016). Park was convicted in a lengthy criminal trial of all the charges and was sentenced to 20 years imprisonment but was released after approximately five years. During the extensive investigation and trial, the Samsung case emerged.

The initial negative publicity concerning the Samsung Biologics case was related to a Korean stock market index (KOSPI) annual report which stated that Samsung Biologics posted a net profit of 1.9 trillion won in 2015. This was surprising because Samsung had reported four consecutive years of losses beginning in 2011. Samsung claimed that this enormous rise in its stock values occurred because its subsidiary company, Samsung Bioepis, had engaged a U.S. company, BIOGEN, in a call option which, upon completion, would raise the book value of Samsung Bioepis from 290 billion (KRW) to 4.8 trillion (KRW). However, this explanation generally created further controversy in Korea, and specifically among global investors. Critics focused on the theme that Samsung had “lost control” of its highly valued Samsung Bioepies by its transaction with Biogen; it could exercise a call option to secure a 50% share stake. For investors, this call option constituted a major mismanagement decision. These critics claimed that this transaction was illegal i.e., it involved accounting fraud manipulation. They focused on the rationale that the family successor of Samsung Group, Lee Jae-Yong, benefitted from this fraud by inflating not only the stock value of the parent

company (Samsung Biologics) but also through the merger of Samsung C&T and Cheil Industries. In its defence, Samsung Biologics claimed that its transaction, in this case, followed normal accounting and business practices. It was asserted further that the criminal fraud case was initiated inappropriately because of the recent change of government in the election of 2017. In effect, the prosecution's decision to indict Samsung and proceed to criminal trial was politically motivated. However, for the prosecution, it was an undeniable fact that Samsung Biologics had been in the red for five consecutive years as of 2018 with accumulated losses of more than 500 billion won. The decision to indict, therefore, was based on the use of the discounted cash flow model (DCF), net assets of several hundred billion won, and the stock value of a company that could not make a profit changed to an extraordinary 4.8 trillion won. What remains problematic for the prosecution in this alleged and enormously complex business case is whether the discounted cash flow method (DCF) of unlisted companies is criminal fraud rather than simply being one of the most controversial methods of valuing companies in M&As and IPOs. ²

² In the process of the Samsung C&T-Cheil Industries merger, Anjin Accounting Firm and Samjeong Accounting Firm were requested to evaluate the company's valuation. At this time, the value of Cheil Industries' stake in Samsung Biologics was calculated at 8.9 trillion won for Anjin and 8.6 trillion won for Samjeong. Considering the stakes at the time, the value of Samsung Biologics was estimated at 19.3 trillion won and 18.5 trillion won, respectively. However, only three months later, in preparing the financial statements of the integrated Samsung C&T, Anjin Accounting Firm found the total value of Samsung Biologics. It is evaluated as Article 6.8, not There is nothing wrong with the company, but the same accounting firm re-evaluated the company in 3 months, and the value of 12 trillion won or 2/3 of the total value has evaporated. More seriously, this amount of 6.8 trillion won is for Lee Jae-yong's smooth management succession. That's pretty close to what you need. Samsung C&T, which was merged at the end of 2015, The financial statement is the financial statement in which the former Cheil Industries absorbed the former Samsung C&T. At this time, more expensive than Goodwill is recorded if purchased, and gains from bargain purchases are recorded if purchased at a low price. At the time, the notes to the financial statements recorded KRW 89 billion in bargain purchase gains. The first written as an integrated Samsung C&T. In the financial statements, it was necessary to evaluate the fair value due to the acquisition of control over Samsung Biologics. From this, gains on the disposal of investment assets and goodwill arise. This goodwill occurred in the former Samsung C&T. The fact that Cheil Industries acquired Samsung C&T at a low price is hidden at a glance at the financial statements, as the gains from the bargain purchase of about 2 trillion won were almost offset. The valuation of Samsung Biologics should have been exactly 6.8 trillion won. In other words, the value of Samsung Biologics was used not only to facilitate Lee Jae-yong's succession process by 1) presenting an excessively favorable ratio to Cheil Industries in the Samsung C&T-Cheil Industries merger, but also 2) to hide the fact that Samsung C&T was bought at a bargain price. The incomprehensible fluctuations in the value of Samsung Biologics

For the prosecution, proving criminal intent can be difficult in such cases where the criminal law is not clear as to what constitutes creative accounting and what constitutes criminal intent. As discussed above for this type of complex white-collar case, proving criminal intent beyond the reasonable doubt criterion is enormously challenging. However, for hundreds of thousands of investors who considered themselves “victims” of complex fraud, this ambiguity is hardly considered justice.

The next fraud case is based in the US even though it involves a Bahamian-based FTX cryptocurrency company with several affiliated trading and related cryptocurrency companies.

4.3. Cryptocurrency blockchain technology

In 2009, the first cryptocurrency, known as Bitcoin, was invented; blockchain technology is considered the most developed form of financial market value. Blockchain is an internet-based, non-changeable i.e., immutable ledger to record a financial transaction and track assets in a manner that is trusted by individuals who use it. This shared ledger typically consists of increasing lists of records identified as blocks which are linked securely by *cryptographic hashes*. More specifically, according to Marco Iansiti and Karim R. Lakhani (2017), “Contracts are embedded in digital code and stored in transparent, shared databases, where they are protected from deletion, tampering, and revision. In this world, every agreement, every process, every task, and every payment would have a digital record and signature that could be identified, validated, stored, and shared” (p. 118). They assert further that blockchain potentially removes the need for intermediaries such as lawyers, brokers, and bankers. Instead, “Individuals, organizations, machines, and algorithms would freely transact and interact with one another with little friction. This is the immense potential of blockchain” (Iansiti and Lakhani, 2017, p. 118). It is important to describe the intricate process involved with

are all in order to justify the succession of the Samsung family; it was just the right number.

And as a result of the investigation, Samsung's internal documents actually instructed the accounting firm to "evaluate the value of the bio business at 6.9 trillion won and reflect it in the books in order to secure the appropriateness of Cheil Industries' stock price when the integrated Samsung C&T merges in September.", and "When Biogen postpones the call option exercise, Logics is expected to have capital impairment at the end of 2015 when 1.8 trillion won evaluated by C&T is reflected as debt" and "In case of capital impairment, Logics cannot repay existing borrowings and new borrowings, and when listing conditions are not met..

each block: for each transaction, there is a cryptographic hash of the previous block, a timestamp, and transaction data. The structure of this data type is identified as a Merkle tree; each data node is identified as a leaf that is timestamped. In effect, the exact time that the transaction occurred is recorded. In this manner, each subsequent transaction block is preceded by previous blocks in a chain structure. And this chain cannot be altered without changing all subsequent blocks. Blockchain transactions, therefore, are both irreversible and secure (Hartelius, 2023).

4.4. Estimates of Corporate Fraud in the U.S

According to a recent 2023 published study of corporate fraud concerning the pervasiveness of both allegations and convictions of corporate fraud, Dyck et al (2023) stated that only approximately one-third of frauds by public companies were identified by police, prosecutors, and other investigatory agencies. It was estimated further that 40% of companies committed accounting violations and 10% engaged in securities fraud. This study utilized multiple sources to approximate the number of fraud cases, including financial audits, whistle-blowers, financial and securities oversight agencies, criminal justice indictments, and convictions. Four specific sources were the basis for their fraud data set: 1) financial misrepresentations identified by auditors, 2) financial misrepresentation causing an SEC accounting and auditing enforcement review, 3) restatements that were “intentional implementation of misstatements,” and 4) “full set of SEC section 10b-5 securities fraud cases,”

Dyck et al (2023) cited a U.S. court concerning the key elements of the definition of fraud: “The law does not define fraud; it needs no definition; it is as old as falsehood and as versatile as human ingenuity.” In a similar vein, the Fourth Circuit noted that fraud is a broad term, which includes false representations, dishonesty, and deceit. Thus, it is not easy to define corporate fraud precisely. Securities law defines securities fraud as making any untrue statement of a material fact or omitting a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading (Dyck et al, 2023). However, Stanford Law School Professor Joseph Grundfest, who is also a former S.E.C. Commissioner, and creator of a database that tracks federal securities fraud cases, agreed “The use of the term ‘fraud’ in this article’s title is highly problematic. The authors (Alexander Dyck, Adair Morse, and Luigi Zingales) themselves concede that they use the word ‘fraud’, ‘loosely’

and for 'simplicity' ... "But events they call fraudulent include alleged frauds that weren't frauds, honest mistakes and differences of opinion about accounting treatment. Calling all these events 'frauds' is like 'loosely' calling a mouse an elephant for the sake of 'simplicity' and then rationalizing the overbroad categorization on grounds that both are mammals. Just as mice are not elephants, alleged frauds are not frauds, and differences of opinion are also not frauds." (Livni, 2023)

4.4.1. Prosecution Challenges in establishing complex fraud.

From a prosecutor's perspective, several specific challenges make the prosecution of fraud cases, especially corporate fraud, difficult. Most importantly, in large complex companies, the decision-making hierarchy requires the police and prosecution to identify individuals that had the "intent" to commit an alleged fraud. According to Allison Harren Lee, a former commissioner and interim chair at the Securities and Exchange Commission, it is extremely difficult to prove criminal misconduct (i.e., beyond a reasonable doubt) and identify all the participants. She stated that, in her experiences, individuals believe that they did not have criminal intent because they were: "just testing boundaries rather than violating the law and such schemes can be sprawling in major corporations. To prosecute fraud, you have to show intent...In big public companies that's tough, because it takes a village to commit fraud." (Livni, 2023)

Similarly, professor of Georgetown University Law Center, and a former special counsel to the S.E.C., Donald Langevoort who has specialized extensively in organized crime, establishing the intent of the fraud is challenging because alleged perpetrators are expert liars and defiant about administrative and legal regulations. In referring to Sam Bankman-Fried, the founder and CEO of FTX, he stated further that "Self-deception has been rampant in crypto but it's not like in traditional finance where people say 'the bureaucrats are holding us back,'...It's more like 'there's a brave new world to invent and you gotta break some eggs to make an omelet.'" (Livni, 2023)

4.5. Case Description: Luna and FTX case

The most sophisticated and most recent example of the enormous complexity of investigating and prosecuting internet-focused fraud schemes, specifically Ponzi-structured ones, is the ongoing FTX case. This case illustrates how difficult it is

becoming for police to uncover or identify fraud schemes that victimize enormous numbers of both financial experts/investors and ordinary/non-professional people.

4.5.1. FTX Case

Sam Bankman-Fried and Gary Wang founded FTX as a cryptocurrency trading firm in 2019. Their cryptocurrency was FTT (FTX Token). On November 7, 2022, Changpeng Zhao, who founded the world's biggest cryptocurrency exchange, posted a tweet saying that he would sell all FTX's self-issued token FTT, which had about \$500 million, following the lessons learned in Luna. Since then, many of the assets of FTX and FTX's cryptocurrency trading company Alameda Research have been made up of FTT, which caused doubts about the stability of both sides, and FTT value plunged more than 80% in one day. At first, people considered this tweet a battle between two major companies; however, his warning that the FTT did not have solid value was accurate.

FTX created their token FTT without any investment or deposit. Alameda Research, which is FTX's sister company, borrowed a massive amount of the FTT as a loan form. Then AR got a loan money by using the value of the FTT as their credit. It is precisely the same procedure as the Luna coin case. They just made circles by tossing around tokens without actual values, a form of Ponzi Scam.

While the FTX case has created the primary media focus regarding cryptocurrency fraud schemes, it appears that other major cryptocurrency companies were allegedly involved in complex frauds. The basic fraud structure appears to consist of the high interest on deposits to promised investors without notifying investors that crypto lending platforms and intermediaries are required to comply with standard security laws which protect investors. In addition, investors were not fully informed or even misled about key information concerning the exchanges of investor crypto assets among other digital currency companies. For example, the S.E.C. charged Genesis Global Capital and the Gemini Trust, which are both cryptocurrency-based business companies, with fraud. Genesis worked with Gemini to establish a program that provides customers with high interest in assets Gemini lent to Genesis. When the cryptocurrency market collapsed in late 2022, Genesis froze the withdrawals of 340,000 Gemini Earn customers involving \$900 million in crypto assets. In addition, by accumulating customer assets and moving these assets to Genesis, Gemini then charged an excessive agent

fee of approximately 4.3% on the returns Genesis paid to Gemini Earn investors. Both these companies were part of the parent company Digital Currency Group (DCG). However, the S.E.C. and potentially federal prosecutors have to establish that this complex maze of crypto asset transactions among these companies constitutes the illegal misrepresentation of financial information and mischaracterization of the value of these companies' assets in order to support the public position of Genesis in the crypto marketplace (Livni, 2023).

Another federal agency investigatory stage involves the Commodity Futures Trading Commission whether Gemini misled or provided false information during its regulatory review of Gemini's bitcoin futures product. The next stage for the SEC and possibly federal prosecutors is whether to proceed with a negotiated settlement with Gemini or to proceed to a combination of civil and possible criminal charges.

4.5.2. FTX Charge history

Within 3 years Sam Bankman-Fried, through FTX and his other companies as well as other crypto exchanges, moved \$5.5 Billion in assets. These assets included stable cryptocurrencies i.e., established crypto coins such as FTT and Terra (UST). These cryptocurrencies were designed to maintain a consistent ratio value of one US dollar. Assets also included unstable or esoteric coins i.e., new and highly speculative coins such as Dogecoin. According to Matthew Goldstein and David Yaffe-Bellany (2023), Dogecoin was created as a joke, however, it attracted investors which resulted in a surge in its value, though temporary (Goldstein & Yaffe-Bellany, 2023). FTX also had over a billion dollars in various other digital currencies from other cryptocurrency exchanges, which had "limited visibility" i.e., investors had difficulties determining the fluctuating values of these currencies. A major part of tracking these values was that FTX had its main offshore exchange in the Bahamas as well as a U.S. exchange unit. The former was therefore not subject to any U.S regulations and oversight, in contrast, to the U.S unit (Goldstein & Yaffe-Bellany, 2023). This visibility challenge to investors and regulatory agencies was confounded because FTX had other investments in hundreds of companies.

For example, in November 2022, after the potential FTX fraud scheme was identified, Sullivan & Cromwell law firm from New York found that in addition to \$5.5

billion in FTX assets, it had “sizable positions in 20 digital assets that the lawyers described as ‘illiquid tokens’ that are difficult to convert into cash. Figuring out what they’re worth could take a long time” (Goldstein & Yaffe-Bellany, 2023).

In addition, another part of this potential Ponzi scheme was a missing \$8 billion from 9 million customers’ accounts in the FTX exchange. Apparently, these accounts primarily belonged to other major cryptocurrency trading firms. Other key findings were that FTX did not maintain records and that Bankman-Fried treated the customers’ money as his personal ‘piggy bank’. As well, Bankman-Fried and 2 key associates took \$1 billion in loans from the FTX exchange. U.S. federal prosecutors charged FTX with diverting customer deposits to promote its related Alameda Research company’s trades and to cover its losses. Alameda is a cryptocurrency trading company owned by Bankman-Fried FTX executives. Another charge was that FTX executives spend customers’ money on major real estate purchases and on political contributions to both the Democratic party and the Republican party (Goldstein & Yaffe-Bellany, 2023).

In the 40-page complaint, the Commodity Future Trading Commission (CFTC) in December 2022, specified against Bankman-Fried based on their assertion that he created the FTT coin and maintained its high value artificially. He then used this inflated value as collateral to borrow large funds from major digital lending firms. The CFTC estimated Alameda obtained up to 10 billion dollars based on FTT and other FTX assets (Flitter & Yaffe-Bellany, 2023).

On December 13th, 2022, the SEC charged Bankman-Fried with two counts of securities fraud in violation of the Securities Exchange Acts of 1933 and 1934. SEC chairman, Gary Gensler stated that; “We allege that Sam Bankman-Fried built a house of cards on a foundation of deception while telling investors that it was one the safest buildings in crypto.” (U.S SEC, 2023). On this date, the United States Attorney for the Southern District of New York, Damian Williams, and the Attorney General of the United States, Merrick B. Garland filed an eight-count indictment for fraud, money laundering, and campaign finance offences (United States Department of Justice, 2022).

4.5.3. U.S Manhattan Attorney FTX special investigation task force

The U.S. Attorney's Office in Manhattan has created a special task force to pursue its investigation into the collapse of FTX, the crypto exchange founded by Mr. Bankman-Fried. More than half a dozen prosecutors, led by Damian Williams, the U.S. attorney for the Southern District of New York, are building the criminal case and tracking down the billions of dollars in customer money that Mr. Bankman-Fried has been charged with misappropriating. Prosecutors have had talks with lawyers representing a dozen former executives and employees at FTX and Alameda Research, the hedge fund Mr. Bankman-Fried also founded. Prosecutors have also examined the role of Mr. Bankman-Fried's family members in his business empire.

4.5.4. Luna Case

In 2018, Terraform Labs released a cryptocurrency called Luna. After a while, Terraform began selling its stablecoin, Terra USD (UST), in 2020. The unique point of Luna and Terra as cryptocurrency was that they are supposed to protect each other's value through the algorithm. UST was designed to keep its values like Wall Street's current US dollar price. Unlike other coins fixed in cash, UST Stable Coin maintained its value of around USD 1 by using an algorithm linked to Luna supply. In other words, they sell or buy Luna in the cryptocurrency market using their own developed algorithm to keep that value. Terra blockchain, which includes both UST and Luna, seemed to have a proposed stable mining incentive to create a firm monetary policy, with possible low adoption rates and efficient fiscal policies to respond to limited use cases. Luna's value eventually reached \$116 in April 2022. It was a huge success for developers and investors. However, the algorithm could have been better, and it even turns out it is all fake. UST failed to react to market values in its calculations. Once the UST price crashed, Luna could not escape the speed of falling. They just collapsed (Sohn, Osipovich, & Ostroff, 2022).

The rapid collapse of the once-popular cryptocurrency pair has had a ripple effect across the industry, erasing hundreds of billions of market value in the digital asset market and contributing to the coin price crash, which has raised concerns about the potential vulnerability of digital asset ventures. Also, it is alleged that the inventor of these coins, Do Kwon, made "fraudulent misrepresentations" despite being aware of the

"structural weakness" of the UST stablecoin, inducing investors to purchase the asset. However, the recent collapse of Terraform Labs and FTX Trading Ltd. delivered a shocking moment to the cryptocurrency market (Sohn, Osipovich, & Ostroff, 2022). Now people realize that the cryptocurrency genius software engineers are similar to many con men in history, only just wearing the better suits.

4.6. Prosecutor investigation and charge strategy

In complex fraud cases, it is often critical that the prosecution attempt to “flip” lower-level fraud participants to obtain more complete information concerning the structure and decision-making in organizing and carrying out sophisticated illegal business schemes. This method involves the prosecutors engaging in a formal exchange: the accused is offered charge leniency and potential sentencing reduction in exchange for new and collateral information and testifying as a prosecutorial witness against major fraud players in complex schemes. According to Daniel Hawke who was a former director of SEC’s market abuse unit and lawyer, “As people begin flipping or cooperating with the government, it can lead to new lines of inquiry and new people of interest” (Goldstein, & Yaffe-Bellany, 2023).

4.6.1. Prosecutor's role in recovering victims' financial losses and investigating illegal campaign donations

As mentioned above, millions of FTX investors lost billions of dollars through alleged fraud. Most recently, for example, prosecutors initiated an investigation process to recover hundreds of millions. A hacker stole this amount from the FTX exchange during the period that FTX initiated the bankruptcy procedure. The next case involves a New Zealand company, Hyper Fund that also was allegedly based on a Ponzi scheme.

4.7. Hyper Fund Case

The role of the Internet media in uncovering crypto Ponzi schemes became particularly evident in the fall of 2022 concerning the Hyper Fund scam. Danny de Hek, a New Zealander and YouTuber, focused on the Hyper Fund company that promoted guaranteed returns to investors i.e., the value of their investment could triple in six hundred days. An estimated one, billion dollars was attracted through thousands of

investors who paid as low as \$300 and high as \$50,000. Through his online identity, crypto Ponzi scheme buster, de Hek exposed Hyper Fund's Ponzi structure using 130 videos, some which are 2 hours long. He explained how this company employed the classic Ponzi structure by providing initial investors and members with the promised outsized returns utilizing money from the most recent investor and member pool. Typically, either through media exposure or a major market crash, the most recent investor member pool assets were effectively lost (Segal, 2022).

Chapter 5. Legal and Investigatory Challenges in the Key Cases

5.1. Investigation process-related challenges

5.1.1. Search Warrant Execution Issue

The search warrant is usually one of the most critical investigative tools for incriminating offenders from the perspective of investigative agencies. Not surprisingly, the highly invasive search warrant execution procedure has often resulted in significant legal and media controversies about state abuse of this power in ROK and Canada.

The Canadian Criminal Code section 487 stipulates that investigation agencies in Canada such as the RCMP, municipal police, and provincial police must provide an application form with information to obtain (ITO) stating the reasonable and probable grounds that evidence will be obtained. The ITO provides the primary rationale for a judge allowing a search warrant. According to the Supreme Court of Canada (SCC), the purpose of Section 487 is “to allow the investigators to unearth and preserve as much relevant evidence as possible” by authorizing them “to locate, examine and preserve all the evidence relevant to events which may have given rise to criminal liability” (Canadian Oxy Chemicals Ltd. v Canada, SCC, 1999). However, according to paragraph 487(1)(b), it also has to be “anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence or will reveal the whereabouts of a person who is believed to have committed an offence”. In other words, to apply for a search warrant, the investigators must rely on convincing evidence.

These legal criteria are evident in all liberal democratic countries including ROK. According to Korean Criminal Procedure Act, Article 215, the prosecutor can request the search warrant from a judge “only when there are circumstances where a criminal suspect is suspected of having committed a crime” or “articles or persons to be seized, searched, or inspected are deemed to be connected with the relevant case”³. In other

³As mentioned above, the unique point in Korean CJS is the fact that the only investigative agency that can request warrants is the Prosecutors. Only the public prosecutor can request a warrant according to a strict procedural process. In most cases, judicial police officers apply to request of warrant to prosecutors by document, and the prosecutor can grant or reject the application.

words, there must be at least situations leading to suspicion and reasonable relevance of a crime having been committed, a much lower standard than the Canadian one.

Currently, especially in complex financial fraud cases, there are several controversial arguments. One is the scope of the search warrant, which is the most obvious. Another is the extent to which investigators can seek information from a third party who possesses the information or data.

In the ROK, a provision in the Criminal Procedure Act (CPA) guarantees the suspect's right to participate at the scene of the warrant execution. As well, it is challenging for police or other investigators to show a complete list of potentially confiscated assets in a warrant to a suspect in the context of searching and seizing data information kept by online service providers. However, it is essential to guarantee that the suspect has the right to participate in terms of the contemporary criminal and civil rights principle. (H. Kim, 2020)

For example, in the Samsung Biologics Case, there were multiple times of search warrant execution to different sources such as Korea Exchange (KRX), Goldman Sachs Korea, and many accounting firms. These companies are not the suspects in this case; however, their data servers have been searched by the Seoul Central District Prosecutors' Office investigators because they had the relevant information stated in the search warrant. Also, the investigation authorities executed the search warrant on data storage companies to get contents or transaction logs maintained by operators, including telecommunication, text messages, emails, and financial transaction data. At that time, there was an intense media controversy regarding who had the right to participate at the place to find the information in the warrant--the company storing the information or the suspect individual who owned it (Kim, 2020). The information is usually stored in the server, so the 'holder' of the information was the third-party company; on the other hand, the information 'owner' was the suspect, which in this case was Samsung Biologics. In other words, the issue was identifying the legally appropriate person or entity representative regarding the confiscation of potentially incriminating evidence.

5.1.2. Importance of Digital Forensic Evidence Analysis

As mentioned above, in this digital convergence era, most businesses, particularly in finance, information is electronic, including encrypted digital data. Investigators, therefore, appear to have encountered specific challenges. Importantly, during the initial investigative stage, in attempts to access electronic data it seemed critical that the integrity of the data is not compromised and can be preserved. Beyond the encryption challenge, digitally stored and internet-exchanged data can always be structured in a manner that is volatile and unstable. Programming exists that can quickly transform it so that it is effectively untraceable or unintelligible from an evidentiary perspective (Kim, Lee, & Lee, 2018). In addition, there are multiple information/evidence devices (e.g., cell phones, desktops, laptops, tablets, servers, workstations, mainframes, supercomputers) and storage sources (e.g., hard disk drives, magnetic tapes, floppy disks, solid state drives, USB flash drives, SD cards, DVDs, Blue Ray disks, Random Access Memory chips, Cache Memory in chipsets, and the Cloud). In other words, contemporary complex fraud can utilize an array of methods to conceal criminal transactions from investigators. As well, the amount of information that can be stored is massive and persistently and, innovatively, increasing.

ROK is one of the top ICT (Information and Communications Technology) countries in the world; which was ranked 6th among the Most Innovative Countries in the World in 2022 according to the Global Innovation Index (Neufeld, 2022). In addition, most people in advanced industrial countries have hand-held personal 'smart' devices where personal information and valuable financial and business data are often increasingly stored. A massive amount of data (e.g., 256 -512 Gigabytes), therefore, can be located even in smartphones. From an investigation perspective, first identifying types of devices, second, accessing relevant potentially incriminating data, and third, analyzing it, is often immensely time-consuming, and, from experience, literally like the aphorism "trying to find a needle in a haystack". Nonetheless and obviously, securing personal devices, especially mobile phones, is paramount in the initial stages of the investigation in ROK. In the Samsung Biologics case, for example, the prosecutors' office immediately utilized warrants to quickly seize the smartphones of the suspects and persons of interest.

However, to protect user information and privacy, modern mobile platforms are equipped with built-in security measures. Without the cooperation of the suspect or person of interest and their sophistication in concealing or attempting to destroy incriminating information can be extremely difficult for forensic capture and analysis. For instance, modern mobile devices come pre-configured with hardware and software encryption techniques. To retrieve data from the devices, the examiner commonly had to resolve encryption safeguards (Kim, Lee, & Lee, 2018).

An example of this kind of problem related to digital technology in the digital forensic analysis involving a mass terrorist attack case in the U.S. in 2016. When faced with an encryption-protected Apple iPhone in which there was potentially critical criminal evidence of co-conspirators, the Federal Bureau of Investigation (FBI) requested that Apple provide their encryption code to access the information. Apple denied this request according to its privacy and confidentiality contracts with its users. This case was brought before the United States District Court for the Central District of California in February 2016. The FBI initially had the National Security Agency attempt to hack the phone, unsuccessfully. The NSA stated that they were only familiar with hacking other devices that criminals frequently use but not iPhones. In order to disable some security protections on smartphones, the FBI requested that Apple Inc. develop a special version of the iOS operating system that could be installed and operated in the phone's random-access memory (Nakashima, 2016). US federal prosecutors then asserted in the federal court that Apple "deliberately raised technological barriers" to prevent the execution of a warrant (Levine & Vols, 2016) It was quite a highly profiled case at that time, however, eventually, the government announced that the FBI had unlocked the iPhone and withdrew its request before the official hearing date.

This case illustrates the continuing obstacles that investigators are confronted with between the rights of individuals and businesses for privacy and confidentiality on the one hand and attempts by CJS investigators to access potentially critical criminal evidence needed to proceed with trial and conviction for complex cases such as MOVCS or high technology based major fraud cases.

Another issue is the central role of national government financial regulations and global financial agencies' regulations of fraud. As mentioned above, with the internet and

global businesses, complex fraud cases often have multi-national investigatory evidence gathering requirements.

5.1.3. Hiding the Data or Information Issues

Another issue that may occur related to search warrant execution, is that the location of the information itself is hidden. Given the unprecedented complexity of digital information (e.g., encryption, deep and dark net), searching for these sources often can be enormously challenging. In other words, there was potentially incriminating evidence in cases often stored by a third, not uncommonly known as a third-party source. For example, not only does the internet facilitate the storing of potentially incriminating evidence, but also global "shell"/ "paper" companies serve the same function. These companies are located throughout the world and are often located in small countries with problematic (i.e., corrupt) financial and criminal justice oversight protocols. (e.g., St. Kitts and Nevis, Cyprus, Malta). The shell companies are typically structured (e.g., multiply linked companies involving an array of financial entities including private and public, banks, investment, and accounting firms in many different countries) making it extremely difficult to identify both potential illegally obtained assets but also the individuals they belong to (O'Donovan & Zeume, 2019). Given this bizarrely complex structure, searches and seizures, not uncommonly, have involved third parties (e.g., Luna & FTX cases). Investigative authorities, therefore, have had to execute search and seizure warrants to obtain emails, cell phone records, website usage records and financial data from multiple companies and individuals. This relatively recent fraud structure is fundamentally different and enormously more challenging to execute search and seizure warrants than the traditional law enforcement processes involving single business entities or an individual's property, location, or person (Lee & Lee, 2020).

5.2. Legislative Challenges for Financial Regulation

Created in 1999, the Group of 20 (G20) is a multinational organization of 20 countries with the largest economies focused on developing coordinated economic policies in the global economy, including financial stability. The G20 established financial laws and international cooperation for policing and the banking sector. The G20 financial regulation policing role became critical during the global financial crisis brought on by the

U.S. Subprime Mortgage Crisis in 2007 and the resulting global stock market crashes. Most industrialized nations at the G20 meeting agreed that financial regulations of banks and other lending institutions, in this case, mortgages, at the national and local levels in its member countries were inadequate. This inadequacy was particularly evident when novel financial instruments were introduced such as massive subprime mortgage lending i.e., customers were given mortgages with minimum or no collateral assets other than the expectation that their purchased home would continue to increase in value. The likelihood of complex fraud schemes increased, according to the G20 analysis primarily because of the ability of major banks to hide the actual levels of risk when they sold stock market shares based on a mixture of prime and subprime mortgages. The complexity of this scheme and its inadequate regulation by US federal banking regulators and the Security and Exchange Commission (SEC) contributed to the perpetuation of the US national subprime real estate investment frauds. The schemes also were hidden by interest rates that were increasing at far lower rates than the perceived for ever increasing values of real estate in the US. housing market. When U.S. interest rates began to rise suddenly in 2007, most subprime mortgage holders were unable to meet their monthly bank mortgage payments. Banks then reclaimed the houses or homeowners simply walked away from their homes. The chain reaction that followed was an immediate crash in housing market values, followed by several bank failures, a deep recession, first in the US and then to most of the G20 countries, and then massive government bailouts of banks that are “too big to fail” (i.e., the collapse of national banking systems would cause a global depression). For the G20, the unregulated existence of uncontrolled market participants like hedge funds and over-the-counter derivatives and related fraud schemes caused recessions in most G20 economies. The Basel Committee on Banking Supervision submitted Basel III⁴

⁴ The Basel Committee on Banking Supervision (BCBS) sets global standards for the regulation of banks. It also facilitates regular cooperation on banking supervisory matters among its 45 members. This includes all major national central banks and bank supervisors from 28 jurisdictions. Basel III established increased regulation, supervision and risk management measures of banks developed by the Basel Committee on Banking Supervision. As mentioned above, this was in response to the financial crisis of 2007-09. However, the Basel III standards are minimum requirements which apply only to internationally active banks. All Members have committed to implementing and applying standards in their jurisdictions within the agreed time frame. Subsequently, Basel IV included new standards regarding credit risk, operational risk and credit valuation adjustment. Additionally, new regulations were introduced for revisions to the definition of the lending leverage ratio; and the application of the leverage ratio to global systemically important banks. (Bank of International Settlement, BIS, <https://www.bis.org/bcbs/>)

coordinated regulations of complex and high potential for major fraud schemes as its primary goal in 2010 (J. Kim, 2019).

After this period, most of the advanced democratic countries such as Canada, the U.S., the U.K., and even the ROK adopted global financial system regulations. This financial crisis is the political and economic context for understanding cryptocurrency and its potential for major fraud if left unregulated. Yet, after the first cryptocurrency Bitcoin was introduced in 2009, there have been no systematic national or international regulations on this novel form of Decentralized Banking (DeFi)⁵ (J. Lee, 2022)

To be specific, in the traditional financial ecosystem, the main difference between the currency exchange and the stock exchange is that the currency transaction is supposed to be a one-time thing when the money trade is occurring. That is, originally, currency exchanges are places where money is exchanged for another currency on the 'spot' and go directly to the client's designated account. Currency exchanges, therefore, are simply where money or currency (e.g., Canadian Dollar) is exchanged for another currency (e.g. Korean Won) instantaneously, and, therefore, not a place where large amounts of money are stored for a certain period of time for later investment or liquidity withdrawal.

However, in the cryptocurrency ecosystem, currency clients or traders often want to keep their currency (e.g., "coins") value amount in their "blockchain" or internet-based virtual accounts. These crypto accounts are then used for investment purposes or currency exchange liquidity (e.g., "coins" for US dollars). Therefore, the cryptocurrency exchange market is like stock exchanges or banks. Nevertheless, they are not yet subject to the same strict national government financial and oversight regulations as stock exchanges or banks.

In this context, the regulation of DeFi is being discussed in several developed nations based on the regulation of virtual assets. However, because each country has a

⁵ Decentralized Finance is financial transactions without centralized financial institutions. This means the government's regulatory intervention through regulating financial institutions could be restricted. The U.S., EU and other countries are developing discussions on regulating for DeFi based on the regulation of virtual assets. (Lee. J., 2022)

different historical and economic background, there are differences in the regulation's scope, application, and subject (J. Lee, 2022).

For example, the recent FTX case brought a lot of discussion regarding the necessity of virtual asset regulations. Hester Peirce, an SEC commissioner, made it known in the summer of 2022 that she believed the organization should work cooperatively with cryptocurrency exchanges rather than just penalizing them. She remarked, somewhat optimistically, "I would say that 2022 is the year of setting the basis for future legislative and regulatory activity." (Cowen, 2023).

5.3. Challenges for Recovering Monetary Damage for Fraud Victims - Civil Forfeiture

Typically, the recovery of monetary damages for financial crime victims has historically not been a fundamental task of law enforcement agencies. Usually, civil courts with litigants, through their legal representatives, contest responsibility and compensation amounts, if any. However, more recently the restoration of victims of crimes, including financial crimes, has become more evident. For example, Restorative Justice principles have been incorporated into criminal justice systems, especially in youth justice laws and systems. These principles include, for example, focusing not on convicting and punishing the offender but on having offenders engage their immediate victims, their families, and their community members to understand the harm done. Related principles: the offenders acknowledge the harms done, engage in mutually agreed upon remedial plans in the community; and the community accepts offenders back into their communities. (Braithwaite, 2018). In addition, the victimology theoretical perspective has influenced criminal justice through one of its key principles: providing financial compensation for victims for their recovery (Kang, 2015). In other words, there appears to be a trend where criminal justice and civil justice systems increasingly have more directly overlapped, particularly regarding financial crimes where both individuals and governments were victimized. Arguably, MOVC involves large numbers of victims and can cause both financial and reputational damage to governmental major business sectors in a country.

As discussed above the FTX collapse and subsequent criminal fraud charges exemplifies this widespread damage. For example, this impact was evident even for

Canadians: for example, the Ontario Teacher's Pension Plan invested USD 75 million in FTX International and its US entity (FTX.US) in October 2021, and in January 2022, another follow-on investment was estimated at USD 20 million. Their 95-million-dollar investment was lost with the FTX digital currency collapse (Brownell, 2022). From the victims' perspective, it has traditionally been costly, time-consuming, and lengthy to pursue financial restoration or some compensation privately through traditional civil court procedures. Alternatively, several of the above principles appeared to be the basis for civil and criminal forfeiture laws with prosecutors having important roles.

I will review first Canadian Civil Forfeiture law and then Korean Forfeiture law to help answer one of the key hypotheses in this thesis, the convergence of Occidental and Oriental and criminal and civil laws and justice systems in a highly globalized economic context.

5.3.1. Canadian Civil Forfeiture

Forfeiture as a legal construct has a long history in civil law and civil courts, its use is more recent in criminal law and justice systems. Property acquired or used illegally can be seized under the doctrine of forfeiture. In Canada, the focus of law enforcement and prosecution has been on the property and illicit profits of criminals and organized crime syndicates. However, as will be explored in the interview chapter with the Canadian police and prosecutor sample, Civil Forfeiture is more easily and successfully pursued in contrast to Criminal Forfeiture. The key legal assumption of Civil Forfeiture is that it does not necessitate a criminal conviction because it is assumed that the property itself, rather than the owner, has broken the law. Criminal forfeiture occurs only when an individual has been found guilty of a criminal act (Maure, 2006).

In 1984, there was an attempt at general regulation regarding the Proceeds of Crime through the tabling of the Criminal Law Reform Act which was originally designed to stipulate the proceeds of any offences as well as any tools used to commit indictable offences could be seized. However, the Bill vanished on the order paper (Maure, 2006). Subsequently, Criminal Code modifications included the Proceeds of Crime (Money laundering) Act of 1991, which primarily focused on extensive financial record-keeping requirements. This information was designed to support prosecutions under the Criminal Code's section on proceeds of crime (Maure, 2006). The system further developed with

the 1991 Property Management Act (PMA), which gave the federal government permission to process confiscated property and dispose of it when forfeiture was mandated by the courts. In 1993, the Department of Public Works and Government Services of Canada established a directorate with related duties regarding the PMA (See Table 1, Maure, 2006)

Table 1. Canadian Forfeiture Laws

Name of Statutes	Main Features and Comments
Narcotic Control Act, S.C. 1960-61, c.35 In force September 15, 1961.	Although this Act did not contain proceeds of crime provisions per se, it provided for the forfeiture of conveyances such as motor vehicles, aircraft, and vessels upon conviction.
Bill C-19, Criminal Law Reform Act, 1984. 2 nd Sess., 32 nd Parl. (First Reading 7 February 1984. H.C.). Bill died on the order paper.	This Bill provided for the confiscation of the proceeds of all offences and of any instruments used to commit indictable offences.
An Act to Amend the Criminal Code, the Food and Drug Act, and the Narcotic Control Act, S.C. 1988c.51 In force January 1, 1989.	This Act creates a definition for proceeds of crime, tools to seize and restrain proceeds of crime, and punishment for laundering proceeds of crime.
Proceeds of Crime (Money Laundering) Act, 1991, S.C. 1991, c.26. In force on October 1, 1991.	This Act introduces a record-keeping requirement for certain financial institutions, meant to assist prosecutions under the Proceeds of crime section of the Criminal Code.
Seized Property Management Act, S.C. 1993, c.37. In force on September 1, 1993.	This Act facilitates consultative and other services to law enforcement agencies regarding the seizure or restraint of property in connection with designated criminal offences. In addition, it authorizes the government to manage and dispose of seized property and allows for sharing of the proceeds with provinces or foreign governments.
Controlled Drugs and Substances Act, S.C., 1996, c.19. In force on May 14, 1997.	This Act makes various provisions regarding the import, export, production, and distribution of drugs. This Act also repealed the Narcotic Control Act and certain parts of the Food and Drugs Act, R.S.C. 1985, c. F-27. In addition, this Act introduces two offences, namely Section 8 (Possession of property obtained by certain offences) and Section 9 (Laundering proceeds of certain offences). With these sections, police can apply for a search warrant and/or a restraint order in order to seize proceeds of drug crimes or offence related property associated to the laundering of drug crimes. Such search warrant and restraint order applications are made without the need for the Crown to give an undertaking with respect to the payment of damages or costs in relation to the issuance and execution of the warrant or restraint order. (Unlike similar search warrant and/or restraint order applications under the Criminal Code proceeds of crime sections).

Name of Statutes	Main Features and Comments
Narcotic Control Act, R.S.C., 1985, c.N-1 [Repealed, S.C. 1996, c.19, s.94].	Act repealed.
Proceeds of Crime (Money Laundering) S.C. 2000, c.17. Various Sections in force on July 5, 2000.	This Act broadens the record-keeping requirement to include mandatory reporting of suspicious transactions. In addition, a reporting obligation is extended to non-bank institutions such as casinos, currency exchange businesses, individuals acting as financial intermediaries, and certain other businesses. This Act also establishes the Financial Transactions Reporting and Analysis Centre of Canada (FINTRAC) which acts as a data-gathering and analysis body.
An Act to Amend the Criminal Code (Organized Crime and Law Enforcement) and Make Consequential Amendments to Other Acts, S.C. 2001, c.32. (AKA Bill C-24) Royal Assent on December 18, 2001.	The Act creates three new offences relating to participation in the activities of criminal organizations. It allows for the enforcement of search warrants, restraint orders and orders of forfeiture from non-Canadian jurisdictions. In addition, the Act repeals Sections 8-9 of the CDSA, which were deemed by some critics as an attempt by the Crown to bypass the undertaking requirement.
An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism. (AKA Anti-Terrorism Act, S.C. 2001, c.41 and/or Bill C-36) Royal Assent on December 18, 2001.	This Act introduced for the first time fully-fledged civil forfeiture provisions to the Criminal Code. However, these provisions only apply to property connected to terrorism. The Act also amends the title of the Proceeds of Crime (Money Laundering) Act to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.
Criminal Code (proceeds of crime) and the Controlled Drugs and Substances Act and to make consequential amendments to another Act, An Act to Amend, S.C., 2005, c.44. (AKA Bill C-53) In force on Royal Assent, November 25, 2005.	This Act provides a reverse onus of proof in proceeds of crime applications involving offenders who have been convicted of a criminal organization offence and/or certain CDSA offences.

Source: Maure, 2006.

According to the Canadian Justice Review Board, “Canada’s civil forfeiture laws allow provincial governments to seize and transfer ownership of property without compensation when the property is suspected of being used to commit an illegal act or is suspected of having been acquired by committing an illegal act”. It was originally designed to reduce the financial incentive for engaging in such criminal activity and to offer victims compensation.

Eight provinces in Canada have civil forfeiture laws⁶. Ontario and Alberta were the first to enact complementary legislation in 2001. In addition, both the federal forfeiture laws and the complementary laws regarding the liquidating of assets from criminals raised several constitutionality issues (Gabor, 2022).

5.3.2. Constitutionality issues with Civil Forfeiture

Through civil forfeiture, the government can seize assets that are directly or indirectly the proceeds of crime, which are gains obtained unlawfully. The most distinguishable difference between criminal forfeiture and civil forfeiture is that an individual's property can be confiscated without having to wait for a criminal conviction. The justifying legal principle is that civil forfeiture involves establishing the targeted assets were illegally obtained, and not whether the individual in possession of them committed a criminal act in acquiring these assets (Gallant & King, 2013).

Critics of this legal doctrine assert that it violates fundamental civil rights. For instance, at the SCC in 2009, Robin Chatterjee contested the constitutionality of the civil forfeiture law in Ontario. He insisted that the Civil Remedies Act (CRA) was within criminal law and was therefore not within the purview of Ontario. In addition to cash worth \$29,020, he was also discovered to be in possession of tools that might have been used to grow marijuana. Even though no narcotics were discovered, and he was not accused of any relevant criminal offences, police still took the money and equipment. He claimed that the CRA's forfeiture provisions were *ultra vires* the province because they encroach on the federal criminal law power. The SCC affirmed Ontario's civil forfeiture law, concluding that its purpose was rehabilitative rather than criminal (Chatterjee v. Ontario, 2009, Gallant & King, 2013). To date, this is the only case dealt with in SCC regarding the constitutionality of civil forfeiture laws.

However, other related constitutional issues regarding civil forfeiture are, for example, fair procedure including due process concerns regarding the possible

⁶ Victims Restitution and Compensation Payment Act [Alberta], 2001; Civil Remedies Act [Ontario], 2001; Criminal Property Forfeiture Act [Manitoba], 2004; Civil Forfeiture Act [British Columbia], 2005; Seizure of Criminal Property Act [Saskatchewan], 2005; Act Respecting the Forfeiture, Administration and Appropriation of Proceeds and Instruments of Unlawful Activity [Quebec], 2007; Civil Forfeiture Act [Nova Scotia], 2007, Civil Forfeiture Act [New Brunswick], 2010.(Gallant & King, 2017)

infringement of the defendant's right to make full answer and defence, and proportionality and judicial discretion issues (Gallant & King, 2013).

5.3.3. Korean Forfeiture System – an Alternative to Civil Forfeiture?

ROK has a somewhat similar criminal forfeiture set of laws and procedures to Canada. The main difference, however, is in the civil forfeiture area there is no equivalent term civil forfeiture in the relevant Korean laws, although there are laws that parallel civil forfeiture.

Nonetheless, the civil forfeiture type procedure only begins after the criminal case is completed with a conviction. Arguably, this is a fundamental difference, possibly related to the above-discussed history of Korea's Criminal Code being based on the continental code's legal structure. Because the criminal trial is the initial stage for forfeiture, the civil forfeiture procedures are considered secondary to assessing culpability and penalty.

There are five SAs that are central (See Table 2). Each of these laws is focused on criminal criteria regarding the key types of criminally alleged acts. Act on Special Cases Concerning Confiscation on Offenses of Public Officials (1995), Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics (1995), Act on Regulation and Punishment of Criminal Proceeds Concealment (2001), Act on Special Cases Concerning the Confiscation of Illegal Political Funds (2005), and Act on Special Cases Concerning the Confiscation and Return of Property Acquired Through Corrupt Practices (2008).

Table 2. Korean Forfeiture-related Acts.

Name of Law	Main Features and Comments
Act On Special Cases Concerning Confiscation On Offenses Of Public Officials	Enacted to thoroughly track and confiscate illegal profits acquired by public officials through job criminal activities
Act On Special Cases Concerning The Prevention Of Illegal Trafficking In Narcotics	Asset preservation measures such as confiscation and collection to thoroughly track and retrieve illegal profits acquired from drug crimes, and international cooperation procedures for the execution of foreign confiscation and collection trials.
Act On Regulation And Punishment Of Criminal Proceeds Concealment	It was established to avoid the designation of a non-cooperative country against money laundering and to join the International Anti-Money Laundering Organization (FATF) Expanding the scope of confiscation and collection when designating serious crimes
Act On Special Cases Concerning The Confiscation Of Illegal Political Funds	Regulations, such as confiscation of illegal political funds regulated by the Political Funds Act, and easing the burden of proof
Act On Special Cases Concerning The Confiscation And Return Of Property Acquired Through Corrupt Practices	It was established to join the United Nations Convention on the Prevention of Corruption, which is the basis of the international anti-corruption protocol. Special provisions on confiscation and collection of crime-damaged property, overseas return of corrupt property, domestic recovery.

Unlike in Canada, there is no general or unified act that encompasses all these forfeiture relevant crimes (Oh, 2019). From an investigation and prosecutorial perspective, it appears that this Korean structure is more complicated and possibly more challenging than Canada regarding MOVC or complex fraud cases. However, this assertion is partly based on my experiences and being part of the investigation using these SAs. Therefore, this hypothesis will be explored in the answers provided by both Canadian and ROK interview participants in Chapters 6 & 7.

This hypothesis appears to be the major reason why there is a current and ongoing introduction of legislation in the National Assembly in ROK concerning bills for the recovery of proceeds from specific property crimes and damage relief (abbreviated as the “Criminal Proceeds Recovery Bill”) (Lee. S.S., 2015). Importantly, these legislative attempts, which began in 2015 have not succeeded and it is unclear whether this will occur in the near future. Arguably, a major political concern in the National Assembly has been focused on concerns about the vulnerability of some politicians to

potentially “excessive” investigatory and prosecution power that would be given to the office of the prosecutors and Korean Criminal Courts.

Chapter 6. Interviews with Judicial Specialists in both Canada and ROK

6.1. Themes Explored in the Semi-structured Interviews

6.1.1. Research Design - Framing of the Interview Questions

The main hypothesis in this thesis is focused on the investigatory challenges of MOVC or other complex fraud crimes, yet there is little theoretical and empirical literature that has examined this theme, particularly in a comparative context. The research design of this thesis is exploratory and not confirmatory: the limited number of interviews with criminal justice specialists dealing with MOVCs in Canada (N 6) and ROK (N 4) simply precludes any systematic assessment of the above theme. Instead, the research design is based on the opportunity sample provided to me by being able to access these specialists in these two countries. As mentioned, I drew extensively from my own professional experiences as a senior investigator in the prosecutor's office in Seoul concerning both the main hypothesis and obtaining interviews of other prosecutorial investigators in this office. RCMP Inspector Ben Maure, while not an interviewee, provided invaluable information about the investigation and prosecutorial process in the Canadian British Columbia context as well as assisting me in selecting and accessing police and prosecutor MOVC specialists in this province context. The research design is necessarily qualitative: the questions are semi-structured, but I did not make any assumptions about expected answers, did not limit the range of responses, and encouraged unanticipated themes (King, Horrocks & Brooks, 2019). I reviewed all the recorded interviews and my notes taken during the interviews to identify selected quotes that illustrated the key theoretical themes and questions discussed above. Simon Fraser University's Research Ethics Board approved this study.

This qualitative research design was also important because it allowed the respondents to maintain confidentiality necessary in their positions regarding answers that avoided investigatory-related judicial specific case information. I also avoided seeking personal information about each interviewee beyond their professional position. I further limited my themes and questions just to MOVC or complex contemporary fraud cases. Again, I asked semi-structured questions so that the participants would be

comfortable with their answers without any anticipation or expectation of sensitive legal and procedural themes. However, I did prepare possible related sub-questions before the interview and improvised with them during the interview sessions where appropriate. Finally, the participants were fully aware that they could choose not to answer any questions if they felt uncomfortable doing so.

Obviously, the sample was divided by country, nationality and by professional occupation of the participants. There are 4 basic categories: Canadian Investigation, Canadian prosecution, ROK Investigation, and ROK Prosecution. I utilized these criteria, in part, because Canada and ROK have different procedures concerning police roles and prosecutorial roles in the criminal justice process. Most importantly, as mentioned above, the ROK Public Prosecutors' Office has its own investigation role and procedures. I, therefore, simplified the participants into investigation vs. prosecution roles to compare the answers and find common themes in the answers. A key theme, though, that emerged from the literature review that was very important in the responses from participants in both countries was the respondents' opinions regarding the Civil Forfeiture System.

Given these differences, I adjusted semi-structured interview questions for both countries according to their participant's positions or specialties. For example, for the specialist in cybercrime and cryptocurrency tactical operations, I started with the basic questions that I already had prepared and added some extra queries regarding crime investigation on the dark web.

The basic questions, again, were general to encourage more 'open' answers. I engaged in a conversational format interview to encourage the interviewee to provide answers based on their specific experiences, specialties and sense of duty related to their specific positions. The number of questions was also typically limited to less than eight. This allowed flexibility for respondents to speak in further depth about their roles and opinions, especially about the more controversial MOVC challenges (See Appendix, interview questions).

6.1.2. Focusing on the Investigatory Challenges and Thresholds

The questions mainly sought to explore whether the financial crime investigation procedures, criminal law, and criminal justice issues regarding MOVCS were similar, as expected in this thesis' convergence hypothesis. The related themes involved several questions: what are the types and most prevalent financial crimes that the participant's department investigates (or prosecutes), and what differences exist between the goal of the investigation/prosecution and typical outcomes. What are the top priority policies in CJS regarding MOVCS in both countries' financial systems in terms of protection or recovery of the asset for victims. In this way, I was able to explore the current practical challenges in the investigation and prosecution in an Occidental country context and an Oriental country context, each with numerous similar and dissimilar societal factors.

6.1.3. The Derivative Solutions to Overcome the Challenges - Civil Forfeiture?

As was illustrated in the notorious FTX and Luna cases, how to recover victims' financial assets in MOVCS was a fundamental policy concern in criminal justice investigations/prosecution. The main instrument for achieving this goal in liberal democratic countries has been the use of diverse national money-tracking systems and the subsequent use of forfeiture laws and procedures. As mentioned, unlike the ROK, Canada has a civil forfeiture system. In order to obtain practical insights into how the Canadian civil forfeiture system has been utilized, I added questions for Canadian participants regarding: how decisions were made to activate civil forfeiture; what are the procedures police and other investigators engage in under the current civil law system to gather evidence constitutionally; what are the legal and administrative challenges in these investigations; and what changes are seen as needed to become effective. Regarding Korean participants, I prepared questions for comparing the ROK's current forfeiture system with Canada's and their opinions regarding the possible introduction of civil forfeiture legislation and procedures in the ROK. Clearly, this difference in forfeiture laws does not support this thesis' convergence hypothesis. However, depending on the ROK respondents' answers, it is possible that, eventually, there might be convergence regarding civil forfeiture if there is strong support within the highly respected ROK prosecutors' institution. Of course, this office is considered politically neutral, though it is

not uncommon for the related National Assembly civil and criminal justice committees to seek its input on such a potentially complex legal and constitutional issue.

6.2. Qualitative Analysis of Interview Answers

Because of my direct and indirect professional experiences with financial crime cases, as discussed, I was already aware of several themes. Nonetheless, given the diversity of MOVC cases, it is possible that other themes could emerge, particularly regarding the absence of the civil forfeiture option. Where appropriate, it was necessary to qualify that the B.C respondents answers to certain questions referred only to B.C context, specifically, regarding civil forfeiture and Crown Counsel's standard of charge approval. The B.C standard of the likelihood of conviction is considered higher than the other provinces, which is important in understanding the respondents' answers involving civil forfeiture and its higher use in B.C.

6.2.1. The Challenges Because of The Complexity of the Financial Crime Investigation Itself

MOVCs and other financial frauds are structurally complex in terms of evidence investigation, charge or civil procedures, and criminal or civil proof criteria. Most importantly, its victims must be identified along with their respective actual asset amounts involved in the business transactions, and the specific pattern of asset transaction and the alleged types of fraudulent acts such as deception, hiding/manipulating information, or counterfeiting have to be specified (Turner, 2011). In other words, as stated throughout this thesis, MOVC or complex fraud cases in general, have been historically, extremely difficult to investigate, charge, obtain convictions, and successfully, through primarily forfeiture, retain all or some of the victims' assets, primarily through forfeiture. I first focused on asking participants to describe the investigation/prosecution process and identify any challenges they encountered. Interestingly, a common response from the participants was the excessive documentation required in the investigation process, especially in Canada, in light of the Supreme Court of Canada's decision in *R v Jordan* (2016). This case placed considerable time pressure on investigators and Crown Counsel to complete the laying of the charge under a certain presumptive ceiling on the trial delay: "18 months for cases

going to trial in the provincial court”, and “30 months for cases going to trial in the superior court” (R v Jordan, SCC, 2016).

Canadian participant #2, for example, describes the challenges in financial investigations.

“We deal with information and put it together in a simple package for Crown Counsel which outlines the evidence we need to recommend a charge. We have to conduct judicial authorizations, and each takes a long time. If a document is from outside the country, we have to make sure the documents are authenticated, affidavits, etc.” (Canadian Participant #2)

This participant stated further about the Jordan case law:

“Jordan case law. We have to consider that as well. Once charges are laid, a certain amount of time (is needed). It differs from the provincial court, 18 months, to the superior court, 30 months” (Canadian participant #2).

The massive documentation is also related to the wide range of data often required for the investigation itself because of the inherent complexity of MOVC or internet-based fraud crimes. Obviously, this occurs overwhelmingly with the development of digital information and networked communication technologies. For example, it is not uncommon that financial information for a single fraud case requires the analysis of enormous multi-terabyte information. Most banking, security trading, currency trading, and cryptocurrency trading are made by e-trading. In turn, each transaction leaves an electronic trail. Typical related internet transactions are similarly recorded. Therefore, most investigatory evidence and relevant materials were digitally recorded. In turn, the investigatory requirement for specialists with the appropriate digital forensic analytical skills are critical.

Canadian participant #1 states,

“The internet is widely used, most accessible, volume based. Youth, adults and the elderly all have specific vulnerabilities that ‘bad actors’ leverage. The challenges are knowledge of technology, speed of accessing data for evidence and anonymity across geographical regions.” (Canadian Participant #1)

Canadian participant #6 also describes the data analyzing challenges.

“And why aren't we doing it? A lot because of the way of relationship in our office turns on what the police are doing, and they're under resource - vastly under-resourced. They need ten times more analysts than they have. They need five times more investigators” (Canadian Participant #6)

The ROK participants also pointed out the procedural challenges such as the documentation delaying issues and the participation right of the suspects, especially with the search warrant executions for smart devices. Given the exceptional technical structure of digital information, search for and seizure generally presented more difficult challenges (Lee & Lee, 2020). It was particularly hard to secure a search warrant for a cellphone, especially if it is a smartphone because this device often had massive amounts of information, requiring investigators to decipher only information legally relevant to a case. Therefore, Judges are very cautious about issuing warrants strictly limited to the case and accusation. Given privacy rights regarding non-case related information such as health, religion, or family-related intimate personal information, it is important to keep the scope of the warrant under constitutional limitation. However, all these pieces of information are contained in one device, so it became a challenge for the investigators.

One of the ROK participants narrates this challenge.

“The search warrant to obtain personal digital device, especially cell phone itself is the most crucial evidence in reality. Because it contains every single piece of information about the person. Not just phone call records or text messages, it also contains location information when you use the navigation apps and have bank account records when you use the banking apps, and even medical or psychological information as well. I agree with the idea that it should be restricted by certain criteria, however, these days, it is getting harder and harder to gain a warrant itself.” (ROK participant #1).

In addition, ROK participants also describe the challenges after the warrant execution.

“Once we get the cellphone, it is not the end. After obtaining the device, the participation rights of the owner/suspects during the extraction make it even more time-consuming. At the end of the day, we need to find the relevant information in the 1TB memory cellphone, and the lawyers who participate in the extraction procedure always try to cut the search and we need to find more. It is always controversial regarding the search scope in the data.” (ROK participant #2).

Once granted, executing a search warrant to obtain financial account records in the ROK is another challenge. Recently, in 2019, The Korean Supreme Court (KSC) ruled that the investigatory agencies' (police/prosecution office) execution of seizure and search warrants against financial institutions or e-mail companies by fax or e-mail without directly presenting the original warrant to the investigated party violated the pre-warrant requirement principle (2018 Do 2841, the Korean Supreme Court, 2019. 3. 14.) In this ruling, KSC also issued a judgment about the procedural criteria for evidence to be obtained legally.

ROK participant #2 describes this challenge.

"Before the Korean Supreme Court case regarding the fax execution, it was OK to send search warrants by fax to banks, security companies, or any other financial agencies. Now court's judgements don't acknowledge the admissibility of evidence recently, since a warrant by fax is a copy and it violates the rule of presentation of a warrant. Now we need to visit every single bank headquarters to obtain the bank records. I know, there are public concerns about the Right to Self-Determination of Personal Information would be infringed upon due to the numerous demands for data from investigating authorities and the operators' careless data providing, and there was also a need to preserve it. However, it is too much, it needs to be fixed by law." (ROK Participant #2)

6.2.2. The Challenges between the Agencies

As mentioned, in Canada, the investigation and prosecution processes are completely divided by law regarding the agencies involved and the human resources available. Nonetheless, the police investigation and prosecution role are connected; the decision to charge and proceed further including a trial is solely Crown Counsel's prerogative. Therefore, the Crown Counsel adheres to higher and more complicated investigation and admissibility of evidence criteria regarding their decisions whether to indict. In contrast, for some, if not many, police officers, it is more likely that Crown Counsel's narrow "technical" criteria for such key decisions to proceed for MOVC cases can be seen as needlessly unjustified.

Canadian Participant #1 explains experiences with Crown Counsel's concerning their tendency to utilize a more challenging investigation and evidence threshold with which police sometimes disagree, such as a higher probability of conviction.

“Our province, British Columbia, is a charge approval jurisdiction. Charges must be approved by the Crown Counsel before being laid. We could say the prosecutors are the gatekeepers of how a file is actually taken to court. Judiciary and Crown are disinclined to accept money laundering charges since reviewing and arguing these before a court represent an additional workload with no commensurate increase in the likelihood of conviction or sentencing. Instead, both federal and provincial prosecutors prefer a literal reading of the money laundering case law and legislation, including proving (to a degree of near certainty) the criminal origin of the money.” (Canadian Participant #1)

Canadian Participant #5 also pointed out that the requirement of the probability of guilty conviction from the Crown Counsel is quite a bit higher than the “beyond a reasonable doubt” level.

“The prosecutors these days, they want a substantial likelihood of conviction. That's what they're looking at even more than the actual standards. I mean, the impression I'm getting is that they want a case which is almost certain to result in a conviction. I think that's not the standard for charge approval. It should be 'beyond a reasonable doubt'. If they require a substantial likelihood of conviction, it is too much. So, they are misconceiving their own standard for allowing cases in. They want the case should be almost bulletproof, which is impossible.” (Canadian Participant #5)

In other words, Crown Counsel's is guided by the BC Crown Counsel Policy Manual Charge Assessment Guideline criterion, the substantial likelihood of conviction-regarding complex financial crimes (Charge Assessment Guidelines, n.d.). This criterion, therefore, can be seen differently by the police from their investigative perspective as too rigidly interpreted by Crown Counsel. In addition, investigation agencies which in this case is the RCMP or a Municipal Police Department, can face other barriers to closing such cases effectively. For example, despite the often time-consuming and painstaking police investigation, according to the BC Crown Counsel Policy Manual, there is no necessary direct consultation between Crown Counsel and the police investigators during the investigation stage and before making their charge decisions.

Canadian Participant #2 mentions this process as a challenging point because of the lack of direct communication with the prosecutor.

“Crown looks at the likelihood of conviction and public interest. The Crown prosecutors may want evidence to the n-th degree because they want it to be fool-proof. There are a lot of legal issues during the investigation. So having lawyers embedded with us would be great. It

would result in fewer questions from Crown prosecutors.” (Canadian Participant #2)

In the ROK, in 2017, the liberal Democratic Party (DP) led by Moon Jae-In formed a majority government. A key part of their election objectives involved their view that the relationship between the police and the prosecution needs to be reviewed; that there should be a prosecution reform process. President Moon Jae-In's government enacted prosecution reform in 2021⁷. The primary objective was the arrangement of investigative authorities between the prosecution and the police based on the reforming principle: “the separation of investigation and prosecution” (Oh. B, 2021). This principle refers to the reform of the Korean CJS to reduce the Prosecutors' command and supervision authority over the police. The Moon Jae-in Government's prosecution reform, implemented in 2021, was mainly centered on the ‘arrangement of investigative authorities between the prosecution and the police’, which is based on the principle of the separation of investigation and prosecution. Even further, there have been suggestions made during the legislation discussion by some of the senators that: the National Investigation Office should be established under the Prime Minister's Office; the authorities and procedures for the direct initiation of prosecutorial investigations be eliminated, and the number of investigators in the prosecutors' office should be decreased (Oh. B, 2021). As a result, in May 2022 the Prosecutor's Office Act and the Criminal Procedure Act were revised to limit the scope of the prosecution's investigations i.e., restrict the scope of the prosecution's investigation from six major crimes to two major crimes (corruption crimes and economic crimes). However, the current government elected and led by President Yoon Suk-Yeol, leader of the conservative People Power Party (PPP), announced a revision of a presidential decree⁸

⁷ The legislation depriving the prosecution of its investigative powers was signed into law by President Moon Jae-in during his final Cabinet meeting. He said, “The laws that we are promulgating today will reduce the scope of the prosecution's investigation. This is to ensure the basic rights of the people while guaranteeing that the authorities in power are faithful to their original roles according to the principles of checks and balances and democratic control”. “Despite efforts and achievements, concerns about the political neutrality, fairness and selective justice of the prosecution have not been resolved,” Moon said. “It has been evaluated that it is unlikely for the prosecution service to gain the public's trust. I think that's why the National Assembly has gone one step further to strip the prosecution of its investigative powers.” With the signing into law, the prosecution will be stripped of its investigative powers after four months (May 3, 2022, Lim, J.W., Korea JoongAng Daily)

⁸ Justice Minister Han Dong-hoon declared the ministry will seek to increase investigative rights through a revision of the enforcement ordinance on August 11, one month before the legislation would go into effect. The amendment would enable prosecutors to examine allegations of abuse of power, crimes involving elections, and crimes involving the defence sector. President Yoon's

to expand the scope of prosecutorial investigations. By this revision, the Prosecutors' Office still maintained its investigation function and broadened the investigations covered to include the original scope of corruption and economic crimes by broadening their definitions.

Even if this law took effect, the focus of this thesis, major fraud or MOVCS and related political crimes, prosecutors would have retained their dominant investigative role because of the complexity of the cases. In contrast, the Canadian interviewees appear to prefer that police officers and Crown Counsel work more collaboratively.

6.2.3. The Restoration of Criminal Proceeds - Civil Forfeiture

During the Canadian interviews, it became evident to me that the civil forfeiture option can be a vitally important instrument for the police and it ultimately allows the courts to achieve justice and help the victim recover assets in complex fraud cases.

Canadian participants #4 and #6 were directly involved in civil forfeiture. One is in the RCMP civil forfeiture unit and the other is in the Civil Forfeiture Office (CFO). The Civil Forfeiture Act (CFA) has been a law in B.C. since 2006. The CFO is part of the Ministry of Public Safety and Solicitor General and operates under the supervision of the Director of Civil Forfeiture. In BC, according to CFA, both the RCMP and municipal police forces can refer cases to the Director of the CFO (Maure, 2006). The BC RCMP's headquarters includes the Civil Forfeiture Referral Unit in their office, which has been the gatekeeper for all of the RCMP's civil forfeiture referrals to CFO. Given its centrality to the convergence hypothesis concerning MOVCS, it is important to further explore the civil forfeiture process and the current challenges in its utilization in Canadian and ROK contexts. Regarding the latter, the interview with an investigator in the Korean Supreme Prosecutors' Office Criminal Asset Recovery Division is particularly relevant to this comparison of forfeiture options. In addition to this interview, my experiences with the civil forfeiture process in the ROK will be included in the discussion of the possible inception of the more robust Canadian civil forfeiture model in the ROK.

efforts to reinstate the prosecution's investigation authority have drawn vehement criticism from the DP, which has dubbed them a "enforcement decree coup."(August 18, 2022, Shin, J.H.,The Korea Herald)

Features of Civil Forfeiture: Process in Canada

Most importantly, most Canadian participants strongly express that civil forfeiture was a very effective alternative remedy procedure when criminal forfeiture was not viable. Several participants, for example, state that

“Remedy – this word implies a decision has been made a priority; it is criminal. For whatever reason the criminal forfeiture did not activate and from a public standpoint we want to stand up for the victim & impact on bad guys. Now we have a remedy to address the situation that was not approved, that is civil forfeiture” (Canadian participant #2).

“There are times when that person isn't gonna get charged or convicted of that higher offence. They may say, you're only gonna get convicted of a lesser offence. The prosecutor cannot ask for forfeiture so there could be a time you know during it gets prosecuted; it goes to trial. They charge them with a lesser offence. So that hundred thousand dollars the prosecutors can't go after that. In this place, the civil forfeiture is considered” (Canadian Participant #4).

However, this civil forfeiture process was seen as complex depending on the police obtaining the initial appropriate evidence by type of financial crime (e.g., drug trafficking, money laundering, or fraud) to initiate the submission of case evidence for the forfeiture team to proceed with each case. Usually, the primary, and often initial resource, for civil forfeiture came from the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). This centre was tasked to both to safeguard the privacy of the data it has under its control, while facilitating the discovery, prevention, and deterrence of money laundering and the financing of terrorist operations. All reporting entities (REs) such as Commercial Banks, Security Exchanges, and Real Estate Agencies, and employees of REs must report suspicious transactions under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and associated Regulations (Minister of Finance, 2023). According to PCMLTFA, a “suspicious transaction” means any suspicious or possibly suspicious behaviour.

Canadian participant #6 describes this procedure,

“Our offices were the Civil Forfeiture offices across Canada to be able to obtain FINTRAC information or direct referrals. We would simply be able to leverage the FINTRAC information, open source searches, and closed source searches, to determine where the property is, and then maybe some information from the Canadian Police Information Centre (CPIC) to know the Canadian sort of database on criminal convictions to be able to form that reasonable suspicion so a case might look like this. FINTRAC

sends us the information they say our target here is involved in numerous suspicious transactions worth millions of dollars” (Canadian participant #6).

Originally civil forfeiture relied on the police investigation; however, the Director of the CFO could obtain interim and permanent preservation orders (s.8) where it is established that there is a “serious question to be tried” over whether the subject asset is proceeds or an instrument of unlawful activity (CFA s 8, ss 5). This is often done to create practical and economic pressure on the accused to settle and not proceed to trial. Also, the CFO officials have initiated investigations with other sources such as FINTRAC, identifying fraudulent transactions, and even relying on past related cases.

“We use the evidence from FINTRAC showing that he's still active in what we would consider to be some kind of unlawful activity that would most likely be related to the drug trafficking for which he was convicted, or importation convicted multiple years ago. That should give us the reasonable suspicion we need to obtain an unexplained wealth order against all property that that person holds” (Canadian participant #6).

Recently, the CFA can utilize the options available with the amendment in Bill 21, the Civil Forfeiture Amendment Act, 2023 (Legislative Agency, British Columbia). This amendment specifies the process for the CFO to obtain Unexplained Wealth Orders (UWO)s. The recent Cullen Commission of Inquiry into Money Laundering in British Columbia report, released in June 2022, directly influenced these requirements. UWOs allow law enforcement an opportunity to confiscate criminal assets without ever having to prove that the property was obtained from criminal behavior (Wood, 2022).

One CFO participant expresses a personal expectation regarding this amendment:

“The unexplained author, it goes further than that. It's not just the property that you hold. It's the property of anybody. It's the property that anybody in your family holds or any of your associates. So usually, criminals try to park property in the names of parents or siblings or cousins. We can obtain the unexplained wealth order against any of those properties.

Under the new process, the Director will only be required to have a reasonable suspicion that the property is linked to unlawful activity. And from that reasonable suspicion, we can obtain an unexplained wealth order. And the unexplained wealth order puts the onus on the individual to prove how they obtained and met all the costs for obtaining the property. Without these kinds of tools, you're stuck. So, we're super excited about that.” (Canadian participant #6).

Also, civil forfeiture requires a far less demanding burden of proof, providing the CFO with considerable flexibility in deciding to pursue the complex fraud case in civil courts. The civil litigation standard is the balance of probabilities: Crown Counsel simply needs to demonstrate that it is more likely than not that the property or assets they are attempting to have forfeited were obtained with the proceeds of crime or were used for illegal purposes.

A participant stated:

"The burden of proof is 51 %. So, you don't have to prove the burden of proof to prove that, if I was growing at a drug lab to prove that 51 % were producing drugs it's much, different than 99 % so the burden [standard] of proof is much different as well so I'm not" (Canadian participant #4).

Features of Civil Forfeiture: Challenges in Canada

Time management has been an important resource concern for the civil forfeiture in Canada investigation process. Even though this process can be initiated quite quickly, the respondents have stated that the time-consuming issues often occurred during the liquidation of the assets stage (selling of illegally obtained goods in exchange for their monetary values).

"And they say, Crown Counsel is going to be approving charges, but sometimes the Crown Counsel takes a long time to approve charges. And a lot of times, the property which can be liquidated is gone by the time Crown Counsel does decide to approve charges. Alternatively, sometimes we only get, sort of the stuff the police want us to see" (Canadian participant #6).

For the CFO, another concern has been their view that the police investigators have been, on occasion, reluctant to provide complete information to them. The typical police concern appeared to be their knowledge and experiences with the defence counsel invoking allegations of Charter of Rights violations, raising challenges in court concerning the police evidence gathering procedures. Therefore, the collaboration between the CFO and the police department is obviously seen as essential:

"I think we'll also be moving in a direction, sort of doing our own independent type things, but we'll still be interfacing with the police, of course. So, there will always be some kind of mechanism to make sure we're not overstepping jurisdictional bounds and causing problems for the police" (Canadian participant #6).

Moreover, regarding MOVC or complex fraud cases, cryptocurrency has raised fundamental challenges for the investigation and prosecution concerning the hiding and movement of financial assets in complex business & organized crime forfeiture case investigations.

“There's less cash being seized on the streets because, quite frankly, there's less cash available to be seized because it's being moved into crypto, the next iteration, you know, of whatever BC or Canada has to be to address cryptocurrency far as we can tell only exists for Russian oligarchs and gangsters but they money launder that's literally all exists for now.” (Canadian participant #6).

ROK Civil Forfeiture Likelihood

Regarding the forfeiture system in ROK, there is no ‘civil’ forfeiture as mentioned above; instead, there are several SA-regulated criminal forfeiture processes (CFP). The main and biggest difference is that the CFP occurs in criminal court as part of the criminal case trial. As mentioned, ‘property’ is the subject of CFP while the ‘person’ is the subject of criminal forfeiture. As well, therefore, the CFP involves far more flexible compulsory execution criteria than criminal forfeiture. Yet, as discussed, in the ROK there has been an ongoing controversy about whether to embrace civil forfeiture that has been going on between the two main political parties and their leaders. The main legal contentions are determining how to balance civil and criminal forfeitures, and determining whether these two procedures violate the double jeopardy principle or retroactively infringe on property rights (Oh, 2019).

Nevertheless, it is evident from the ROK interviews that there is support for broadening the scope of forfeiture procedures. During the interview with the ROK investigators and prosecutors, partly based on their perceptions of the public and victims of MOVCs desire to recover the proceeds of crime. Historically, this concern intensified notorious cases, such as the corruption case against the former dictator, ‘Chun Doo Hwan’. As a former ROK Army commander, he took total control of the ROK national political institutions in a coup in 1979 and remained in power until 1988. He was arrested in 1995 and subsequently convicted of treason, mutiny, and corruption and given the death penalty. However, Chun Doo Hwan was pardoned in 1997 but was mandated to repay the KRW 220.5 billion (USD 203 million, CAD 220 million) in bribes he received from businessmen. Because he claimed to have few assets, only a small portion was returned. The complexity of recovering assets and ongoing political controversy

associated with this case was evident, though, when the Korean National Assembly revised the SA - Act On Special Cases Concerning Confiscation On Offences Of Public Officials in 2013. This act, in part, was directed at preventing Chun Doo Hwan's remaining unlawful financial gains from going to his family, and that they were to be collected by the government. It emerged from this case that the actual forfeiture or confiscation process involved challenging obstacles such as borrowed accounts, foreign concealment, or outflows of assets or cash (J. Park, 2013). In addition, there was a cross-national component to the hiding of illegal assets.

In 2015, the U.S. Department of Justice reported that the US and ROK had received USD 28.7 million as part of a settlement filed in the U.S. District Court in Los Angeles following a joint investigation into bribes that Chun concealed. The US court identified that Chun and his family had used a web of intermediaries and dummy companies to launder corruption proceeds in ROK and the U.S. (AP, JoongAng Daily, 2015).

Arguably, this was a “trigger” case that focused the public, media, and political attention on the inherent challenges of obtaining forfeited criminal proceeds and the need to strengthen the forfeiture mechanism. Not surprisingly, the ROK participants mention these themes of broadening the forfeiture as one of the most challenging parts of MOVC or financial crime investigation:

“Concealing criminal proceeds through financial crimes is another financial crime, and I think securing criminal profits and recovering victims are the main tasks of recent years because, in my opinion, it is a preventative measure against financial crimes to stop criminals from enjoying criminal profits.” (ROK participant #1).

“Regarding financial crimes, a series of fraudulent crimes cause great damage to the common people in Korea, such as Ponzi schemes, voice phishings, and cryptocurrency schemes.

Accordingly, the National Assembly revised the Special Act On Special Cases Concerning The Confiscation And Return Of Property Acquired Through Corrupt Practices in August 2019, in order to make if a person affected by such fraud does not file a civil suit against a criminal, the government can find and return the property taken by the criminal.

However, the court's judgment is very strict, so it is rare for victims of illegal multi-level or voice phishing to use this system to recover the damaged property, so it is evaluated as ineffective.” (ROK participant #2).

A key hypothesis is that with the development of global businesses and related financial and internet-based networks, illegal proceeds easily crossed national borders. Regarding MOVC cases, especially those that are enmeshed in the complex internet-based financial market such as the cryptocurrency exchange market such as FTX, tracing financial assets has become enormously more challenging and confusing. The recent commercialization of virtual currency has obviously affected the investigatory challenges with various financial crimes including online gambling, smuggling, and drug and person trafficking. A key concern, not surprisingly, has been the resource inadequacy of the CJSs in tracking the rapidly evolving internet and financial technology systems used to engage and hide illegal assets. (Oh, 2019). This theme about the need for more effective forfeiture tools is evident in an ROK participant's response.

One ROK participant, for example, referring to this trend of expanding confiscation, states:

"In my opinion, financial crimes are evolving in various ways in an environment where financial transactions are possible regardless of time and space due to the increase in online banking operators and the spread of mobile financial systems such as Apple Pay, Samsung Pay, sort of things" (ROK participant #2).

Again, the related forfeiture theme was the legal and financial structural problems that occurred with MOVCs when the accused are based in a foreign country. To seize and confiscate the proceeds of borderless crimes, has required intricate CJS global collaboration concerning networks of information involving different legal systems and cultural values.

Several ROK participants discuss this theme:

"One of the international organizations, the Financial Action Task Force (FATF) recommended the implementation of an independent confiscation system, and measures have been submitted several times since the 18th National Assembly in ROK. We call it 'Independent Forfeiture.' The purpose of independent forfeiture is to give the court the discretion to simply issue confiscation and additional orders even if the indictment is impossible due to a criminal's death, lack of evidence, or some other reasons. It is still just an ongoing topic though." (ROK participant #3)

"As financial crimes have become internationalized, such as using foreign financial institutions or using foreign servers, the need for judicial cooperation in collecting evidence and securing the whereabouts

of criminals is increasing day by day. In particular, if important evidence is located in a foreign country, it is often ineffective because it takes a long time even if the investigative agency gives up collecting evidence or collects it. Therefore, I think it is necessary to simplify and speed up the judicial cooperation process." (ROK participant #2)

Given the above history of criminal and civil forfeiture as well as the differences in the structure of key CJS agencies in investigating MOVCS, it is not surprising that the possibility of the introduction of a civil forfeiture system in ROK elicited hesitant and conflicting comments. As expected, the main legal issues would likely be potential violations of the presumption of innocence, double jeopardy, and the infringement of property rights retrospectively.

One ROK participant expresses these concerns regarding the introduction of civil forfeiture:

"Although criminal prosecution is not possible, the usefulness of such civil confiscation may be recognized in cases where recovery is deemed necessary due to legal sentiment, but it is necessary to consider whether it is reasonable to change the conclusion of criminal and civil cases. If it is a case that is criminally difficult to prosecute, it is likely to be the substantive truth that he is not a "criminal". Theoretically, it is reluctant to recover as the "crime profit." when it is unclear that the person is not convicted yet." (ROK participant #1)

Other ROK participants though, respond with pro-civil forfeiture opinions:

"Under the current law, it is impossible to prosecute a criminal if they are dead, have unknown whereabouts or a lapse of the statute of limitations so legislation is necessary to recover criminal proceeds." (ROK participants #2)

"Currently, the return of criminal proceeds is possible after the court's conviction is confirmed. This is because confiscation and collection are penalties with additional characteristics. As a representative example, Cho Hee-pal, dubbed the "biggest con artist since its foundation," was known to have died in China after smuggling abroad, and was not prosecuted for not having the right to indict, and the return of criminal proceeds could not be made. In this context, it is necessary to consider introducing a system that can recover criminal proceeds more quickly" (ROK participants #4)

To sum up, there is evidence that public, political and CJS specialists' support in the ROK for a more effective forfeiture or confiscation legal and procedural system is growing. In particular, the Chun case demonstrated how lengthy, internationally

intertwined, and financially confusing MOVC cases, especially those involving corruption components, have become.

Chapter 7. Conclusion

I chose this two-country comparative case study and semi-structured interview research design to examine this thesis' main convergence hypothesis. This hypothesis is: despite differences in Code based law and common law as well as differences in Oriental cultural values and Occidental cultural values, increasingly similar legal and investigative procedural approaches in these two countries will be evident regarding complex fraud cases. I believe there is sufficient information in the case studies and, more importantly, the interview responses to support a tentative inference that this convergence is occurring. In addition, there is overwhelming support for Sutherland's RCT model as the appropriate explanation of MOVCs in the ROK and Canadian contexts. Most importantly, these frauds required an extensive knowledge sophistication regarding criminal code sections on business fraud and enormously complex financial transactions, including intricate use of global internet-based schemes.

I focused the exploration of this hypothesis on MOVC primarily because the MOVC construct is recent and has not been researched or examined in-depth. In addition, as a senior investigator in the Seoul Central District Prosecutors' Office in the ROK, my colleagues and I experienced the largely procedural challenges of pursuing information for MOVC's cases. As well, MOVCs have become increasingly important and controversial legal constructs. It was evident in the literature that modern Ponzi schemes, wireless frauds, and cryptocurrency scams have been similarly important and controversial in most, if not all, liberal democratic countries. However, the interviews with the Canadian participants revealed a major difference in the approaches to these crimes: prosecutors in Canada innovatively utilized civil forfeiture proceedings and its lower standard of proof to seize illegal assets instead of beginning with criminal procedures and convictions of individuals to then initiate forfeiture of their criminal proceeds. The prosecutors in the ROK employ the criminal forfeiture model for the political and historical reasons discussed above. Nonetheless, there is a possibility that aspects of the Canadian model eventually might be adopted in some manner in the ROK.

Despite this major difference regarding forfeiture in complex fraud schemes, there were considerable similarities between the Canadian and ROK participants

regarding their experiences with challenges in investigating and proceeding to the indictment stage with MOVCS and the Canadian equivalent fraud schemes. A key and obvious theme was tracking asset movements within countries. This was even more problematic for investigating cross-national financial transactions and situations where shell companies were used. Also, the introduction of the cryptocurrencies and crypto market share exchange companies, exemplified by the FTX case, added a recent layer of investigative complexity.

My professional experience with a complex MOVCS case, as discussed, influenced my interest in better understanding how other countries responded to the novel version of complex fraud crimes in the global internet context. As well, senior officials in the Prosecutors' Office also expressed policy interests in a comparative examination of the current and rapidly evolving MOVCS category. In certain interviews that focused on civil forfeiture, I was impressed by how important studying more advanced forfeiture laws and procedures in other countries, especially the United Kingdom, was for these participants. Again, like the ROK, with several significant differences (e.g., powerful elected president), the UK has an essentially unitary political system (though certain political powers have been devolved to Northern Ireland, Scottish and Welsh regional parliaments), complete with its CJS (Canadian participant #6). The ROK and UK also have highly dense and overwhelmingly metropolitan populations. Obviously, Canada's CJS experiences with innovative options in responding to MOVCS, most importantly the central role of civil forfeiture, reflected the provinces' power over this option according to the interviews. As was evident in the recent ROK, reform attempts to move towards the Canadian model of distinctly separate investigative roles for the police and prosecutors, were not implemented with the presidential and parliamentary elections. These reforms are still controversially discussed in academic and political fields. Clearly, in both Canada and the ROK, the response to MOVCS directly reflects their respective political systems and histories.

Again, the evidence supporting the convergence hypothesis rather than the divergence approach was reflected in examples of both the case reviews and the interviews, suggesting the respective countries have much in common. Quite likely, if the liberal Democratic Party were to return to power in the next national election, the convergence trend would intensify.

It is important, though, to reiterate that the study's qualitative research design only allows for exploratory or tentative insights into the MOVC.

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Appendix. Interview Questions

For Investigator/Police Official Participants

1. What are the types and most prevalent financial crimes in your department?
2. How does a Financial Integrity Team start an investigation?
3. What is the goal of a financial investigation?
4. What are the challenges regarding investigation/prosecution?
5. Regarding the MOVC:
 1. What is the procedure to investigate this type of crime?
 2. What are the challenges to investigating and tracking illegal proceeds?
6. Questions regarding Civil Forfeiture:
 1. How is Civil Forfeiture used in a police investigation?
 2. When or how is a decision made to use Civil Forfeiture instead Criminal Forfeiture?
7. In an ideal world, what law or tool would be helpful for police to investigate financial crime?

For Prosecutor/Crown Council Participants

1. What is the goal of a financial crime prosecution? (e.g., financial system protection, asset recovery, etc...).
2. What are the most prevalent financial crime types that prosecutors deal with?
3. What factors play a crucial role when deciding whether to prosecute?
 1. Regarding the “Reasonable Likelihood of Conviction,” when is a decision made as to whether the Prosecution feels it has enough to meet that threshold?
 2. Are there any statistics that your department could share regarding the conviction rates of the financial crime accused that went to trial?
4. From a prosecutorial services perspective, what are the main challenge to the prosecution of financial crimes?
5. Regarding MOVCs:
 1. What is the procedure to prosecute this type of crime?

2. What are the specific challenges in prosecuting these types of financial crimes?
6. Questions regarding Civil Forfeiture:
 1. When is a decision made to use Civil Forfeiture instead Criminal Forfeiture? Who makes that decision?
 2. What is the threshold for a case to be considered by the Civil Forfeiture Director?
 3. To date, what has been the impact of the BC Civil Forfeiture Act on Organized Crime and on Financial Crimes? Are their statistics available?
7. In an ideal world: what law or tool would be helpful for prosecutors to win financial crime cases? (Or make it easier to prosecute)

Civil Forfeiture related Participants

1. How is Civil Forfeiture used in a police investigation?
2. When or how is a decision made to use Civil Forfeiture instead Criminal Forfeiture?
3. What is the threshold for a case to be considered?
4. How long does it take for a Civil Forfeiture case to see a resolution, from the time a case is referred until assets are forfeited? Are there statistics available on that?
5. What is the most challenging part of your work?
6. There are some controversies, such as 'against the double jeopardy rule, how to defend properly without property, proportionality issues' _ how's your opinion regarding that matter?
7. To date, what has been the impact of the BC Civil Forfeiture Act on Organized Crime and on Financial Crimes? Are their statistics available?