

Korean Anti-Corruption and Compliance Best Practices Roundtable



September 14, 2017



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Legal Framework

Compliance Legal Framework: Main Four Laws

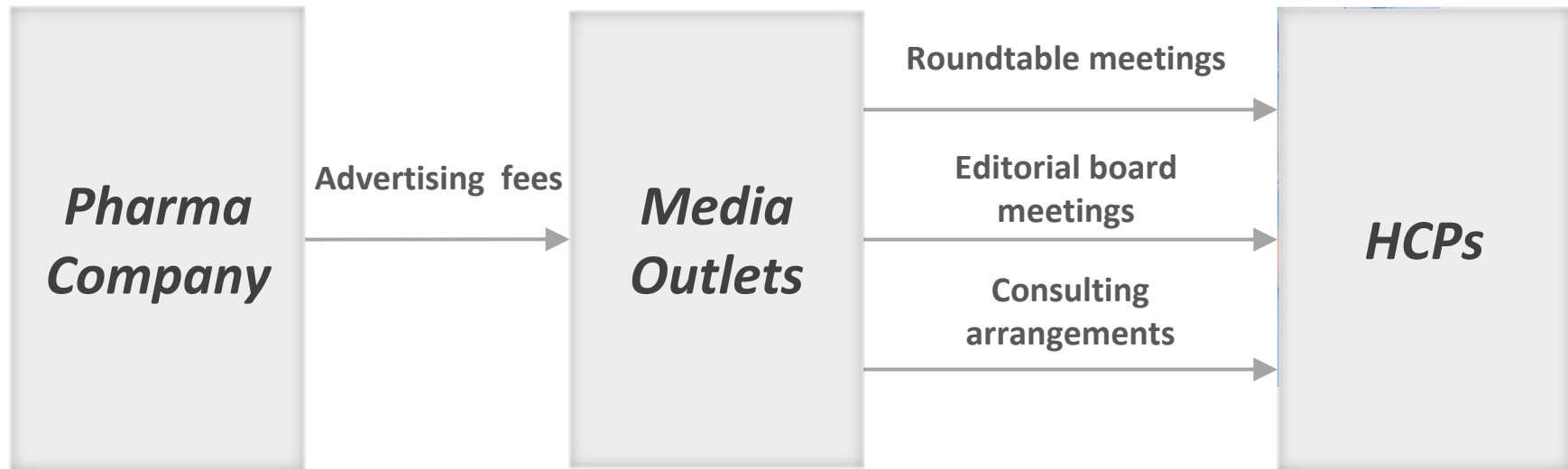
	Criminal Law	Anti-Graft Act (Effective Sep. 2016)	Pharmaceutical Affairs Law	Competition Law
Enforcing Authority?	<ul style="list-style-type: none"> Prosecutors' Office 	<ul style="list-style-type: none"> Prosecutors' Office 	<ul style="list-style-type: none"> MOHW MFDS Prosecutors' Office 	<ul style="list-style-type: none"> KFTC Prosecutors' Office
What's Prohibited?	<ul style="list-style-type: none"> Official Bribery Commercial Bribery 	<ul style="list-style-type: none"> Improper requests Benefits to Public Officials 	<ul style="list-style-type: none"> Giving & Taking Economic Benefits to Promote Sales 	<ul style="list-style-type: none"> Unfair Solicitation of Customers
Safe Harbors?	NO – But “totality of circumstances” standard of review	YES – Presidential Decree	YES - Ministerial Decree	YES - Industry Codes KRPIA/KPBMA/KMDIA
Potential Sanctions?	<ul style="list-style-type: none"> Giver and Taker Criminal Sanctions Individual Liable 	<ul style="list-style-type: none"> Giver and Taker Criminal Sanctions Individual/ Company Liable 	<ul style="list-style-type: none"> Giver and Taker Administrative & Criminal Sanctions Individual/ Company Liable 	<ul style="list-style-type: none"> Giver only Administrative (potential Criminal Referral) Company Liable



Recent Enforcement

Investigation of MNC Pharmaco Involving Media Outlets

Main Fact Pattern at Issue



Investigation of MNC Pharmaco Involving Media Outlets

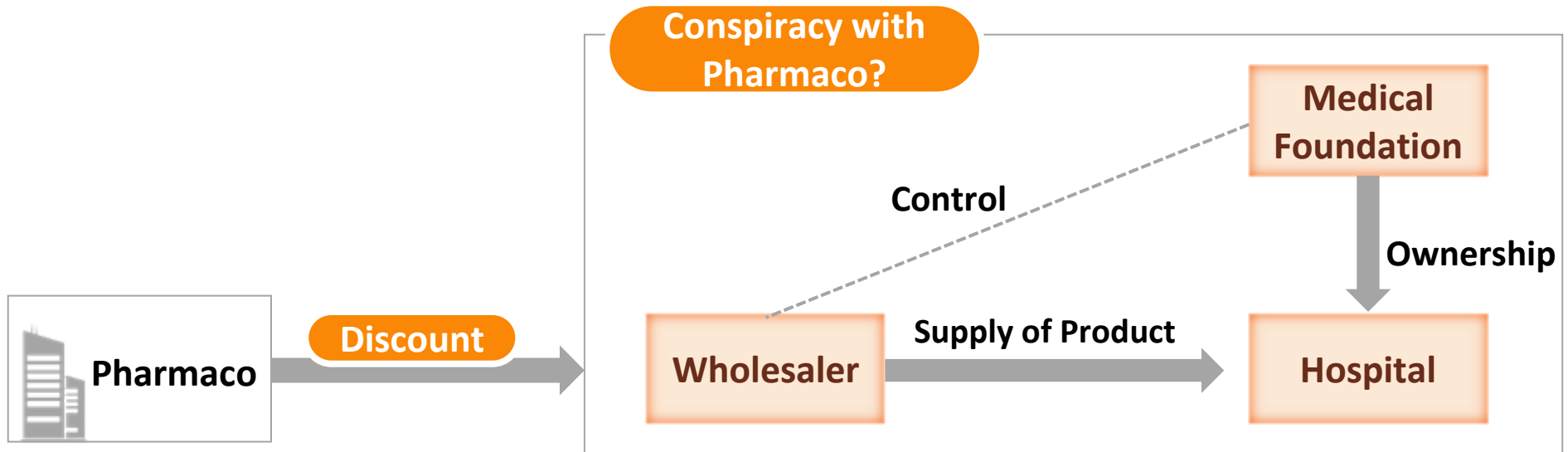
Main Fact Pattern at Issue



Regional Prosecutor's Investigation: Pusan

- Chairman of a local pharmaceutical company placed under arrest
- Charges include embezzlement (to provide improper economic benefits to HCPs) and tax evasion
- Chairman reportedly denying the charges, claiming improper economic benefits were made by sales employees acting individually or by wholesalers without authorization from the company

Regional Prosecutor's Investigation: Jeonju



Key Allegation:

Pharmco discount (margin) to Wholesaler used to create funds at Wholesaler which was funneled to chairman of Medical Foundation

Recent Enforcement: Take-aways

- Trend of aggressive enforcement continues, with greater reliance on dawn raids, seizure of electronic documents
- Authorities willing to go after individuals, particularly heads of companies
- Third party transactions under greater scrutiny



Implications for Companies

How to Make a Viable “Compliance Defense”

- Company has **joint liability** for violation of employees
- However, if company can show it exercised “**due care and supervision**” to prevent violations, it will be exempt from liability
- Korean Supreme Court has looked to the “actual actions the company undertook to prevent the illegal activity”
- What can companies do, to increase the chances of a viable defense?

Thank you

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