

Summary of Korean Regulatory Regime: Private Placement of Offshore Funds



October 2017



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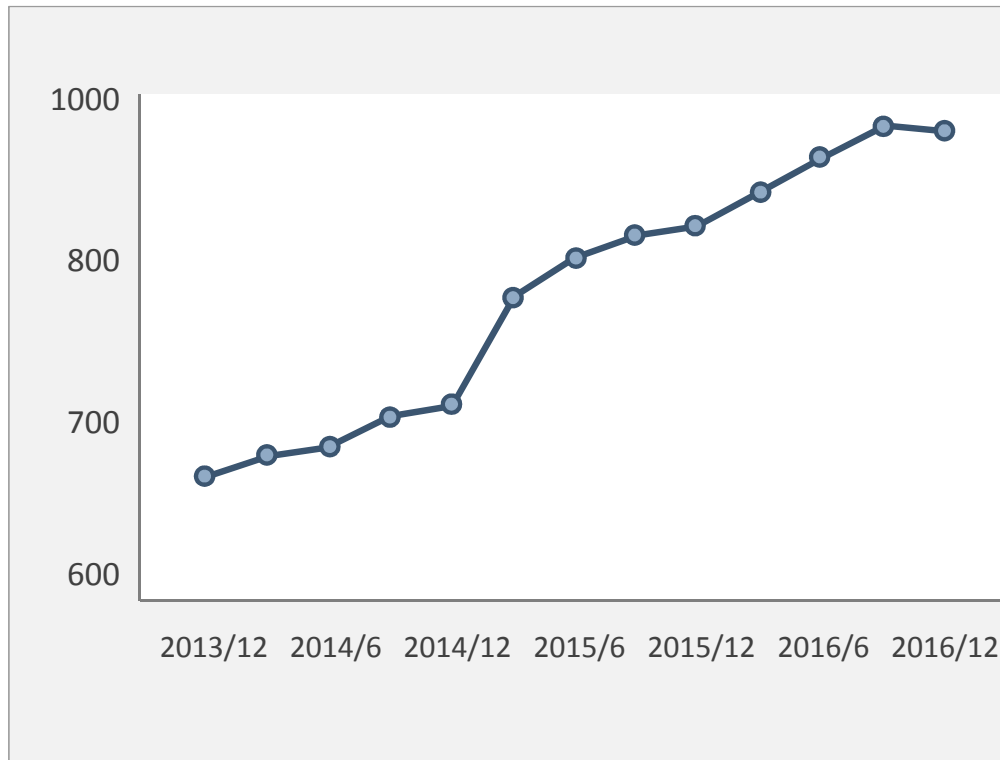
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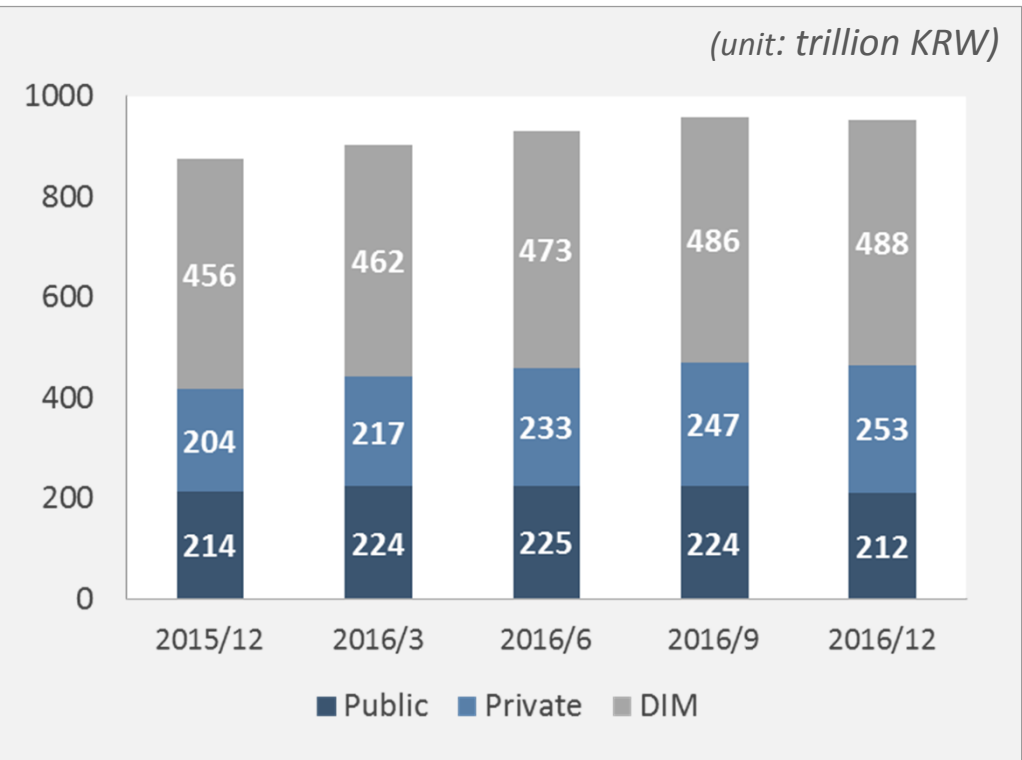
I. Market Trends

Market Trends in Korea

Size of Asset Management Market



Size of Market per Sector



- Asset management market overall has been continuously growing in the past three years
- First decrease in last three years was in Q4 2016 as public fund market experienced recession affecting total market size
- Private fund and DIM market continues growth trend

Market Trends in Korea

Public Fund Market

- Contraction of Market
- Gradual recovery in first half of 2016, but decline in Q4 2016
- Substantial capital outflow from bond funds as aftermath of increase in US interest rates
- AUM at end of Q4 2016 was KRW 212 trillion (5.3% decline from KRW 224 trillion previous quarter)

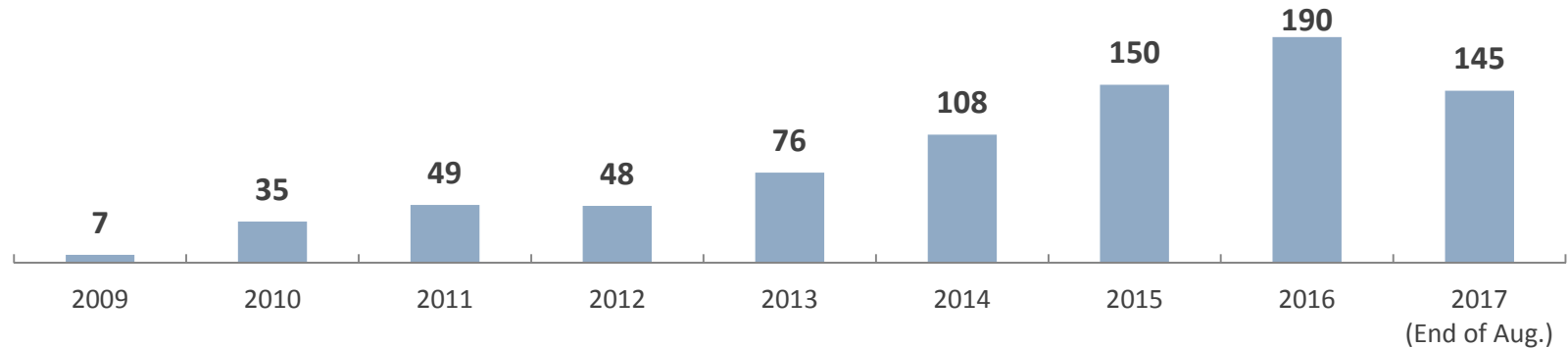
Private Fund Market

- Interest in bond funds decreased while AI funds (real estate and infra) reached a record high (KRW 92.7 trillion)
- Net inflow of KRW 2.8 trillion
- AUM at end of Q4 2016 was KRW 253 trillion (increased 2.6% from previous quarter)

Market Trends in Korea

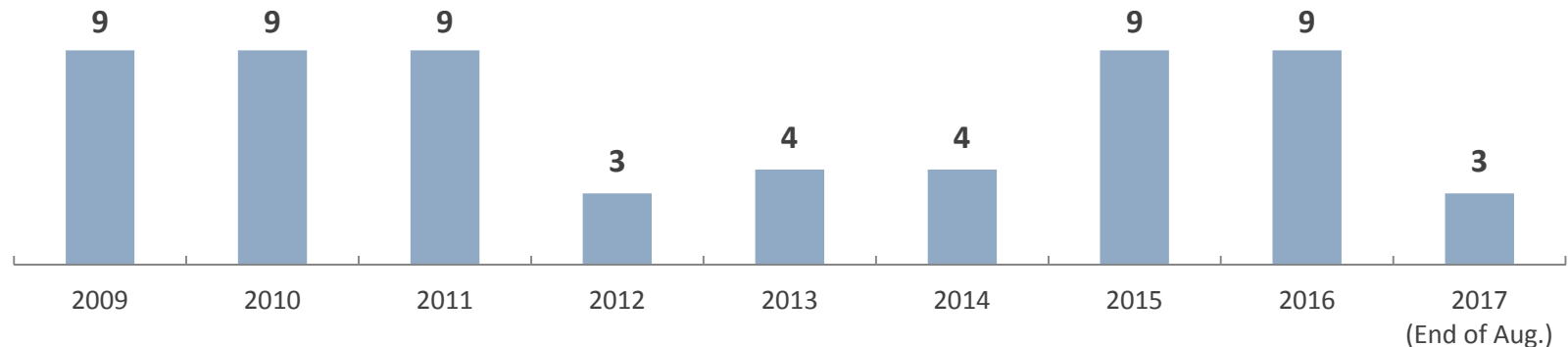
*Registration of Offshore
Funds for Private
Offering
(Since 2009)*

Total : 808



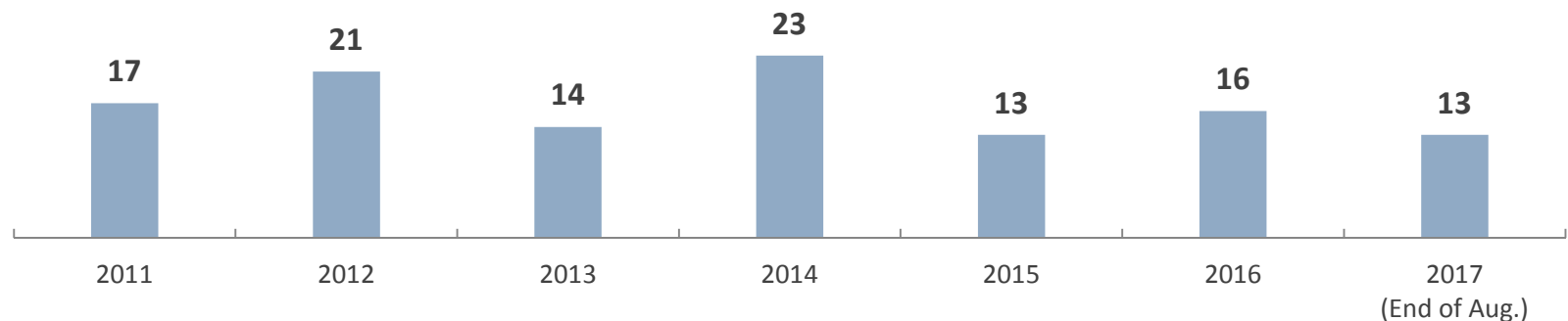
*Registration of Offshore
Funds for Public Offering
(Since 2009)*

Total : 59



*Cross-border
Discretionary
Investment
Management License
(Since 2011)*

Total : 117





II. Sale of Offshore Funds

Direct Private Placement

Korean Feeder Fund Structure

Direct Offering – Registration Requirement

Fund Registration Requirement



- All offshore funds marketed to Korean residents must be registered with the Financial Services Commission
- If limited to only “Qualified Professional Investors”, simplified private placement registration

Direct Offering – Registration Requirement

Who is a “Qualified Professional Investor”



- Government, Bank of Korea, Korea Investment Corporation
- Financial institutions
- Certain statutory pension funds and other statutory entities (e.g., NPS, Korea Post, KDIC, KAMCO)
- Listed companies and certain general corporate and HNWI (since May 2017)

Direct Private Placement – Registration Requirement

Eligibility Requirements



- Disclosure of Fees and Expenses
- No Sanctions on the Manager by the Korean Regulators
- No Suspension of Business by Asset Manager, Trustee/Custodian, Distributor, Administrator
- Lawful Establishment of the Fund
- Policy matter: Evidence of investment track record

Direct Offering – Registration Requirement

Documentation



- Fund Registration Application
- Supporting documents

Timing



- About 4 weeks after filing
- To be completed prior to execution of subscription agreement
 - Marketing may commence prior to registration

Local Distributor Requirement

Marketing of offshore funds to Korean residents must be done through a locally licensed distributor



Direct Offering – Local Distributor Requirement

Role & Obligations

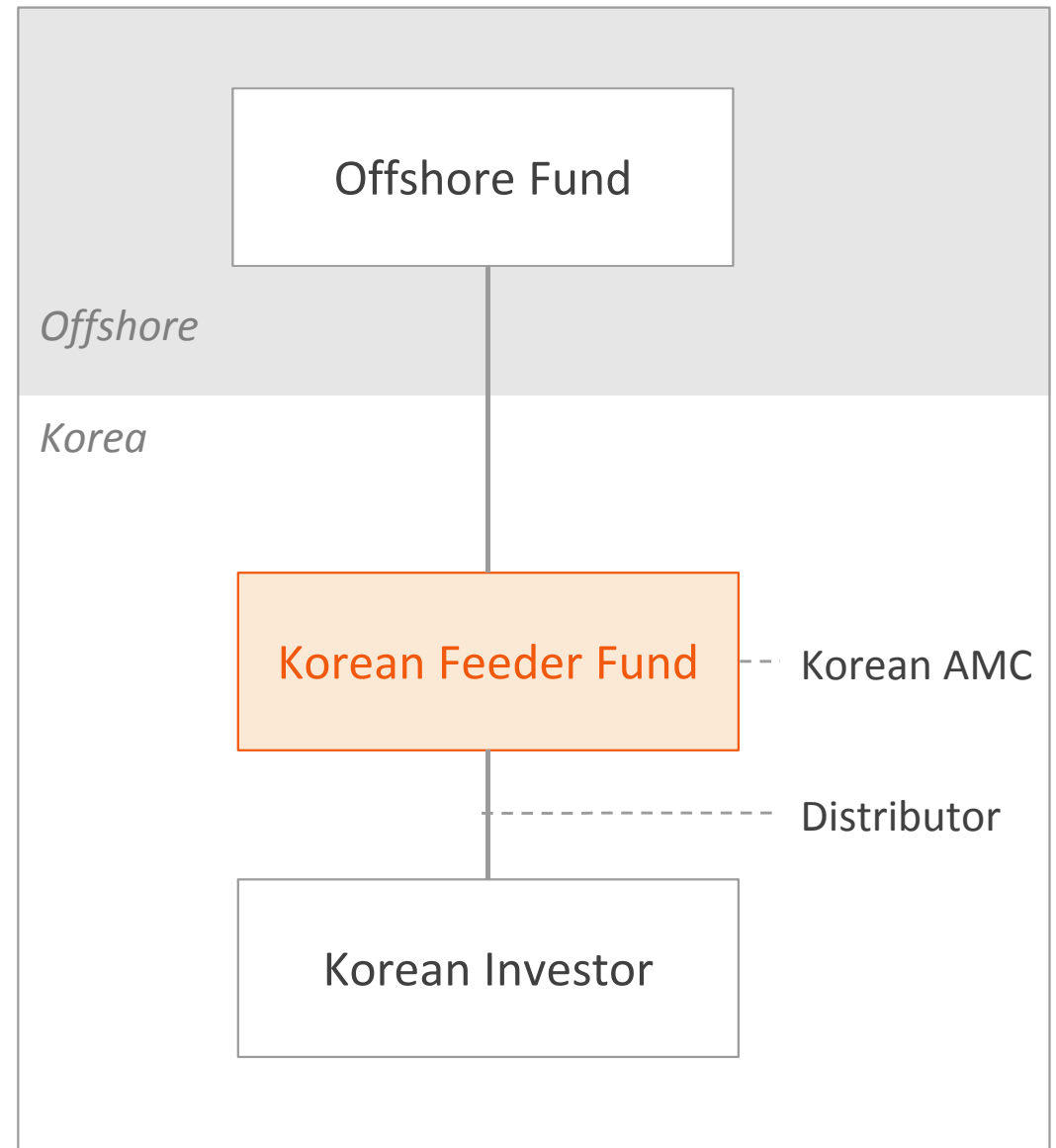
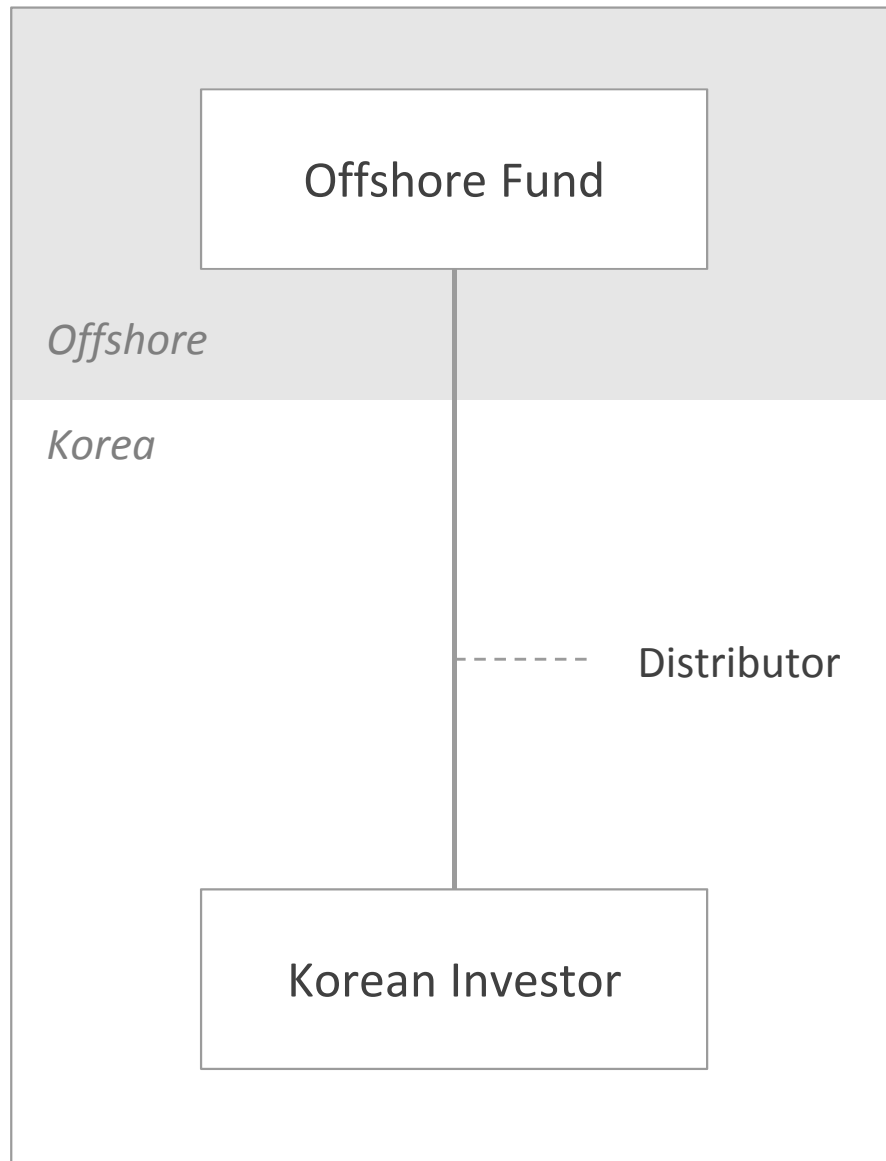


- Formal marketing, provision of fund documents
- NAV disclosure, Asset Management Reports
- Books and Records
- KOFIA sales reporting

Direct Private Placement

Korean Feeder Fund Structure

Direct Private Placement vs. Korean Feeder Fund Structures



Korean Feeder Fund Structures

Increasing Demand & Potential Issues

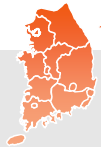
- Language barriers & time zone differences
- Reporting obligations
- FX reporting
- No hedging required by investor
- No direct nexus between offshore fund and end investor

Korean Feeder Fund Structures

Procedures



Offshore Fund
Registration



Establishment of
Korean fund



No requirement to
appoint Local
Distributor

Sub-Management / Advisory Models

“Delegation” Model

- Korean fund manager delegates management function of Korean fund to Offshore Manager (Sub-management model)
- Offshore manager provides investment advice to Korean fund manager (Advisory model)

Considerations

- Co-branding helpful when first entering the market
- No need to register offshore fund
- Management restrictions applicable to Korean fund shall apply

Closer Look at Marketing Activities

Target Investors

Q Are they Qualified Professional Investors (“QPIs”)?

YES



No

No contact allowed

Pre-Marketing vis-à-vis QPIs

Q What types of activities are allowed?

A Offshore fund manager may:

- Meet potential Korean investors (i.e., QPIs) on a low profile basis
- Engage in high-level discussions about the funds, fund manager, etc.
- Not distribute PPM and subscription documents (i.e., legal documents)
- As this is NOT an express legal exemption, 'pre-marketing' should be done on a low profile/limited basis.

If QPI shows initial interest in particular offshore fund



Full Marketing vis-à-vis QPIs

Q Can offshore fund manager engage in marketing in Korea?

A No, marketing (offer and sale) must be done through a locally licensed distributor

Exception: If the Korean investor is a Korean feeder fund, no requirement to appoint the local distributor.

Q Can offshore fund manager directly contact potential Korean QPIs once a local distributor is appointed?

A Local distributor should attend and lead marketing discussions



III. Cross-border DIM/IA

Cross-border DIM/IA Services

DIM

Companies wishing to manage ***segregated accounts*** for Qualified Professional Investors in Korea on a cross-border basis must register as a cross-border discretionary investment manager with the Financial Services Commission

IA

Companies wishing to provide non-discretionary ***investment advice*** to Qualified Professional Investors or Retail Investors in Korea on a cross-border basis must register as a cross-border investment adviser with the Financial Services Commission

Cross-border DIM/IA Services

Exceptions

- Management of assets for certain governmental and quasi-governmental institutions and statutory pension funds, such as BOK, KIC, NPS, *provided* no solicitation or marketing
- Management delegation by local AMC or DIM company

Cross-border DIM/IA Services

Delegation of Business function



- Investment Management Function
- Marketing/Client Servicing

Requirements



- No license in Korea required; Licensed in home country
- Business delegation report and supporting documents



IV. Other Compliance Matters

New Anti-Graft Law

Sept. 28, 2016

Effective date of the Anti-Graft Law



Expansive definition of “public officials”



Relevance to duty or reciprocity not necessary



Prohibition on improper requests



Corporate liability

Prohibition on Provision/Receipt of Benefits

Issue	Key Points
<p>Benefits to Public Officials <i>(Liability for Giver and Recipient)</i></p>	<ul style="list-style-type: none">• Criminal sanctions for one-time benefit exceeding KRW 1 million or aggregate benefits totaling KRW 3 million in one fiscal year, regardless of connection to recipient's official duties<ul style="list-style-type: none">• Up to three years' imprisonment and/or up to KRW 30 million criminal fine; forfeiture of benefit received• Administrative fines for benefits up to KRW 1 million provided in connection to recipient's official duties<ul style="list-style-type: none">• Two to five times the amount of conferred benefit
<p>▶ Several exceptions enumerated in the Anti-Graft Act</p>	

Exceptions Regarding Benefits to Public Officials

Main Exceptions

- Honoraria for external lectures (limits set forth in presidential decree)
- Meals and gifts (limits set forth in presidential decree), provided for the purpose of facilitation in the performance of one's duties
- Financial or other advantages that are offered from a legitimate source of right due to a private transaction
- Souvenirs or promotional items distributed to mass recipients, or rewards or gifts distributed through contests or raffles/lotteries
- Benefits such as transportation, accommodation, and food provided by a host of an 'official event' relating to the official duties of the public official, where such benefits are within a customary scope and are provided uniformly to all participants

Corporate Liability

If a corporation's employee violates the Anti-Graft Law in relation to the corporation's work, **a fine or penalty will be imposed on the corporation.**



However, a corporation will be exempt from liability if it exercised significant care and supervision to prevent its employees' violations

- ▶ Highlights the importance of **compliance policies and systems**

Thank you

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