Expansion of "Rule of Law" in the Market

- Korean Experience after the Late 1990s' Economic Crisis

GOVERNMENT POLICIES AND CORPORATE STRATEGIES UNDER STRUCTURAL CHANGES AND ECONOMIC DYNAMISM

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Contents

Prologue : The Economic Crisis

- Downfall of big corporations
- Bankruptcy of banks
- Bailout package for the Government
- Awareness of system failure
- Pressure for reform

Rule of Law in Traditional Sense

- Rule of Law in form
- Rule of Law in substance
- Generally accepted ideal, but not fixed
- Core components
  - Constitutionalism
  - Law governs the government
  - Independent judiciary
- Western society based
- Understood in political context

Rule of Law in the Korean Context

- Social norm in traditional society
- Political experience
- Economic policy and business activities

Social Norm in Traditional Society

- Confucian Political Philosophy
  - Virtue of a ruler more important than law
  - Law applied to subject, not to ruler
- Agricultural Society
  - Enclosed in nature
  - Custom more important than law
  - Idea of “Person who can live without law”

Political Experience

- Japanese Colonial Period
  - Introduction of foreign law
  - Rules made without participation of people
  - Tool of exploitation
- Military Dictatorship
  - Law in form versus law in substance
  - Arbitrary application of law
  - Tool of dictatorship

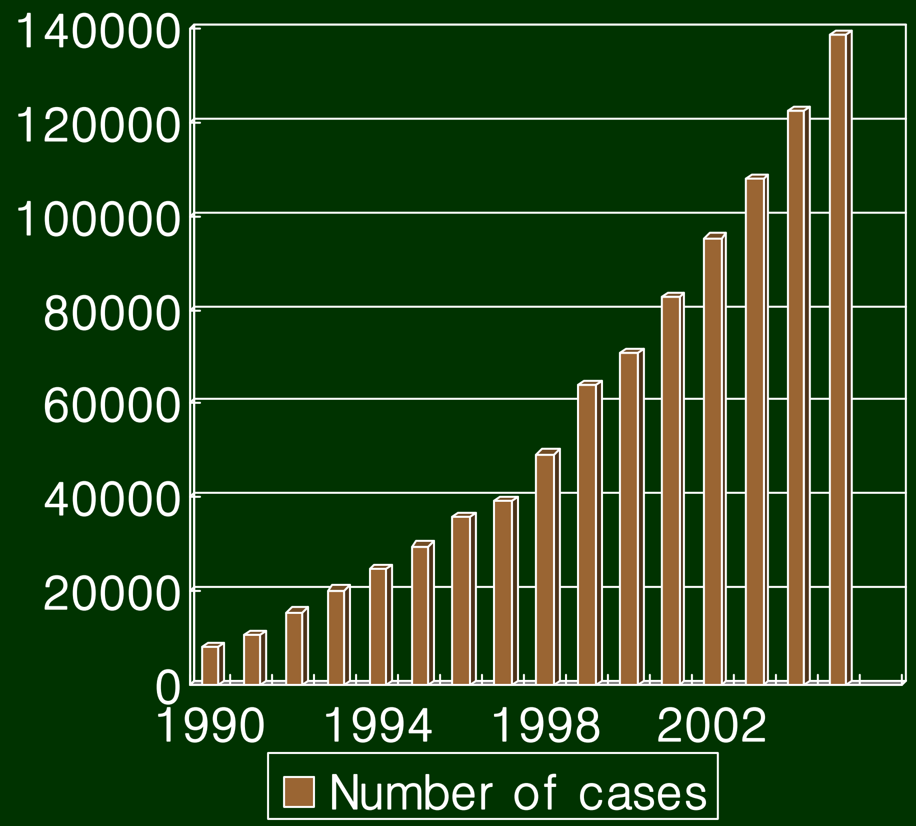
Economic Policy and Business

- Areas where rule of law did not apply
- Strong administrative power
- Government-led banking
- Judicial passivism

Circumstances for Rule of Law in Market

- Democratization of politics
- Constitutional court
- Bankruptcy of banks and Government failure
- Awareness of efficiency in the long term
- Theoretical support

Constitutional Concern



Four Pillars of Rule of Law in Market

- Law enforcement without delay and exception
- Timely rule-making
- Restriction on power of majority
- Protection of minority

Law Enforcement

	Homicide	Larceny & Robbery	Embezzlement & Breach of Trust
1991	762	22,937	3,363
1993	656	18,370	3,577
1995	514	15,953	2,786
1997	670	16.290	3,504
1999	858	18,537	5,197
2001	930	15,710	4,145
2003	823	13,971	4,359
2005	779	13,608	5,556

Intervals between Amendments

	Before Crisis (months)	After Crisis (months)
Commercial Code	61.7	24
Securities Exchange Act	28.8	6
Competition Law	21.6	6
Corporate Reorganization Act	86.4	13.7

Facilitating Exit Mechanisms

- Insolvency law
  - Economic test
  - Maximum duration of time
  - Debtor-in-possession
- Corporate law
  - Split
  - Comprehensive transfer/exchange of stock
- Competition law
  - Ban on cross guarantee
  - Holding company

Improving Corporate Governance

- Outside directors
- Audit committee
- Fiduciary duty
- Liability of de facto directors
- Disclosure

Protection of Minority Shareholders

- Enlargement of minority shareholders' rights
  - Proposal of an agenda
  - Cumulative voting
- Less requirements for standing in derivative suits
- Appraisal rights in transfer of stocks, merge and sales of business

Conclusion : Goals and Tasks

- **Goals : Enforcing Four Pillars**
  - **Law enforcement without delay and exception**
  - **Timely rule-making**
  - **Restriction on power of majority**
  - **Protection of minority**
- **Tasks**
  - **Establishing a sound learning curve**
  - **Strict punishment against illegal business practice in the market**
  - **More judicial review on economic policy implementation**

Thank You