

Regulatory Oversight and Incentive Mechanism in Korea

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Introduction: Policy Context

- Having shifted its policy focus from economic democratization to economic vitalization, the Park Geun-hye government launched a regulatory reform agenda in March 2014.
 - “What”: regulations to be improved or removed to promote employment and investment, especially in services (e.g., health, education, tourism, finance, software, culture, and logistics)
 - “How”: institutional improvement to facilitate regulatory reform
 - (1) regulatory stock-flow management: cost-in, cost-out;
 - (2) regulatory reform principles: review of all economic regulations from zero base, shift from a positive- to negative-list system, expansion of sunset provisions, and shift from ex ante to ex post regulatory approach;
 - (3) regulatory information disclosure: expansion of the regulatory information portal (better.go.kr), and establishment of on- and off-line communication channels such as the regulatory reform petition drum to facilitate crowd sourcing and open policymaking.
- However, the Sewol Ferry tragedy in April 2014, highlighted the problem of regulatory governance in Korea, including corruption and incompetence, underscoring the need for better regulation, not one-sided deregulation, especially in regard to health and safety.

Korea's Political System

- Korea has a presidential system with enhanced powers for the President.
 - The President does not have a running-mate VP, but appoints Prime Minister (PM) subject to approval by a unicameral National Assembly (NA).
 - NA does not have power to exercise a vote of no confidence in the Cabinet and instead has non-binding power to recommend the dismissal of PM or Ministers.
 - NA members can concurrently serve as PM or Ministers.
 - The Executive as well as NA members may introduce bills, although legislative power is vested in the NA.
 - The State Council is a deliberative body rather than a decision-making body.
 - Impeachment of the President requires a two-third majority each of the NA and the Constitutional Court.
 - The President no longer has power to dismiss the NA (since the 1987 constitutional amendment).
- Any discussion on reforming Korea's regulatory governance and incentive mechanism should take into account Korea's political system.
 - Korea should not import without adaptation regulatory reform measures based on the UK parliamentary system or US presidential system.

Constitutional Provisions

- Art. 40. The legislative power shall be vested in the National Assembly.
- Art. 52. Bills may be introduced by members of the National Assembly or by the Executive.
- Art. 75. The President may issue presidential decrees concerning matters delegated to him by Act with the scope specifically defined and also matters necessary to enforce Acts.
- Art. 95. The Prime Minister or the head of each Executive Ministry may, under the powers delegated by Act or Presidential Decree, or ex officio, issue ordinances of the Prime Minister or the Executive Ministry concerning matters that are within their jurisdiction.

Ordered Bifurcation of Regulations: Legislative Acts and then Executive (Administrative) Decrees within the scope defined by Legislative Acts

Implications for Regulatory Governance: Ordered Bifurcation?

-Ideally, set up Legislative Impact Assessment (LIA) and (Administrative) Regulatory Impact Assessment (RIA), with LIA having priority over RIA.

-So far, only RIA on administrative regulations is conducted.

- National Assembly Act Art. 98-2 (Introduction of Presidential Decrees, etc.) (3) ...where deemed that the relevant Presidential Decrees, etc. are not in accord with the purport and content of the Acts..., the head of the central administrative agency shall notify without delay the competent Standing Committee of the plans for disposal of notified details and the results thereof.
- In June 2015, President Park Geun-hye vetoed a bill that sought to amend this provision to enhance executive compliance with a legislative request for revision in accord with the Acts, and the NA did not override the veto.

-What if Executive Decrees go beyond the scope defined by Legislative Acts?

-What if Executive Decrees consistent with Legislative Acts do not receive a green light in the RIA process and, implicitly, questions are raised about the appropriateness of Legislative Acts themselves?

-What if the asymmetrical institutional arrangements for regulatory reform create distortions and the “under-regulated” legislative channel is used to bypass IA scrutiny?

Legislative Process

Executive Legislation

1. Drafting of the Bill
2. Corruption Impact Assessment
3. Consultation with Relevant Ministries / Agencies
4. Consultation with the Ruling Party
5. Pre-Announcement of Legislation
6. Regulatory Review
7. Ministry of Government Legislation Review
8. State Council Deliberation
9. Executive Approval
10. Submission of the bill to the National Assembly
11. National Assembly Deliberation and Vote
12. Transfer of the Passed Bill to the Executive
13. Promulgation or Executive Veto / National Assembly Override

National Assembly
Legislation does not
require Steps 2 through 9.

Presidential Decrees do
not require Steps 10
through 12.

PM or Ministerial
Decrees do not require
Steps 8 through 12.

Regulatory Governance: Institutional Arrangements

- For regulatory governance pertaining to administrative regulations, as defined in the 1998 Framework Act on Administrative Regulations (FAAR), Korea has featured essentially three key players since 1998, in addition to line ministries and local governments:
 - Regulatory Reform Committee (RRC), a non-standing committee co-chaired by the Prime Minister and a non-government official that has the authority to review and clear every new administrative regulation proposal, prepare comprehensive plans to streamline existing regulations, and evaluate the performance of ministries and agencies in improving regulation
 - Department of Regulatory Coordination within the Prime Minister's Office
 - Private-Public Joint Group on Regulatory Improvement, led by the Korea Chamber of Commerce and the Prime Minister's Office, which holds regular consultations with businesses by sector and region to identify regulatory problems and recommend solutions.
- However, there is no clear regulatory governance structure that covers both the Legislature and the Executive.
 - There are competing amendments on the status of RRC.

Regulatory Reform Committee: Major Issues and Options



- Status: private-public deliberative committee whose members are all commissioned by the President (not merely an advisory committee)
 - Improve the representativeness and accountability of committee members through diversified nominations and stronger conflict-of-interest and public disclosure provisions if it is to remain a deliberative body?
- Scope of Work: all administrative regulations except for affairs executed by constitutional bodies (NA, Courts, Election Commission, and Board of Audit and Inspection) or matters relevant to criminal, intelligence, military, and tax measures
 - Carve out regulatory matters under the jurisdiction of independent regulatory commissions as well?
- Authority: RRC examination required and RRC recommendation to be complied with (unless any special grounds exist to the contrary)
 - Attach the RRC's opinion to the draft regulation for deliberation by the State Council if differences between the RRC and Ministry/Agency, so that the State Council can see for itself each side's position?

Regulatory Impact Assessment

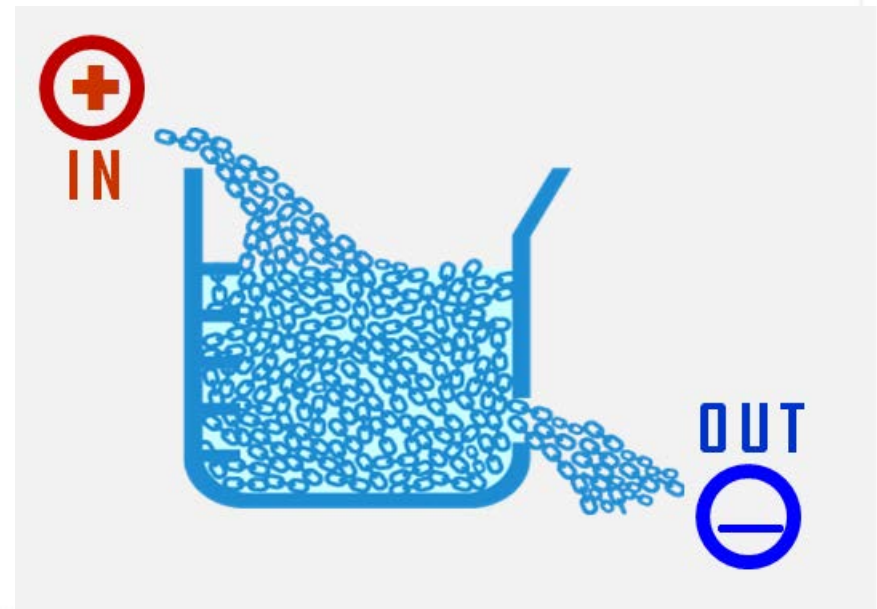
- In 1998, the Framework Act on Administrative Regulations introduced regulatory impact assessment and registration system in Korea.
 - For any new or strengthened administrative regulatory measure, the supervisory Ministry/Agency must prepare a RIA, publicly disclose it, and submit it to the Regulatory Reform Committee for confirmation.
 - A RIA is supposed to include: rationale for regulation, review of options, cost-benefit analysis, and assessment of proportionality and effectiveness.
- Ministries/Agencies have complained about the lack of time and resources to do proper RIAs, and have not placed priority on impact assessment as an integral part of policymaking.
 - These two problems reinforce each other.
- RIAs have suffered from serious quality deficiencies as a result.
 - According to NABO (2008), out of 328 RIAs for important regulations in 2007, 32.7% had a weak rationale for regulation, 90.2% failed to consider multiple options, and 84.2 and 82.0% had poor cost and benefit calculations, respectively.
 - According to NABO (2011), 82.0% and 79.8% of reviewed RIAs had poor cost and benefit calculations based on, for instance, unjustified assumptions.

Regulatory Budget

- In 2004, the Roh Moo-hyun government introduced a cap on the number of regulations to manage regulatory burden, but flaws in the mechanism design and the lack of buy-in from government officials derailed the experiment in less than two years.
 - Because the cap was based on the number of regulations, not cost-benefit, it was easy for Ministries/Agencies to meet the cap by offsetting a new significant regulation with an existing minor regulation.
 - Because the cap on the number of regulations lacked a legal basis and political consensus/will, Ministries/Agencies did not cooperate.
- In 2014, the Park Geun-hye government announced a plan to introduce a cap on regulatory cost (“cost-in, cost-out”), in two stages.
 - Benchmarking the UK case (to a lesser extent, Australia’s offset), the cap on regulatory cost is based on direct incremental net cost to business (the regulated).
 - A pilot phase (8 Ministries/Agencies) in the second half of 2014 is to be followed by a full implementation phase (41) in 2015, pending legislative amendment.
 - KDI and KIPA respectively review draft RIAs submitted by economic and non-economic Ministries/Agencies and validate equivalent annual net cost to business (EANCB), to be confirmed by the Regulatory Reform Committee.
 - To sum up, cost-in, cost-out is being introduced even though Ministerial capacity and buy-in to produce quality RIAs have yet to be secured.
 - Can CICO serve as a catalyst for evidence-based regulatory reform in Korea?

Cost-In, Cost-Out: Catalyst for Better Regulation?

- Cost-In, Cost-Out (CICO) is a rule that any new regulatory or deregulatory measure that is expected to result in a direct incremental net cost to business (or, more broadly, those affected by regulation) must be offset by compensatory measures providing savings at least equal to that amount.
- It is a variant of “regulatory budget,” which dynamically manages the stock and flow of regulations; whereas, regulatory impact assessment (RIA) takes a snapshot of the appropriateness (cost-benefit) of individual regulations.



Mechanism Design: Exemptions

Regulations pertaining to the following are exempted from Cost-In, Cost-Out:

- Emergency situations requiring urgent response
- International treaties and obligations (without gold-plating) [plus “global norms”?]
- Directly related to maintaining law & order and protecting people’s lives & safety
- Preventing financial crisis and environmental crisis, with a very large social benefit
- Automatic sunset provision within a year
- Adjustments in line with wage or price increases to maintain the existing level of regulation
- Fees and charges
- Fines and penalties
- Others approved by the Regulatory Reform Committee

By comparison, the UK does not exempt regulations with a large social benefit, but it seems to have the following “safety valves,” which reduce the need to have exemptions from One-In, One-Out (OIOO) / One-In, Two-Out (OITO):

- A large stock of existing regulations with room for improvement (e.g., sheep identification– electronic slaughter tag vs. prior non-electronic tag in the UK and pork traceability program vs. nothing prior in Korea)
- EU Regulations, Decisions, and Directives (without gold-plating)
- Political decisions (e.g., Home Office’s new immigration regulation despite its chronic problem on the OIOO/OITO account)

Tasks Ahead

- Establish regulatory governance structure that covers both the Legislature and Executive.
 - Change laws (e.g., NA Act) and institutions (e.g., RRC) so that they will become consistent with the spirit of the Constitution.
 - Introduce LIA and coordinate with RIA.
- Firmly establish Better Regulation principles and build the capacity of the Ministries/Agencies accordingly.
 - Promote a cultural change / paradigm shift that incorporates RIA as an integral part of policymaking (e.g., resale price maintenance for books).
 - At each Ministry, appoint a Chief Economist and expand the Regulatory Reform Legal Affairs Unit/Office to include at least a few Economists. Cooperate with public research institutes, but avoid a false dichotomy between policymaking and cost-benefit analysis.
- Take a stock of existing regulations and coordinate regulatory offsets within the Ministry and across Ministries by using an appropriate incentive scheme their cost and benefit.
 - Prioritize existing regulations based on their EANCB as well as overall impact, to identify regulatory offsets in advance.
 - Give credit to those who come up with ideas for regulatory offsets as well as those responsible for implementation.

Tasks Ahead

- Change the regulatory registration system to ensure consistency with cost-in, cost-out.
 - Use the regulatory registration system as a statutory bookkeeping tool, rather than as a basic metric for regulatory burden. (Note: A registered regulation roughly corresponds to an article of a law.)
 - Use a coherent set of related regulations as the object of analysis for RIA and CICO. (For example, the pork traceability program includes 11 separate registered regulations.)
- Systemize crowd sourcing and private-public consultation to enhance the quality of collected information and facilitate the discovery of regulatory measures for removal or improvement.
 - Select a regulatory topic, summarize key existing regulations, and solicit comments and ideas for regulatory reform through on- and off-line channels (cf. Red Tape Challenge vs. Your Freedom).
 - Publicize successful regulatory reform cases to secure public support and interest.