www.klri.re.kr

Korea Legislation Research Institute

# 2015 Annual Report

## Vol.2 Annual Research Projects Ⅰ

www.klri.re.kr

Korea Legislation Research Institute

# 2015 Annual Report

## Vol.2 Annual Research Projects Ⅰ

# Preface to the Publication

The Korea Legislation Research Institute has been presenting legislative alternatives to outstanding national policy issues and has been supporting the legislation of government policies as the one and only government-funded research institute specializing in legislation for the last 25 years since its establishment in 1990. In the last year, the Korea Legislation Research Institute has also published legislative research reports in various fields, such as public administration, economy, welfare, and global issues.

The five administrative goals of the Government in order to become a highly developed country, namely "a creative economy focusing on job creation," "tailored employment and welfare," "creativity-oriented education and cultural enrichment," "a safe and united society" and "establishment of infrastructure for a happy unification era", can be achieved through strategies and tasks that support such goals. The Korea Legislation Research Institute provides legislative support so that the five administrative goals of the Government may be realized effectively.

Especially in 2015, the Korea Legislation Research Institute established "legislative research for the establishment of law and order and the realization of a safe society," "legislative support for the realization of sustainable peace," and "legislative support for the creation of infrastructure for a healthy information and communications ecosystem" as its business goals and conducted a large number of research projects related thereto.

The Korea Legislation Research Institute has published the "Korea Legislation Research Institute (KLRI) Annual Report 2015" in order to contribute to the improvement and revision of related legislation by widely informing and disseminating the results of professional and specialized research in the field of legislation it conducts and for utilizing the results thereof.

In this Annual report, the Korea Legislation Research Institute introduces the main content of research projects and the results of large-scale projects conducted in 2015, and information about its plans for research projects in 2016.

We hope this "KLRI Annual Report 2015" will be useful and helpful to, not only legal experts, but also a large number of people interested in legislative research, and all researchers, executives, and employees of the Korea Legislation Research Institute will endeavor to produce the results of professional research which form the basis of legislative policy. We would appreciate your unreserved support and much attention.

Korea Legislation Research Institute

# 2015 Annual Report

## contents

02 Preface to the Publication

06 Mission

09 Research Scope

15 Annual Research Projects
- Regional Law Research Projects
- Support for Legal Exchanges

## Mission

As Korea's only government-funded research institute specialized in legislation, KLRI has been established to support the formulation of national legislative policies and to improve legal culture.
We create a better future through outstanding research outcomes.

## Purpose of Establishment

KLRI provides assistance in the formulation of national legislative policies, promotes dissemination of timely and accurate legislative information, and supports general legislative activities by systematically collecting and managing legislative information and by offering a wealth of expertise in investigating and researching legal systems.

## Primary Functions

· Research on foreign and domestic laws and legislative policies

· Systematic collection, management and dissemination of foreign and domestic legislative information and provision of such information via web service

· Publication and supply of explanatory materials that discuss the legislative purposes and backgrounds of individual legislations

· Research on legislation skills, legal terminology, Korea's old legal codes before the introduction of current legal systems, and study on the history of the country's legal systems

· Legal research with overseas or domestic institutions on legal systems and legislative policies, and invitation of legal experts at home and abroad for research

· Entrustment of research projects to other domestic research institutions or individuals as well as performance of research projects entrusted by the Government or private organizations

· Other projects necessary to attain the purposes of KLRI

# Research Scope

## Basic Research Projects

These projects contribute to establishing legislative policies of the Government by analyzing and researching diverse demands for legislative research in the fields of legislation on administration, society, culture, and economy, and introducing schemes to reform legal systems that require supplementation.

### Tasks

- Basic research tasks: Conducing legislative research in fields requiring reform and amendment for the mid- to long-term.
- Occasional research tasks: Identifying and researching timely issues to incorporate more research outcomes into policies

## Regional Law Research Projects

The purpose of these projects is to contribute to the Government's legislative support. To that end, we conduct comparative research into foreign policies and legal systems in conformity with the Government's directions for setting policies and improving legislation and provide the Government with our research outcomes. We also collect and offer information on legal systems and the latest legislative information of various regions, and present detailed research findings in connection with foreign laws.

### Tasks

- Comparative studies on the laws of foreign countries in accordance with the Government's directions for policy making
- Publishing reports after analyzing foreign legislative information currently at issue
- Publishing the latest information on foreign legislation and KLRI Journal of Law and Legislation
- Publishing commentaries on foreign statutes

## Support for Legal Exchanges

With the elevation of Korea's international status, the country's legislations are attracting a rapidly increasing attention from the global community. Its economic and democratic development is recognized as an exemplary model by newly emerging economies, especially in terms of legislative systems.
These projects intend to diversify the contents of programs for supporting legal exchanges, by operating the Asia Legal Information Network and Legal Exchanges Collaboration Forums, under the initiative of KLRI, and by expanding networks with other countries, and to develop infrastructure for assisting economies in transition and developing countries in adopting the Korean legislative model.

### Tasks

- Assisting in sharing Korea's experience in the development of legal systems with economies in transition and developing countries
- Surveying demand for legislation in economies in transition and developing countries and consulting on legislation
- Increase the number of ALIN member institutes and perform joint research projects

## Research Projects on Global Legislative Strategies

These projects aim at providing support for the nation to formulate legislative policies by actively participating in international effort to solve problems of legal systems, which are identified during discussions on global issues, and by conducting in-depth study on legislative issues such as national and international collaborative plans to address them.

### Tasks

- Formulating fruitful legislative strategies to address global issues
- Conducting collaborative studies with international research institutes and holding international conferences
- Doing research on strategies for future legislation on FTAs
- Publishing commentaries on foreign statutes

## Research Projects for Legislation on Climate Change

The purpose of these research projects is to assist the Government in successfully developing a sound environment for: (i) fulfilling Korea's international commitment to cut greenhouse gas emissions by 30 percent from business-as-usual (BAU) levels by 2020; (ii) playing a leading role in resolving global environmental issues; and (iii) enhancing Korea's role as a donor to international climate funds through the East Asia Climate Partnership, based on climate change policies and a sustainable development. To that end, we suggest legislative directions to address climate changes and draw up measures to improve relevant legislation.

### Tasks

- Identifying and performing high priority tasks on legislation and policies to respond and adapt to climate change
- Translating scientific literature on climate change
- Holding legislative forums on climate change
- Hosting international conferences to discuss global climate change issues

## Legislative Evaluation and Research Projects

The purposes of these projects are to contribute to establishing addressee-oriented legislative policies and enhancing democratic legislative functions by minimizing the gap between norms and practice with the application of various evaluation methodologies such as legislative economic analysis on legislative policies, questionnaire surveys and statistical analysis.

### Tasks

- Performing research to establish a legislative evaluation system
- Setting up methodologies and evaluation standards through ex post facto assessment of legislations
- Research on the latest legislative evaluation theories of major countries and cases studies relating thereto
- Support and research for the legislative evaluation of municipal ordinances

## Support for Post-Reunification Law Studies

The projects for supporting post-reunification law studies aim at efficiently supporting the Government's preparations for assimilation of laws and contributing to the establishment of peace on the Korean Peninsula and the realization of a happy unification era by utilizing all available human and physical resources, building up systematic databases of studies on the unification process of divided states and on legislation of transition countries, statutes of North Korea, and other research materials, and organizing a task force for research on, and assistance in, legislation of North Korea and legislation in preparation for unification.

### Tasks

- Research on the unification of divided countries and economies in transition
- Research on, and assistance in, legislation of North Korea and harmonized legislation
- Organization and operation of the task force for assistance in research on harmonized legislation
- Providing data in foreign languages regarding North Korea and harmonized legislation

## Legislative Analysis and Assistance Projects

The purposes of these projects are to contribute to formulating national legislative policies, turning policies into legislation and enhancing the quality of law. To that end, KLRI performs various types of specialized legislative analyses such as those on current statutes relating to major issues, foreign statutes and legislative bills, which are to meet the national demand for legislation.

### Tasks

- Holding working-level policy meetings on legislative issues pending in each sector
- Conducting specialized legislative analyses to meet various legislative demands

## Translation of Korean Statutes into English

In response to a rapid increase in demand for English translations of legal materials such as statutes, these projects aim at providing high-quality systematic English-language translations of Korean statutes by boosting efficiency in translating, proofreading and editing statutes and by keeping coherence and objectivity of terms. As a service for foreign investors and legal professionals, these translations will help those who have little knowledge of Korean laws to understand them more easily.

### Tasks

- Keeping English versions of Korean statutes up-to-date at the relevant website
- Having international exchanges to ensure the quality of translations
- Hosting policy debates on legislative translation
- Offering an open API service for the database of English translations of Korean statutes
- Publishing statutes in English to help foreigners in their daily lives

# Annual Research Projects

Regional Law Research Projects

# A Comparative Legal Study on Public Bodies Corrupt Practices in Canada

Researcher: Kim, Hyun-Hee(KLRI)

## I Background and Purpose

- Corruption, especially the corruption of bureaucrats or public servants invites the distrust of the people towards the government, induces a sense of incompatibility and conflict between the classes, lowers the willingness to engage in the society causing confusion and chaos. Therefore, both developed countries and underdeveloped countries have adopted a policy to eliminate the corruption.
- Also, South Korea have continuously made efforts to provide the institutional apparatus for anti-corruption. However, due to some systematic problems, it is not getting actual results.
  - It is caused by a combination of factors such as the abstractness of wrongdoing, the diversification of applicable norms, the lack of organization to investigate wrongdoings, the limitation of preventing corruption, the simplicity of punishment (regulation), the lack of means to protect filers, the lack of awareness of public service ethics and wrongdoings.
- Nowadays, the law on wrongdoings of public servants is in progress and various discussions about the legislation are being held. Therefore, it is necessary to reexamine the issues not from the individual legal perspective but from the integrated legal perspective in order to achieve the theoretical and institutional development of the wrongdoings of public servants.
- By the research of the relevant laws of the eight major countries about the public service ethics and anti-wrongdoing and by the comparative legal analysis about the laws and their major issues, we try to contribute to the development of domestic legislation, and eventually to the institutional ground for the incorrupt public sector.
- Especially, it is necessary to examine the relevant laws and history of legislation of Canada, since Canada has steadily been in the top 10 in Corruption Perceptions Index(CPI) according to the International Transparency announced every year.

## II Main Contents

- The laws related to the public service ethics in Canada

- Regarding the wrongdoings of public servants, the relevant laws have established the range of public servants in the legislative, the judicial, and the administrative branches, and also the types of wrongdoings and the disciplinary punishment. And, each law, while defining its main contents, allows the organization of each department to define its own rules of ethics, ie CODES, which leads to the double ethics enhancement system.
- Regarding the target of application, for the Congress, "Parliament of Canada Act", "Ethics and Conflict of Interest Code for Senators" and "Conflict of Interest Code for Members of The House of Commons" exist, for the government "Conflict of Interest Act," and "Conflict of Interest Code for Members of The House of Commons" exist, with respect to the entire public servants in the public sector, "Public Servants Disclosure Protection Act" and "Values and Ethics Code for the Public Sector" exist. In addition, there are "Lobbysts Code of Conduct" and "Lobbying Act" applied to the lobbying of lobbyists.

■ The wrongdoings of public servants

- Corruption is deviant behavior that one gets, or that one helps another get the material or social benefits such as wealth, social position, opportunity by illegal or unreasonable manner. The specific definition and range can be defined according to the area where the corruption occurred or the special aspect of the behavior.
- The types of action that have actually been referred to as "unethical behavior" in Canada, are private financial transactions of public servants (self-dealing), the application of economic value of public servants from personal financial resources, the help of public servants to the person who deals with the government, the help of formal public office holders, to the person after the retirement, the private benefit by the information obtained as a public official(while in the public office), the personal use of the assets of government, the political activities of non-elected public servants, the criticism to the government policy and such behaviors not appropriate to the public office.
- In this report, we will examine the system and contents of specific rules regarding the concept of public servant / public official holder, conflict of interest, gift and other advantages, post-employment, and outside activities.

■ Anti-corruption implementation system in Canada

- As the laws separately exist for each target of application, there are various committees organized on the basis of such laws. For example, "Conflict of Interest and Ethics Commission" is organized on the basis of the "Conflict of Interest Act", "Commissioner of lobbying" is organized on the basis of "Lobbying Act", and "Public Sector Integrity Commissioner" is organized on the basis of the "Public Servants Disclosure Protection Act".
- As for other special police organization, "Royal Canadian Mounted Police" exists, and with respect to values of public sector and Ethics Codes, "Treasury Board" codifies the CODES, and each institution applies its autonomous codes.

## III Anticipated effects

- Since Canada is one of the incorrupt states, the examination of the concepts of the wrongdoings of public servants and the ethical conduct created under the political and institutional system in Canada will provide the implication for our future policy making, legislation and social awareness-raising.

**Key Words**

Canada, Public servants / Public official holder, Anti-corruption, Conflict of Interest, Public Sector Ethics

# A Comparative Legal Study on Public Bodies Corrupt Practices in United States of America

Researcher: Na, Chae-June(KLRI)

## I Background and purpose of the research

- Public officials Corruption leads to distrust of the nation to government, causing discomfort and conflict between the hierarchy. because it debase social ethics, and cause chaos and confusion, So all countries being promoted aggressive policies about Anti-public corruption
- Korea also doing a lot of effort to Anti-corruption in all Governments, but effect is not sufficient.
- Although the provisions of corruption is the law, Many issues are still left such as the concept of corruption is ambiguous, diversification of the applicable norms, the lack of a corruption investigation bodies, Precautionary limits, Lack of public ethics and corruption awareness.
- Therefore, in the law theory and social controversy is increasing, through research the policies and laws on public Corruption in the United States, review the current anti-corruption policy and legal issues and Required to promote the maintenance of institutional corruption of public officials.
- This study current legislation by doing a comparison study reviewing, reflecting the policy stance to eradicate the discipline established and the corruption of government officialdom against the discipline of the type and therefore the public ethics and corruption, contrary to that of the US officials Do implications for the purpose of setting presents
- The purpose of this study is present the implications for existing legislation through the research the US public ethics and types of corruption and disciplined about it

## II Main Contents

- Overview of Public Corruption corruption in US
  - The review of public official's concept and scope, analysis of corruption's concept in the US
  - Status of public corruption and classification of US officials bribery and corruption

■ US officials job-related anti-corruption legislation

• Detailed review of Federal Law about the anti-public corruption

- Research and Analysis to 18 U.S.C. §201, U.S.C. §209

• Detailed review of individual law about the anti-public corruption

- Research and Analysis to conflict of interest of 1961, Ethics in Government Act of 1978, Civil Service Reform Act of 1978, False Claim Act, Whistleblower Protection Act of 1989, the Lobbying Disclosure Act of 1995, Honest Leadership and Open Government Act, Foreign Corrupt Practice Act

■ US officials job-related anti-corruption system

• Official anti-corruption institutions Overview

• Public anti-corruption organizations and Systems

- Research and Analysis to ① Federal Bureau of Investigation: FBI, ② Office of Govenment Ethics: OGE, ③ Office of Inspector General: OIG, ④ Office of Special Counsel:OSC, ⑤ The Public Integrity Section, ⑥ U.S. Office of Special Counsel ⑦ Office of Inspector General:OIG, ⑧ Criminal Investigation Division of Internal Revenue Service, ⑨ Government Accountability Office

■ Major policy about the anti-public corruption

• Overview of Policy

• Special Council system

• Whistleblower protection system

■ Conclusions and Implications

## III Expected benefits

■ Providing Legal basis for public anti-corruption institutions in the US

■ Improvements proposed for the current official anti-corruption institutions

**Key Words**

Public Corruption, Bribery, Conflict of Interest, Improper Influence, Illegal Gratuity

# A Comparative Legal Study on Public Bodies Corrupt Practices in United Kingdom

Researcher: Park, Gyung-Chul(Kangwon National Univ.)

## I Background and Purpose

- For the last decade, Korea's Corruption Perceptions Index(CPI) of International Transparency(IT), which works together with governments, businesses and citizens to stop the corruption and to assess each nation's integrity system, stays in the intermediate-level and is not improved inspite of legislative and institutional attempts.
- It is necessary to review the legal system or institutional framework for anti-corruption in Korea critically and comprehensively.
- The study on perspectives of comparative law will be helpful for this need.
- United Kingdom has established not only parliamentary democracy but also civil service system earliest in the world and for 300 years endeavors enduringly to fight corruption. UK's legal system or institutional framework for anti-corruption is estimated as efficient and effective.

## II Major Contents

- UK's strategy for anti-corruption and legal and institutional reponse system
  - Expansion of meaning of corruption
  - Elimination and prevention of international corruption as well as internal corruption
  - Elimination and prevention of corruption not only in public sector but also in private sector, especially corruption of commercial organisations
- Legal system for anti-corruption
  - Constitutional Reform and Governance Act 2010
  - Ministerial Code & Civil Service Code
  - Civil Service Management Code
  - Bribery Act 2010 & Fraud Act 2006
  - Public Interest Disclosure Act
  - Freedom of Information Act 2000

- Institutional framework for anti-corruption
  - Civil Service Commission
  - Serious Fraud Office
  - National Audit Office

## Anticipated Effects

- Implication of the Bribery Act 2010 for the prohibition of receving gifts, hospitality or benefits of any kind from & the improper performance of civil service
- Implication of Fraud Act 2006 for prevention of conflict of interest
- Implication for internal corporate governance of National Audit Office and external control system for National Audit Office

**Key Words**

Ministerial Code & Civil Service Code, Civil Service Management Code, Bribery Act 2010 & Fraud Act 2006, Civil Service Commission, Serious Fraud Office, National Audit Office

# A Comparative Legal Study on Public Bodies Corrupt Practices in Germany

Researcher: Park, Kyu-Hwan(Youngsan Univ.)

## I Background and Purpose

- It is important to prevent corruption and it is necessary to establish an anti-corruption system.
- Anti-corruption activities in Germany will be helpful for study from a comparative law perspective.
- Elimination of the potential risk factors for corruption through personnel management and organizational management

## II Main Contents

- Study on the regulations of the Federal Republic of Germany
  - Guidelines to prevent corruption given by the federal public administration
  - General administrative rules to promote federal activities through private sector support (sponsorship, contributions, other donations)
  - All principles concerning the prohibition of giving and receiving entertainment and gifts
- Study on the regulations of the states
  - Guidelines for conducting affairs of the department in charge of the examination of corruption in the state administration - Berlin
  - State rules related to sponsorship for affairs of the department of justice and the department of consumer protection - Berlin
  - Laws concerning the registration of enterprises related to corruption - Berlin
  - A series of corruption scandals - Hamburg
  - General rules concerning the eradication and prevention of corruption - Hamburg
  - General rules concerning donations, sponsorship and support for the fine arts - Hamburg
  - Announcements concerning the receipt of compensation and gifts - Hamburg

■ Study on the Anti-Corruption organizations in Germany

• The Federal Republic of Germany

• Bremen

• Berlin

• Hamburg

## Expected results

■ To establish a system of checks and balances for anti-corruption.

■ To establish a control organization and to present a management model for anti-corruption.

■ To establish a sustainable education system for anti-corruption.

Key Words

Anti-corruption in Germany, the prevention of corruption in Germany, anti-corruption organization in Germany, regulation of anti-corruption in Germany

# A Comparative Legal Study on Public Bodies Corrupt Practices in Austria

Researcher: Jang, Won-kyu(KLRI)

## I Background and Purpose

- Corruption is a serious general problem. Due to its economic influences, corruption is a threat to stability and security of societies. It undermines the values of democracy and jeopardizes the rule of law.

- Unfair and improper influence-peddling and solicitations based on family ties and regional or academic relationships have been the main causes of corruption in Korean society. However, there was a loophole in the current legal system to regulate those malpractices.

  • With regard to cronyism expanded to include retirees, the Korean Anti-Corruption & Civil Rights Commission revised the Guidelines on the Code of Conduct for Public Officials on June 30, 2014.

  • The Improper Solicitation and Graft Act was passed by the National Assembly of the Republic of Korea on March 3. 2015 and will take effect September 28, 2016.

  • The revised Act on the Protection of Public Interest Whistleblowers was passed by the National Assembly of the Republic of Korea and will take effect January 16, 2016.

- Austrian Society, Politics, Laws against Corruption of Public officials

  • The global anti-corruption organization Transparency International published its Corruption Perceptions Index for 2014. Austria ist in place this year, 23 of a total of 174 countries assessed. Austria is in this scale this year 72 of a possible 100 points.

  • The Austrian lobbying and interest representation law came into force on January 1, 2013. The law established the lobbying register and the explicit prohibition of acting as a lobbyist for public officials and politicians.

  • In a relatively short period of time, Austria has begun to institute and debate some forms of whistleblower protection. Movement on a comprehensive whistleblower law, however, has been minimal.

- The purpose of this article is to describe and analyze the legal framework and each existing instrument regarding corruption of public officials in Austria.

## II Main Contents

- European Union Anti-Corruption Initiative and Instruments
  - This part sketches the genesis of the european legal framework regarding corruption and outlines the main anti-corruption instruments.
  - It refers to the Group of States against Corruption (GRECO) and the monitoring mechanism of the Council of Europe (CoE), etc.
- Meaning of Public official and Corruption
- System of Norms against Corruption
  - Federal Civil Servants Act (BDG); disciplinary sanctions for civil servants and the provisions concerning them
  - Statute on responsibility of legal entities (VbVG), Lobby Act, Political Parties Act, Code of Conduct, etc.
- Organization against Corruption
  - Federal Bureau of Anti-Corruption(BAK), Office of Prosecution for Economic Crime and Corruption, etc.
- Whistleblowing and Protections for Whistleblowers
  - Austria has partial legal frameworks for whistleblower protection that are considered to be advanced. Encouragingly, in recent years it has taken steps to strengthen whistleblower rights.
  - This part provides an overview over the concept of whistleblowing, whistleblower policies and whistleblower protection against corruption in Austria

## III Expected Effects

- Specific examinations to the current anti-corruption framework and the legislative system in Austria can be assessed as following respects:
  - Definitional problems, jurisdictional problems regarding foreign corruption practices, asset recovery, the interface between corruption and good governance and that between corruption and human rights, etc.
- This Studies help to inform states of the actual impact of corruption and potential points of convergence and divergence in legal systems, which reduced the legal uncertainty.

**Key Words**

Austria, Public officials, Anti-corruption and the prevention of corruption, lobbying, public interest reporting

# A Comparative Legal Study on Public Bodies Corrupt Practices in France

Researcher: Jeon, Hoon(Kyungpook National Univ.)

## Background and Purpose

- This comparative study is to know the french legal system of anti-corruption and the duty of public officials.
- Corruption is a result, a symptom of bad governance and maladministration. Korea/France ranked $43^{rd}$/$26^{th}$ among 175 countries on the 2014 Corruption Perceptions Index (CPI) report issued by Transparency International.
- France needs more effort to ensure public sector ethics and prevent any form of corruption.
- In the interest of anti-corruption in public sector and in private sector, France established several special acts and specialized institutes within legislative trends for anti-corruption politics.

## II Main Contents

- The propose of this study is to examine and analyze the system of french legislations and administrative bodies about anti-corruption.
- Corruption is distinguished between two types : passive and active (Art. 432-11 and 433-1 of the Criminal Code).
- According to the law of 1993, the Central Service for the Prevention of Corruption is the monitoring center and its principal mission is to detect and to prevent of facts of corruption which is related to public officers.
- High Authority for Transparency in Public Life was established at the end of 2013 in order to guarantee the transparency of french public officials.
- Individuals who convicted of active or passive corruption and influence-peddling in the public sector may be sentenced by principal penalties and supplementary penalties.
- In principle, the reemployment of retired public officials is accepted but additional business is prohibited.
- The Ethics Commission performs a function to examine the exception cases about reemployment and additional business for public officials.

- Corruption and influence-peddling of French public officials are regulated by the French Criminal Code.

## III Expected Effects

- This study may contribute to improve the institutional environment favorable for the transparency of the public life in Korea.
- The main interest of this study is to contribute transparency of public life in Korea by means of comparing with french legal system and institutional system of anti-corruption.
- In order to find a effective solution on problem related to corruption, it may be useful to make a direction of criminal policy in Korea such as strengthening practical measures against corruption by legislative reform in France.
- Anti-corruption and its administrative body system will be an important theme for research. Therefore, the study about french institutes for anti-corruption may be helpful to improve the prevention of corruption in public life in Korea.

**Key Words**

corruption in public sector, transparency of public life Law, active/passive corruption, anti-corruption, Central service for the prevention of corruption

# A Comparative Legal Study on Public Bodies Corrupt Practices in Singapore

Researcher: Cho, Jae-Hyun(Dong-A Univ.)

## I Object of Research

- Singapore has been ranked as one of the world's least corrupt countries
  - Singapore is 7th of 175 countries in the Transparency International's(TI) Corruption Perception Index(CPI) 2014
- Singapore has managed to control corruption
  - Singapore has an effective anti-corruption law and independent anti-corruption agency
  - Singapore has a strong punishment for corruption
  - Singapore carry out preventive discipline and education
  - The Government's anti-corruption stand is clear and firm
  - Corruption is well under control in both the private and public sectors in Singapore
- This research has many implications to our preventive policy for corruption in Korea

## II Main Contents

- Singapore has a legislative system for prevention of corruption
  - Singapore has Prevention of Corruption Act(PCA), Corruption, Drug Trafficking and other Serious Crimes, Confiscation of Benefits Act and Penal Code as a law of prevention for corruption
  - Singapore has Code of Conduct for Ministers and Do's and Don'ts for Public Officers
- PCA provide for more effectual prevention of corruption
  - PCA was enacted in 1960
  - It is provided powers of Arrest under Section 15 of the PCA
  - It is provided powers of Investigation under Section 17 of the PCA
  - It is provided powers of Search and Seizure under Section 22 of the PCA
  - PCA empowers CPIB officers to investigate and arrest corrupt offenders

■ PCA has definition of corruption

- An act done with an intent to give advantage inconsistent with official duty and the rights of others
- The act of official or fiduciary person who unlawfully and wrongfully use his status or character to procure some benefit for himself or for another person contrary to duty and the right of others
- Corruption involves the dishonest or preferential use of power or position which has the result of one person or organization being advantaged over another

■ There are several corruption offences under the PCA

- Corruptly solicit, receive, or agree to receive any gratification for himself, or for any other person
- Corruptly give, promise, or offer to any person any gratification, whether for the benefit of that person or of another person
  - Gratifications include money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable
  - Gratifications include any office, employment or contract
  - Gratifications include any payment, release, discharge of liquidation of any loan, obligation or other liability whatsoever, whether in whole or in par
- To offer any gratification to a Member of Parliament
- To offer any gratification to any member of a public body

■ PCA covers both the civil servants as well as those working in the private sector

■ Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act allows the court to confiscate properties from convicted corrupt offenders

■ Code of Conduct for Ministers has been in force since 1954 detailing how Ministers should act and arrange their personal affairs

■ There are Do's and Don'ts for public officers

- There are seven type of obligatory action a list of "Dos" for public officers
- There are twenty-four type of prohibited act a list of "Don'ts" for public officers

■ CPIB(Corrupt Practices Investigation Bureau) is the anti-corruption agency in Singapore

- CPIB was established in 1952 as an independent organization
- CPIB is under the charge of the Prime Minister's Office
- Director of the CPIB is appointed by the President of Singapore

- CPIB is divided into three main Departments, the Operations Department, the Corporate Affairs Department, the Investigation Department
- Investigation Department executes the main function of the Bureau investigating offences under the Prevention of Corruption Act
  - CPIB investigates corruption in the public sector
  - CPIB also investigates corruption in the private sector
- CPIB officers may exercise the powers of arrest, investigations, search and seizure
- CPIB do not have a power of prosecution, a prosecution under PCA shall not be instituted except by or with the consent of the Public Prosecutor

■ There are criminal penalties, administrative action, preventive measures against corrupt public officers

■ Any person who is convicted of corruption offence can be fined or sentenced to imprisonment or to both provided under the PCA

■ Public officer may be departmental disciplinary procedures if there is insufficient evidence for court prosecution

- Departmental disciplinary action may include dismissal from service, reduction in rank, stoppage or deferment of salary increment, fine or reprimand, retirement in public interest

■ CPIB conducts educational programme as a preventive measure against corruption

## III Effect of Research

■ This research concerning the cause and measure of corruption in Singapore has academic and social value

■ A strong anti-corruption measure of Singapore has good implication for the anti-corruption policy in Korea

■ Various preventive measures to reduce opportunities for corruption in Singapore have good implication for the anti-corruption policy in Korea

**Key Words**

Corruption, CPI, PCA, CPIB, Code of Conduct

# A Comparative Legal Study on Public Bodies Corrupt Practices in Japan

Researcher: Bae, Sung-Ho(Yeungnam Univ.)

## I Background and Purpose

- Since corruption of bureaucrats and public officials causes the nation's distrust in the government, touches off a sense of incompatibility and conflicts between classes, and dampen the sound will of the people in general to work, thereby causing disorder and confusion, Korea has endeavored to provide institutional devices with which to prevent or eradicate corruption each time political power has changed hands or a case of corruption has occurred, almost to no avail for numerous reasons.
- While the Public Service Ethics Act of Korea has incorporated as its key elements registration and disclosure of public officials' property, a blind trust system, the responsibility of reporting on gifts received, and restriction on employment of former public officials, it is applicable, for regulatory assessment, only to some portions thereof concerning conflicts of interests of public officials, thus failing to reflect shifts in environment over time.
- It is the public official's code of conduct in line with the Corruption Prevention Act that comprehensively and specifically defines situations where interests conflict. However, the successful deterrent by means of the code of conduct of public officials is largely in the form of an administrative penalty, showing limitations intrinsic to the institution itself.
- This study proposes to examine and analyze Japan's cases of legislation concerning the code of ethics of public officials and prohibition of individual corrupt acts, and contribute toward the introduction of institutional environment favorable for the transparency of the public officialdom.

## II Major contents

- The system and major contents of the Japan's legislation system related with public officials' corrupt acts.

• Japan's major legislation system related with public official's corrupt acts is made up of the National Official Act, the National Official Ethics Act, the National Official Ethics Regulations, the criminal law and so forth.

- The Japan's National Officials Ethics Act and the National Official Ethics Regulations have shifted the focus of the policy of preventing public official's corrupt acts away from an emphasis on punishment-oriented prevention by providing regulations for the prevention of conflicts of interests on the part of public officials, thus providing effective regulations in the form of basic laws.
  - Regulations are specifically stipulated on interested parties, prohibition of transactions between public officials and interested parties, exceptions to prohibition of transactions between public officials and interested parties, transactions allowable between public officials and interested parties and so forth.
  - Among others, prohibition of accepting remuneration for supervising specific books and so forth, advance permit and report on the designation of ethics supervising officials as lecturers and so forth, report on ethics supervising officials dining with interested parties and so forth are specifically stipulated.
- Since preference of public interests to private ones could prevent public officials from perpetrating corrupt acts in spite of conflicts of interests, appropriate regulations on the matter, therefore, are duly required. Therefore, it is imperative to stipulate regulations for the prevention of corruption.
- It is implied that ethics of public officials needs to be approached comprehensively from the perspective of the prevention of conflicts of interests so that they could fulfill the responsibility of seeking public interests by preventing situations where public and private interests conflict with each other.

■ Japan's public officials corruption prevention implementation system and organization

- Japan's public officials corruption prevention implementation system and organization includes National Public Official Ethics Assessment Committee, Ethics Supervising Official, Joint Government and Civilian Manpower Exchange Center, Reemploy-ment Monitoring Committee and so forth.
- The National Public Official Ethics Assessment Committee is commissioned to come up with opinions on whether to legislate or abolish ethics regulations, study and plan on matters of upholding ethics of national public officials, implement comprehensive planning and coordinating of training to uphold ethics of national public officials, examine various reports, introduce or revise criteria for disciplinary actions in the case of the Ethics Act violated, and implement inspection and disciplinary procedures, and approves disciplinary measures. In case suspicion is aroused over possible violations of the Ethics Act and so forth, the Committee provides guidance to each ministry concerned and requests necessary measures to be taken.
- An ethics supervising official, an agency in charge of administrative desk work in each of the agencies installed in the cabinet based on regulations of the law under the control of the cabinet in order to maintain ethical standards associated with official assignments of the staff members, is assigned to each agency installed and those installed under

the control of the cabinet, General Accounting Office and each specific administrative corporate body, so that he or she can counsel on cases exceptional to prohibited behaviors between the staff member and those associated with interests. Should the staff member dine with the person associated with interests, the supervising officer receives incoming reports, approves of lectures and so forth, and counsels on other related matters.

- While in Japan so-called ‘amakudari’, or the practice of helping employees or retirees of government ministries to find reemployment at private firms or related corporations, has been around for long, the National Public Official Act as amended in 2007 prohibits such a practice of helping retirees to find reemployment, and introduced a clause prohibiting reemployment of retirees at profit businesses for 2 years associated with the office work they had held while in office. Instead, the government established a joint government and civilian manpower exchange center in an effort to take overall charge of reemployment of retired public officials, and designated the reemployment monitoring committee as a monitoring agency.

■ Punishment of illegal practices of public officials in Japan

- In case a public official has violated ethics expected of a public official or perpetrated an illegal practice, he or she is subject to a disciplinary measure as a rule, while at the same time he or she is criminally responsible as well.
- Disciplinary actions can be accompanied by criminal punishment.
- While the right to administer disciplinary actions belongs in principle to the official who has the authority to appoint, the Personnel Board is empowered to administer disciplinary actions for personnel from agencies other than the Personnel Board, and the National Public Official Ethic Screening Committee is empowered to administer disciplinary actions on its own.

## III Anticipated Effects

■ This study simultaneously examines public official’s ethics and individual corrupt acts of Japan from the perspective of the overall legislative system, closely examines the system of public official’s ethics-associated legislation that reflects Japan’s cultural traits, their key components, the corruption prevention implementation system and so forth, and makes implications of the study available for the preparation of institutional environ-ment that will enable transparency of the public officialdom to be established by analyzing in a comparative manner the Korea's legislative system and that of Japan.

■ It is expected that a mid-and long-term perspective will be provided for a corruption prevention policy so that a clean atmosphere of the public official career can be created in Korea.

- A review of the current global legislative trends shows that it is necessary to approach public official's ethics comprehensively from the perspective of prevention of conflicts of interests so that public officials can do all to fulfill their responsibilities by raising the level of transparency of government policy drafting and steering clear of situations where public and private interests conflict with each other.
- With respect to restrictions on reemployment of retired public officials, viable specific measures need to be prepared, based on national consensus reached over the needs for restrictions on reemployment of retired public officials, and a series of tasks of supplementing and correcting existing institutions.
- The legislative system associated with the public official's conflicts of interests and corrupt acts now covering the Public Official's Ethics Act, Corruption Prevention Act, Illegitimate Request Prevention Act and so on now in force need to be rearranged into a single legislative system related with the public officials' ethics-associated system.

**Key Words**

Public Official, Ethics of public Officialdom, Corrupt Act, The National Public Official Ethics Assessment Committee, Amakudari

# A Comparative Legal Study on Construction Safety Legislation in Japan

Researcher: Na, Chae-June(KLRI)

## I Background and purpose of the research

- Recent many accident is caused such as Gyeongju Mauna Resort Collapse, Sewol ferry Sinking, the second Lotte World Mall accident. So public interest is growing for safety. Especially the danger for the safety of building is increased, due to sarge-sized buildings and Skyscrapers.

- Construction accidents are mostly caused by human error, such as mismanagement and moral hazard. Seeking institutional measures to prevent this, but our construction safety legislation system is lacked a lot for ensuring Construction safety that reflected the characteristics of the building.

- In the case of Japan, many measures taken to promote the safety of buildings, such as Structural calculation compatibility judgment conducted by governors, Strengthen supervision of the designated confirmation inspection agency, enhanced penalties for designers of buildings in violation of the Building Standard Act, strengthen supervision and penalties for the certified architect

- Considering the recent Construction accidents, the preparation of construction safety legislation for the protection ours life, body and property is needed urgently. for this purpose, the need to be raised to analysis of Japan's system and research the institution to meet our reality

- This study is intended to contribute to providing a institutional conditions for safety society by analyzed Japan Building Safety Legislation comparatively.

- The purpose of this study is present the implications for existing legislation through the research Building Safety Management System and Building Safety Legislation in Japan

## II Main Contents

- Building Safety Management System in Japan

• The Survey and Analysis about Building safety status and Safety Management System in Japan

• Processing for the design, construction and building phase Step-by-Step Safety Management System for Safety in Japan

■ Building Safety Legislation in Japan

• The Law system of Construction Safety in Japan

• Detailed review of individual law about the construction safety in Japan

■ The main building safety policies in Japan

• Overview of Policy

• The Propulsion system and organization of Architectural Safety Policy

• The analysis about major policy of Construction safety

• The prevention measures of Building safety accident

■ Conclusions and Implications

• Comparative legal analysis between korea and japan.

• Implication and Improvement

## III Expected benefits

■ Providing Legal basis for Building Safety Legislation in the japan

■ Improvements proposed for the current Building security system in korea

Key Words

Building safety in Japan, Building Standard Act, Housing Performance Labeling System, Housing quality secure Act, Fire Services Act

# A Comparative Legal Study on Construction Safety Legislation in France

Researcher: Kim, Hyun-Hee(KLRI)

## I Background and Purpose

- Very large buildings or multi-use facilities usable and accessible to multiple users, because certain accidents can connect large damage on the life and property or other types of casualty, it is necessary to prepare to respond carefully to accidents and to prevent accidents thoroughly.

- The Republic of Korea has the general safety standards of buildings in Building Codes, and that pending in the area of special laws relating to specific types, such as high-rise buildings or multi-use facilities.

  - The current special laws' normative and organizational system is distributed, so its system still results in duplicate or blank and a risk of accidents occurring in those areas will always exist because no principles and criteria covering the entire field.

- It is necessary to promote the legal organization for special types of buildings, to look into the international legal framework for such modification.

## II Major Contents

- Construction Safety Legislation Overview of France

  - French laws and regulations are composed of preventive measures to reduce the risk of fire and panic at indoors, corridors, living rooms as a prevention of the risk of high-rise buildings and multi-use facilities.

  - The purpose of prevention in these facilities is “to protect the human’s life(including the outside ordinary people and rescue worker be placed in direct danger as well as indoors), to minimize property damage, and to facilitate rescue activity under appropriate conditions.”

  - In France, the system of discipline has been established through a different legal basis in the respective areas, large categories of the entire building of being subjected fire safety separated by “Habitable Buildings”, “Office”, “High-rise Buildings”, “Environmental Protection Facilities.”

- "Construction and Habitation Code(Code de la construction et habitation)" in France is established on codification of a number of sub-regulation, for example Décret, Arrêté, etc., the Code have been complemented by the basis of those safety provisions to standards, integrating technical documentation, technical guidance.

■ Safety regulations for high-rise buildings

- Through a case of World Trade Center attack in United States on September 11, 2001, France has begun extensively streamlining the safety regulations for High-rise Buildings.
- In the fields of construction and management of high-rise buildings, enormous amount of "December 30, 2011 Arrêté on safety regulations for the construction of high-rise buildings and the protection from a risk of fire and panic" was established through consultation with leading experts so it was granted as a character of "special provisions" against the general rules which has been applied in the meantime.
- Building Code in France regulates the concept and type of high-rise buildings, construction conditions, construction permit conditions, the Central Safety Committee, the duty of building occupants, safety control and etc.

■ Safety regulations for public-use facilities

- Building Code regulates the concept of public-use facilities, safety principles, classification, using approval documents, enforcement & oversight, and regulatory penalties and etc.

■ The main system related to the construction safety

- People who bear the most basic obligations for construction safety, is basically the owner and constructor.
- Besides, Safety Advisory Committee as a admitter existing for markets and each local government performs a crucial role.

## Anticipated Effects

■ It is expected to refer to establishment of relevant policies and legislation in Korea examining the safety regulations for high-rise buildings and public-use facilities in France, and proposing implications.

**Key Words**

France, Construction Safety, High-rise Buildings, Public-use Facilities, Safety Committee(CCDSA)

# A Comparative Legal Study on Construction Safety Legislation in Germany

Researcher: Jang, Won-Kyu(KLRI)

## I Background and Purpose

■ Structural causes of construction accidents

• From skyscrapers and schools to hospitals and home, Korean's buildings are the foundations of our communities. When construction risks strike, we rely on the structural integrity of our buildings to keep us safe.

• There are many causes which lead to construction accidents. Generally speaking, we can classify them into immediate and distant causes. By contrast with direct causes, e.g., structural failures, the indirect causes refer to human, legislation and legal enforcement, etc.

■ The aim of this Paper describes how to carry out regular inspections of the structural safety of buildings in Germany. This Paper is intended for buildings and structures of all types with the exception of bridges and tunnels.

• It contains federal and state laws in Germany and EU Regulation/ Directive: German Federal Building Code, German Construction Products Law, German Federal State legislation (e.g., Building Code Bayern).

## II Main Contents

■ Entity related to structural safety of buildings

• Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety(BMUB), Bayern Ministry of the Interior for Building and Transport, Bauordnung Authority, Deutsches Institut für Bautechnik (DIBt), Technical Inspection Association (TÜV).

■ Legal Systems of Construction and Surveillance

• The structural safety of buildings is integrated into all levels of construction procedure and management.

• Construction products covered by European technical standard (i.e., EU Construction Products Regulation/Directive) are provided with the CE marking. German Federal State are responsible for the market monitoring of construction products for building construction.

• Depending on the construction material properties and the influences, it research on inspection methods and processes.

■ Structural safety of special building types/constructions

## III Expected Effects

■ Many construction accidents on site occur not because of one or two reasons but when one or more distant and immediate factors go wrong. Legislation and Safety management should not focus solely on the direct causes. It should also spend effort on eliminating the indirect causes.

■ Understand the enhanced design and construction issues and potential risks associated with environmentally friendly Green Building construction.

Key Words

Germany, structural safety of buildings, Federal Building Code, Construction Products Law, Building Code Bayern

# A Comparative Legal Study on Construction Safety Legislation in United States of America

Researcher: Kim, Young-Jin(Incheon National Univ.)

## I Background and purpose of the research

- It is clear that Republic of Korea("Korea") has rapidly joined the ranks of advanced countries: however, Korea still suffers basically man-made disasters such as structures collapse, worker's accidents in a construction site. Can't we successfully get out of these unwanted tragedies? From a legal point of view, what methods can support to overcome miseries in a construction safety field?
- This research mainly focuses on introducing current construction safety legislations and policies in U.S. and finally aims to change Korea's construction accident management system, construction safety legislations and policies under a lesson of those in U.S. legal system.

## II Main Contents

- This research is composed of three parts. The first part shows a construction accident manage system in U.S. together with a series of historical and statistical data concerning construction accidents in U.S. The second part analyzes the relevant parts of U.S. construction safety legislations including International Building Code(IBC) as a model code, National Fire Protection Association(NFPA)'s code and standards etc. The third part introduces current construction safety policies from both public sector-including federal/state government-and private sector in U.S.
- The first part analyses a historical data showing diverse construction collapses in U.S. since 1970. It also shows a statistical data regarding worker's accidents in construction sites. Next, it deals with construction accident manage system in U.S. specially introducing those of New York State,
- The second part analyses a recent 2015 version of IBC, NFPA's code and standards, Chicago city's municipal construction code and Occupational Safety and Health Act(OSHA) for describing current U.S. construction safety legislations.
- The third part shows currently noticeable construction safety policies in U.S. including Federal Highway Administration (FHA)'s, National Institute for Occupational Safety & Health (NIOSH)'s, and U.S. Army Corps of Engineers's. It also deals with construction safety policies from NFPA and New York city.

## III Expected benefits

- This research will be expected to provide a comparative view for dealing with both construction safety legislations in U.S. and those in Korea.
- This research will be expected to help to develop Korea's current construction safety legislations and policies.

Key Words

U.S. Construction accident manage system, U.S. Construction safety legislations, U.S. Construction safety policies, International Building Code, National Fire Protection Association, Occupational Safety and Health Act

# A Comparative Legal Study on Construction Safety Legislation in United Kingdom

Researcher: Kim, Yong-Hoon(Sangmyung Univ.)

## I Background and purpose of the research

- We need to secure the prompt measures throughout the concerned legislation for the sake of prevention and response in the area of construction, especially in the safety for the construction.
- In fact, it is necessary to introduce the legislative instrument in order to prevent from accidents and deal with the accidents afterwards on account of the fact that the instrument brings about broad and effective methods for the sake of coping with the accidents.
- However as there are unnecessary and uneffective regulations, unexpected accidents happen from time to time. Therefore we need to adopt the multilateral legal approach relating to security and control system in order to accomplish the rationalization and efficiency concerning with regulation of construction.
- Since we approach in terms of Police Act, we intent to adopt the concerned legislations in order to prevent the danger in the field of construction. In contrasts, England aims to manage the policy concerning construction flexibly to some extent.
- This study aims to find out the problems in construction in Korean Construction fields and to develop the flexible policy and a legislative plan referring to England's case

## II Main Contents

- Building Safety Supervision Condition in UK
  - Safety Supervision in Building Design
  - Safety Supervision in Building Construction
  - Building Safety Accident Management - Response
- Building Safety Legislation in UK
  - History of Construction Act
  - Formal Features of UK Legislation concerning Construction
    - Common Law & Statute Law & Delegated Legislation etc.

• Building Act 1984 as Basic Law relating to Construction

• Building Regulation as Subordinate statute

■ Substantial Features of Legislations concerning Construction in UK

• Legislations concerning Construction in UK have remarkable features of specific and concrete statutes in dealing with the construction fields, which brings about the multilateral and substantial regulations.

• As there are a great deal of subordinate statutes such as regulation, bylaw and approved document etc. centering on the Building Act 1984 in fields of construction, the regulation and control with a view to securing safety in construction are adopted in many ways.

- There is flexible policy in area of construction in UK in a sense that private actors are able to participate in construction industry freely to some extent and there are various regulative methods according to regions and time tables in construction.

- Because UK is the member of European Union, it is necessary to consider the harmonized application of EU Law concerning with construction in UK.

## III Expected benefits

■ It is necessary to consider the flexible policy in securing the participation of private actors in the area of construction in UK.

■ Moreover we are able to refer to the UK's policy to make avail of subordinate statutes in the are of construction actively in order to secure multilateral and specific plans against the safety accidents.

Key Words

United Kingdom, Common Law, Building Act 1984, Building Regulation, Approved Document, European Union

# A Comparative Legal Study on Construction Safety Legislation in Australia

Researcher: Kim, Won-Jung(Cheongju Univ.)

## I Background and purpose of the research

- Recent many accidents have been occurring. So public interests in safety are growing. Especially, the danger for building related safety, such as large-size buildings and Skyscrapers, has been increased
- Construction related disasters are mostly caused by human error, such as mismanagement and moral hazard. Seeking institutional measures to prevent those from taking place are necessary. Unfortunately, legislation system for construction safety is much to be desired. Thus, it is essential to reform the legislation system so that it could ensure construction safety that reflects the characteristics of the building.
- In the case of Australia, many measures are taken before and after planning construction to promote the safety of buildings, such as structural calculation compatibility judgment conducted by Australian Building Codes Board.
- Considering the recent Construction accidents, the preparation of construction safety legislation for the protection ours life, body and property is needed urgently. for this purpose, the need to be raised to analysis of Australia's Construction Law system and research the institution to meet our reality
- This study is intended to contribute to providing a institutional conditions for safety society by analyzed Australia Construction Law comparatively.
- The purpose of this study is present the implications for existing legislation through the research Building Safety Management System and Building Safety Legislation in Australia.

## II Main Contents

- Building Safety Management System in Australia
  - The Survey and Analysis about Building safety status and Safety Management System in Australia
  - Processing for the design, construction and building phase Step-by-Step Safety Management System for Safety in Australia

■ Building Safety Legislation in Australia

- The Law system of Construction Safety in Australia
- Detailed review of Construction law about the construction safety in Australia

■ The main building safety policies in Australia

- Overview of Policy
- the Propulsion system and organization of Architectural Safety Policy
- the analysis about major policy of Construction safety
- the prevention measures of Building safety accident

■ Conclusions and Implications

- Comparative legal analysis between Korea and Australia.
- Implication and Improvement

## Expected benefits

■ Providing Legal basis for Building Safety Legislation in the Australia

■ Improvements proposed for the current Building Code system in korea

Key Words

Building safety in Australia, Building Code of Australia, Plumbing Code of Australia, AUSTRALIAN BUILDING CODES BOARD, WaterMark, CODEMARK

# A Comparative Legal Study on Construction Safety Legislation in Canada

Researcher: Park, Young-Chul(Yong-In Songdam College)

## I Background and purpose of the research

- The state or local governments are to realize the construction of living space directly related with the safety, health and welfare of the people and shall take measures necessary to safely construct buildings and spatial environment and to continuously maintain such safety level in preparation for all kinds of disasters.
- In the light of a series of safety accidents recently, preparation of building safety legislation is urgently required to protect the people's life, body, and property. In order that, the state or local governments should thoroughly analyze examples of legislation of other countries and seek a system that reflects our reality.
- In Canada, as legislative power of Building Code is authorized to provincial and territorial government, they have the right to legislate or abolish the law concerning the design and the construction of buildings. Therefore, it is very difficult for designers, builders and contractors to manage to business due to the disagreement of each code.
- To escape from confusion of regulations, it should be provided with a unified legal system on construction following same national standards. In 1937, so as to prepare national programs for supporting construction, the Department of the Treasury asked National Research Council to legislate National Model Construction Codes which were applicable to all regions in Canada. As a result, the first edition of National Model Construction Codes was adopted and published in 1941.
- There are many terrible accident recently. It makes people feel needs to legislate building safety regulation in order to protect life, body and property of the people. By analyzing Canada's National Building Code systematically, we can find acceptable solution to improve Korea law and policy practically.
- This study is intended to contribute to providing a policy and law that makes safety society and protect the people's life, body and property from threat by analyzing the National Building Code of Canada.

## II Main Contents

- Introduction

■ Development system of National Model Construction Codes

- Development background and applicability of National Model Construction Codes
- Development propulsion system and process of National Model Construction Codes
- Role of federal and local government to legislate building regulation

■ National Building Code and assuring safety

- Construction industry and safety accidents in Canada
- System and framework of National Building Code of Canada
- Objective and function of National Building Code of Canada
- National Building Code and assuring safety

■ Conclusion

- Comparative legal analysis and its implications between Korea and Canada

## Expected benefits

■ Providing basic legal information about the main content and the regulatory system of National Building Code regarding the Canadian building safety.

■ This study is expected to ensure the safety of the people and contributed to make the safe society by providing implications for the improvement and problem of the current law through a comparative study of building regulations between Korea and Canada.

Key Words

Building Safety in Canada, National Model Construction Codes, National Building Code, Main Occupancy Classification, Functional Statements

# A Comparative Legal Study on Construction Safety Legislation in China

Researcher: Han, Sang-Don(Ajou Univ.)

## I Research Necessity

- With vast land and over population, China has faced great deal of construction related accidents. There are calls for deep considerations of construction laws and building safety legislation of China concerning reporting, investigation, procedures and safety measures after construction accidents.
- For construction related companies that already entered Chinese market or otherwise planning to invest in China to safely pursue their construction goals, an overall study of construction laws and safety legislations is needed to help these companies acquire general understandings of construction laws and safety related accidents in China.

## II Main Contents

- The numbers of construction safety accidents from 2001 to 2011 were approximately 1000, but the numbers are decreasing from 2011 every year. In 2014, there were 522 construction safety related accidents and 648 deaths.
- In November 1997, <Construction Law> was enacted. On this legal ground, China has made administrative regulations regarding construction safety. They established “Safety First, Prevention Priority” to create basic policy for construction safety. In November 2011, <Work Safety Law> was enacted to legislate safety management and supervision.
- The legal system of Construction safety in China is formed with Laws, Administrative Regulations, Divisional Regulations, Government and Industry Standards, Local Regulations and the Rules of Local Government.
- The construction company is required to prepare a detailed ‘Preventive measures for emergency accidents’ and the design company or the designer of safety installation assumes the responsibility of their design.
- Investigation Enterprise, Design, Supervision, Operational Companies cannot require processes against the compulsory laws and regulations. Supervision Enterprise needs to supervise construction process on the bases of related regulations and takes responsibility in construction safety supervision.

- From August 2014, chief executives of Construction, Investigation, Design, Operation and Supervision takes lifelong responsibility which reinforced the quality of the construction work in its system.
- If construction related enterprise caused serious safety accident, the person in charge is sentenced up to 5 years of imprisonment with additional fine. In the situation of severe consequence, sentence would be minimum of 5 years and up to 10 years of imprisonment with additional fine.

## III Implications

- China has made clear of their construction related responsibilities through establishing construction safety regulations, regulating the person in charge of the Government Departments, Related Industry, Operation Enterprise, Design and Supervision Enterprises.
- The effect of lifelong responsibility system of construction safety is clear in China. Establishing this system into every possible level of construction management, enabling to guaranty quality for their lifetime, a compulsive regulation which eliminates the possible safety risks in the construction process.

**Key Words**

Construction Laws, Construction Safety, Safety Accidents, Work Safety Law, Lifelong Responsibility, Criminal Responsibility

# Comparative Legal Study on Safety Regulations of Nuclear Power Station -United States of America-

Researcher: Lee, Sang-Yoon(KLRI)

## I Background and Purposes

- Unless a complete alternative energy is developed, nuclear power plants will continue to be considered a critical source of energy in South Korea, the fifth largest consumer of oil energy in the world.
- Under such circumstances, it is a crucial legislative and regulatory challenge to protect people from any physical, economic, or environmental harm caused by nuclear power generation, e.g. exposure to radiation.
- In the United States, continuous efforts have been made in the laws and regulations relating to the establishment, operation, or closure of nuclear power plants to ensure safety.
- This study analyzes the legislative system for nuclear safety in the United States where high levels of regulations are in place with an aim of finding out any significant regulatory elements applicable in South Korea.

## II Overview

- In Chapter 2, Nuclear Regulatory Commission (NRC) and Department of Energy (DOE), two of the most prominent regulatory bodies in the United States, will be examined in terms of their history, functions, etc.
- In Chapter 3, laws in the United States will be examined for separate stages including establishment, operation, and closure of a nuclear power plant, starting from the Atomic Energy Act of 1954.
- In Chapter 4, administrative and legislative systems for nuclear safety, analyzed in Chapter 2 and Chapter 3, are summarized and suggestions are made with regard to what South Korea can learn from the cases of the Unites States.

## III Anticipated Effects

- By presenting points to learn from the nuclear safety regulation in the United States, this study can be a source of reference in improving safety regulation of South Korea's nuclear power plants.

- By examining and analyzing laws and regulations on nuclear safety in the United States, this study can be the foundation for relevant policy making and implementation in South Korea.

**Key Words**

Unites States Atomic Energy Act, Nuclear Regulatory Commission (NRC), Nuclear Power Plant, Nuclear Regulation, Nuclear Laws in the Unites States

# Comparative Legal Study on Safety Regulations of Nuclear Power Station -Japan-

Researcher: Park, Kwang-Dong(KLRI)

## I Background and Purposes

### Background of the Study

- Considering complex environmental disasters in modern times, the nuclear power plant needs consistent study to secure safety because of its large scale accidents and damages.
- After the Fukushima disaster, Japan is undergoing legislative maintenance on the safety regulations and the use of the nuclear power plant, while the policy decision makers conduct an overall reexamination on the nuclear energy policy.

### Purpose of the Study

- This study aims to draw an implication in Korea through analyzing Japanese safety regulations and related legislations on the nuclear power plant.

## II Main Contents

### Change in the Nuclear Energy Safety Regulations

- Due to the Fukushima disaster, Japan was in demand to establish an independent, professional, and transparent system to regulate the nuclear power by separating the promotion to utilize the nuclear power and its regulations.
- After the Fukushima disaster, Japan founded the Nuclear Regulatory Commission and the Nuclear Regulatory Agency to be in charge of the nuclear power regulations.
- The main laws related to the nuclear power safety in Japan are as follows: 「The Atomic Energy Act」, 「Act on Regultions of Nuclear Source Material, Nuclear Fuel Material, and Reactors」, 「Act on the Preventing Radiation Interference such as the Radioactive Isotope」, 「The Atomic Energy Damage Compensation Act」, 「Act on Special Measures Concerning Nuclear Emergency Preparedness」, and 「Nuclear Damage Compensation Facilitation Corporation Act」.

### Implications

- Founding the Nuclear Regulatory Commission for nuclear related regulations as Japan did can solve desultory legislations on the nuclear power.

• Setting a specific regulation on permission to build the plant to secure effective safety regulation of the nuclear power plan can be taken into account.

• Setting a definitive operation term of the power plant in the law can be taken into account.

## Expected Effects

■ **Functioning as basic information on Japanese safety regulatory legislation of the nuclear power plant.**

• Providing the direction to improve legislation for effective safety regulation of the related institution on the nuclear power plant

**Key Words**

nuclear power, nuclear power plant, safety act on the nuclear power, nuclear power safety, regulating the nuclear power plants

# Comparative Legal Study on Safety Regulations of Nuclear Power Station -United Kingdom-

Researcher: Yoon, In-Sook(KLRI)

## I Background and Purposes

- Since the Fukushima nuclear disaster, while global concern over safety of nuclear power plants has been growing, social demands for securing nuclear safety has been also increasing in Korea.
- Considering that a nuclear power plant is susceptible not only to man-made disaster but also to natural disaster and nuclear disaster causes massive damages, it is needed to perform a steady study on regulation for securing safety.
- Provided about 20% of its entire energy consumption from nuclear power facilities, England has been changing its energy policy with renewed recognition that nuclear energy may play a significant role for its low carbon energy policy.

## II Main Contents

- Nuclear Safety Regulation Authorities

• The main regulator is Health and Safety Executive(HSE) of the Department for Work and Pensions.

• HSE may not only issue nuclear site license but also, if necessary, impose, change and revoke condition to such license.

• Office for Nuclear Regulation(ONR), an independent institute of HSE, is responsible for practical implementation of nuclear regulations including imposing of license condition.

• Before making a decision that may affect environment, HSE and ONR should consult Environment Agency and other relevant governmental agencies.

- Legal Framework on Nuclear Safety Regulation

• Legal grounds for regulation of nuclear facilities to ensure safety are 「Health and Safety at Work etc. Act 1974(HSWA)」 prescribing general authority and duties of nuclear safety regulators and 「Nuclear Installation Act 1965」 regulating nuclear site license.

• Relevant secondary regulations include 「Environmental Permitting (England and Wales) Regulations 2010」, 「Ionising Radiations Regulations 1999」, and 「Nuclear Reactors(Environment Impact Assessment for Decommissioning) Regulations 1999」

■ Procedure for Safety Regulation of Nuclear Power Plants

• Conditions attached to a nuclear site operates as a practical ground for regulation throughout the entire life cycle of a nuclear power plant from the acquisition of site license, construction to decommissioning.

## III Expected Effect

■ When social awareness has been forming that safety regulation of a nuclear power plants is urgent agenda, it is expected that comparative study on the regulation scheme of England is likely to contribute to securing nuclear safety regulation in Korea.

Key Words

Nuclear site license, Environment Permit, License Condition(condition attached to license), Radioactive Waste, Decommissioning, Environment Statement

# Comparative Legal Study on Safety Regulations of Nuclear Power Station -Germany-

Researcher: Kim, Nam-Cheol(Pusan National Univ.)

## I Background and Purpose

■ The purpose of this research is to conduct research on the nuclear safety legislation of Germany.

- This research intensively focuses on: (1) agencies that regulate the safety of nuclear power plants; (2) the current status of the legislation of safety regulation of nuclear power plants; and (3) the content of safety regulation of nuclear power plants.

## II Main Content

■ Agencies that regulate the safety of nuclear power facilities

- In the Republic of Korea, the Ministry of Science, ICT and Future Planning is the competent authority, and an agency that plays the key role in relation to safety regulation is the Nuclear Safety and Security Commission, established under the jurisdiction of the Prime Minister.
- In Germany, the competent authority in the Federal Government is the Federal Ministry of Environment, under the jurisdiction of which the Federal Radiation Protection Authority has been established. Furthermore, the state committee for nuclear energy (LAA) for the cooperation between the Federal Government and states, the Nuclear Reactor Safety Commission (RSK), the Radiation Protection Commission (SSK) and the Waste Disposal Commission (ESK), have been established as advisory agencies, and the Federal Radioactive Waste Authority and many research institutes have been established as well. The Federal Government proactively utilizes expertise in its administration through the participation of experts.

■ Legislation regarding nuclear safety

- The Republic of Korea has about 12 nuclear power-related laws and has more laws than Germany which enacted five laws. Among these laws, are the Nuclear Safety Act, the Act on Measures for the Protection of Nuclear Facilities, etc. and Prevention of Radiation Disasters, the Radioactive Waste Management Act, and the Act on Protective Action Guidelines against Radiation in the Natural Environment. However, the nuclear or radiation safety legislation was framed in 2011.

- In Germany, the Act on nuclear safety regulation is the Nuclear Power Act. The Nuclear Power Act was enacted in 1959 and has been amended several times. The purpose of this Act is to use nuclear power peacefully; protect the people from the dangers of nuclear power; use nuclear power in a safe manner, and also end the use of nuclear power for the production of electric power for business, as scheduled. In addition to the Nuclear Power Act, a number of subordinate statutes exist, which include laws, regulations, orders and administrative rules, which embody the aforesaid Act.

■ Content of safety regulation

- In general, various measures for notification, permission, examination, evaluation, reporting and safety, and administrative measures to apply sanctions, such as the revocation of permission, may be mentioned as regulations for safety regulation. Such regulations of the Republic of Korea are similar to those of Germany.
- In addition, however, the Nuclear Power Act of Germany further provides for the extinguishment of the right to operate a nuclear power plant, the diversion of the remaining amount of electric power to other uses, the closure of the facilities, and preliminary operation, etc., according to the nuclear free policy. In comparison with the Republic of Korea, Germany specifically provides for procedures to determine plans, the prohibition of alterations, the examination of the reliability of the relevant persons.

## III Expected Effect

■ Research on safety regulation in the Nuclear Power Act of Germany is expected to contribute to the scientific research in the field of the Nuclear Power Act (Republic of Korea) and the revision and improvement of legislation related to nuclear power, and especially to the paradigm shift of our society in the use of nuclear power in the future.

**Key Words**

Nuclear power, the Nuclear Power Act, the Nuclear Power Act of Germany, Agencies that regulate the safety of nuclear power facilities, the legislation of safety regulation of nuclear power facilities.

# Comparative Legal Study on Safety Regulations of Nuclear Power Station -France-

Researcher: Jeon, Hak-Seon(Hankuk Univ. of Foreign Studies)

## I Background and Purpose

■ Understanding of nuclear safety

- The Hukushima nuclear disaster 2011 was a highly disturbing event.
- Such disaster has expanded interest in and necessity of nuclear safety, and it is necessary to revise legislation related thereto.

■ Understanding nuclear legislation of France

- France depends heavily on nuclear power generation.
- It is intended to examine the nuclear legislation of France.

■ Nuclear safety agencies and the details thereof

- Research has been conducted on agencies related to nuclear safety in France.
- Research on various procedures for nuclear safety and the details thereof has been conducted.

## II Main Content

■ French agencies that regulate nuclear safety

- The Nuclear Safety Authority (ASN) is an independent administrative authority related to nuclear safety. It is an agency whose independence from the government is ensured in relation to nuclear safety. It is an agency that plays the key role in relation to nuclear safety.
- The Radioactive Waste Management Authority (ANDRA) takes charge of the management of radioactive waste. It generally conducts affairs related to radioactive waste.
- The Alternative Energies and Atomic Energy Commission (CEA) is a French government-funded research institute involved in the areas of energy, national defense, information and communications, health, etc.
- The Nuclear Power Policy Commission (CPN) is a government agency that formulates policy related to nuclear power.

- The Radiation Protection and Nuclear Safety Institute (IRSN) is a French research institute related to nuclear power.
- The High Commission concerning Transparency of and Information about Nuclear Safety (HCTISN) is a French organization established to ensure transparency and safety in national policy in the field of nuclear power.
- The Regional Information Commission (CLI) is a French organization that conducts examinations, formulates information and provides cooperation concerning the effects of activities related to nuclear power facilities on humans and the preservation of the environment, and radiation protection.

## ■ Nuclear safety legislation

- The principle of safety (le principe de sûreté), the principle of security (le principe de sécurité), the principle of responsibility (le principe de responsabilité), the principle of permission (le principe de permission), the principle of permanent control (le principe du contrôle permanent), the principle of indemnification (le principe d'indemnisation), the principle of sustainable development (le principe du développement durable), the principle of conformity (le principe de la conformité), the principle of independence (le principe d'indépendance), the principle of transparency (le principe de transparence), and the principle of international cooperation (le principe de coopération internationale), are required as the basic principles of the Nuclear Power Act.
- The principles of nuclear safety under French legislation are the principle of responsibility of the operator of facilities (Le Principe de responsabilité de l'exploitant), the principle of polluter pays (Le Principe du pollueur-payeur), the principle of precaution (Le Principe de précaution), the principle of participation (Le Principe de participation), the principle of justification (Le Principe de justification), the principle of optimization (Le Principe d'optimisation), the principle of limitation (Le Principe de limitation), and the principle of prevention (Le Principe de prévention).
- Nuclear safety in France is legislated by the Constitution, the Environmental Code (Code de l'environnement), the Code of Public Health (Cede de la santé publique) and various laws.

## ■ Procedures for nuclear safety regulation

- A construction permit must be obtained when constructing the basic nuclear power facilities, and the authority concerned shall consider overall aspects when it grants a construction permit.
- The operator of nuclear power facilities shall make regular reexaminations and adhere to safety rules.
- The operation of nuclear power facilities shall be suspended or nuclear power facilities shall be dismantled unless such facilities meet certain conditions.

• France has prepared procedures and systems through which most information can be disclosed and opinions of local residents can be gathered for the transparency of nuclear safety.

## III Expected Outcomes

- The Republic of Korea also needs to fortify its nuclear safety legislation while it continuously increases nuclear power generation. It may supplement or strengthen its nuclear safety legislation by conducting research on the nuclear safety legislation of France.

**Key Words**

The Nuclear Power Act, the Nuclear Safety Authority, nuclear safety, legislation related to nuclear power, France

# Comparative Legal Study on Safety Regulations of Nuclear Power Station -Canada-

Researcher: Chang, Cheol-Joon(Dankook Univ.)

## I Background and Purpose

- After Fukushima disaster in 2011, public concerns regarding the safety of the nuclear power plant have been elevated in Korea.
  - We have to check where we are in terms of this matter, and try to change to more reasonable regulation systems.
  - To get answers for this matter, it is useful to find the developed regulation model from outside because there are many better models of the nuclear safety.
  - Especially because we have undergone some corruption scandal related to the nuclear plants, our alternatives of the nuclear matter should be based on the social consensus and trust.
- Canada has a developed regulation system for the nuclear safety with higher technology based on the national supports and transparency.
  - It invented the CANDU reactor model that is used for our Wolsung nuclear plant, so its regulation system can be suggestive to us.
  - Most of all, the Canadian trust the governmental policy about the safety.

## II Main Contents

- The main regulator of the Canadian nuclear power plants is the Canadian Nuclear Safety Commission.
  - It builds many nuclear policies, and holds the power of issuing a license.
  - It is an independent government agency whose decisions are made collectively and effectively.
- The legal ground of the Canadian Nuclear Safety Commission is the Nuclear Safety and Control Act of 1997.
  - This act is a basic law of the nuclear safety in Canada. It works for developing nuclear energy, for safeguarding health, safety, and the environment and the national security.
  - It is a legal justification of the Canadian Nuclear Safety Commission.

■ **With the systematic legal supports, the Canadian Nuclear Safety Commission works rationally for safety regulation.**

- Because of its independence, the policy coherence and effectiveness are maximized.
- It guarantees the people's participation, and develops transparency that can be a main resource of social trusts on its works.

## Expectation

■ **The Canadian system can suggest a useful regulation model to us.**

- People's participation and transparency are the premise of social trust.
- We can introduce a dynamic discussion during the process of policy making regarding the nuclear safety.
- The Canadian model gives a way to go for the Korean government where the agency conflicts, closure, and unilateral administration system presides.

**Key Words**

the Canadian Nuclear Safety Commission, the Nuclear Safety and Control Act, Nuclear Safety Regulation, Social Trust, Transparency of Nuclear Administration

# Comparative Legal Study on Safety Regulations of Nuclear Power Station -Sweden-

Researcher: Yoon, Seok-Jin(Kangnam Univ.)

## I Background and Purpose

- Sweden's nuclear power policy promote that inward and outward by the impact of the nuclear power plant nuclear safety regulatory policy of strengthening and reduced Two Track policies.
- Recent policy trends in Sweden is being discussed nuclear export policies and stabilization policies in Korea, it shows many similarities in the regulatory policy of nuclear facilities.
- This report is adopted and in Sweden nuclear power plant safety regulatory agencies, relevant laws, by looking at the regulatory procedure intended to dig the implications for national legislation policy

## II Main Contents

- Sweden operates an integrated nuclear power plant radiation safety regulatory system through Swedish Radiation Safety Authority(SSM), grant full control on nuclear power plant safety regulations to the agency.

• SSM is a on the Ministry of Environment according to The Instrument of Government, but being virtually independent administrative institutions

• Radiation Safety Authority has been granted extensive rights with respect to nuclear power plant safety regulations.

• The main privileges include Establishing emergency measures for nuclear facilities and radioactive materials Volume, Licensing and inspectors, Control over the exposure of workers, Environmental radiation monitoring and evaluation work carried Issues, Issues related to all activities of the nuclear surveillance, legislative powers of Ordinance and Regulation relating to nuclear safety, Nuclear non-proliferation oversight, Nuclear Import and Export Control Issues.

- Swedish nuclear power plant safety regulatory legislation is divided into Act, Ordinance and Regulation.

• The Act on Nuclear Activities(SFS 1984:3) are mainly related to nuclear security activities and control and govern the details on the overall safety of nuclear work

- Radiation Protection Act(SFS 1998:220) are governs matters concerning the security and control of radiation, the overall safety of the nuclear activities, nuclear activities.
- Ordinance has establish that detail the mandate in The Act on Nuclear Activities(SFS 1984:3) and Radiation Protection Act(SFS 1998:220)
- Regulation has establish that the 「Regulations concerning safety in nuclear facilities(SSMFS 2008:1)」, 「Regulations concerning mechanical components in certain nuclear facilities(SSMFS 2008:13)」 and 「Regulations on design and contruction of nuclear power reactors (SSMFS2008:17)」 etc,.

■ Sweden's nuclear power plant safety regulatory processes can be divided into proactive safety regulatory procedure, safety regulations procedures of during operation, safety regulations procedures of the abolition and the dismantling.

- Proactive safety regulatory procedure that the authorization procedure is with mainstream licenses by The Act on Nuclear Activities and permit by The Environmental Code.
- The safety regulations procedures of during operation is that a procedure such as shutdown changing facilities, facility inspection, evaluation nuclear power station, license cancellation, and provided and restart.
- The safety regulations procedures of the abolition and the dismantling is general duties, research and development, planning and evaluation

## III Expectation

■ Swedish nuclear power plant safety regulatory agency can give suggestions to the regulatory administrative system, which is divided into the Ministry of Science, KT and Future Planning, Nuclrea safety and security Commission, etc,. in Korea.

■ Swedish nuclear power plants in the regulatory legislative area can have an implication that has been discussed in the domestic maintenance after the Fukushima nuclear accident on nuclear safety legislation.

■ As for the Swedish nuclear power plant safety regulatory procedures being implications that the central government, local governments and the inhabitants the direct participation of the regulatory process.

**Key Words**

Sweden's nuclear power policy, nuclear power plant safety regulatory agency, nuclear power plant safety regulatory procedures, Swedish Radiation Safety Authority, The Act on Nuclear Activities, Radiation Protection Act, The Act on Nuclear Activities, Radiation Protection Act

# Comparative Legal Study on Safety Regulations of Nuclear Power Station -Belgium-

Researcher: Kim, Beom-Joon(Dankook Univ.)

## I Background and Purpose

- In March 2011, Fukushima Daiichi Nuclear Power Plant accident by the Great East Japan Earthquake caused huge shock and anxiety in the world and awakened the attention and the awareness on the nuclear safety.

• Especially, this provides a chance for countries having nuclear power plants to initiate a large-scale safety inspection for their nuclear power plants when considering various and complicated circumstances of modern disasters and recognizing the enormous scale of the damage by accidents.

- Also in Korea, the awareness of the nuclear power plant has rapidly been changed in the whole society after the Fukushima nuclear accident and due to the concealment of the power outage, business corruption, fake quality assurance certificate issue, etc. currently occurred in domestic nuclear plants, the distrust on the safety of nuclear power has been expanded nationally. Thus, in addition to the existing safety inspection, now rearrangements and improvements of the safety regulatory system for the nuclear power plants seems to be necessary.

- In Belgium, nuclear power plants has commonly been used since 1974 and not 7 nuclear power plants are operated. It is ranked as the 5th country having most nuclear power plants in Europe after France (58), England (16), Sweden (10) and Germany (9). About 53.7% of its domestic electricity supplies are provided by using nuclear energy and thus its nuclear power utilization rate could be the third largest in Europe after France (73.3%) and Slovakia (54.4%).

• Furthermore, the Belgian former passive attitude on the nuclear power development has recently been changed into the one to decide its long-term utilization based on the government-led research and considering energy security, economic growth, carbon dioxide emission and etc. For this, the investment and the improvement on the safety regulatory system are in the plan to proceed gradually.

- In this situation, since the systemic and thorough study on the safety regulatory framework of the Belgium nuclear power plants could be utilized as the essential basic resources for improving and restructuring our future safety regulatory system of nuclear plants, this study is intended to suggest concrete perspectives by analyzing the safety regulation and legislation of the Belgium nuclear power development.

## II Main Contents

- **In-depth analysis on current status of Belgium nuclear power plants and function, powers, structure, position and etc. of the regulatory body**

• Current status of Belgium nuclear power plants

• Analysis on function, powers, structure, position and etc. of the regulatory body

• Analysis on relationship between the FANC(Federal Agency for Nuclear Control) and Bel V, and their relationship with the international regulatory bodies

- **Analysis on main contents of legislative and regulatory framework for the safety of Belgium nuclear power plants**

• The Law of April 1994 on the Protection of the Population and the Environment against the Hazards of Ionizing Radiation and on the Federal Agency for Nuclear Control

• The Royal Decree of 20 July 2001 laying down General Regulation regarding the protection of the public, the workers and the environment against the hazards of ionizing radiation (GRR-2001)

• The Royal Decree of 30 November 2011 on the Safety Requirements for Nuclear Installations (SRNI-2011)

• The Royal Decree of 17 October 2003 on Emergency Planning

• The Law of 31 January 2003 on the Phase-out of Nuclear Energy

• Analysis on the Licensing Regime for Nuclear Installations

- **Analysis on procedures and contents of safety regulation for Belgium nuclear power plants**

• Responsibilities of licence holders and priority to safety

• Management of Human Resources

• Quality Assurance, Assessment and Verification of Safety

• Radiation Protection

• Emergency Preparedness

• Siting, Design, Construction & Operation

## III Expected Effect

- **Through the in-depth analysis on safety regulatory system of Belgium nuclear power plants, it will be possible to contribute to rearrangements and improvements of our future safety regulation of nuclear power as well as to prepare for policy demands.**

- In addition, given the situation that there are few analysis on Belgian safety regulatory framework of nuclear power in Korea, this study could be utilized as an useful basic prior research resources.

**Key Words**

Fukushima Daiichi Nuclear Power Plant Accident, Nuclear Safety, Belgium, Regulatory Body, Legislative and Regulatory Framework, Licence Holder, Quality Assurance, Assessment and Verification of Safety, Radiation Protection, Emergency, Siting, Design, Construction, Operation

# A Comparative Law study on the Legislation of Opening of Information -Finland-

Researcher: Kim, Jung-Hyun(KLRI)

## I Background and objective

■ Background

- The government is trying to materialize a people-centered administration by opening entire process of policy and operation to the people

- Improvement or reorganization of the related legislation is required in the current situation to support the government policy. The current Freedom of Information Act was established in 1998 and no big change has made since the general revision was made in 2004.

- It is expected to find a problem on the current Freedom of Information Act and bring implications for improvement through study on Finnish Freedom of Information Act.

## II Contents

■ The management system of Finnish Freedom of Information

- Parliamentary Ombudsman

■ The main content of Finnish Freedom of Information legislation

- Establishment of Act on the Openness of Government Activities in 1999
  - In order to compel the actual openness of information by improving the exist law and clearly define the matters in which law should protect.

■ The implication of Finnish Freedom of Information legislation

- In Finland, the range and requirements of closed information are precisely specified in the law to help people grasp the range of public information in easier way.

- Also the process for the request of information disclosure has been relaxed to help people make easy request

## III Expectation

- The study on Finnish Freedom of Information legislation is expected to be baseline data for the revision of our related legislations in the future.

**Key Words**

Freedom of Information Act, Act on the Openness of Government Activities, Target Information, Institutions and Agencies Required to Provide Access to Information, Parliamentary Ombudsman

# A Comparative Study on the Government Information Disclosure Law of the U.S. Freedom of Information Act -United States of America-

Researcher: Rhee, Woo-Young(Seoul National Univ.)

## I Background and Objectives of the Research

- In today's "information society," with continuing and multi-dimensional development of diverse technologies to produce, circulate, store and reproduce information, information holds critical significance in the life of individuals and the community both in public and private dimensions. The government or particularly the administrative agencies possess and manage, consciously or inadvertently, the most amount of diverse information including the information pertaining to the privacy of the individual citizens and the business information of various corporations and other entities.
- In order to secure transparency of the government administration and to heighten the trust of the public in the fairness of the government through open communication with citizens and within the government, the government of the Republic of Korea has taken the position to make available to the public all information possessed and managed by the government as a matter of principle, subject to clearly defined and substantively justified exceptions. The law and the system of public disclosure of government information in the Republic of Korea is structured upon the Official Information Disclosure Act (Law No.12844, as most recently revised November 19, 2014). A continuous effort to systematically analyze and timely revise the Official Information Disclosure Act and other relevant laws of Korea is required for the implementation of the legislative purposes of such laws.
- In this vein, this research aims to analyze, from comparative perspectives, the law and the system pertaining to the management and the public disclosure of the information possessed by the federal government in the United States with relevant court decisions, primarily by analyzing the Freedom of Information Act (5 U.S.C. § 552; abbreviated as FOIA), in order to draw applicable lessons for Korea from the U.S. experience.

## II Major Aspects and Contents of the Research

- The Law and the System of Management and Disclosure of the Government Information in the United States

• Basic Structure of the Management of the Information Possessed by the Federal Government in the United States

- Historical Account of the Legislation and the Overview of the Federal Statute of the Freedom of Information Act

■ Major Aspects of the Federal Freedom of Information Act of the United States and the Relevant Court Decisions

- Overview
- Right to Request Information Possessed by the Government, Who May Request Disclosure of Information, Which Agency is Obligated to Make Government-Possessed Information Available to the Public, Information to be Disclosed for Inspection and Copying, Exemption from the FOIA Application, Procedures for the Disclosure of the Information including Applicable Fees
- Administrative Relief and Judicial Relief
- Reverse-FOIA Suit and the Protection of the Third Party Concerned
- Relevant Court Decisions

■ Implications to and Lessons for Korea from the U.S. Experience with the Legislation and the Implementation of the FOIA

## III Expected Applications of the Outcome of the Research

■ The analysis on the legislative history with relevant grounds therefor of the FOIA, the idiosyncratic aspects and features of the FOIA, the distinctive issues and positions argued and contested in the process of the implementation of the FOIA, the relevant court decisions, and the arguments and the trajectory for and of the revisions of the FOIA conducted in this research will help seek the direction that the information disclosure law of Korea should take for its improvement and revision in the future, from the comparative perspectives.

■ The analysis of the FOIA in this research will serve as the pertinent reference in Korea's effort in the future to revise and improve the law and the system of the management and disclosure to the public of the government-possessed information, including Korea's Official Information Disclosure Act.

**Key Words**

Freedom of Information Act (FOIA), Request for Disclosure of the Information and Record, Government Agency, Exemption from Disclosure, Administrative and Judicial Relief, Reverse-FOIA Suit

# A Comparative Law study on the Legislation of Opening of Information -United Kingdom-

Researcher: Im, Ji-Bong(Sogang Univ.)

## I Background and Objective

- As many countries in the world have rapidly entered into the information society, each countries have enacted the legislations on the freedom of information in order to enhance the openness of government management and guarantee the right to know of the people. Therefore, the study on the recent trend of the legislations on the freedom of information is fairly necessary, but the study on the topic is insufficient in Korea.
- This study aims at giving precise informations on the management system and the legislations of the freedom of information in United Kingdom.

## II Contents

- We will examine the background and the developments of management system for the freedom of information.
- We will explore the legislations on the freedom of information in United Kindom focusing on the Freedom of Information Act in the year of 2,000.

## III Expectation

- We will explore implications for Korea from the precise analyses of the management system and the legislations of the freedom of information in United Kingdom.

**Key Words**

United Kingdom, Public Information, Freedom of Information Act, Right to Know, Information Society, Lgislation on Public Information, Management System of Public Information

# A Comparative Law study on the Legislation on Disclosure of Information -Germany-

Researcher: Suh, Jung-Bum(Korean National Police Univ.)

## I Background and Purpose

- Research on the enactment of the Freedom of Information Act (Informationsfreiheits gesetz) of Germany and the content thereof
- Comparative legislative research on the Information Disclosure Act (Republic of Korea) and through which discovery of suggestions given by the aforesaid Act
- Provision of data for the revision of the Information Disclosure Act (Republic of Korea)

## II Main Content

- Information management system of Germany
- Content of the Freedom of Information Act of Germany
- Suggestions on the Information Disclosure Act of the Republic of Korea

## III Expected Outcomes

- Provide commentary (Kommentar) on the Freedom of Information Act of Germany in the status of ordinary law concerning the disclosure of information in Germany
- Presentation of a plan for the efficient operation or improvement of the Information Disclosure Act of the Republic of Korea.
- Proposal for a government model that may enjoy the confidence of the people, concerning the Information Disclosure Act.

**Key Words**

The Freedom of Information Act (Informationsfreiheitsgesetz) of Germany

# A Comparative Law study on the Legislation of Disclosure of Information -France-

Researcher: Jeong, Jae-Hwang(Sungkyunkwan Univ.)

## I Background and Purpose

- The Republic of Korea has been disclosing information held by public institutions since the Official Information Disclosure Act entered into force in 1998. The Government endeavors to realize Web 3.0-oriented public promises, and in this context, the Government will guarantee the people's right to know by increasing the scope of institutions subject to the disclosure of information and the range of the information disclosed.
- France has been concentrating its efforts on reforming the "Act on various measures to improve relations between public administration and the general public, and various regulations concerning administrative, social and financial order, Act No. 78-753 enacted on July 17, 1978" through several amendments since it enacted the aforesaid Act to ensure transparency in public administration and realize the people's basic human rights.
- The Supreme Administrative Court (Conseil d'Etat) once ruled that the right to claim disclosure of information falls under means of guaranteeing of the basic right to exercise public freedom provided for in Article 34 of the Constitution of France. Therefore, the right to claim disclosure of information is a matter of law in France.
- In this research, the researcher intends to analyze the related legislation of France that has established the information disclosure system ahead of the Republic of Korea, and especially to formulate suggestions regarding the Information Disclosure Act of the Republic of Korea, by attaching more importance to references to the explanation and decisions under the Information Disclosure Act presented by the Information Disclosure Commission of France.

## II Main Content

- The researcher seeks to ascertain persons who have the right to claim disclosure of information, persons obligated to disclose information, information subject to disclosure and information subject to non-disclosure.  In particularly, the Information Disclosure Act of France provides in detail for grounds for non-disclosure and personal information exclusively acknowledged to interested persons. Such grounds have been strictly construed and developed in accordance with judicial precedents of the Information Disclosure Commission and the Administrative Courts.

- A person who files a claim for the disclosure of information may select a method of disclosure. Where an institution that possesses information refuses to disclose such information, the person who files a claim for the disclosure of information may file an objection with the Information Disclosure Commission (CADA). Filing an objection with the Information Disclosure Commission is a prerequisite for bringing an action against the abuse of authority.
- Part of this research comprises analysis on the reutilization of public information based on guidelines of the European Union adopted as laws of France.
- In the meantime, the administrative authorities of France have been operating a system of information disclosure officers in charge of issues concerning the disclosure of information and the reutilization of public information to enhance professionalism concerning the disclosure of information since 2005.

## III Expected Outcomes

- Comparative law research with France may be utilized as reference data in the improvement of legislation related to the disclosure of information and the formulation of policy of the Republic of Korea. Especially, because the Information Disclosure Commission of France is a specialized independent administrative commission, and presents important decisions with a very high recommendation rate, and such decisions involve specific issues, the practicality of reference is deemed large.

**Key Words**

The Information Disclosure Act of France, the Information Disclosure Commission, officers in charge of the disclosure of information, reutilization of public information.

# A Comparative Law study on the Legislation of Opening of Information -Australia-

Researcher: Kim, Kwang-Soo(Sogang Univ.)

## Background and Objective

### Background

- This study aims to examine the legislations regarding the access to and freedom of information around the world and to introduce them to South Korea.
- Located in the Pacific Rim as South Korea is, Australia has seen an increasing number of exchanges with South Korea.
- As part of the Commonwealth of Nations, Australia has been strongly influenced by the traditions of the British law. Recently however, Australia has had exchanges with the US in the area of law and has striven to improve the institutional framework for the sake of welfare of its people.
- In 1982, the Freedom of Information Act came into force into force in Australia, determined to enhance governmental transparency by providing a right of access to government documents of the Federal Court.

### Objective

- This article focuses on the Freedom of Information Act (FOI Act) of 1982 enforced in Australia and compares it with the South Korean legislation.
- By this comparative study, the paper wishes to broaden the horizon of mutual understanding and to contribute to the better interpretation of the South Korean legislation.
- This paper also seeks to assist with all other future studies on the FOI Act and relevant legislations of Australia.

## II Contents

### Introduction to the Australian Legal System

- Legal Tradition
- The Constitution and Legislation

### The Information Disclosure and Control System in Australia

- Overview and Basic Structure: the Information Control Legal Systems

■ Details of the Freedom of Information Legislation

• Overview and Details of the Freedom of Information Legislation

■ Implications of the Freedom of Information Legislation in Australia

## Expectation

■ Legal Effects

• The study will help understand the FOI Act and relevant legislations in Australia and improve the interpretation of the South Korean legislation.

■ Extralegal Effects

• The study intends to further advance the mutual understanding and exchanges with Australia and to contribute to the resolution of conflict of law issues involving the people.

Key Words

Freedom of Information Act, Information Commission, Target Information, Institutions and Agencies Required to Provide Access to Information, Consultation on the Request, Administrative Appeals Tribunal

# A Comparative Law study on the Legislation of Opening of Information -Japan-

Researcher: Kim, Rae-Young(Dankook Univ.)

## I Background and Objective

- Japan is the second country(following Korea) in Asia that legislates and enacts Information Disclosure Act.
- To research Japanese Information Disclosure Act and check the related judicial precedent.
- To find the publication of the present state of Japanese Information Disclosure.

• We can find suggestions in amending Act and reasoning findings through this study.

## II Contents

- Japanese Information Disclosure Acts respectively regulate Administrative Organization and Independent Administrative Corporation. But their specific provisions are much the same.
- The Act explicitly includes a foreigner as a subject of Information Disclosure, whereas excludes Courts and Assembly as a object.
- The other provisions of the Act and the tendency of the judicial precedent are similar to those of Korea. Japanese Court prefer Information Disclosure in appearance, but have a tendency to dismiss Information Disclosure Claim on the reason of privacy of the third Party.

• It is estimated that Japanese judicial precedent effect Korean judicial precedent.

• We may refer to the publication pt the present state of Japanese Information Disclosure which is very detailed in specifics.

## III Expectation

- Legal system and specific provisions are go in advance of those of Japan. Whereas We are second to Japan in reasoning of the judicial precedent and the publication pt the present state of Japanese Information Disclosure, so we shall refer and reflect of the Japanese merits.

**Key Words**

information disclosure, foreigner, privacy, publication of the present state of information disclosure

# A Comparative Law study on the Legislation of Opening of Information -China-

Researcher: Lee, Sang-Mo(KLRI)

## I Background and Purpose

### ■ Background of this study

- Introduction of legislation related to government information disclosure in China, and its present condition and management system of information disclosure
- Suggestion of improvement directions for disclosure of public information of present government in Korea by analyzing problems in laws related to information disclosure in China

### ■ Purpose of this study

- Suggestion of advancements in information disclosure laws in Korea by analyzing problems that have been found by case studies of recent Chinese laws related to information disclosure

## II Main Contents

### ■ Introduction of laws related to information disclosure, and important cases in China

- Introduction of main structure and details of information disclosure system in China with "the Regulation of the People's Republic of China on the Disclosure of Government Information" and "Opinions of the General Office of the State Council on Some Issues about Implementing the Regulation of the People's Republic of China on the Disclosure of Government Information"
- Discussion of what China should take care of in regards to information disclosure by analyzing issues raised in "Ten Cases regarding Government Information Disclosure by Courts over the Country" that was published in September, 2014, and suggestion of its implications to Korea

### ■ Implication

- For Korea to carry out information disclosure system effectively, it is necessary to refer to work–oriented contents of recently enforced information disclosure in China.

• By materialization and organization of scope of information disclosure based on precedents related to information disclosure in China, it becomes possible to predict and prevent potential future disputes related to information disclosure.

• It is necessary to improve and develop information disclosure system to protect the rights and interests of the people.

## III Expected Effects

- It is expected that all the scattered information related to government information disclosure in China to be organized, and would become a foundation for future study.
- By establishment of efficient government information disclosure system, people's right to know would be protected and institutionalized.

**Key Words**

China information disclosure system, government information disclosure ordinance, government information disclosure procedure, present condition and management system of information disclosure

# Annual Research Projects

Support for Legal Exchanges

# A Comparative Study on ICT Laws in India and Korea

Researchers: Jiyeon Choi(KLRI)
Jupi Gogoi(Indian Law Institute)

## I Purpose and Scope of Research

- In Asia, Korea and India are considered as countries with advanced technology in information and communications field, based on each country's highly developed industrial foundation.
- With the rapid growth of the business in the ICT field and the take it brings to the national economy, coupled with the level of complexity of the technology that the industry entails, it is obvious that relevant legislation needs to be carefully drawn and match the speed of the development to avoid lagging.
- Overview of Laws related to ICT issues from India and Korea is provided with introduction and brief analysis of key elements, followed by comparison.

## II Contents

- ICT Laws in India

• The aim of the 『IT Act』 was to set up India's first ever information technology legislation.

• To bring the 『IT Act』 in line with the 『Model Law on Electronic Signatures adopted by the UNCITRAL』, the 『Information Technology (Amendment) Act, 2008』 (『IT(Amendment) Act』) was passed in December 2008, and was made effective from 27th October, 2009.

• Both the 『IT Act』 and the 『IT Act Amendment』protects data and privacy through various penalization provisions and hold a legal person liable for breach.

• 『IT Act』 and 『Copyright Act』provides specific circumstance when intermediaries are held liable

• Key legal issues pertaining to cloud computing are data protection, privacy and security, and liabilities of the cloud service providers

- ICT Laws in Korea

• Historical Developments of ICT Laws in Korea are reviewed: chronologically, laws on ICT can be grouped into five stages - (1) Expansion of Foundation for Telecommunications (1902 - 1986), (2) Drive for Computerization (1987 - 1994), (3) Initiative for National

Informatization (1995 - 2003), (4) Full-Scale National Informatization (2004 - 2007), and (5) Regulation for Broadcasting Communications Convergence (2008 - ).

- The amendment on the 「Framework Act on Broadcasting Communi-cations Development」 that provides the concept of the broadcasting communications and also manages the policy on the broadcasting and communications were made, in the hope of providing a firm legal foundation for the converged and unified sector.
- 「Special Act on Promotion of Information and Communication Technology, Vitalization of Convergence Thereof, Etc.」 (a/k/a 「Special Act on ICT」) builds itself as a legal foundation for the support for software and web-contents businesses as well as R&D and materialization of business ideas for the new convergence technology and services
- 「Act on the Development of Cloud Computing Development and the Protection of Users」 aims to reform regulations that hinders development of the cloud computing business, to provide legal foundation for promotion policies for the industry, and also to maintain a secured cloud computing service use to systematically and comprehensively grow the cloud computing business

## III Expected Effects

- Through this comparative analysis of laws on ICT in India and Korea, this research hopes to build a helpful resource for scholars and legislatures as well as entrepreneurs and researchers in the field in their quest of journey for better legislation on and implementation of ICT laws.
- This research report may be utilized as basic information for ICT Laws in India and Korea

Key Words

Information and Technology Law, ICT Law, India, Korea

# Supporting Laws for Developmental Stages of Small-Medium Enterprises in South Korea

Researchers: Kwan-Hoon Kwak(Sunmoon Univ.)
Dae-Hoon Kwak(Chungnam National Univ.) Jiyeon Choi(KLRI)

## I Purpose and Scope of Research

- With the accomplishment of the rapid economic growth for the past decades after the Korean War, Korea has been set as one of the model countries to study and to benchmark for development by many Asian countries. As the Small and Medium Enterprises ("SMEs") taking the majority of the economic vehicle in Korea, reviewing and sorting out relevant laws and regulations on SMEs would certainly shed lights in assessing effectiveness of those laws.
- According to the developmental stages of SMEs, each supporting law's specific provisions and their effectiveness are reviewed and assessed.

## II Contents

- Supporting laws for small-medium enterprises can be classified into three developmental stages: (i) Establishment Stage, (ii) Growth Stage, and (iii) Conversion Stage.
- For establishment stage of small-medium enterprises, there are several support laws including 'Support for Small and Medium Enterprises Establishment Act', 'Act on Special Measures for the Promotion of Venture Businesses'.
- Consumer cash loan, policy financing, and funding through the Fund for the Establishment and Promotion of Small and Medium Enterprises based on Small and Medium Enterprises Promotion Act are available for start-ups.
- For growth stage of small-medium enterprises, supporting systems include ① Support for R&D, ② Support for manpower, and ③ Support for development of their markets, and related supporting laws are 'Framework Act on Small and Medium Enterprises', 'Act on the Promotion of Technology Innovation of Small and Medium Enterprises', 'Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises'.
- During the conversion stage, 'Special Act on the Promotion of Business conversion in Small and Medium Enterprises' is considered most helpful.
- Support for funding as well as business operations and managements are available throughout the developmental stages by various laws.

## III Expected Effects

- For each stages, establishment, growth, and conversion, laws provide methods to assist financially and also with management. These systematic support throughout the developmental stages of enterprises has been effective in having the SMEs survive, if not thrive, in Korea, and the same system may be utilized, with modifications based on each country's political and societal circumstances, by developing countries and transition economies.

**Key Words**

Small and Medium Enterprises, Supporting Laws, Developmental Stages, Funding, Management Support

# A Study on Laws Related to Social Economy

| Researchers: Kwang-Dong Park(KLRI) | Jiyeon Choi(KLRI)
| Sang-Mo Lee(KLRI) | Cherry Kwon(KLRI)
| Cheolseon Lee(KoreaInstitutefor Health and Social Affairs)
| Junseob Yi(Ajou Univ.) | Hyeogsang Sohn(Hongik Univ.)

## I Social Enterprise

### Significance of Social Enterprises

- Emergence of Social Enterprises: Background
  - The emergence of social enterprises is based on considerations for the socially vulnerable
- Concept of Social Enterprises
  - The initial definition and the subsequent expansion of the definition of Social Enterprise through amendments of the Social Enterprise Promotion Act only shows lack of clear explanation as to the boundaries of the Social Enterprises

### Social Enterprises and their Current Status

- International Situations
  - United States currently have various forms of social enterprises legally authorized under laws on corporate/company and not have a distinctive legal entity designated for social enterprises, while European countries such as the United Kingdom or Belgium, although different in details, recognize social enterprise in their legal system
- Current Status of Social Enterprises in Korea
  - While the total number of social enterprises operating after certification and the number of the “would-be” social enterprises have been increasing steadily, some fluctuations over the years in the number of newly certified social enterprises each year also exist

### Legislation for Social Enterprises

- Development of the Social Enterprise Promotion Act
  - The Social Enterprise Promotion Act aims to help nurturing and supporting social enterprises that pursue social missions such as social services for low-income earners using proceeds from their business activities by providing legal framework for them to be a truly meaningful alternative in our society, and through amendments it also projects to expand the scope and to enhance the supervisory system

• Legal Framework for Social Enterprises

- Although provides no distinction between regular for-profit businesses from social enterprises in terms of the forms of corporations, the Social Enterprise Promotion Act tries to define social enterprises by providing detailed provisions meticulously

- The Social Enterprise Promotion Act also provides different supportive mechanisms throughout the development of social enterprises

■ Legislation for Social Enterprises: Prospects and Challenges

• Policies under the Social Enterprise Promotion Act and their Achievements

- Policies related to social enterprises are implemented by different government agencies depending on their objectives. While social enterprises are under the jurisdiction of the Ministry of Employment and Labor, there are other forms of organizations with similar social objectives that are governed by different government agencies

• Policy Improvements Needed for the Social Enterprise Promotion Act

- Lack of diversity, self-sufficiency issues when government supports cease, and tailored support system for individual enterprises are counted as the major issues to be addressed through the amendments of the Social Enterprise Promotion Act in the future

• Prospect and Challenges

- Social enterprises, social cooperatives, community businesses, self-sufficiency enterprises and other similar organizations have a common goal - growth of social economy and development of voluntary civil economy, consolidation of, or alliance with, similar policies, instead of fragmented implementation by different agencies, will have a much greater impact on social enterprises and the social economic ecosystem

## Social Cooperative

■ Definition of Social Cooperative

• Legislation

- In Korea, the Framework Act on Cooperatives was enacted in December 2011 and came into effect in December 2012 to help local communities create jobs and provide local welfare services.

• Qualifications

- The Framework Act on Cooperatives is the governing law for eight individual acts on cooperatives. General cooperatives are for-profit entities as defined under the Commercial Act, while social cooperatives are defined as not-for-profit entities under the Civil Act.

• Characteristics

- Unlike corporations where voting rights are linked to the contribution (one share, one vote) as defined under the Commercial Act, cooperatives are democratic organizations jointly owned by their members with each member having an equal voting right (one member, one vote). Profits generated from their activities are not distributed among members.

- Compared with social enterprises, social cooperatives require approval from the competent authority, but receive no direct financial support. Cooperatives are a form of enterprise, like a corporation, which social cooperatives may choose to be.

### ■ Facts about Social Cooperatives

• Key fitures

- As of December 2014, the number of social cooperatives is 233, representing 3.7 percent of the total 6,251 cooperatives, and the majority of social cooperatives are of multi-stakeholder type arrangements in which business owners, individuals and organizations come together for mutual benefits.

- Four ministries have granted a combined 70 percent of the total 233 counts of approval granted: Ministry of Employment and Labor (51), Ministry of Health and Welfare (44), Ministry of Education (40), and Ministry of Planning and Finance (27).

- The sectors where social cooperatives are predominantly found are education services (67), healthcare and social welfare services (64), business facilities and support services (24), and art, sport and leisure services (14).

- 222 (or 95.5 percent of the total 233 social cooperatives formed) are new, with only 4.3 percent are those having been created through conversion from existing entities.

- Seventy nine, or 33.9 percent, of the total are registered in Seoul, 66 in Gyeonggi and 15 in Gangwon.

- A combined 24,693 members participated in 233 cooperatives at the time of their formation, with a mean average of 106 members per cooperative. The combined capital stock of all cooperatives is 9.375 billion won, which represents a mean average of 40.23 million won per cooperative.

• Operations

- As of September 2013, the presidents of 73 social cooperatives had worked for research institutes/schools (20.5 percent), political parties/civic groups (19.2 percent) or welfare organizations (19.2 percent).

- Their business areas include supplying processed agricultural products (23.6%) for disadvantaged groups (21.8%), day care for senior citizens (21.8%), environmental services (14.5%) and education and culture services (14.5%).

- They are more reliant on external funding such as member contributions (84.9%),

government subsidy (26.0%) or donations (20.5%) than revenue generated internally by their own businesses.

- The average headcount per cooperative is 13.33. The mean average numbers of regular and non-regular employees per cooperative are 5.74 and 5.88, respectively. There are four times as many female employees working in cooperatives than male employees doing so.
- The average monthly salary is 1.57 million won per executive and 1.49 million won per non-executive employee. A combined 91 percent of all employees are beneficiaries of the four statutory forms of social insurance in Korea.

■ Prospects for Social Cooperatives

• Policy Implications

- Social cooperatives can be used as a means to help support social cohesiveness in the wake of major demographic shifts such as the falling fertility rate and societal aging. They can also function to counterbalance the weakened competitiveness of industries that have traditionally provided large numbers of jobs such as manufacturing.
- Instead of spending public money, the government may choose to use cooperatives to change the link between employment and welfare and ultimately help form self-sufficient social infrastructure.
- Unlike Italy or France where citizens have played a leading role in the growth of social cooperatives, Korea has used a top-down approach in which the central government has enacted legislation to promote cooperatives.

• Limitations and prospects

- At 230, social cooperatives represent a very small number of all cooperatives, and only a few are involved in the alliance business.
- It is necessary to widen the scope of social services eligible for financial support from the state so that social cooperatives can undertake investment in not-for-profit activities through for-profit ones.
- A framework act on social economy, which is currently being discussed by the National Assembly, needs to be passed to help support economic organizations with similar objects to cooperatives, such as social enterprises, village businesses, self-sufficiency businesses and community businesses, in working collaboratively on mutually beneficial activities.

## III Social Economy

### ■ Background and Implications

• Background

- The growth of capitalism driven by enterprises made the rich even richer and the poor even poorer. At the same time, many challenges emerged, such as inequality of income distribution, economic instability resulting from alternation between recession and boom, disparity between private and public interest, destruction of nature, and human alienation. To help address these challenges resulting from the structural drawbacks of capitalism, new movements emerged.

- Consequently, voices begin to surface indicating that, with respect to the entire economy, balanced progress in economic, environmental and social values should be the goal instead of higher economic growth in a broad spectrum, and with respect to individual enterprises, maximization of social influence should be the goal instead of profit maximization.

- In this regard, social enterprises with a goal of helping socially disadvantaged groups get on their own feet began to emerge, and the concept of corporate social responsibilities started to proliferate. Today, discussions are under way about social economy that goes beyond social interest and responsibility and touches on fundamental transformation.

• Implications

- Social economy is a process of redistributing wealth created from market economy based on voluntary solidarity and mutual consideration as a response to the failure of government and the drawbacks of the market.

- Mainstream organizations of social economy are not-for-profit organizations in the third sector such as cooperatives and social enterprises (and not government and market). The proposed Framework Act on Social Economy identifies cooperatives, mutual aid cooperatives, social enterprises and other similar organizations as social economic organizations.

### ■ A snap shot

• Discussions of social economy depend on the socio-economic circumstances and the history of modernization and political system of individual countries. We can see both diversity and uniqueness as well as uniformity in the diverging discussions.

• Western States

- Social economy started to gain attention again when the welfare model in Europe exhibited a series of crisis symptoms in the 1970s. The globalization of capitalist economies brought tremendous changes to individual countries' economic structure such as a major shift in their demographic composition and the fall of the myth of full employment. These, in turn, led to widespread unemployment and financial burden on welfare states. Amid such dramatic changes in capitalism, social economy emerged in areas where neither the state nor the market can fill the needs. There was also a highly intentional and strategic need to promote voluntary economic movement in the private sector.

- Social economy in the U.S. emerged in the historic background of charity movements and activities of not-for-profit organizations.

• Korea

- Private groups that emerged in the course of democratization in the 1980s ushered in the start of a new social economy.

- Korea has adopted many systems designed to assist diverse social economic organizations such as social enterprises that have different goals for protection of socially vulnerable groups, an extended welfare safety net or restoration of local communities. The policies and institutions concerning social economic organizations, however, have been adopted discreetly without any connectivity. Yet discussions of social economy started in the 2000s and recently have begun to heat up.

- Over 1,000 social enterprises have been certified nationwide since the passing of the Social Enterprise Promotion Act in 2007, and over 4,000 cooperatives were created within just 16 months after the Framework Act on Cooperatives went into effect in 2012. Recently, a bill entitled "Framework Act on Social Economy" has been proposed to house all these individual acts under a single structure.

■ Legislation on Social Economy

• Proposed Framework Act on Social Economy

- The Framework Act on Social Economy has been proposed by Lawmakers Yoo Seung-min, Shin Gye-ryun and Park Seok-won, respectively. Their bills have many provisions in common such as those regarding development funds for social economy and assistance, and nurturing and operation for social economic organizations.

- Yoo's bill states "the purpose of the Proposed Act is to help address income disparity, form healthy and sound communities and achieve balanced growth of the national economy by building an integrated ecosystem and developing an integrated implementation system for the sustainable growth of social economy."

- Article 2 of the bill provides the definitions of social economy, social economy promotion projects and social economic organizations. "Social economy refers to all economic activities aimed at creating social values such as expanded social services, greater availability of welfare services, more job opportunities, and community development

through cooperation and solidarity among members and their practive self-innovation and voluntary participation."

- The article also states "other legal entities or associations formed to help realize social economy or support social economic organizations," which broadens the scope of social economic organizations. Organizations not eligible under the preceding paragraphs may be accepted as social economic organizations under the bill.

• Framework Act on Realization of Social Values by Public Organizations

- The Framework Act on Realization of Social Values by Public Organizations was proposed on June 17, 2014 with a goal of realizing social cohesion by causing public organizations to take social values into account in addition to economic values when they set up and implement their policies.

• Proposed Special Act on Greater Sales and More Marketing Channels for Social Economic Enterprises

- This bill was proposed in 2013 in connection with social economic enterprises eligible for preferred purchase and greater market access.

■ Benefits and prospect

• Benefits

- Potential benefits include more job opportunities, rollout of values of solidarity in the community, shift in social relationship network and realization of democracy.

• Prospects

- Although social economy has just started to be discussed, expectations of its benefits are very high.

- To make it successful in Korea, it is imperative to remove any overlapping or conflict with existing regulatory framework, have everything required to determine whether and how much it realizes intangible and abstract social values and identify anything that may cause issues in relations with other countries.

**Key Words**

Laws of Social Economy, Social Enterprise, Social Enterprise Promotion Act, Social Cooperative, Framework Act on Social Cooperative, Framework Act on Social Economy

# Study on Systemizing Legislative Modularization in Korea

Researchers: Park, Kwang-Dong(KLRI)
Lee, Sang-Mo(KLRI) | Hur, Dae-Won(Silla Univ.)
Oh, Il-Seok(National Assembly Library) | Park, No-Il(PnC media)

## I Background and Purpose

### Background of the Study

- The legislative exchange as knowledge exchange functions as a mutual legal cooperation through exchanging and sharing knowledge information on Korean experience in legal development and Korean legal information infrastructure.
- Contrary to international interests in recent Korean legal issues, the legislative knowledge exchange is difficult due to insufficient ways to introduce Korean legislative knowledge.

### Purpose of the Study

- This study aims to provide the direction to modularize Korean legislative reports in rational and efficient way for legislative exchange and cooperation with the target state.

## II Main Contents

### Brevity of Summary and Other Reports

- Constitute summary reports as follows: Ⅰ. Background and Purpose; Ⅱ. Main Contents (1. Concept, 2. legislation and system of the target state, 3. certain legislation and system of Korea, and 3. mutual comparison and implication); Ⅲ. Promotion System of Exchange and Cooperation; and Ⅳ. Expected Effects.
- The general title-subtitle struture is rational for reports.
- The cover of the book should provide an image that relates to the contents and in case of series, a consistent design is necessary.

### Utilizing a Source Book Binder

- The source book binder has less danger in losing additional sources, and the legislative decision makers can store the information in the binder for a long period.

### Rationalization of Utilizing Internet

- The Measures to post the main contents of published reports on the homepage and to upload the reports.

## III Expected Effects

- Contributing to secure legislative confidence in diplomacy through providing a direction for an effective cooperation on legislative exchange of related institutions.
- Fulfilling as a uniformed guideline to the method of Korean legislative exchange and cooperation.

Key Words

Modularization, legislative exchange, legislative cooperation, supporting legislative exchange, maintaining legislation

# Current Issues in Korean Law

Researchers: Sang-Mo Lee(KLRI) | Kwang-Dong Park(KLRI)
Song-Min Hong(KLRI) | Sun-pil Eum(Hongik Univ.)
Seung-Hwan Choi(Kyung Hee Univ.) | Gyooho Lee(Chung-Ang Univ.)

## I Background and Purpose

### Background of the Study

- The objectives of this study are to promote understanding of Korean legislation and vitalize foreign research on Korean law by publication of books in English that introduce Korean legislation systematically

### Purpose of this study

- The primary purpose of this study is not only to promote intellectual exchange but also to enhance the value of Korean legislation as a model legislation.

## II Main Contents

### Democracy and the Election Commission in Korea

- The history of Korea after the foundation in 1948 has been a process of action and reaction for the development of democracy.
  - In this process, the legislation of election laws and the establishment of an independent election management body have been at the center stage.
- Although having accomplished good performance until now, the Election Commission should strive further to deepen democracy in Korea.
- The Commission, as an independent constitutional agency, must maintain the reliability of the election management at a high level through the enhancement of professionalism, transparency, morality, accountability.
- For the development of democracy in Korea, the Commission should endeavor to support the development of party politics, enhancement of democratic civic education, and to develop the electoral system and the election management system in preparation for the reunification era.
- Korean experience of achieving industrialization and democratization in a relatively short time needs to be theorized in order to be a big help for the emerging democracies in the world.

■ Food-Related Laws and Systems

- South Korean food safety-related laws are pluralistically administered by several relevant agencies including Ministry of Agriculture, Food and Rural Affairs (hereinafter referred to as "MAFRA") and Ministry of Health & Welfare (hereinafter referred to as "MW") according to the purpose and regulatory targets of laws, centered on the 'Framework Act on Food Safety.'
- The laws administered by MAFRA mainly include food safety and quality-related laws that regulate the production process for agricultural, marine and livestock food, and the laws administered by MW mainly include food sanitation and public health-related laws.
- South Korean agricultural and marine food safety management system and inspection and quarantine system are dualistically managed by MAFRA and MW in accordance with items and stages.
- South Korean food safety management system includes Good Agricultural Practice (GAP), Eco-friendly Agricultural Product and Processed Organic Food Certification system, Hazard Analysis and Critical Control Point (HACCP) system, Place-of-Origin Indication System, and Traceability system.

## III Expected Effects

■ This study will satisfie the needs for promotion of intellectual exchange by introducing Korean legislation to the world

■ It also will enhances the value of Korean legislation as a model legislation.

**Key Words**

development of democracy, Election Commission, food safety, food safety management, human health, Framework Act on Food Safety, Food Sanitation Act

# Foreign investment legal commentary in Korea

Researchers: Lee, Sang-Mo(KLRI)
Kim, Yeu-Sun(Jeju National Univ.)

## I Background and Purpose

### ■ Background of this Study

- As Korea-China FTA will come into effect in 2015, Korea and China will have a more intimate economic cooperation relationship. Currently, Chinese investment in Korea is increasing due to the Chinese government policy.
- However, according to the survey of the Office of the Foreign Investment Ombudsman, the most common difficulty Chinese investors have is establishing a precise investment plan due to a complex foreign investment system. Especially, the survey points out problems such as a scattered system and law on the foreign investment, investment procedure, incentive system, postmanagement system, and relationship between central law and local regulations.

### ■ Purpose of this Study

- This study intents to facilitate establishing an investment plan and service of Korean central and local government to attract investment by transferring accurate contents of the related law for Chinese to invest in Korea.

## II Main Contents

### ■ Foreign Investment Regulation System in Korea

- The main regulations on foreign investment are Foreign Investment Promotion Act and related laws, Tax Reduction and Exemption Control Act, Foreign Exchange Act, and so on.
- Among these regulations, Foreign Investment Promotion Act is the general foreig investment related law that attracts foreign investment by supporting foreign investment and providing convenience in foreign investment to contribute to a healthy development in public economy.
- Besides, there are regulations that apply to exclusive zone that has different system than other region in Korea to secure foreign investor's business and economic activity.

■ The Concept of Foreign Investment

- Foreign Investment refers to ① foreigners retaining stocks or shares of Korean corporation or business entity, ② foreign parent company or others having a long-term credit longer than 5 years with the relevant foreign-invested company, or ③ foreigners contributing to non-profit organizations.
- Other than above, if a certain activity satisfies standard requirement of the Committee on Foreign Investment, such activity is recognized as a foreign investment.

■ The Method and Procedure of Foreign Investment

- The procedures of foreign investment are: reporting foreign investment, establishing a company, acquiring land by foreigner, establishing a factory, postmanagement after investment, and so on.
- The methods of reporting foreign investment by acquisition of shares are as follows: introducing foreign currency funds on purchase of existing stocks, purchang new stocks or other acquisition, purchasing existing stocks, or acquiring stocks by merger or approval. In addition, the companies that are established for foreign investment are: a general partnership, a limited partnership, a limited liability company, a joint-stock corporation, or a corporation.

■ The System of Foreign Investment Support

- In certain case, foreign investments get support in taxation. Thus, the targeted foreign investement businesses that are important for enforcing international competition of national businesses get special tax treatment according to 「Tax Reduction and Exemption Control Act」. They get reduction on the corporation tax, income tax, acquisition tax, and property tax on the investments.
- However, for certain instances, the foreign investments do not get reduction of coporation tax, income tax, acquisition tax, and property tax according to the Act.

■ Foreign Investment in the Capital Markets

- The foreign investment system under the Capital Markets Act has three main aspects: the limitation on acquiring listed stocks, registration of foreign investment, the transaction of listed security by foreigners.
- The related regulations are the Foreign Investment Services and Capital Markets and its Enforcement Decree and the regulation on financial investment and its Enforcement Rules.

## Ⅲ Expected Effects

- By analyzing scattered foreign investment laws in different types, the paper aims to enforce the transparency of investment legislation for Chinese investors. Through this, this paper will be able to promote globalization of Korean law and legal exchange.
- This paper has meaning in preventing the investment disputes that might arise during the postmanagement of the Chinese investments. Especially, by providing a useful basic resource to attract Chinese investors, this paper will help the related government deprtment to adapt government policies effectively.

Key Words

Foreign Investment, Exclusive Industrial Zone, Promotion on Foreign Investment Act, Supporting Foreign Investment, Stock Investment, Bond Investment, Transaction System of Listed Stocks

# Comparative Study of Genetic Resources Legislation between Korea and China

Researchers: Lee Sang Mo(KLRI)
Jin Zhe(China University of Political Science and Law)

## I Background and Purpose

### Background of this Study

- In October, 2014, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (hereinafter the “Nagoya Protocol”) which was adopted at the tenth meeting of the Conference of the Parities on October 29, 2010, entered into force.
- Even though Korea and China are not a member of the Nagoya Protocol, both countries already have laws related to the Access to Genetic Resources and Benefit-Sharing (hereinafter the “ABS”). The laws related to the ABS in both countries will be strengthened and systematized due to the enforcement of the Nagoya Protocol

### Purpose of this study

- This study will compare and analyze present conditions and issues of the laws related to the ABS in Korea and China, and provide solutions to strengthen such laws.

## II Main Contents

### Comparison of Korean and Chinese law related to the ABS

- The Nagoya Protocol is a protocol that achieves “the fair and equitable sharing of the benefits arising from the utilization of genetic resources.”
- In Korea, laws related to the ABS are: “Act on Preservation and Utilization of Bio-Diversity,” “Act on the Preservation, Management and Use of Agro-Fishery Bio Resources,” “Act on the Acquisition, Management, and Utilization of Biological Research Resources,” and “Act on Access to Genetic Resources and Benefit-Sharing.”
- In China, laws related to the ABS are: “Act on Seed,” “Act on Protection of New Plant Varieties,” “Act on Access to Genetic Resources,” and others.

### Implication

- It is foreseeable that Korea will make a policy that promotes preservation and usage of domestic genetic resources, and at the same time, use foreign genetic resources actively.

- China needs to make a reference to provisions in "Act on Preservation and Utilization of Bio-Diversity," and "Act on Access to Genetic Resources and Benefit-Sharing."
- Korea and China need to cooperate and respond jointly to issues related to "preservation of bio-diversity" and "access to genetic resources and benefit-sharing" for the purpose of protection and usage of genetic resources.

## Ⅲ Expected Effects

- Legal solution for more efficient performance of ABS measures on genetic resources
- Improvement in international cooperation and dispute resolution between Korea and China

Key Words

genetic resources, bio-diversity, benefit-sharing, the Nagoya Protocol, Korea-China comparison method

# Overview and Historical Development of Intellectual Property Laws in South Korea

Researcher: Hyung-Gun Kim(KLRI)

## I Background and Purpose of Research

- The study was carried out as part of the Korea Legislation Research Institute's legal exchange research project. The purpose of this study is to provide an overview of the legislative history of Korean intellectual property laws to share Korea's legislative development experiences in the field of intellectual property law.

## II Contents

- This study gives a brief overview of the structure and sources of intellectual property laws in South Korea.
- This study then scrutinizes the legislative history (i.e., reason for enactment, major amendments and structure of law) of Korean intellectual property laws.
- This study breaks into five chapters: 1) Overview of Intellectual Property Laws in South Korea; 2) Laws on Industrial Property and Industrial Designs; 3) Laws on Copyrights and Neighboring Rights; 4) Laws on Trademarks and Other Distinctive Signs; and 5) Laws on Plant Variety Protection.

## III Expected Effects

- This study may serve as a brief introduction to Korean intellectual property laws in English.
- This study may serve as a guide to the legislative history of Korean intellectual property laws.

Key Words

Intellectual Property Laws, Patent Act, Copyright Act, Trademark Act, Utility Model Act, Design Protection Act, Plant Variety Protection Act

**Printed on** August 26, 2016
**Publisher** Lee Won
**Published by** Korea Legislation Research Institute

15, Gukchaegyeonguwon-ro, Sejong-si
Tel: +82 44 861 0300 www.klri.re.kr

Korea Legislation
Research Institute
**2015 Annual Report**

15, Gukchaegyeonguwon-ro, Sejong-si, Korea
T. +82 44-861-0300   www.klri.re.kr