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Korea Legislation Research Institute

2015 Annual Report

Vol.3 Annual Research Projects Ⅱ

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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

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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

Research Projects on Global
Legislative Strategies

An Analysis of Current Issues Regarding Global Legislations about Human Rights Management of Multinational Corporations

Researchers: Yoo, Sung Jin(KLRI)
Kim, Jae Won(SUNGKYUNKWAN Univ.)

I Background and Purpose

■ Background of this study

• Corporations have a strong influence on society because they lead economic growth, but they may pose risks to human rights such as labor rights because of excessive pursuit of profits. Therefore, society and governments must hold corporations socially responsibility and ensure that corporations are held to human rights standards.

• The international community, including the UN, OECD, ILO, ISO, and international NGOs, has suggested several standards or guidelines about multinational corporations' duties to respect human rights.

• Also, there are arguments that these standards and guidelines should be included in international human rights law in order to create an international regulatory mechanism because the standards and guidelines currently depend on the whims of corporations and are not legally binding.

• Thus, it is necessary to check for possible human rights violations committed by multinational corporations and try to find ways to prevent such violations.

■ Purpose of this study

• With the changing global legal system, it is necessary to modify domestic law, national systems, governmental policies, people's awareness, and corporations' practices to ensure that corporations are held accountable to respect human rights while supporting the promotion of business activity and overseas expansion.

• This study will suggest a political improvement plan for implementing international standards on the domestic level, as well as a plan for revising the labor relation acts, corporate governance structure acts, and capital market relation acts to be in accordance with international standards.

II Main Contents

■ Understanding corporations and human rights, and the roles and duties of multinational corporations

• Understanding corporations and human rights

- Review the definition of corporation and the legal role of corporations, and compare similar concepts, such as CSR, business ethics and human rights management.

• Human rights management of multinational corporations

- Review the idea that multinational corporations have a duty to respect human rights and to protect the human rights of each nation; then analyze possible human rights violations by multinational corporations and their regulations.

• Human rights violations by multinational corporations

- Human rights violations occurred due to lack of understanding about the local rules and international standards, absence of communication with native people, and discriminatory attitudes.

■ **Human rights trends relating to multinational corporations and the international community**

• UNGP

- Under of its mission to "protect, respect, remedy," UNGP suggests guiding principles about corporations' duty to respect and protect human rights in each nation, and asks for due diligence and a national action plan (NAP) for human rights protection.

• OECD Multinational corporation guidelines

- In 2011, the guidelines added an independent chapter for human rights, which suggests connected work with other international standards such as UNGP for the human rights management of multinational corporations. It also recommends operating with a national contact point (NCP) for remedying human rights violations.

• UNGC

- It provides 10 principles relating to human rights and multinational corporations under the categories of labor, the environment, and fighting corruption.

• ISO26000

- It suggests a standard relating to the duties of corporations and nations, includes an explanation of CSR, and asks for joint confrontation on human rights issues with UNGC and ILO.

• GRI

- GRI is a network for providing a framework for reporting comprehensive sustainability, and it asks multinational corporations to be open and report about their corporate governance structure and non-financial achievements. It also currently affirms corporations' duty to protect human rights in its G4 initiative.

■ Human rights management of multinational corporations in foreign countries

• Human rights management of multinational corporations in the U.S.

- Human rights management is often privately led in the U.S., such as by NGOs, private SRI funds, and large financial institutions, rather than enforced by the government.
- Review the Alien Tort Statute, Dodd-Frank Wall Street Reform and Consumer Protection Act, California Transparency in Supply Chains Act of 2010, and Code of Conduct.

• Human rights management of multinational corporation in Japan

- There are a few cases relating to GRI and UNGP, and human rights management has been discussed as CSR

• Human rights management of multinational corporations in the EU

- In the EU, human rights management is essentially considered part of company management because it affects the interests of all: employers and employees.
- It shows a tendency for corporations to be open and to report their financial and non-financial information under the law. In particular, England clarified multinational corporations' duty to respect human rights in the NAP; and the NCP is operating comparatively to remedy human rights violations.

■ Improvement plans for the legal system to ensure human rights management of multinational corporations

• The current status of domestic legislations relevant to the human rights management of multinational corporations

- Although there are no laws directly relating to human rights management in Korea, there are several parts of Korea's labor law, corporation law, and commercial law that relate to international standards.

• Using a NAP to improve human rights management of multinational corporations

- It is necessary to establish and push for a NAP, which was recommended by the UNGP, as a macroscopic plan to deal with human rights issues and corporations. This would be led by the government for the fulfillment of our national duty to protect human rights.

• Promoting the human rights management of multinational corporations through the NCP

- It is necessary to improve the objection process of the NCP recommended by the OECD guidelines to remedy human rights violations by multinational corporations

• Policy proposal and improvement plans for the legal system to ensure human rights management of multinational corporations

- It is necessary for the government to have a positive attitude and consistent policy regarding the human rights management of multinational corporations. The government should provide political support for the transparency of corporations, and it is necessary to modify domestic laws relating to human rights management according international standards.

III Expected Effect

- This study will be analyzed in an effort to improve the human rights environment of Korea's corporations.
- This study will contribute to social unification and economic activation by promoting the implementation of human rights management.
- This study could be referenced in any amendments to domestic laws relevant to human rights management, and it may also allow Korean global corporations to become more competitive in their overseas expansion and to attract more investors worldwide.

Key Words

Multinational Corporation, Corporate Social Responsibility, Human Right Management, National Contact Point, National Action Plan

Legislative research on the development and safety control of novel food regulation

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I Background and Objectives

- Korean Ministry of Food and Drug Safety set out the future policy goals, one of which is “to ensure the safety of the novel food materials to realize healthier society.” However, the current legislation concerning the development and commercialization of novel food is not completed. Now there is several administrative regulations to assess the safety of novel food ingredients and to give them a temporary authorization
- Food engineering applied to the new food material provides a new opportunity for the food industry. Yet the industrial investment is possible only after the legislation to regulate the new materials provided for. This research analyse the laws and regulations on novel food of United States and the European institutions. The research will provide the basic framework to establish the institutional infrastructure to promote the investment & development of novel food processing technology and to ensure the safety of the novel food.
- The present research has provide the institutional framework that ensure the technical efficacy and the safety of new food materials and make the consumer “safety” be guaranteed.

II Main Content

- To legally define the concept of novel food and new materials. This legal concepts has also provide the criteria for setting the regulatory jurisdiction of novel food. With applying the comparative legal methodology, the institutional system of the development and safety control of the United States and of the European Union is analysed. This comparative research will reflect the institutional basis of the legislation to improve the chances of food industry development and to protect the consumer safety.
- To present an institutional alternative which can provide the business operator with an incentive for development of novel food technologies through scientific technology data protection.
- To analyse the legal measures to ensure the safety of new materials for the novel food consumers, and to analyse the re-evaluation procedure, mandatory notification of side effect, labeling rules, traceability system, etc.

Ⅲ Expected Effect

- Contributing to the development of novel food materials and enhancing the international competitiveness of the food industry by providing a legislative basis for food industry.
- Providing a basic knowledge for the preparation of policy options for the government to raise the institutional framework in harmonization with international standards through providing advanced control techniques and standards which aims to meet the global standards relating to the future regulatory framework for the novel food industry.
- Proposing advanced measures to regulatory authority to provide a precautionary protective measures when authorizing new technologies for the development of novel food material.

Key Words

novel food, novel food risk assessment, novel food technology data protection, novel food labeling, adverse effect notification scheme.

Analysis on sectoral legal issues of the Korea-China FTA

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I Background and Purpose

- The Korea-China FTA, which was signed in November 2014 and is currently awaiting ratification in each country, is expected to have a great impact on the economic, political, and cultural sectors in Korea.
  - Like all FTAs, the Korea-China FTA will have both positive and negative effects.
  - As for its positive effects, the Korea-China FTA will have certain beneficial economic effects such as the establishment of an institutional and policy-based environment conducive to Korean business forays into the Chinese market, as well as contributing to the establishment of a wider East Asian economic community through the reinforcement of strategic cooperative partnerships between the two countries and to the securing of peace on the Korean Peninsula.
  - On the other hand, it will have a number of negative effects including the shrinkage of domestic business due to an increase in the importation of low-priced agricultural, marine, and dairy products and manufactured goods from China.
- Under such circumstances, it is above all else vital that we strive to maximize the positive effects while minimizing the negative effects.
- In this regard, this study aims to come up with focal points and countermeasures that can be used as reference points for the execution of a bilateral FTA, the formulation of relevant policies, and the enactment of relevant laws to enhance the usability of the FTA based on legal analysis of the contents of the Korea-China FTA, which will take effect in due course.
- This study will also explore the policy/legal focal points and countermeasures that can be used as reference points in subsequent negotiations concerning the service and investment sectors by analyzing the relevant domestic laws of China.

II Main Contents

- The main contents of this study include an analysis of the major chapters of the Korea-China FTA, research on China's relevant domestic laws and policies, and countermeasures to be taken in the future in preparation for subsequent negotiations concerning the service and investment sectors. The relevant details are as follows:

1. Analysis on the major chapter in the Korea-China FTA and its implications

■ Rules of origin and trade facilitation

- Commodity sectors in the Korea-China FTA and the KORUS, Korea-EU, Korea-ASEAN FTA(the majority in the country and trade criteria analysis result) compared and analyzed the results, rules of origin and the customs clearance procedures of origin, preferential tariff rate of origin and the origin preferential specific rules are somewhat difference, but customs and trade facilitation regulations are already quite consistent with the Korea customs system.

- Meanwhile, the materials acquired originating status in the Korea-China FTA not to consider the value of non-originating materials used in its products as the KORUS FTA and Korea-EU FTA, that can be utilized originating materials for intermediate goods. It is expected that higher utilization of rules of origin.

■ SPS

- Korea-China FTA emphasizes the link to WTO SPS Agreement, but it just provides basic matters which is hardly like to cause controversy.

- Korea-China FTA is compared to other Korea FTAs and China FTAs which directly regulate various obligations under SPS Agreement and supply the legal base for complying with fundamental rights and duties of that Agreement.

  - As Korea-China FTA has the clause concerning technical cooperation that offers the opportunity to exchange experience and information in relation to SPS measures, it will contribute to legal advancement.

  - As the disputes relating to SPS measures shall not be subject to dispute settlement procedures under Korea-China FTA, it will be expected to settle under the WTO system which is by far more objective and impartial.

■ TBT

- Korea-China FTA introduces a variety of provisions such as closer work between conformity assessment bodies with a view to facilitating the acceptance of conformity assessment results between both Parties, encouraging both national certification bodies to accept each other's IECEE-CB test certificate, etc, in order to ease the trade barrier effects of the technical regulation. Besides, it includes various provisions regarding transparency, consumer safety, marking and labelling, measures at the border in order to ensure that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade.

- Not a few above-mentioned provisions have a soft law character. In order to effectively implement them, therefore, the cooperation between both technical regulatory authorities and conformity assessment bodies respectively is important and the Committee on Technical Barriers to Trade also has to play a role.

■ Trade remedy

- 'Korea-China FTA' addresses contents and institutions for the manifestation of fair trade rules in three sections upon safeguard measures, anti-dumping and countervailling duties, and the committee on trade remedies.
- Though the FTA is found slight differences in the application of a safeguard measure with the one of the WTO Agreement and of other FTAs, the formal is basically similar to the later. But The FTA does not provide 'Special safeguard' in connection with the importation of an agricultural product because the staple agricultural products are not included in the Schedules.
- The 'general provisions' of anti-dumping and countervailling duties section manifests that except as otherwise provided for in the agreement, each Party retains its rights and obligations under the WTO Agreement. The FTA provides an institutional mechanism with the adoption of clear and transparent criteria so as to prevent disguised trade restrictions from protecting domestic market.
- The absence of the lesser duty rule and the public interest clause, which are provided in other FTAs, causes worry that the FTA is short of the countermeasures against the frequent anti-dumping and countervailling measures by china.

■ Trade in Services

- Chapter 8 of the Korea-China FTA consists of sixteen main articles, schedule of specific commitments of the parties and two annexes on co-production of film and co-production of TV drama, documentary and animation for broadcasting purposes.
- The service chapter follows the framework of the General Agreement on Trade in Services (GATS) of the WTO.
- Aberration from the GATS includes the absence of a most-favoured-nation treatment clause, the absence of a provision on government procurement, the absence of a provision on emergency safeguard measures, and vagueness on the recognition of non-violation complaints.
- Although Korea and China followed the approach of WTO/GATS in their schedule of specific commitments, they agreed that a negative list approach would be taken in subsequent negotiations.

■ Financial Services

- The Korea-China FTA is similar to the Korea-EU FTA in its scope of openness, and it incorporates provisions from the Korea-US FTA and the Korea-EU FTA when necessary.
- Provisions related to financial services in the Korea-China FTA is generally similar to financial provisions in the Korea-US FTA, the Korea-Canada FTA, and the Korea-EU FTA. And, intended degree of openness of the Korea-China FTA is similar to that in the Korea-US FTA.
- The Korea-China FTA does not contain "most-favored-nation treatment," and provisions

related to new financial services. And, the Korea-China FTA enhances regulatory transparency in provisions related to transparency, but it sets up relatively longer processing period than other FTAs.

■ Telecommunications

- General degree of openness in the Korea-China FTA aims to be similar to that in the Korea-US FTA. However, taking surrounding circumstances of both countries into account, some provisions are removed for flexibility.
- The Chapter that regulates telecommunication in the Korea-China FTA is generally similar to the Korea-US FTA, but some provisions such as Resale, Unbundling of Network Elements, and Forbearance are excluded from the Korea-China FTA.

■ Movement of Natural Persons

- The Korea-China FTA adjusts the interests of both parties in increasing personal exchanges between them and reducing a number of illegal aliens.
- While the Korea-China FTA permits a temporary entry of a natural person to their territory that promotes economic activities and investments, it excludes some provisions related to a grant of labor permit and other immigration issues.
- Scope of a natural person for a temporary entry in the Korea-China FTA is relatively narrower than that in the Korea-Canada FTA.

■ Investment

- Advancing the following three questions on the investment rules incorporated in Korea-China FTA (KCFTA), this chapter empirically analyses the investment rules using China's bilateral investment treaties (BIT) practice and preferential trade and investment agreements (PTIA) practice:
- First, how we can evaluate investment rules in the KCFTA in terms of the relationship between China's PTIA and BIT?;
- Second, what is the rationale and significance of including investment rules in the KCFTA instead of pursuing a standalone BIT?;
- Third, considering so far China's practice of just recognizing pre-establishment MFN clause, what is the prospect for introducing pre-establishment national treatment clause to the KCFTA in the follow-up negotiations?

■ Electronic Commerce

- The chapter on electronic commerce is rather of a symbolic nature than a substance.
- A policy of separating economy from politics would help to improve the chapter in the future negotiation and fulfil the ideal of digital silk-road.

■ Competition

- The competition chapter stipulates principles in competition law enforcement such

as transparency, non-discrimination, and procedural fairness, along with principles concerning application of competition laws to public enterprises and enterprises entrusted with special or exclusive rights, and cooperation in law enforcement.

- This is among the best competition chapter signed by China as well as by Korea in terms of the structure and contents of the rules.

■ Intellectual Property Rights

- This Chapter adopts TRIPS plus provisions for the wider protection of intellectual property rights and it also imposes concrete procedural provisions in order to carry out its obligations.
- This Chapter protects well-known trademarks in a concrete manner, and thus, it becomes to secure the Korean well-known trademarks which are lesser-known in China.
- Both Parties recognize the discrepancy in ability for the protection of intellectual property rights, both agrees to enhance cooperation, and thus, they establish the Committee on Intellectual Property Rights for the purposes of the effective implementation and operation of this Chapter.

■ Environment

- Korea-China FTA provides high levels of environmental protection, compliance with multilateral environmental agreements, enforcement of environmental measures, promotion of bilateral cooperation and the establishment of a Committee on Environment and Trade.
- Korea-China FTA has no clause on civil society participation which could play an important role in effective implementation under Environment chapter and effective improvement to enforcement of domestic environmental laws.
- It is required to have an appropriate implementation mechanism in relation to environmental matters under Korea-China FTA.
- It is a pity that Korea-China FTA has lack of provisions regarding consultations and environmental consultations procedures, even though environmental disputes shall be subject to dispute settlement procedures under the WTO system.

■ Economic Cooperation

- With a respect to the scope and numbers of agenda for economic cooperation between two countries, the Chapter Economic Cooperation of Korea-China FTA has the most comprehensive and longest list, compared with other FTAs which two countries have concluded respectively.
- Next, it establishes a variety of contact points and channels for the implementation of cooperation agenda. However, it lacks in the provisions concerning the funding of financial resources and share of the expenses for cooperation programmes.

■ Transparency

- Korea-China FTA deals with publication, notification and provision of information, administrative proceedings, review and appeal in order to enhance transparency.
- It is needed that Korea-China FTA will regulate the publication requirements in a more precise and concrete way.
- Having regard to provision of information, it will be better to keep a balance between promotion of transparency and protection of public interests, by laying down the prevention of disclosure of confidential information.
- It is necessary to require high levels of transparency measures to China for the purpose of having positive effects on our trade, in spite of ambiguous practice of law in China.

■ Dispute Settlement

- 'Korea-China FTA' provides a dispute settlement which is similar to the one of WTO Agreement and other FTAs. The dispute settlement chapter is applied to disputes except the ones relating to the investor-state dispute settlement procedure, SPS, TBT, competition, economic cooperation, and environment.
- 'Korea-China FTA' introduces diplomacyoriented dispute settlement procedures, the exclusion of other fora, the reasonable period of time, a mediation procedure for a certain non-tariff measure, the establishment composition function of the panel, the adoption and implementation of the panel report, the suspension of concessions or other obligations, limitation on private rights, and etc.
- Further development, on the other hand, is required to adopt non-violation complaints and the requirements of nullification or impairment in the dispute settlement, and to establish plain criteria of the scope of the right to information and technical advice, and the period relating to the suspension of concessions or other obligations.

2. Coping with subsequent negotiations concerning the service and investment sectors

■ Overview

- The two countries agreed to start negotiations concerning the service and investment sectors within two years of the effectuation of the FTA and to end the negotiations within two years of their commencement.
- To help Korean businesses make more positive forays into the fast-growing Chinese service market, it can be said that subsequent negotiations concerning the service and investment sectors will form the core of the bilateral FTA.
- Thus, it is necessary to continue conducting research on the trend of China's service and investment-related domestic laws in order to develop an effective strategy.

■ Investment in general

- Since the inauguration of the Xi Jinping government in China toward the end of 2012, the country's foreign investment-related systems have undergone fundamental changes.

- The Chinese government enacted the new Foreign Investment Act for the equal treatment of domestic and foreign investors, and undertook a noticeable mitigation of the administrative regulation that used to act as stumbling block to foreign businesses making forays into the Chinese market as part of its forward-looking reforms.
- It is also expected that the business environment in China will be improved dramatically with the adoption of an investment liberalization system, particularly in free trade zones like Shanghai.

■ Legal service sector

- The level of legal market opening under the Korea-China FTA is similar to the level of legal market opening currently in place in the China (Shanghai) Pilot Free Trade Zone. Under the domestic law associated with the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), the level of legal market opening in Guangdong Province of China to Hong Kong and Macao is among the highest.
- The Chinese government's policies and laws concerning the opening of the legal market have changed very frequently, making it necessary to continue to monitor the country's relevant legal system until the commencement of the subsequent negotiations.
- It is necessary to consider including a three-stage opening of the legal market in the FTA with China similar to that of the FTAs with the United States and the EU in connection with the need for the level of legal market opening to be higher than that currently provided for under China's domestic laws in subsequent negotiations.

■ Financial service sector

- Recently, the Chinese government has been accelerating its financial reforms, including the opening of the stock market, which has caught the world's attention.
- Under the Qualified Foreign Institutional Investor (QFII) program, which represents a step toward the opening of China's stock market, the investment amount ceiling is being raised continuously. Recently, the Chinese government even adopted the new "Hu-Gang Tong" scheme to connect the domestic securities market with overseas markets.
- The Chinese government has started taking steps to amend the Bond Act for the first time in fifteen years in order to favor a more sound development of the stock market amid overheated speculation and the spread of illegal acts.
- We need to monitor the Chinese stock market more closely, as it is expected that steps for the relevant reforms and opening will be strengthened.

■ Environmental Services

- Although China-Switzerland FTA, China-Korea FTA and China-Australia FTA were concluded after them, they permitted investment only in the form of joint venture. It means that the degree of liberalization of environmental services pulled back compared to before. Therefore, we need to negotiate by giving specific examples of FTAs with which China concluded.

- And China's domestic legislation in the sector of environmental services is not uniformed and has absence of clear standards. Hence, it is needed to ask to establish unified legislation and institutions.

■ Tourism and Travel, Cultural Services

- China has strictly restricted scope of business of foreign travel agencies in FTAs like WTO GATS. However, recently scope of business of foreign travel agency is liberalizing in Shanghai and Beijing.
- China permitted outbound business of travel agencies of Taiwan and Hongkong through China-Taiwan ECFA and China-Hongkong CEPA. Therefore, the Korean government needs to draw agreement regarding outbound business of Korean travel agencies when China and Korea resume negotiations on the services sector. It is because that outbound business depends on individual FTA according to article 8 of《Rules on travel agency》.
- China's Entertainment service market is opened to Korea for the first time through China-Korea FTA. However, we can not expect true effect of the liberalization of entertainment service because the Chinese government open only "other entertainment services". Therefore, it is needed to liberalize more comprehensive and extensive scope.
- Although China opened entertainment service,《Rules on Commercial Performance management》 sill has for foreign enterprises to perform strict rules and procedures, hence it is needed to remove them for the negotiations.

III Expected Effects

■ It is hoped that this study will contribute to a more effective execution of the Korea-China FTA and Korean businesses' more positive use of it through an analysis of its major chapters and an exploration of the focal points.

■ The study will analyze China's service/investment-related domestic laws and policies to help the government establish a strategy for subsequent negotiations.

■ The study, as a systematic and comprehensive basic research paper, is also expected to be used as a reference material for in-depth study of the bilateral FTA.

Key Words

Korea-China FTA, Rules of Origin, Trade Facilitation, SPS, TBT, Trade Remedy, Trade in Services, Financial Services, Telecommunications, Movement of Natural Persons, Investment, Electronic Commerce, Competition, Intellectual Property Rights, Environment, Economic Cooperation, Transparency, Dispute Settlement, Subsequent Negotiation in the Services and Investment

A Study on the Legislative Strategies for Guarantee of Safety from Future Disasters of Special Fields(I)

- Focused on Nuclear & Food Legislations -

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I Background and Purpose

- On March 2011, the accident of Fukushima Nuclear Power Plant resulting from an earthquake and tsunami provokes the controversy that a nuclear power plants shall be decommissioned on whether a nuclear power generation in Korea shall be operated continuously or stopped permanently.
- In this regard, Kori No. 1 Nuclear Power Plant will be finished on the life extension on June 2017. If the life is not extended, there the problem that until 2020, the Nuclear Power Plants from No. 1 to No. 12 shall be decommissioned through permanent suspension even though they are extended until 2040.
- As a result, the purpose is to study a safety legislation strategic plan with a special field in order to strengthen a consistent safety management while examining the decommissioning of nuclear power plants and food safety management legislation to secure the safety from disasters of special fields

II Main Contents

<Part 1> Nuclear Decommissioning

- The problem of procedural provisions of nuclear decommissioning on the current 「Nuclear Safety Act」 revised on Jan. 20th, 2015.

• The related provision of decommissioning on the current 「Nuclear Safety Act」 revised on Jan. 20th, 2015 builded a safety management system total periodically from a constructive stage to a operative stage and a decommissioning stage through arranging more progressive and detailed provisions under the delegation provisions than simplified provisions of decommissioning on the 「Nuclear Safety Act」 on July 25th, 2011.

• Therefore, in order to stop permanently as a precondition to decommission a nuclear power plant under Article 20(2) of the 「Nuclear Safety Act」, firstly, a licensee of nuclear power generation shall submit a decommissioning plan to the Nuclear Safety Commission and receive a operating change license. Secondly, a licensee of nuclear power generation under Article 103 of the 「Nuclear Safety Act」 shall disclose a first draft of decommissioning plans or open a public hearing to collect residents' opinions. Thirdly,

a licensee of nuclear power generation under Article 28(1) and Enforcement Ordinance 41(2) of the 「Nuclear Safety Act」 shall receive the change permission with permanent suspension and the application of decommissioning permission to the Nuclear Safety Commission within 5 years from the date of permanent suspension. Fourthly, a licensee of nuclear power generation under Article 28(3) to (7) of the 「Nuclear Safety Act」 shall report the decommissioning circumstances of nuclear facilities and decommissioning completion of nuclear power plants to the Nuclear Safety Commission. Fifthly, a licensee of nuclear power generation under Article 28(8) and (9) of the 「Nuclear Safety Act」 shall notify the termination of operating permission with nuclear reactors and related facilities in written when the Nuclear Safety Commission completes the examination with decommissioning of electricity generating reactors and related facilities.

- However, the problem is whether or not the subject of decommi ssioning becomes Korea Hydro & Nuclear Power Co., Ltd. as an generating licensee, which methods secure the safety of employees who charge decommissioning works, and how an environmental impact assesment with a decommissioning plan which is in the blank shall be handled.
- In addition, as the provision that a licensee of nuclear power generation shall prepare for decommissioning funds, the problem shall be solved on whether he/she substantially prepares for the funds in currency to decommission a nuclear power plant or the funds only written on the book.
- In addition under the recommendation of Public Engagement Commission on Spent Nuclear Fuel Management on June 30th, 2015, our country recommended a final site to manage a spent nuclear fuel until 2051. Because there is no preparation of any government policy on how a spent nuclear fuel with wet storage in a nuclear reactor is managed after Kori No. 1 Nuclear Power Plant is stopped permanently on June 2017, the problem is whether a spent nuclear fuel can be a final disposal, intermediate storage, or on-site dry supplemental storage.

■ The United States

- The Nuclear Regulatory Commission in the United States charges the decommissioning of nuclear power plants through terminating the permission of nuclear power plants and plays a role in decreasing residual activities and removing related facilities and sites safely, appropriately, and effectively.
- The Nuclear Regulatory Commission regulates Domestic Licensing of Production and Utilization Facilities (Part 50), Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions (Part 51), and Radiological Criteria for License Termination of Standards for Protection against Radiation (Subpart E of Part 20) under Title 10 of Federal Regulations.
- Especially, under 10 C.F.R 50.82 (a) of the United States, when a licensee has determined to permanently cease operations the power reactor licensee shall, within 30 days, submit a written certification to the Nuclear Regulatory Commission, consistent with the requirements of § 50.4(b)(8) and a non-power reactor licensee that permanently

ceases operations must make application for license termination within 2 years following permanent cessation of operations, and in no case later than 1 year prior to expiration of the operating license under 10 C.F.R 50.82 (b). In addition, each application for termination of a license must be accompanied or preceded by a proposed decommissioning plan. The contents of the decommissioning plan are specified in paragraph (b)(4) of this section.

- In addition, legal evidence with the decommissioning of nuclear power plants consists of twentieth part of Federal Regulations(10 C.F.R. Part 20) and expressed details(Subpart E), which is composed of total six provisions with radiological criteria for license termination.

■ The United Kingdom

- The United Kingdom establishes and operates the Nuclear Decommissioning Authority as an independent agency under the Energy Act and the Authority charges the decommissioning of nuclear power plants under the Energy Act of 2004.
- In particular, the Nuclear Decommissioning Authority of the United Kingdom does not directly operate nuclear power plants and enter into contracts with six private companies permitted. Afterwards, it plays a role in supervising them, which it is necessary to study whether or not Korea Hydro & Nuclear Power Co., Ltd. plays a role on the decommissioning of nuclear power plants.
- In these regards, the United Kingdom shall need the examination every five year by a regulatory agency from a permission stage to an operation and decommissioning stages which consist of a decommissioning plan, strategy, and program development. A licensee shall submit and permit a developing program for decommissioning of nuclear power plants to the regulatory agency before decommissioning nuclear power plants and the regulatory agency shall need to examine whether or not this program adopts the danger resulting from decommissioning activities.
- After decommissioning and decommissioning completion of nuclear power plants, a licensee applies for the decommissioning and decommissioning completion of nuclear power plants to the Nuclear Regulatory Authority. The Nuclear Regulatory Authority examines these which are called as the termination of site permission of nuclear power plants and the termination of license as a final stage of decommission of nuclear power plants.

■ Germany

- Germany decided the first decommissioning of nuclear power plants on July 2002 after a Chernobyl accident and enacted the Nuclear Energy Services Termination Act(Kernenergienutzungs-Beendigungsgesetz) to stop the use of nuclear energy.
- However, the federal government for Christlich-Soziale Union Christian Democratic Union(CDU/CSU) and Free Democratic Party (FDP) tried to change the energy policies announced in 'Energy Initiative 2010' and decided to extend the duration of operation with nuclear power plants again through the 11th revision of the Atomic Energy Act in 2010.

- However, this decision was totally revoked due to the accident of Fukushima Nuclear Power Plant on March 2011 and there was a second decommissioning of nuclear power plants and a substantial change of energy policies.
- In this regard, the federal government of Germany decided the suspension of use during three months with lightning speed with No. 7 of nuclear power plants(Biblis A, Neckarwestheim 1, Biblis B, Brunsbüttel, Isar 1, Unterweser, Philippsburg 1) becoming deteriorated and the Krümmel nuclear power plant on March 2011.
- In other words, the federal parliament decided the second decommissioning of nuclear power plants under the 13th revision of the Atomic Energy Act(Atomgesetz) on July 31th, 2011 and decided to operate the No. 9 nuclear power plant until 2015 and No. 3 until 2022.
- In particular, Gemany tries to extend an renewable energy and its equipment after the decision of decommissioning of nuclear power plants twice.

■ France

- As Article 29(5) of the Nuclear Safety Transparency Act provides the decommissioning of nuclear powers under the Nuclear Power Regulation, the permanent suspension and decommissioning is regulated to permit from the Nuclear Safety Administration, it has permission from Dekeure, the characteristic of decommissioning and duration of decommissioning, etc. are regulated.
- A licensee of nuclear power generation shall submit a decommissioning plan attached on the application of construction permission before three years from the due date of permanent suspension, apply for the permission to the assigned minister, and add a document which explain a facility before the permanent suspension and decommissioning, an environmental impact assessment under L.122-1 of the Environmental Act, a safety report, a danger management assessment report, a revision of decommissioning plans, a general provision and maintenance management regulation, and technical financial introduction of a licensee of nuclear power generation on the application.
- The permission of decommissioning of nuclear power plants is issued as the procedure of construction application under the presidential decree after it is examined under the hearing of opinion of related administrative agencies and the procedure of public hearings. This presidential decree provides in detail the working type of fulfilling by the funds of a licensee of nuclear power generation after the characteristic of decommissioning, the duration of decommissioning, and decommissioning.
- Concretely, a licensee of nuclear power generation under 2007-1577 Dekeure shall submit a decommissioning plan before not more than three years from the due date of permanent suspension and it shall include (i) the contents of advance preparation activities for permanent suspension (ii) the matters of equipments of decommissioning of nuclear power plants, management methods of radioactive wastes, etc.

- A licensee of nuclear power generation shall apply for the permission with decommissioning before not more than one year from the due date of permanent suspension and shall submit the documents such as (ⅰ) a document with facilities of nuclear power plants before permanent suspension, (ⅱ) a decommissioning plan updated, (ⅲ) a map to show the location of decommissioned nuclear power plants, (ⅳ) an environmental assessment, (ⅴ) a preliminary safety case with permanent suspension and decommissioning of nuclear power plants, (ⅵ) a risk management assessment with permanent suspension and decommissioning of nuclear power plants.
- In the case that decommissioning of nuclear power plants is completed, a licensee of nuclear power generation shall apply for the termination of license in order not to fulfill the duty on the Nuclear Safety Transparency Act and shall submit the documents such as (ⅰ) an application document of decommissioning, (ⅱ) a map to show the location of decommissioned nuclear power plants, (ⅲ) a document to show a site situation after decommissioning of nuclear power plants, (ⅳ) a site use of nuclear power plants for the future.
- In particular, the Nuclear Safety Transparency Act of France can find the amicable communication with people through providing related information of nuclear power plants to them. France has continuously studied the sector to solve even though it does not handle wastes perfectly about 100% by policies and technical developments with radioactive wastes management for a long time. In addition, France has continuously maintained the policy that there is a corporation among the Nuclear Safety Administration, the Radioactive Waste Management Administration, the Local Information Committee, the Nuclear Power Businesses, etc. in order to solve the process, cost, site decision, and environmental impact assessment of radioactive wastes due to social burdens and costs.
- In conclusion, France provides Korean decommissioning of nuclear power plants with the recommendation so much with the funds of decommissioning of nuclear power plants accumulated intentionally.

■ Improvement plan of our country's decommissioning related provisions under the 「Nuclear Safety Act」

- Since the Nuclear Safety Ordinance has a massive national business to produce electricity through nuclear power plants, there is a provision to collect residents' opinions in the surrounding area of nuclear power plants, but it is necessary to organize an institution of “public hearings” to protect residents' rights substantially under these provisions.
- The subject to manage the funds to decommission nuclear power plants shall not be assigned to a licensee of nuclear power generation and these matters shall not be submitted to the Ministry of Trade, Industry and Energy. It realizes the duty national safe protection that a management system shall prepare from a decommissioning plan to a safety management and decommissioning cost under the Nuclear Safety Commission of the 「Nuclear Safety Act」.
- In this regard, it is necessary to manage the construction, operation, and decommissioning

plan of nuclear power plants and charge completed decommissioning costs systematically to the nation. Therefore, it is necessary to establish "(Tentatively named) Korea Nuclear Decommissioning Corporation" as a public corporation fully charged as a new type which decommissions nuclear power plants in order to plan, operate, and manage the decommissioning of nuclear power plants rather than a licensee of nuclear power generation charges the decommissioning cost of nuclear power plants.

- A legislator of nuclear powers needs to regulate the bill that prepares for the related provisions with a procedure of salt manufactures(core facilities, second sub-systems, and structural equipment decommissioning) and a safety standard, activates the related provisions of decommissioning technical development, and fosters decommissioning professionalists of nuclear power plants.

<Part 2> Food Contingencies & Emergencies

■ Main issues on food safety and hygiene contengencies and emergencies regulations to response food related disaster

- Current korean law does not define the concept of food disaster or food terrorism. Korean Food Safety Hygiene Law, article 17 paragraph 1 provides the emergency response, which is closely related cause and effect necessary conditions "The head of relevant administrative agency may order business operators who produce or sell food, etc. falling under any of the following subparagraphs to undergo inspection by inspecting institutions determined and publicly announced by the head of the relevant central administrative agency: 1. Food, etc. considered to require emergency attention under article 15 (2); 2. Food, etc. which has caused or causes fear for a potential hazard domestically or overseas; 3. Other food, etc. which has caused or is feared to cause a substantial hazard to public health, as prescribed by Presidential Decree."
- Food Safety Basic Law assume a case which might cause for serious health problem if the case is not unrelated to the scientific evidence. In addition, if the scientific basis to generate concern about such food already raised or there is a possibility of problem, this disaster response should be required. This clause can be applied even if it is difficult to identify the causal relationships in the context of the food disaster.
- 'Food Crisis Response Operations Manual', which is based on Food Safety Basic Law Article 17, is written for a practical manuel. It consists with technical methods and the sequential steps of scenarios for emergency response. In fact, this crisis manual is detailed and technical regulations are assessed as a useful manual. But it does not describe the requirements for a scientific basis.
- Korean Food Sanitation Law (art.19) also provides the rules and regulations on emergency response actions. These can actually be applied in order to respond to food emergencies. Food Sanitation emergency measures should be taken only when the food does not meet the standards and specifications specified within the food regulation
- Korean Food Sanitation Law (art.19) clause only allows the emergency response when there is a risk as well as a necessity to take preventive measures to mitigate urgent

circumstances. The risk means that the food 'does not meet the legal standard criteria.' These two factor are combined with to meet the requirements for authority to take a measure. But food incident could be taken in place although the food is consistent with the legal standard criteria. There is a risk to bring hazard to health although the food is consistent with the legal standard criteria.. Therefore this provision regarding emergency measure should be revised. It should be set as a separate requirement, the disqualification for one hand, and the need to take urgent measures against such food for the other hand.

■ Foreign rules and practices and their implications for Korean law

- World Health Organization (WHO) food terror guideline deals with information related to the prevention and control of food safety, responsive action to bioterrorism attacks.
- US bio-terrorism act regulates the registration of food-related facilities, prior notice of imported food shipments, executive seizure action, trading and distribution of food, food record keeping system.
- The EU also operates a crisis management network via the RASFF (rapid alert system for food and feed in the European Union). RASFF is based on the European food regulation 178/2002, It is organized among the Member States in accordance with the provisions of Article 50. the Commission and the European Food Safety Authority (EFSA) is also involved. EU Commission within the 'Health and Consumer Protection Directorate General (DG SANCO)' is in charge of it. DG SANCO should carry out official food safety standards and monitoring activities for imported fruits and vegetables are brought in from third countries
- The UK operates a food emergency response system with the Ministry of Health and the FSA. Germany and France food emergency system are operated by disaster response system mainly with agri-food sector. The German Federal Consumer Protection section developed 'Food Safety Risk Management Guidelines'. These guidelines targeted to manage the "exceptional circumstances" and have the "crisis" for the rapid and explicit aim to ensure a proper possibilities to overcome the contingencies.

III Expected Effect

■ People feel safe by securing safety from disasters of special fields and there is contribution to realize a safe management system to use a nuclear power, food, etc.

■ There is contribution to realize a safe life from disasters of special fields to people by strengthening national overall safe management.

Key Words

Decommissioning of nuclear power plants, Food terrorism, Decommissioning appropriation fund, (Tentatively named) Korea Nuclear Decommissioning Corporation, Rapid Alert System for Food and Feed(RASFF), Risk communication

An Analysis of Current Issues Regarding Global Legislations about The Medical Technicians Act

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I Background and Purpose

■ Background

- Current statutes concerning health and medical service are products made merely by retouching the framework of Japanese legal system after independence from Japanese rule to make it fit for our conditions and thus lack a system appropriate for responding properly to changes in social phenomena and changing concepts of health and medical service.
- Although it is a current trend of administrative statutes to relax excessive restrictions, adequate efforts have not been made to relax regulations under statutes concerning health and medical service, and therefore it is necessary to gradually reflect the expansion of the authority of specialized medical personnel, etc. to independently practice their specialties in the areas governed by statutes concerning health and medical service.
- The Medical Technicians Act, currently in force, originates from the Medical Assistants Act, which was enacted and promulgated on July 31, 1963, while the Medical Technicians Act (Act No. 2534) was enacted and promulgated by amending the Medical Assistants Act on February 16, 1973. However, it cannot be said that the current Act is a significantly improved statute, because there is no change, except the change of the job title from “medical assistants” to “medical technicians.” Although the Medical Technicians, etc. Act (Act No. 4912) was enacted and promulgated on January 5, 1995 to cover various job categories of medical technicians, including opticians and medical record administrators, there was no change except the change in the title of the Act from the Medical Technicians Act to the Medical Technicians, etc. Act to include opticians and medical record administrators therein.
- It seems to be about time to consider the improvement of the Medical Technicians, etc. Act to reflect changes of the times, since medical technicians, etc. continuously develop according to changes in medical settings.

■ Purpose

- Faculties of physical therapy in universities and colleges provide and operate not only three-year educational courses but also four-year bachelor's degree courses,

as well as master's degree courses and doctorate courses, and the operation of the Korean Research Society of Physical Therapy has contributed to the advancement, segmentation, and specialization of the science of physical therapy.

- Today, international exchange is active owing to free trade agreements (FTAs), etc. throughout the world, and the opening of the medical market now demands limitless competition.
- The results of a survey reveals that the Republic of Korea is the only country, out of 34 OECD member countries, that has no statutes on physical therapists and does not recognize physical therapists' right of independent practice and right to engage in business.
- Therefore, it is intended to demonstrate the necessity for improving statutes concerning medical technicians, etc. and propose the direction in improvement so that physical therapists can enhance their competitiveness to appropriately cope with global issues in the medical sector, such as the opening of medical markets.

II Major Contents

- The Medical Technicians, etc. Act merely prescribes practices of physical therapy but does not properly define the role of physical therapists and the scope of their duties. Therefore, it is necessary to clearly define the role of physical therapists and the scope of their duties by legislation. Such legislation will contribute to the protection of physical therapists, who are stakeholders in the Medical Technicians, etc. Act, and the promotion of people's health.
- Article 1-2 (Definitions) of the Medical Technicians, etc. Act defines a medical technician as “a person who is engaged in medical examinations or medical, chemical tests under the instruction of a medical doctor or dentist.” However, there is no subject concerning the science of physical therapy, out of the subjects for which medical doctors must obtain at least 170 credits for graduation from a medical school. Therefore, it can be said that medical doctors are experts in examining patients, performing surgeries, or prescribing medicine but they are not experts in physical therapy.
- Article 9 of the Medical Technicians, etc. Act provides that “persons who are not medical technicians shall not perform the duties of medical technicians” to specify their fields as exclusive ones. However, Article 1-2 (Definitions) of the Medical Technicians, etc. Act, which provides that physical therapists shall be under the instruction of a doctor, allows doctors to practice medical therapy, even though they are not physical therapists. Allowing doctors to practice physical therapy, which must be permitted only to physical therapists, results in weakening the legal status of physical therapists, who are beneficiaries of legislation of the Medical Technicians, etc. Act.
- As a consequence of changes in policies on health and welfare, demands from private homes or facilities, such as welfare centers, for physical therapy have been increasing

day by day. However, Article 1-2 (Definitions) of the Medical Technicians, etc. Act prohibits physical therapists from practicing physical therapy at any place other than a hospital, and thus physical therapists, who are specialists in physical therapy, are not allowed to practice physical therapy at private homes and other places. In contrast, nurses and care workers, who are not specialists in physical therapy, are permitted to practice physical therapy in private homes and other places, if they complete an educational course of specified hours. Such prohibition is unfair regulation on physical therapists' services and has a negative impact on the promotion of people's health.

- There are two different educational courses - a three-year course and a four-year course - in faculties of physical therapy in Korea and even physical therapists who hold a doctorate in the science of physical therapy are not permitted to exercise the right to engage in business, although there are master's degree courses and doctorate courses established and operated for the science. In contrast, all OECD countries, except Korea and Japan, recognize the right to engage in business, although most of OECD member countries have an educational system identical with that of Korea.
- According to the relative risk points assessed by the Health Insurance Review and Assessment Service, the relative risk of simple treatment, such as disinfecting a wound with an antiseptic, among medical practices conducted by medical doctors, is as very low as 2.39 points. However, the relative risk points of all practises of physical therapy, except intermittent respiratory therapy (5.96 points), are significantly lower than the risk points of simple treatment. Therefore, the risks imposed upon people by recognizing physical therapists' right to engage in business will be very insignificant.
- Even in Indonesia, in which no one can say that people can have more advanced medical service in comparison with medical service in Korea, statutes enacted with respect to physical therapists recognize physical therapists's right to engage in business. In particular, Australia has statutes concerning physical therapists and permit physical therapists to exercise the right to engage in business and even the right of independent medical treatment. Such statutes provide even the rules applicable to mediation in legal disputes, and domiciliary physical therapy is guaranteed by law. Moreover, only Korea and Turkey, out of 34 OECD member countries, have no separate statutes concerning physical therapy, and only Korea and Japan do not recognize physical therapists' right to engage in business.

III Conclusion

- As a result of analyzing the Medical Technicians, etc. Act, currently in force, it has been found that the current Act imposes excessive restrictions on physical therapists' services and that it is unfair treatment to ignore the specialty of physical therapists by denying physical therapists' right to engage in business, although they have studied subjects related to physical therapy, particularly based on basic medicine and clinical medicine, for nine years, while allowing doctors, who have never studied a single subject of physical therapy, to instruct physical therapists and practice physical therapy.

- Not permitting physical therapists to exercise their right to engage in business at all appears to be excessive regulation in the light of changes in current medical markets, new policies established on health and welfare, and the specialized expertise of physical therapists.
- Arguments of medical doctors' organizations on hazards caused by physical therapy seems to be inordinate jumps. It is noteworthy that the relative risk points assessed for physical therapy by the Health Insurance Review and Assessment Service is lower than the risk of disinfection of a wound, which is a simple treatment performed by medical doctors.
- As a result of the review on statutes concerning physical therapists in foreign countries, it has been found that even Indonesia, which is economically poorer than Korea, guarantees physical therapists' right to engage in business and that Australia permits physical therapists to exercise even the right of independent medical treatment.
- In conclusion, it seems right time to enact an act on physical therapists in view of all problems. On the other hand, it is necessary to enact an act on physical therapists that can satisfy both physical therapists and people by thoroughly examining methods for contributing to the promotion of people's health by guaranteeing physical therapists' rights through the act on physical therapists, while reinforcing their duties at the same time.

Key Words

Medical Assistants Act, Medical Technicians Act, Medical Technicians, etc. Act, Physical Therapists Act, Right of independent practice, right to engage in business

A Study on Strategy of Global Legislation for Enactment of Immigration Law

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I Background and Purpose

■ Background

• According to the increased inflow of foreign national, we need to require legal perspective

• It provided the legal system, but comprehensive and systematic management is not being made

• On the need to review for such separation phenomenon in the area of legislation and policies are emerging

■ Purpose

• Analyze issues relating to the current immigration legislation

• Polls for the legislative experts

• Improvement of legislation ever proposed, especially Integrated Method of immigration, Immigrant organizations, Green Card System Improvement

II Major contents

■ The current immigration legislation Analysis

• The concept of immigration and immigration policy

• Details about the acquisition of citizenship, Foreigners registration system, Green Card system

■ Polls for the legislative experts about Immigration

• Surveyed : 200 people, Congressional officials including Parliamentarians

• Survey information

- Assessment and the reasons for the current Foreigners and multicultural policies

- Immigration Law enact, the timing and direction

- competent ministries of Immigration

• Improvements to Immigration

- Review in the immigration laws
- The establishment of immigrant organizations
- Legal plan of permanent residence

Ⅲ Conclusion

■ A reflection of environmental changes in the immigration

• enact an integrated immigration for response to changes

• Enforcement of foreign policy through a single organization

• Change of residency system for the reorganization of the immigration law

Key Words

Immigration, Nationality Act, Foreigners Policy, Multicultural Policies, immigrant organizations, Permanent residence

Global Trends in Regulating Non-Practicing Entities and Their Implications

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I Background and Purpose

■ Background of This Study

- It turns out that non-practicing Entities (NPEs) have filed patent infringement lawsuits most frequently against Apple and Samsung for the past 5 years. U.S. companies, Japanese companies, and Korean Companies have been the main targets of NPEs' patent infringement lawsuits.
- Since Korean companies are getting frequently involved in patent infringement lawsuits filed by NPEs, there are more and more cases where Korean companies pay NPEs a large sum of money for damages and patent royalties.
- The number of lawsuits filed against Korean companies continues to grow, and it is expected that NPEs's next targets will be FinTech companies and IoT companies. Therefore, it is necessary to step up fight against NPEs in order to protect Korean companies.

■ Purpose of This Study

- This study comparatively analyzes current discussions on and legislations regulating NPEs in U.S., Europe, Japan, and China (IP 5 countries).
- Through analyzing Korea's legislations on regulating NPEs, this study provides implications derived from the current policy discussions and legislations of the IP 5 countries.

II Main Contents

■ Analysis of Current Status of the IP 5 Countries' Legislations That Regulate NPEs

- U.S.
  - Analysis of legal disputes instituted by NPEs and of policies and legislations which regulate NPEs, etc.
- Europe
  - Analysis of legal disputes instituted by NPEs and of provisions of the Agreement on a Unified Patent Court that regulate NPEs, etc.

• Japan

- Analysis of discussions on the necessity of regulating unreasonable exercise of patent rights and of legislative strategies to regulate NPEs, etc.

• China

- Analysis of legal disputes instituted by NPEs and of current status of legislations which regulate NPEs, etc.

■ Implications for Regulating NPEs in Korea

• Legislations Which Regulates NPEs in Korea

- Analysis of the Guidelines for Unfair Exercise of Intellectual Property Rights, etc.

• Implications Derived from the Current Policy Discussions and Legislations of the IP 5 Countries

- Necessity of affirmative defense by defendants and limitation on multiple defendants's participation in a single lawsuit, etc.

III Expected Effect

■ This study may serve as analytical reference for the IP 5 countries' policy discussions on regulating NPEs.

■ This study may be used as the fundamental reference for the improvements of legal and institutional systems regulating NPEs.

Key Words

Patent Trolls, Non-Practicing Entities, Abuse of Patent Rights, Guidelines for Unfair Exercise of Intellectual Property Rights

Annual Research Projects

Research Projects on Global Legislative Strategies
Research Projects for Legislation on Climate Change
Legislative Evaluation and Research Projects
Support for Post-Reunification Law Studies
Legislative Analysis and Assistance Projects

Research Projects for Legislation on Climate Change

Indonesia's Climate Change Adaptation and Mitigation Policy

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I Purpose and Scope of Research

- The purpose of this study is to explore the polices and laws of Indonesia in respect of climate change. Assessment of polices and laws of the climate change in Indonesia will provide us the information on tasks and positions of Non-Annex countries in the international arena.

II Contents

- The scope of the study is climate change mitigation and adaption related policies and laws, regulations, decrees in Indonesia. Although it is broad, ① policy; ② law; ③ finance; ④ institution; ⑤ action on climate change are main focuses of this study.
- International supports from various developing countries and international institution provides chance to build its own domestic government capacity thereby reducing the risk of political failing and consolidating the position as a global player as well.
- This report contains five main chapters. The first chapter at first, introduces the current geographical information and legal hierarchy of the Indonesia. Then institutional framework and focal point of the climate change policy are covered. The second chapter provides extensive volume of climate change related laws of Indonesia. The third chapter devotes to the analysis of climate change policy within the National Development Plan. The fourth chapter tackles financial aspect of the policy. The fifth chapter focus on the actions planned and practiced in different sectors.

III Expected Effects

- This research is the very first-attempt covering extensive laws and policies of non-Annex I country in climate change field. Because non-Annex I country's policies and law of local governments were provided only in native language.
- This research report will serves as an opportunity to check the policies and laws of the climate change in Indonesia. This research paper will be utilized as basic information provider as well as substantial in contents.

Key Words

Climate Change Policy in Indonesia, Climate Change Regulations in Indonesia, National Development Plan, Climate Change Adaptation, Climate Change Mitigation

The laws and policies for energy efficiency to cope with climate change in leading countries

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I Background and Purpose

- The principle of 'sustainable development' of energy is an important matter in terms of the use and development of energy on a global level. When dividing this matter more specifically, 'the reduction of greenhouse gas emissions' and 'the strategy on climate change adaptation' emerge as primary ways of coping with climate change. 'Energy conservation and efficiency improvement' and 'the development and use of new renewable energy' are two major efforts being made to reduce 'greenhouse gas emissions' which is the main cause of climate change.
- Coping with climate change is not just individual nations' obligation. Europe, in particular, imposes joint obligations according to "United Nations Framework Convention on Climate Change (CCNUCCP)" on each country through various directives. After going through the reception of international law in the municipal legal system, these obligations became recognized as being legally binding not only in private sectors but also in local governments and public organizations.
- This paper attempts to look at on what grounds Germany and France are achieving energy efficiency in terms of securing energy efficiency among concrete measures to cut down on greenhouse gas emissions to deal with climate change and what kinds of concrete steps these countries are taking in each area.

II Main Contents

- Guidelines and contents of energy efficiency in EU

• EU (the European Union) set up "the energy efficiency 2006 May EU directive in the use of energy" in the area of energy efficiency in an effort to cope with climate change. The directive stated the need for improving energy efficiency and for energy demand management and the promotion of producing new renewable energy and its development.

• Establishing "the climate-energy package" in 2008, EU drew up plans to increase the proportion of renewable energy to 20% in the entire energy source by 2020 and to decrease greenhouse gas emissions by 20% and set a target to raise energy efficiency by 20%. EU required individual EU countries to abide by the international convention in EU and imposed the obligations of establishing and implementing their own energy policies on each country.

- "The energy efficiency directive on October 25th, 2012" confirmed that the surest way to establish 'energy security' for reducing Europe's dependency on imported energy and to cope with the economic crisis and climate change that Europe is facing now is to secure energy efficiency and stipulated each member nation's specific obligations.

The laws and policies for energy efficiency in Germany

- Regarding energy efficiency, Germany transposed provisions of EG-Richtlinie 2002/91/EG Energy Performance of Buildings Directive(EPBD) into its national law. As for German law, there is the law on energy conservation (Energieeinspargesetz, EnEG) and based on this law, there is a provision of energy efficiency improvement in Article 20 of the energy saving rules (Energieeinsparverordnung, EnEV).
- Energy efficiency is a core element of energy conversion. In 2010, by setting 2008 as the base year, German federal government set goals to reduce energy consumption by 20% compared to the base year and to cut it down by 50% compared to the base year. The measures to meet these targets are now put in place.
- With a view to tackling climate change and improving energy efficiency, efforts are being made to reduce carbon dioxide emissions by accomplishing energy efficiency in various fields. Especially, in the field of housing that makes up a big part of energy consumption, Germany is making large investments in housing development to reduce carbon dioxide emissions by increasing energy efficiency.
- Besides, German government established a national action plan on energy efficiency. To implement this plan, programs are being developed to enhance energy efficiency in a variety of areas including industry, traffic, and agriculture and research on energy conversion is being carried out continually.

The laws and policies for energy efficiency in France

- In accordance with the provision of Article 2 of "the July 13th, 2005 program law (POPE law) setting the direction of energy policy", the establishment of energy and climate plans became mandatory at the state level. "France's action plan on energy efficiency (PNAEE)" is setting up concrete implementation plans in the field of energy to fulfill the national obligations according to "climate plan (Plan climat)".
- The housing-service sector comprises the most important part of energy efficiency measures and "the heat management regulations in 2012" stated that the improvement of energy consumption efficiency (performance énergétique) is being pursued and set a goal to reduce about 1 million tons of oil equivalent of energy by 2020. "The energy renovation plan for residential buildings (Plan de rénovation énergétique de l'hibitat: PREH)" is supporting the remodelling of buildings to improve thermal efficiency of the existing residences through service information networks, various tax benefits, and interest-free loans. In addition, for the benefit of energy-poor people, energy efficiency measures are being implemented by "the national residence agency (Agence nationale de l'habitat: ANAH)".

• In order to attain energy efficiency, the effort to save energy is being made in the field of traffic through “the use of alternative means of transportation (Report modal)” and “the policy of subsidies for new low-carbon vehicles”. Besides, in a range of areas including private sectors as well as the field of industry and agriculture, energy efficiency measures are put in place.

III Expected Effects

■ By providing information about the laws and policies for energy efficiency in leading countries (Germany and France), this paper can be used as reference materials and present some policy implications.

Key Words

energy efficiency, energy conservation, energy consumption, climate change adaptation, greenhouse gas emissions, energy efficiency of buildings

Study of Market Stability Measures in EU ETS

Researcher: Kim, Eun Jung(KLRI)

I Background and Purpose

■ EU ETS is required to suggest the measures on the depression of the carbon market caused by the low carbon market price.

• In EU, it has discussed to implement the backloading to decrease the supply of emissions, to expand the allocation entities to mitigate the oversupply and to amend the carbon market mechanism from the 3rd phase.

• EC has tried to find out the direct measures to settlement the oversupply of emissions and the market imbalance to introduce Market Stability Reserve in 2015.

■ In Korea ETS, the trading emissions, which was about 630,000t, are no more than 1% of the total allowances amounted to 570 mt during 5 months.

• According to the Art. 18 in legislation on Korea ETS, there are the systems on the additional allocation of emissions for market stabilization.

• Accordingly, it could be applied to take advantage of the new entrants, the market stability measures, the outcomes of earlier reduction, additional emissions & adjustment of emissions, voluntary entities, objections.

II Major content

■ The current status of EU carbon market

• There are 31 countries to implement ETS in EU, it covers 20% GDP and 17% CO2 in the world.

• GHG had reduced about 13% from 2005 to 2013 in EU ETS.

- The EUA was amounted upto 30 euro, but it was sharply declined due to the financial crisis in 2008 and the over allocations under the amount of production reduction.

• EC refers to be a reduction of GHG emissions by no less than 40% in 2030 compared to 1990 levels.

- It will be accomplished by a 43% reduction in ETS sectors and a 30% reduction in non-ETS sectors compared to 2005 levels.

- An indicatives target at the EU level of improvement in a share of renewable energy consumed in the EU and energy efficiency in 2030.

■ The surplus in the carbon market is planned to increase from 2.1 billion today to around 2.6 billion allowances by 2020.

• Otherwise, the demand of emissions will be fluctuated by the economic situations and the price of fossil fuel.

• The proposal of the Commission to back-load the auctioning of 900 million allowances during phase 3 is a effective measure to mitigate the surplus in the short term.

■ MSR features

• EC proposed to set up a Market Stability Reserve to amend the imbalance between the supply of the demand for carbon permits.

• If the surplus allowances is larger than 833 million in any year, 12% of the surplus is set in the reserve.

• While if the surplus is below 400 million, the 100 million allowances among reserve will automatically be released back to the market.

• This results in transparency and predictability for market participants from 2021.

III Expected Effects

■ It discusses to lead to the market stability of the carbon market in ETS

• It could be used for the price floor and reserve system in case of the over-supply of allocations.

• To use the offset system

Key Words

Emissions Trading Scheme, Market Stability Measure, Reserve, Price Floor, Offset

Study of Legislative and Economic Convergence on Energy Price Regulation

Researchers: Kim, Eun Jung(KLRI) | Oh, Hyung Na(Kyung Hee Univ.)
Hong, In Kee(Daegu Univ.) | Hong, Jong Ho(Seoul National Univ.)

I Background and Purpose

- Since 1990 Korea has seen four Master Plans for National Energy (1997, 2002, 2008, 2014) whose main policy objects were stabilization of energy supplies, energy security, promoting green industries, and so on.
  - The government has tried to promote renewable energy sources in particular for various environmental reasons as well as a new dynamic growth strategy for the 21st century. And four National Renewable Energy Plans were announced with the Master Plans for National Energy.
- The energy price in Korea is intensified to be distorted by the various political intentions such as the price stabilization, the support for the export company and the low-income group.
  - It needs to recognize the energy price and the distortion of relative price, and the legislations and regulations on them, then, suggest the improvement to consider the economy theory and global standard, and the proposals for the legislation based on the analysis and foreign trends.

II Major content

- In Chapter 2, this chapter examines first how fiscally successful the execution of National Renewable Energy Plans were using the 2008-2010 budgets for the third National Renewable Energy Plan in 2008 and the actual settlements during the same period.
  - The result shows that the execution rate was only 56.3 percent.
- This chapter also recalculates the budget for specific renewable energy policies between 2011 and 2015 and compares it with the corresponding budget for the 2011-2015 Medium-Term Expenditure Framework,
  - It found that only 40 percent of budget had been allocated to fiscally support the proposals.
- In Chapter 3, the issue of energy price distortion and fossil fuel subsidies in Korea
  - The distortion of comparative energy prices due to policy measures is leading to an inefficient distribution of resources.

- Coal benefits from subsidies and a lower tax rate compared to other forms of energy; natural gas and petroleum product prices lose out from the government's price intervention.
- Subsidies for fossil fuel is a typical example of energy price distortion. South Korea has explicit subsidies for oil and coal.
- International organizations such as the OECD, IMF, IEA, etc. has urged the removal of fossil fuel subsidies. Similarly, in light of the social problem arising from energy subsidies, the G20 has agreed on the phasing out of the fossil fuel subsidies by 2020.
- In order to solve the socioeconomic problems arising from distorted energy prices, the government has to improve energy policies.

■ **In Chapter 4, we summarize a corrective-tax property of energy taxes suggested in literature, list Korea's energy taxes and compare them with those of OECD countries, and investigate statistical interactions among energy taxes, energy prices, energy consumption patterns and carbon intensities. Our finginds are as follows:**

- Energy taxes induce each individual, household and firm to reduce energy use and to reduce social damage associated with excess energy use (Section 1).
- We use corrective tax rates estimated by the IMF (2014). IMF listed various energy products in order of corrective tax rates that represent the monetary value of social damage associated with unit energy use as follows: coals, natural gas, diesel and gasoline (Section 1).
- Compared with social damage represented by average corrective tax rates for forty-one countries, the level of damage in Korea is relatively large for gasoline ($0.98) and diesel ($1.2), below the average for natural gas ($2.3) and about the same for coals ($8.1) (Section 1).
- Korea's energy taxes consist of Transportation Energy Environment Tax, Education tax, Border tax, Individual excise tax, VAT(10%), Mileage tax (car tax), and taxes on regional facilities. Since most of these are imposed as unit taxes, effective tax rates tend to decline over time (Section 2).
- Our estimation outcomes using energy prices, taxes and energy consumption data of the OECD BRICs countries, both energy intensity and carbon intensity decrease in effective energy tax rates and energy proces (Section 3).
- This implies that either relatively low energy taxes and distorted relative prices of energy contributes to Korea's excessive energy use and high GHG emission rank (7th in the world) (Sections 3 and 4).
- Given that various social damage associated with excessive energy use in Korea, this study recommends to enforce the correction role of energy taxes, instead of securing financial sources for transportation-related infrastructure projects, and to increase our energy taxes at least to the OECD average (Section 5).

■ In Chapter 5, the spirit and the principle on energy and the analysis on the legislations of energy in Korea and other countries.

- The energy policy and environment policy is closely related to the discussion in the mitigation and adaptation of climate change.
- Regarding the legislations on energy, it is refered to low carbon green growth framework act, the energy law contains the implement of energy policy and plans.
- It is operating the energy tax and the energy subsidiary related with energy price.
- It needs to consider the matters on side effects of energy efficiency, amend the structure of energy related to laws, and study on the purpose and operation of the legislation in energy tax.

III Expected Effects

■ These results show one of the reasons that the National Renewable Energy Policies have been unsuccessful in accomplishing the targets and objects proposed and also implies that the future performance of government's plans might suffer from insufficient funds despite of ambitious proposals and all the declarations.

■ Therefore these results strongly suggest that the necessary budgets be secured for successful energy policies and that matching efforts be improved between various energy plans and government budget process.

■ In summary, this study suggests two directions in energy tax reform in Korea: first, energy taxes should be treated as corrective taxes to incentivize economic actors to reduce energy use generating negative externalities; second, energy tax rates for bituminous coal, brown coals, LNG and diesel should be adjusted since current tax rates are lower than the monetary value of social damage for them.

Key Words

Master Plans for National Energy, National Renewable Energy Plans, Energy Subsidiary, Energy Tax, Energy Price, Energy Law

A Draft on Local Uniform Regulation for Climate Change Adaptation

Researcher: Lee, Jun-Seo(KLRI)

I Background and Purpose

- Regulations or ordinances can play a better role as a legal and institutional basis to give a suitable measure to climate change at the local level.
- Climate Change Plan and Strategy are understood as a policy directive from the central government and they need to be implemented at the local level in the same way.
- The object of this study is to make a standard enactment of a specific regulation or ordinance to come up with perspective on the degree to which climate change adaptation policy by analyzing and comparing the status of climate change related ordinance enactment.

II Main Contents

- The climate change adaptation issues that gave rise to some regulations and ordinances on climate change is not sufficiently complete to implement.
- Local autonomy has important meaning because legislation by local governments can have greater impact on the lives of the citizen. And it can be enacted as a method of implementation on national plan and strategy at local level through separation of powers and enhancement of diverse autonomy at the local level.
- The climate change adaptation plan and strategy must take into account the effects of natural disaster, agriculture, production, construction, and other energy efficiency measures on final energy consumption. These plans will also establish procedures for the reform of planning and pricing schemes and access to local situation.
- Those local governments who passively enacted the regulation or ordinance on climate change adaption according to the central government's uniform plan and strategy tend not to have their own directive on climate change.

III Expected Effect

- By reviewing laws and policies for climate change, improvements for Korean law could be devised.
- Introduction to the success factors along with detailed methods of implication of the climate change adaptation would be provided.

Key Words

autonomous legislation, local governments, climate change regulation/ordinance

A Study on Recent Trend of Civil Litigations related to the UK Emissions Trading Scheme

Researcher: Choi, Kyung Ho(KLRI)

I Background and Purpose

■ Background of this study

- Three operational phases of the EU Emission Trading Scheme: the first phase(2005-2007) and the second phase(2008-2012) had been passed. Currently the EU ETS is in the third phase(2013-2020)
- The EU ETS was launched in 2005. Currently EU has the world largest scale of carbon trading markets
  - In the Europe as of 2015, EU ETS covers 31 countries(28 members and three non-EU members(Iceland, Norway, and Liechtenstein)
  - As of 2012, In the Europe as of 2015, EU ETS covers 31 countries(28 members and three non-EU members(Iceland, Norway, and Liechtenstein)
- As a leading country in the EU, the UK is subject to the EU ETS rules and regulations
- In the very beginning of the EU ETS, there is a litigation regarding the allocation. Recently, litigation on the allocation is rare and a few civil cases on ETS had been processed

■ Purpose of this study

- As the worlds' 10th largest emitter of greenhouse gases, Korea launched a nationwide ETS market according to 「Act on Allocation and Trading of GHG Emissions」 and enforcement decree of the Act
- There are litigations on the allocation of the allowances are processing against the government of Korea by private companies. At this point administrative litigations on the ETS against the government are general types of litigations. However, in the near future, more diversified legal litigation, including civil litigation would occur
- Analysis of the UK civil litigations in the area of the ETS would be useful to anticipate possible legal issues in private transactions of emission allowances and provide legal guidance

II Main Contents

- Review of the UK Emissions Trading Scheme
- Review of the UK Civil Procedure
- Review of Civil Litigations on the UK ETS

• Armstrong DLW GMBH v. Winnington Networks Ltd
Case Number: [2012] EWHC 10
Court: Chancery Division, High Court
Date: 2012. 1. 11

Main issue: 1) EU allowances were held to be intangible property, However, the court failed to provide classification of which type of intangible property EUAs were
2) Whether defendant was able to rely on defence of 'bona fide purchase for value without notice'

• Deutsche Bank AG v Total Global Steel Ltd
Case Number: [2012] EWHC 1201 (Comm)
Court: QBD, Commercial Court
Date: 2012. 5. 11.
Main Issue: 1) Whether defendant being in breach of contract 2) Whether claimant being entitled to damages

• CF Partners (UK) LLP v Barclays Bank Plc and another
Case Number: [2014] EWHC 3049 (Ch)
Court: Chancery Division
Date: 2014. 9. 24
Main Issue: Breach of confidential information / contractual obligation of confidentiality and exclusivity

III Expected Effect

- Analysis of the UK civil litigations in the area of the ETS would be useful to anticipate possible legal issues in private transactions of emission allowances and provide legal guidance

Key Words

UK ETS, UK Civil Procedure, Civil Litigation on the ETS

A Study of the ETS for the Mitigation of Climate Change
- Focusing on the legal issues related to adjustment and revocation-

Researcher: Park, Ki Ryoung(KLRI)

I Background and Purpose

■ In order to reduce GHG emissions for the mitigation of climate change, the Government has prepared a carbon emissions trading scheme from the past government. As a result, the first national GHG emissions allocation plan is establishing and enforcing.

• In Korea ETS, the trading emissions, which was about 630,000t, are no more than 1% of the total allowances amounted to 570 mt during 5 months.

• The industry was recently filed a lawsuit against the government due to under-allocate allowances, etc.

■ After the introduction of the emissions trading scheme for greenhouse gas has been determined, the allocation scheme for emissions trading system introduction of greenhouse gases, such as the quota has been studied in the main issue.

■ In this study, after the allocation of greenhouse gas emission rights, and analyzed for adjustment and cancellation is a subsequent issue.

II Major content

■ Highlights of the 1st national GHG Allocation Plan

• GHG is reducing about 16.2% from 2015 to 2017 in K-ETS.

■ Ministry of the Environment has established the “Guidelines for CER allocation adjustments and cancellations.”

• Allocation of emission rights for emissions trading system introduced is mainly research. Study on the adjustment and cancel the allocation of emission rights have not yet been addressed specifically in a later step allocation

• In the future, the adjustment and cancel the allocation of emission rights is discipline on the basis of the “Guidelines for CER allocation adjustments and cancellations.” of the Ministry of the Environment

■ The main contents and analysis of the “Guidelines for CER allocation adjustments and cancellations.”

• Companies to specify the emission rights, or to organize and analyze the specific case for canceling

- New construction or expansion and the positive and the merger of the facility

- Pharmaceutical development

- Change of production items and the business plan

- Closure of the facility, the US operation, running stop, etc.

• acquisitions merger, change of business plan, to derive the issue that may be operational occurrence of adjustment or cancellation of allocation emission credits based on the service change of facilities

III Expected Effects

■ To suggest the implications for the future allocation adjustments and cancellations operating system, this study presents

• specific and detailed criteria for adjustments and cancellation of allowances.

Key Words

Emissions Trading Scheme, Emissions Allocation, revocation of allocated emission, adjustment of allocated emissions, M&A

Comparative legislation study on allocations and offset in the ETS

Researcher: Park, Ki Ryoung(KLRI)

I Background and Purpose

■ In April 2015, offset credit is listed on the offset emission rights KRX and start to trade

• Certified offset considered as 1KCU(Korean Credit Unit) is trading in the same units as the 1KAU(Korean Allowance Unit)

• KCU listed on the KRX is expected the activation of stagnant emissions trading system.

■ In the ETS, alowances and offset credits from emission trading market it may be traded as of equal value, origin and characteristics of each emission generation, conversion and cancellation of emission allowances and it has started allocating emission rights from other origins

• KAU means allocated according to the total emissions determination and allocation plan

• KCU means performing complementary roles linked to assign credits from emissions trading.

II Major content

■ Korean Credit Unit features

• KCU is based on the offset credit that offset operators conducted a greenhouse gas offset projects which the government certified, and certified to reduce greenhouse gas offsets minutes, depending on the results of the business carried out based on the register them and also to deal with offset credits

- Comparison of the work performed and voluntary activities and voluntary carbon offsets to reduce greenhouse gas emissions

• Offset credit trading(KCU) in ETS has the core legal issue : Authentication

- The authentication to offset business, in order to reductions such as authentication offset business after the project is to work to offset emissions speaking, it is essential premise authentication process of government and expert group of business performance and results

- The grant of the cancellation through the authentication process worth credit (credit), will be listed on the exchange to describe this in the Register

- Comparative analysis of foreign legislation example for the operation of the Offset Program
  - offset credit management of the EU-ETS
  - RGGI offset program management
- Comparison with allocation emission(KAU)
  - comparison of allocation and offset of legal nature and the feature of property right
  - comparison of national allocation plans and the government`s authenticate procedures for the offset credit.

III Expected Effects

- Through the comparative analysis between the allocation of emission and the offset emission in the ETS, it deives implication for ETS operation.
  - suggest detailed guidance for authentication and revocation of offset credit
  - taxation and tax-deferred treatment for the offset credit and project

Key Words

Emissions Trading Scheme, Korean Allocation Unit(KAU), Korean Credit Unit(KCU), offset credit, authentication

A Study on Renewable Energy Law and Policy for Climate Change Adaptation in the European Union(II)

Researchers: Lee, Jun-Seo(KLRI)
Choi, Kyung-Ho(KLRI)

I Background and objectives

- In order to achieve the reductions of greenhouse gas emissions to response climate change, it has focused on the study of the means adopted by each country it is a renewable energy policy.
- Contrary to such passive energy investments of Korea, countries of the European Union appear very actively respond accordingly and have tangible results in greenhouse gas emissions through renewable energy.
- In this study, we analyzed the renewable energy laws and policies of Denmark and Sweden in the greenhouse gas reduction policies and proposed concrete suggestions that can take advantage of renewable energy in our country quite scarce.

II Main Contents

- Danish energy legislation and policy

• Denmark has a high level of enthusiasm that the renewable energy utilization as compared to small countries and its size in the Nordic countries. Total power production and public transportation has the goal to stop the use of fossil fuels by 2050 through the unique characteristics that Denmark has there leverage to spur renewable energy development.

• In Denmark, it was linked to efforts to improve energy self-support considered environmentally friendly policies and renewable energy utilization policy. Although the Danish government a lot of money being invested, such as for the short term plant expansion and long-term is a point of view, it is undergoing work to convince people through a multi-angle analysis of the benefits that may arise that renewable energy policy is never not a loss.

• In Denmark, it helps the economy of the local people have priority purchase rights, such as the facility is situated shares granted to the renewable energy industry through legislation, such as “Renewable Energy Promotion Law”. Danish Government could reduce the opposition of the area that can occur through those methods.

■ Swedish energy legislation and policy

- Sweden has already achieved a 49% renewable energy target for 2020, and it has been significantly advances the renewable energy sector. There does not exist independent renewable energy law in Swedish, however government has legislated renewable energy policies to suit each sector and region from a variety of energy-related legislation.
- Through a scheme called green certification of renewable energy, Sweden has achieved a remarkable growth. The Swedish government has implemented a policy of intensive support for three areas of electricity, heating and cooling power, and transportation.
- Sweden established the specific policy objectives of 2020, and was to establish a climate and energy strategy for the decarbonization policy in 2050.

III Expected Effects

■ Introduction to the success factors along with detailed methods of implication of the renewable energy law and policy of the Denmark and Sweden would be provided.

■ By reviewing laws and policies for renewable energy in the Denmark and Sweden, improvements for Korean law could be devised.

Key Words

Renewable Energy Law, Renewable Energy Policy, EU energy legislation and policy, Danish energy legislation and policy, Swedish energy legislation and policy

Annual Research Projects

Legislative Evaluation and
Research Projects

Study 1 on Support for Legislative Evaluation of Municipal Ordinances

- Study on「Exemplary Municipal Ordinances (Bills) on Legislative Evaluation of Municipal Ordinances」Based on Experts' Responses to Questionnaires -

Researcher: Cha, Hyun-Sook(KLRI)

I Backgrounds and Purposes

- The role and functions of local assemblies have been strengthened since 20 years before, when local autonomy was implemented, and consequently the number of bills presented for enactment or amendment of municipal ordinances of each local government has been rapidly increasing.
- Inadequate examination of practical effects, relevancy, possibility to accomplish purposes, and necessity for amending a municipal ordinance in compliance with an amendment of a superior statute has been pointed out as a problem.
- In order to overcome such problem and make a new leap towards better municipal ordinances, the system for legislative evaluation of municipal ordinances has been actively introduced.
- The purposes of this study are to prepare and propose an exemplary bill for a municipal ordinance based on responses of experts in local legislature to questionnaires, which may be utilized when a local assembly intends to introduce the system for legislative evaluation of municipal ordinances in connection with the introduction of the system for legislative evaluation of municipal ordinances of a local assembly as it is expected that demands for such system will continually arise.

II Major Content

- Necessity for the introduction of legislative evaluation of municipal ordinances
- Analysis of “ordinances on legislative evaluation of municipal ordinances” of metropolitan/provincial governments

• Analysis of “ordinances on legislative evaluation of municipal ordinances” of Gyeonggi-do Provincial Government, Gwangju Metropolitan Government, Busan Metropolitan Government, Jeju Special Self-Governing Provincial Government, and Seoul Metropolitan Government and similar ordinances

- Questionnaire surveys targeting experts

• Surveys on the level of awareness of legislative evaluation of municipal ordinances

- Surveys of opinions on checklist items based on the report released in 2013 on the "Study on Standard Municipal Ordinance Bills for the Introduction of Legislative Evaluation of Muncipal Ordinances of Local Legislature"

■ Proposal of an "exemplary municipal ordinance (bill) for legislative evaluation of municipal ordinances"

III Expected Effects

■ It is expected to render assistance in institutionalizing legislative evaluation of municipal ordinances by proposing an exemplary municipal ordinance bill that may be utilized for the introduction of the system for legislative evaluation of municipal ordinances and to contribute to the enactment and amendment of better ordinances by materializing legislative evaluation of municipal ordinances.

Key Words

legislative evaluation, local assembly, legislative evaluation of municipal ordinances, *ex-post* legislative evaluation, *ex-ante* legislative evaluation, exemplary municipal ordinance bill

Study 1 on Support for Legislative Evaluation of Municipal Ordinances

- Legislative Evaluation of Gyeonggi-do Provincial Government Ordinance -

Researcher: Yun, Gye-Hyeong(KLRI)

I Backgrounds and Purposes

- The Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes enacted on January 10, 2014 has been in force since July 1, 2014. Gyeonggi-do Provincial Government plans to conduct the first ex-post analysis of legislative impact in December 2016.

- In order to ensure practical effects of legislative evaluation of municipal ordinances, it is necessary to examine whether the Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes is systematically legitimate as the basis for legislative evaluation of municipal ordinances and whether the ordinance is substantively sufficient for legislative evaluation.

- Hence, it is necessary to ascertain the merits and limits of the Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes by conducting legislative evaluations of municipal ordinances of Gyeonggi-do Provincial Government, and it is also necessary to examine schemes to improve the Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes for the promotion of the system for legislative evaluation of municipal ordinances for the future.

- The purposes of this study are to select representative municipal ordinances necessary for evaluation, from among municipal ordinances of Gyeonggi-do Provincial Government, then draw a conclusion by conducting legislative evaluation on each municipal ordinance with the guidelines for legislative evaluation in the Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes, and furthermore present problems in the Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes and propose schemes to improve the ordinance.

II Major Content

- Background of introduction of the “Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes” and major content.

■ Respective legislative evaluations of municipal ordinances of Gyeonggi-do Provincial Government.

• Respective municipal ordinances subjected to legislative evaluations are as listed in the following:

Evaluated Municipal Ordinances
Gyeonggi-do Provincial Government Ordinance on Living Wages
Gyeonggi-do Provincial Government Ordinance on the Establishment and Operation of Public Postnatal Care Centers
Gyeonggi-do Provincial Government Ordinance on the Protection of Food Service Facilities from Radioactive Substances
Gyeonggi-do Provincial Government Ordinance on Support for the Elderly People Collecting Recyclable Materials and Persons with Disabilities
Gyeonggi-do Provincial Government Ordinance on the Safety Control of Outdoor Events

■ Evaluation of the Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes and schemes to improve the ordinance.

III Expected Effects

■ It is expected to ensure practical effects of legislative evaluation of municipal ordinances and promote legislative evaluation in the future by conducting the legislative evaluation of respective municipal ordinances of Gyeonggi-do Provincial Government, presenting problems in each municipal ordinance, and proposing schemes to improve ordinances, while proposing supplements to the Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes, which is the basis for legislative evaluation of municipal ordinances.

Key Words

Ex-post legislative evaluation, legislative evaluation of municipal ordinances, Gyeonggi-do Provincial Government Ordinance on the Analysis of Legislative Impact of Municipal Statutes, Gyeonggi-do Provincial Government Ordinance

Study 1 on Support for Legislative Evaluation of Municipal Ordinances - Legislative Evaluation of Municipal Ordinances of Gwangju Metropolitan Government -

Researcher: Bae, Gun-Yee(KLRI)

I Background and Purpose

- The Gwangju Metropolitan Government Ordinance on *Ex-Post* Legislative Evaluation of Municipal Ordinances has been in force since July 1, 2013, and Gwangju Metropolitan Government conducted an *ex-post* legislative evaluation in 2014 for the first time in the Republic of Korea.

- In order to rationally conduct *ex-post* legislative evaluations, Gwangju Metropolitan Government established criteria for evaluation, which include the practicability of purposes of legislation, the reasonableness of estimated cost and benefit, whether a master plan and an implementation have been formulated, whether a budget has been compiled and executed, legal consistency, including whether enacted or amended superior statutes are reflected therein, whether any violation or discrimination against human rights or gender equality exists, and the actual situation of organization and operation of the relevant committee, and prepared working-level guidelines for ex-post legislative evaluation to enhance efficiency in conducting evaluations.

- It is obviously significant that Gwangju Metropolitan Government conducted an *ex-post* legislative evaluation for the first time in order to enhance the rationality of municipal statutes. However, the burden on executive agencies has been increased due to redundant evaluations of government affairs, and no criteria for evaluation befitting to characteristics of municipal ordinances have been established, Moreover, the inadequacy of personnel specializing in legislative evaluation led public officials of the responsible agency to conduct the evaluation as a mere formality, and thus it is urgently necessary to improve the evaluation process and the quality of results of evaluation.

- The purposes of this study are to select municipal ordinances necessary for evaluation, from among municipal ordinances of Gwangju Metropolitan Government, according to experts' advice, then draw a conclusion by conducting legislative evaluation on each municipal ordinance with the guidelines for legislative evaluation in the Gwangju Metropolitan Government Ordinance on *Ex-Post* Legislative Evaluation of Municipal Ordinances, and furthermore present problems in the Gwangju Metropolitan Government Ordinance on *Ex-Post* Legislative Evaluation of Municipal Ordinances and propose schemes to improve the ordinance.

II Major Content

■ Background of introduction of the "Gwangju Metropolitan Government Ordinance on *Ex-Post* Legislative Evaluation of Municipal Ordinances" and major content.

■ Details of respective legislative evaluations of municipal ordinances of Gwangju Metropolitan Government and results thereof.

• Respective municipal ordinances subjected to legislative evaluations are as listed in the following:

Evaluated Municipal Ordinances
Gwangju Metropolitan Government Ordinance on the Promotion of Historical Culture
Gwangju Metropolitan Government Ordinance on the Installation of Bus Stops for the Mobility-Disadvantaged
Gwangju Metropolitan Government Ordinance on the Improvement of Convenience in Movements of the Education-Disadvantaged
Gwangju Metropolitan Government Ordinance on Support for the Improvement of Living Standards of Tenants in Permanent Rental Apartment Buildings
Gwangju Metropolitan Government Ordinance for the Prevention of Suicide and the Creation of Culture of Respect for Life
Gwangju Metropolitan Government Ordinance on Support for Foreign Residents and Multi-Cultural Families
Gwangju Metropolitan Government Ordinance on the Creation of Ecological Landscape
Gwangju Metropolitan Government Ordinance on Support for Traditional Korean-Style Houses
Gwangju Metropolitan Government Framework Ordinance on the Creation of Cultural City
Gwangju Metropolitan Government Ordinance for Women's Safe Living

■ Evaluation of the Gwangju Metropolitan Government Ordinance on *Ex-Post* Legislative Evaluation of Municipal Ordinances and schemes to improve the ordinance.

Ⅲ Expected Effects

- It is expected to ensure practical effects of legislative evaluation of municipal ordinances and promote legislative evaluation in the future by conducting the legislative evaluation of respective municipal ordinances of Gwangju Metropolitan Government, proposing methods for legislative evaluation of municipal ordinances, presenting problems in the Gwangju Metropolitan Government Ordinance on *Ex-Post* Legislative Evaluation of Municipal Ordinances, which is the basis for legislative evaluation of municipal ordinances, and proposing the direction in supplementing the ordinance.

Key Words

Ex-post legislative evaluation, legislative evaluation of municipal ordinances, Gwangju Metropolitan Government Ordinance

Study 1 on Support for Legislative Evaluation of Municipal Ordinances - Legislative Evaluation of Municipal Ordinances of Busan Metropolitan Government -

Researcher: Baek, Ok-Sun(KLRI)

I Backgrounds and Purposes

- The Busan Metropolitan Government Ordinance on Legislative Evaluation of Municipal Ordinances has been in force since May 6, 2015, and Busan Metropolitan Government makes preparations for legislative evaluation of municipal ordinances.
- In order to ensure practical effects of legislative evaluation of municipal ordinances, it is necessary to examine whether the Busan Metropolitan Government Ordinance on Legislative Evaluation of Municipal Ordinances is systematically legitimate as the basis for legislative evaluation of municipal ordinances and whether the ordinance is substantively sufficient for legislative evaluation.
- Hence, it is necessary to evaluate the Busan Metropolitan Government Ordinance on Legislative Evaluation of Municipal Ordinances and draw its limits by conducting legislative evaluations of municipal ordinances of Busan Metropolitan Government, and it is also necessary to examine schemes to improve the Busan Metropolitan Government Ordinance on Legislative Evaluation of Municipal Ordinances for the promotion of the system for legislative evaluation of municipal ordinances for the future.
- The purposes of this study are to select representative municipal ordinances necessary for evaluation, from among municipal ordinances of Busan Metropolitan Government, then draw a conclusion by conducting legislative evaluation on each municipal ordinance with the guidelines for legislative evaluation in the Busan Metropolitan Government Ordinance on Legislative Evaluation of Municipal Ordinances, and furthermore present problems in the Busan Metropolitan Government Ordinance on Legislative Evaluation of Municipal Ordinances and propose schemes to improve the ordinance.

II Major Content

- Background of introduction of the “Busan Metropolitan Government Ordinance on Legislative Evaluation of Municipal Ordinances” and major content.
- Details of respective legislative evaluations of municipal ordinances of Busan Metropolitan Government and results thereof.

• Respective municipal ordinances subjected to legislative evaluations are as listed in the following:

Evaluated Municipal Ordinances
Busan Metropolitan Government Framework Ordinance on Entrustment to the Private Sector
Busan Metropolitan Government Ordinance on the Encouragement of Donation of Organs and Human Tissues
Busan Metropolitan Government Ordinance on Subsidization for Heating Cost of Permanent Rental Housing
Busan Metropolitan Government Ordinance on Support for the Development of Local Newspapers
Busan Metropolitan Government Ordinance on the Registration, etc. of Community Bus Transportation Businesses

■ Evaluation of the Busan Metropolitan Government Ordinance on Legislative Evaluation of Municipal Ordinances and schemes to improve the ordinance

III Expected Effects

■ It is expected to ensure practical effects of legislative evaluation of municipal ordinances and promote legislative evaluation in the future by conducting the legislative evaluation of respective municipal ordinances of Busan Metropolitan Government, proposing methods for legislative evaluation of municipal ordinances, presenting problems in the Busan Metropolitan Government Ordinance on Legislative Evaluation of Municipal Ordinances, which is the basis for legislative evaluation of municipal ordinances, and proposing the direction in supplementing the ordinance.

Key Words

Ex-post legislative evaluation, legislative evaluation of municipal ordinances, Busan Metropolitan Government Ordinance

Study 1 on Support for Legislative Evaluation of Municipal Ordinances - Legislative Evaluation of Municipal Ordinances of Seoul Metropolitan Government -

Researcher: Choi, You(KLRI)

I Backgrounds and Purposes

- Seoul Metropolitan Government has not enacted a municipal ordinance on the legislative evaluation of its municipal ordinances.
  - It plans to enact a municipal ordinance on the legislative evaluation of its municipal ordinances to institutionalize the legislative evaluation of municipal ordinances.
- The Seoul Metropolitan Government Ordinance on Legislation of Municipal Statutes contains the Guidelines for the Examination of Bills for Municipal Statutes, according to which *ex-ante* evaluation and *ex-post* management have been performed in regard to legislation of municipal ordinances.
- Included in the items of *ex-post* management are the extension or reduction of organizations, the increase or decrease of personnel or a budget, opinions of main responsible agencies, opinions from mass media, academic circles, etc., analysis of effects, such as changes in citizens' lives and reactions, reporting of the analysis and evaluation of results of enforcement, disclosure of results of evaluation, reflection of results of evaluation in municipal statutes, and recommendation of amendment of statutes.
- The purposes of this study are to select representative municipal ordinances necessary for evaluation, from among municipal ordinances of Seoul Metropolitan Government, then draw a conclusion by conducting legislative evaluation on each municipal ordinance with the guidelines for evaluation in the Guidelines for the Examination of Bills for Municipal Statutes, and furthermore propose implications for the introduction of the “Seoul Metropolitan Government's System for Legislative Evaluation of Municipal Ordinances.”

II Major Content

- Background of introduction of the “Seoul Metropolitan Government's System for Legislative Evaluation of Municipal Ordinances” and major content.
- Details of respective legislative evaluations of municipal ordinances of Seoul Metropolitan Government and results thereof.

• Respective municipal ordinances subjected to legislative evaluations are as listed in the following:

Titles of Evaluated Municipal Ordinances
Seoul Metropolitan Government Ordinance on the Promotion of Transfer and Commercialization of Technology
Seoul Metropolitan Government Framework Ordinance on Youths
Seoul Metropolitan Government Ordinance on Juvenile Activity Promotion
Seoul Metropolitan Government Ordinance on the Promotion and Support of Devolution
Seoul Metropolitan Government Ordinance on the Support for Activities of the University of Seoul for Social Contribution
Seoul Metropolitan Government Ordinance on Support for Foreign Residents and Multi-Cultural Families
Seoul Metropolitan Government Ordinance on Support, Etc. for Promotion of Social Housing
Seoul Metropolitan Government Ordinance on the Installation and Operation of Safety Audit Ombudsmen
Seoul Metropolitan Government Ordinance on the No-Driving Day Program for Passenger Vehicles and Support for Mileage of Passenger Vehicles
Seoul Metropolitan Government Framework Ordinance on Public Transportation
Seoul Metropolitan Government Ordinance on Support for Establishment of National and Public Child Care Centers
Seoul Metropolitan Government Ordinance on Towing, Etc. of Vehicles Stopping or Parking Illegally
Seoul Metropolitan Government Ordinance on the Permission to Occupy Roads for Use and the Collection of Fees for Occupancy and Use, Etc.

III Expected Effects

- It is expected to ensure practical effects of legislative evaluation of municipal ordinances and promote legislative evaluation in the future by conducting the legislative evaluation of respective municipal ordinances, proposing methods for legislative evaluation of municipal ordinances, presenting problems in the Guidelines for the Examination of Bills for Municipal Statutes, which is the basis for legislative evaluation of municipal ordinances, and proposing the direction in supplementing the guidelines.

Key Words

Ex-post legislative evaluation, legislative evaluation of municipal ordinances, Seoul Metropolitan Government Ordinance

A Study on the Applacation and Practices of Legislative Evaluation in Sweden

Researcher: Bae, Gun-Yee(KLRI)

I Background and Purpose

- Influenced by the trend of regulation reform in Europe, Sweden established a legislation evaluation system as an efficient tool of controling regulations not only in a quantitative way but also in a qualitative way.
- Swedish pre-evaluation of legislation is implemented when a relevant law stipulates a provision on evaluation or partial influence can be made by post-evaluation on financial impact or anything similar. On the other hand, pre-evaluation of legislation is implemented during the legislation process where drafting and preparing of a bill are made.
- In-depth research on the role of each institute and the cooperative structure throughout legislative process may be done to earn implications on the integration of impact assessment of different categories when a legislation evaluation system is introduced in Korea.

II Main Contents

- In accordance with Committees Ordinance, SFS 1998:1474, the Swedish government and parliament established a temporary commission called Statens Offentliga Utredningar to provide the best legislative alternative prior to a proposal of a bill. Pre-evaluation of legislation is ultimately done by a policy report called SOU(Statens Offentlig Utredning).
- The Swedish evaluation system has a number of players to be involved in the course of evaluation such as independent advisory organizations like Regulation Reform Committee and other evaluation authorities including Swedish Agency for Economic and Regional Growth and Swedish National Financial Management Authority.
- Once the SOU by the Statens Offentliga Utredningar is submitted, the Remiss process starts. The Remiss process is a way to collect opinions on the proposed bill. The SOU is sent to all stakeholders and related organizations and groups who are on the lists of ministries and who can send their opinions freely.

III Expected result

- The Statens Offentliga Utredningar actively carries out evaluation and the Remiss process has transparency and credibility. And the Swedish evaluation authorities cooperate and collaborate with each other. This will certainly provide implications for Korea to design its legislation evaluation system.

Key Words

Swedish legislation evaluation, Swedish Better Regulation, Remiss, SOU, Swedish legislative process

Legislative Evaluation of the 「National Standard Framework Act」 - Centered on Regulations Regarding Product Certification and Testing and Inspection Institute Accreditation -

Researcher: Baek, Ok-Sun(KLRI)

I Backgrounds and Purposes

■ Need and purpose of legislative evaluation

- The 「National Standard Framework Act」, constituted with the purpose of the advancement of nationwide conformity assessment systems and the consolidation of competitive power of testing and inspection institutes, is a 15 year old legislation.
- There is a need for an ex-post legislative evaluation for the 「National Standard Framework Act」 as it is a legislation directly relevant to the recent objective for the consolidation of competitive power of testing and inspection institutes, and also is a foundation to test · inspection · accreditation system that is being reviewed as key to regulatory reform.
- In addition, as the 「National Standard Framework Act」 is structured as a framework act, through its ex-post legislative evaluation, a standard can be devised through the examination of the distinct characteristics of the ex-post legislative evaluation of framework acts.

■ Method and subjects of legislative evaluation

- Categorize the type and characteristics of framework act, review existing discussion on ex-post legislative evaluation, extract legislation evaluation methods required by the ex-post legislative evaluation of framework act
- Not a legislative evaluation of the 「National Standard Framework Act」 as a whole, but an evaluation of certain articles relevant to conformity assessment systems from the regulations within the framework act

II Major Content

■ Proposal of criteria and methods for Ex-Post Legislative Evaluation of the Framework Act

- Discussions on the limitations of applying general methods for ex-post legislative evaluation of the framework act
- Ex-post legislative evaluation's directed based on and following a type analysis of the framework act
- Discussions regarding the criteria for the ex-post legislative evaluation of the framework act

■ Legislative evaluation of 「National Standard Framework Act」

- Evaluation of articles related to conformity assessment systems, not the entire 「National Standard Framework Act」
- Legislative Evaluation on Product Certification and etc. (Article 22, Article 22-3, Article 25-2)
- Legislative Evaluation of Testing and Inspection Institute Accreditation (Article 21, Article 23)

■ Legislative Propositions for 「National Standard Framework Act」 based on Ex-Post Legislative Evaluation results

III Expected Effects

■ As a case study of legislative evaluation, it can be used a basic data for ex-post legislative evaluation framework acts

■ Through the process of Legislative Evaluation of 「National Standard Framework Act」, it will contribute to the efficient establishment of a conformity assessment system and procure a systemization of relevant legislation, both of which are legislative goals

Key Words

Standards, Conformity Assessment, Accreditation, Certification, Legislative Evaluation, Framework Act

A Study on Development of Impact Assessment Toolkit

Researcher: Yun, Gye-Hyeong(KLRI)

I Background and Purpose of Research

- In Korea, there are ongoing discussions on legislative evaluation system. However, it does not provide a practical guide to legislative evaluation is needed for this discussion.
- This study presents some implications for institutionalization of legislative evaluation system through Impact Assessment Toolkit or Toolbox.

II Main Contents

- The content of the Better Regulation Toolbox in EU
  - General principles of Better Regulation
  - How to carry out an impact assessment
  - How to identify impacts in Impact Assessments, evaluations and Fitness Checks
  - Implementation, transposition and preparing proposals
  - Monitoring implementation
  - Evaluations and Fitness Checks
  - Stakeholder consultation
  - Methods, models and costs and benefits
- Impact Assessment Toolkit in UK
  - Checklist for Impact Assessment
  - The Stages of Impact Assessment Process
  - Impact Assessment Template
- The need for Impact Assessment Toolkit
  - It is necessary to design the Impact Assessment Toolkit for institutionalization of Legislative Impact Assessment in Korea

Ⅲ Expected Effects

- Being a useful article developing the toolbox of toolkit for the plan and design of legislative evaluation.

Key Words

Impact Assessment Toolkit, Legislative Evaluation, Impact Assessment Guidelines, Impact Assessment Template, Better Regulation Toolbox

Annual Research Projects

Support for Post-Reunification
Law Studies

A Legislative Study of Railroad Cooperation in Divided Nation

Researcher: Park, Hun-min(KLRI)

I Backgrounds and Purposes

- In the North and South Korea cooperation, besides a summit meeting, Trans-Korea-Railway development and it's demonstration/revenue train service has been mentioned.
- As a preparation for TKR-TSR/TCR Railways connecting, Railroad Service Regulations research between divided nation should be conducted.
- Several lessons ware brought up for former Gyeongui Line Railroad operation. In that experience, necessity of Law & Regulation Study for in North Korea land pass-by Rail traffic and North/South commutual Railway service.

II Major content

- A Study of Rail Road Cooperation case in divided East&West Germany, as Precedent which koreans could use for reference in near future.
- Focusing agreements of Railway Service joining between East & West Germany, include pass-by and mutual Railway service.
- As conclusion of this study, lessons of Germany case would be applied for N.&S. Korea Railway Cooperation. Content of (future) agreement and improvement direction of internal Legislation also would be mentioned.

III Expected Effects

- Suggesting of Procedent which as reference working in N&S Korea Railway Coopration agreement.
- Augmenting of various circle's Understandance Level on german railway service cooperation case.

Key Words

North & South Korea Cooperation, Unification of Korea, TKR, TSR, Railway traffic, East&West Germany Cooperation, German Railway

A Study on Legislation of Education and Occupation in North Korea

Researcher: Ryu, Ji-Sung(KLRI)

I Background and Purpose of Research

■ background of Research

- In existing researches on North Korea education system, legal reviews are almost none, so it is the necessary to precede research in case of considering unitary convergence of education legislation after reunification.
- As legalization of all kinds of institutions is started these days in North Korea, analyses on it are necessary.
- In order to set up basic directions of integrated legislation preparing for sudden reunification, analyzing relevance between education legislation, main license system, and educations is required.
- There is effectiveness in rather analyzing recognizing matters on academic career and qualifications of North Korean defectors in South Korea which could be said like 'small reunification' in grouping basic directions of integrated legislation.

■ Research object

- This study sets up basic directions of legislation which admits its education and qualifications in case of reunification by suggesting reality of North Korea education as well as analyzing its education legislation.
- By checking current main issues on admitting academic career and qualifications of North Korean defectors, this study intends to design institution so that they could be integrated to South Korea society and enjoy equal life.
- This study proposes required considerations in integrating legislation of both parties together with designing legislation about admitting North Korea academic career and qualifications.

II Main Contents

■ North Korea education system and Related law

- North Korea education system equipped with related laws by each school having been led by contents such as implementing socialistic education principles in The Peoples

Republic of Korea constitution(Below 'The Peoples Republic of Korea omission'), and revision was made in 2012 from 11-year compulsory education to 12-year one.

■ Medical science education and Legal education of North Korea

• This study reviews status of North Korea medical college and its curriculum, and analyzes actual reality and problems.

• Based on above analyses, problems of admitting North Korea doctors are examined.

• Researcher instigates North Korea legal system, and looks into problems of admitting legal professions.

■ Key problems of admitting North Korea academic careers

• After analyzing problems of ex-academic career confirming systems, installing background of academic review system as its alternative together with problems for the time being and improving methods are deduced.

• South Korea treating on North Korea academic careers and degrees will be reviewed, and this study suggests a basic direction on future admitting matters on it.

■ Key problems on admitting North Korea qualifications

• Reviews on national technical qualification system of North Korea are made.

• Curriculum and extensive technical commonality are guaranteed to the maximum by comparing between North Korea and South Korea, acceptable system of North Korea is alive regarding heterogeneous parts, and prudent reviews on parts which show prominent different levels in quality and are not harmonized to constitutional basic order of South Korea could be said as being required.

III Expected Effect

■ This study introduces education legislation of North Korea and clarifies basic spirits penetrating in its legislation.

■ Researcher analyzes national qualification system of North Korea, and an expectation could be done as a basic reference data of integrated legislation by deducing commonality and heterogeneity with South Korea through North-South Korea comparison.

■ By checking admittances of North Korea academic abilities and careers in South Korea, this study suggests desirable legislation directions for admitting academic abilities and careers of North Korean defectors in South Korea, and then proposes basic directions on integrated legislation while foreseeing key matters on them after reunification.

Key Words

North Korea, Korean Unification, Law of Education in North Korea, the certificate of technical qualification in North Korea, academic deliberation

Annual Research Projects

Legislative Analysis and
Assistance Projects

Analysis of Post-Mortem Examination Laws in Korea and Overseas

Researcher: Lee, Seo-Young(Handong Global Univ.)

I Purpose and Scope of Research

- 「Act on Dissection and Preservation of Corpses」 governs post-mortem examination, and it applies to dissection of cadaver for the education and research.
- However, in the past few years, it has been criticized that it fails to reflect the reality of medical education or research demand for development of medicine and science. Parts that especially requires amendment include: who may conduct dissection, how anatomical gifts may be made and the effect of the consent of family members, dissection of unclaimed dead bodies, and respectful treatment of the cadavers.
- It is necessary to look into and analyze legislative examples of other countries. As such, 「Postmortem Examination and Corpse Preservation Act」 of Japan, and the 「Revised Uniform Anatomical Gift Act 2006」 and relevant state laws of the US will be analyzed.

II Contents

- 「Act on Dissection and Preservation of Corpses」 provides who may dissect or order dissection of corpses, consent of bereaved families for dissection, verification of bodies of accident, measures upon discoveries of abnormalities, management of corpses, dissection for research, provision, etc. of corpses without claimants (unclaimed dead bodies), consent to human specimens, and courtesy to corpses, delegation of authority, and other penal provisions.
- In Japan, post-mortem examination is governed by 「Postmortem Examination and Corpse Preservation Act」, whose purposes and functions are similar to Korea's 「Act on Dissection and Preservation of Corpses」, and by 「Act on Body Donation for Medical and Dental Education」.
  - 「Postmortem Examination and Corpse Preservation Act」 has a structure similar to Korea's 「Act on Dissection and Preservation of Corpses」, the biggest difference between the two Acts lies in who may conduct dissection of dead body.
  - According to 「Postmortem Examination and Corpse Preservation Act」, post-mortem examination requires a local public health center's director permission. However, in exception, doctors, dentists and others designated by the Minister of Health and Labor

who have much knowledge and technique in post-mortem examination may conduct dissection without such permission. This is broader and more flexible than Korea's 「Act on Dissection and Preservation of Corpses」 which strictly limits who may conduct dissection.

- 「Postmortem Examination and Corpse Preservation Act」 in principle requires the permission of the deceased's family members in order to dissect the deceased's body, but there are a few exceptions, as is the case in Korea. In addition, dead bodies unclaimed during 30 days after death may also be dissected without family members' consent.
- 「Act on Body Donation for Medical and Dental Education」 is unique piece of legislation, and there is no Korean counterpart. It is rather declaratory and symbolic, but it contributes to emphasizing the importance of anatomical gift for education and research purposes, as well as to raising awareness among citizens.
- 「Act on Body Donation for Medical and Dental Education」 raises awareness about anatomical gift for educational purpose and supports intent to make anatomical gifts, as well as organizations of anatomical gift donors.
- 「Act on Body Donation for Medical and Dental Education」 states that the intent to make anatomical gift shall be respected, and that, in case the deceased made written expression of intent to make anatomical gift and the family members do not refuse dissection, no separate consent for anatomical gift is required from family members.
- According to 「Act on Body Donation for Medical and Dental Education」, the Minister of Education, Culture, Sports, Science and Technology may provide supervision and advice on the activities of organizations of anatomical gift donors. The State has the duty to take measures to raise understanding of anatomical gift.
- While not yet reflected to current laws, wide distribution of cell-phones with camera functions and development of social network services resulted in damaging the dignity and invasion of privacy of donors whose bodies are used in anatomy practicum, and these problems caused relevant associations to jointly recommend medical and dental schools to properly educate their students on respect for the donors.

■ **In the US, dissection for education and research purposes is in the jurisdiction of each state. However, the Uniform Law Commission drafted Revised Uniform Anatomical Gift Act 2006 and most of the states decided to adopt it and legislated into their state laws.**

- 「Revised Uniform Anatomical Gift Act 2006」 broadly defines “document of [anatomical] gift” to include a statement or symbol on a driver's license, ID card, or donor registry, and simplifies the formalities of anatomical gift donation.
- 「Revised Uniform Anatomical Gift Act 2006」 respects the autonomy of the donor's intent to make anatomical gift, and prevents amendment or revocation of donation by a 3rd party after the donor's death.

- 「Revised Uniform Anatomical Gift Act 2006」 expands the rule on who may make anatomical gift before donor's death, and it includes emancipated minor, minor who are licensed to drive according to state regulation, and, in some cases, donor's agent, parents, and guardian.
- Unclaimed dead bodies are governed under each state's law, and in most states, after a designated number of days, unclaimed dead bodies may be distributed to medical schools through a regulated procedure. However, whether they are actually dissected for educational purpose depends on the geological, social, economical, cultural condition of each state.
- Most states have established a system in which representatives of medical education institutions and government participate in a committee which fairly and efficiently distributes unclaimed dead bodies among institutions eligible to dissect them.
- A lot of states use unclaimed dead bodies not only for education of anatomy but also embalming, which allows development of technique that produces cadaver models which may be used for an extended period when actual cadaver is hard to obtain.
- However, in the US, similarly to Korea, use of unclaimed dead bodies for dissection has been continuously criticized for its lack of usefulness and ethical problems.

III Expected Effect

■ It is expected that the recent legislative trend and discussions based on the laws of Japan and the US would provide lessons as to how to amend the 「Act on Dissection and Preservation of Corpses」 in the future.

Key Words

Dissection, Post-mortem Examination, Unclaimed Dead Bodies, Act on Dissection and Preservation of Corpses

Examining Legislation to Streamline Regulations on Animal Cremation

Researcher: Jang, Eun-Hye(KLRI)

I Background and Purpose

- For those who breed pet animals, disposition of pet remains is inevitable. This, combined with the necessity to ease the emotional pain of pet owners who just lost their pet animals, has led to the emergence of funeral and cremation services.
- The impact of increasing pet owners and changing recognition has reached to the issue of the disposition pet remains. Still, the legislative conditions in Korea fall far short of expectations.
- It is necessary to consider overall problems such as an environmental and sanitary problem caused by the disposition of pet remains and ease of petowners' emotional pain through a humane treatment of pet remains through the promotion of lawful pet funeral and cremation services.

II Main Contents

- Legal issues on pet funeral and cremation services

• Status of legislation on the matters related to the disposition of pet remains in Korea

- As of July 2015, there are only 14 pet funeral and cremation service providers registered on Animal Protection Management System. This means that not many pet remains are properly disposed in Korea. According to the Wastes Control Acts, relevant entities like veterinary clinics pet remains as medical refuse but it is assumed that many pet owners treat their pet animals dying of natural causes as household wastes, putting them into a standard plastic garbage bag, or bury them illegally.
- Therefore, it is necessary to improve the current way of treating pet remains and begin discussions on practical methods of their disposition considering the sentiment of people - whether they breed pet animals or not-and as well as environmental problems.

• Necessity of rules on the disposition of pet remains

- Growing demand for pet funeral and cremation services has resulted in a spring-up of unlicensed funeral and cremation service providers. Yet, they are only punished by fine not exceeding one million won under the current laws.

- Some argue that a complicated registration procedure impedes the promotion of pet funeral and cremation business. But there are more significant factors playing here: absence of specific matters related to the disposition of pet remains and undefined disadvantages or penalties for a violation of rules and regulations.

• Pet cemetery and cremation business

- Full prohibition of arbitrary burial with no exceptions needs to be reconsidered since such prohibition may weaken the regulatory power.

- In regard to pet cremation business, it is important to identify any difference between the cremation of human bodies and pet animals'. This is because such differences may need to be specified by the law.

■ Case studies: Disposition of pet remains and related legislation in other countries

• U.S

- Matters related to the disposition of pet remains are specified in State laws. Some states have highly sophisticated level of legislation with detailed provisions.

• Japan

- There is a controversy over the regulatory approaches on those who operate pet disposal business. With no legislation available at the national level, however, each local governments regulates pet disposal service providers by applying their own ordinances, codes, guides, guidelines.

■ Measures to rationalize regulations on pet funeral and cremation business

• Redefine legal concepts

- Legal concepts need to be modified to endure the establishment of more comprehensive concepts rather than enumerating a list of animals included in a certain group to be covered by pet funeral and cremation services.

- It is necessary to make provisions for matters related to pet remains, separating them from wastes defined in the Wastes Control Act and preventing dualistic regulation of pet disposal.

• Allow natural burial and exceptions

- While banning on arbitrary burial in general, it is necessary to create special provisions that make exceptions where certain requirements are met.

- Matters related to the method of natural burial need to be prescribed in provisions on the ways of pet remains disposal.

• Classify the use of pet cemetery and pet crematorium by the Building Act

- It is necessary to specify the use of pet cemetery and pet crematorium to prevent over-regulation from restricting facility installation and poor regulation from causing damage to members of the surrounding community.

• Reform the regulatory framework related to pet cemetery and pet crematorium

- The issue of pet funeral and cremation business cannot be simply confined to the matter related to regulating the relations between service providers and their clients. Rather, it is a comprehensive issue that requires considerations of social and moral aspects based on the respect for life, stricter environmental standards and settlements of disputes over unwanted public facilities.
- It is reasonable to recognize the need of discussions and consensus considering every possible problem, instead of suggesting the promotion of pet funeral and cremation business through deregulation and relaxation of registration requirements in favor of service providers.

III Expected Effect

■ This study which focuses on the measures to rationalize regulations on pet funeral and cremation business will be used as a useful reference to prepare a legal basis for the operation of pet funeral and cremation business that successfully deals with the main issues: protection of animals, emotional stability of pet owners and environmental protection.

Key Words

Animal Protection Act, funeral and cremation business, pet cremation, pet cemetery, pet animals, disposition of pet

The Legislative Analysis on the Organizations in Laws

Researcher: Lee, Eubong(KLRI)

I Background and Purpose

■ Background of this study

- The legal forms of an organization are articulated in various forms such as legal persons, non legal persons, foundations or associations, their existence based on their constitutional right of voluntary establishment and to act.
- In today's modern society, people tend to achieve their interests collectively through a group activity rather than on an individual, fragmented basis.
- In addition, as the third sector consisting of individuals and the government expands, the role of non profit organizations in the public area are also expanding and the situation that some of the government's tasks are entrusted to non profit organizations or groups is increasing.
- By setting up the proper legal foundation and providing proper support these efforts will enable non profit organizations to reasonably act and these efforts will allow to construct the foundation for a vibrant democratic society with an active private sector.

■ Purpose of this study

- By a comprehensive analysis of the legal framework governing non profit organizations and non governmental organizations, this research makes the attempt to make clear which legal status these organizations have as legal actors with rights and obligations under the current legal framework.
- This research makes the attempt to identify the current topography of Korean law governing non governmental organizations by analyzing the relevant laws prescribing the general matters with respect to non governmental organizations or groups and various provisions concerning these organizations under the laws.
- Based on above, this study reviews the legal issues that may arise in supporting or contracting out to organizations, and suggests approaches to improve appropriate selection criteria for the target groups.

II Main Contents

■ The current topography of Korean laws governing non profit organizations and non governmental organizations

• By comprehensive analysis on the legal framework governing non profit organizations or groups, this study makes the attempt to review the basic legal approaches to non profit organizations as a legal subject and the detailed system of laws which govern these organizations considering the policy objective.

• This research reviews the distinction between a legal person and a non legal person and for profit organization and non profit organization in conjunction with the accompanying problems.

• This study analyzes the legislative intent with respect to the provisions governing non profit organizations according to the purpose of each relevant policy including categories, for example establishment, operating and management, support and development, entrust of public works, and supervision.

■ The relevant Korean laws governing organization

• This study outlines the legislations that define legal acts and activities of the organizations under The Civil Code, The Private Non-profit Organizations Promotion Act, The Act for Establishment and Operation of the Public Interest organization, The Act on Management of Grant, The Regulation on Delegation and Entrustment of Administrative Authority and The Act on Management of Public Institutions.

• Also, this study analyzes the key descriptions in Korean legislations with respect to the organizations which are not further statutorily defined with respect to their establishment and promotion.

■ The legal issues on promoting organizations or contracting out

• The articles on promotion and entrustment to organizations or corporations in Korean legislations tend to provide obscure standards with only abstract criteria on the main goal of the association which is insufficient to define which organization is qualified.

• Therefore, legislations or regulations shall provide more detailed standards with a qualitative and quantitative method for judging which institutions or organizations deserve to get grant or entrustment.

■ Improvement of legislations governing organizations

• Based on the analysis regarding the organizations above, this research suggests several approaches for regulatory improvement: first, to mitigate the requirements for getting the permission in order to be a legal person; second, to refine and specify the requirements of the target group according to the intent of promotion and the level of the organization's development; third, to provide more tailored criteria for selection of an organization for public tasks; fourth, to strengthen the process for management and supervision, and evaluation of the organizations' achievements for objective and fair judgment.

■ Case Study on the Statutory Organizations: Juvenile Organizations

• Based on the general approach for legislative improvement above, for case study, this study reviews the provisions governing 'juvenile organizations' and suggests how to modify them to clarify relevant laws and regulations.

III Expected Effect

■ Academic effect

• This study offers discussions on the approaches for legal restructure in order for organizations to act rationally in a modern society through a comprehensive analysis on the legal framework of the current legislation governing organizations.

■ Effect in Policy

• This research proposes in practice how to provide a reasonable and objective measure in selecting organizations which are qualified and deserve promotion and subsidies as a reward for assuming public tasks.

Key Words

statutory organizations, private non-profit organizations, organization fostering, entrustment of civil service, Youth Organizations

A Study on the Improvement of Regulation Concerned with Issue and Circulation of Gift Certificate

Researcher: Jo, Yong-Hyuk(KLRI)

I Background and Purpose

■ Background of this study

• Recently, there have been a lot of cases of consumer injury due to confusion of gift certificate issuers and overissue of gift certificate

• It is necessary to make a resonable rule for Issue and Circulation of Gift Certificate

■ Purpose of this study

• The purpose of this study is to review legal issues concerned with Gift Certificate and to finally suggest policy and legislative system for Gift Certificate

II Main Contents

■ Current state of gift certificate

• Current state of issue and circulation of gift certificate

• Current legislation status and history about issue and circulation of gift certificate

• Foreign legislative system concerned with issue and circulation of gift certificate

■ Suggestion for improving legislative system concerned with issue and circulation of gift certificate

• Definition of gift certificate

• Limit of gift certificate issuer

• Restriction for issue of gift certificate

• Expiration date of gift certificate

• Public use of profit resulted from unredeemed gift certificate

III Expected Effect

- This study suggests the way to improving policy and legislative system for Gift Certificate
- This research is intended to provide the legal framework for Gift Certificate, and is expected to contribute to better environment for Issue and Circulation of Gift Certificate

Key Words

Gift Certificate, Gift Card, Prepaid Card, Expiration Date, Unredeemed Gift Certificate

The Legal Analysis on the Village Company Development

Researcher: Lee, Joon-Ho(KLRI)

I Background and Purpose

■ Background of this study

• Current regional economic policy, and community development policies promoted in our country is supported by the activation of subunit of the regional economic organizations as an essential infrastructure, and the legal basis for it is requested from a long time ago

• Despite "Village Company Development Policy" as regional economic policy and community development policies continue to be performed every year, there is not yet clear legal basis

• Since "Village Company Development Policy" is needed for ①, Compliant, customized support for local demand, ② the formation of local voluntary organizations support, ③ sustainable regional policy, This policy should require a legal basis necessary for the local economy

■ Purpose of this study

• Purpose of this study is to carry out legislative work to legislation, to provide a legal basis in policy implementation for "Village Company Development Policy"

II Main Contents

■ General theory of Village Company

• Concept of Village Company

- The village company is corporate units of village or town, to enable the local communities through profitable business utilizing the various local resources to provide income and jobs for local residents for regional development

• Laws in relation to Village Company

- Special Act to enable and support urban regeneration, Social enterprise Promotion Act, Special Act on development in rural areas and improvement of the quality of life, Regional Community supporting Bill, Villages community activation in rural area supporting Bill, Social and economic basic Bill

■ Legislation for “Village Company Development Policy”

• Needs

- Legislation necessary for the local economy and local communities
- Overcome shortcomings of laws in relation to Village Company
- Need for Supporting Law to be optimized for Village Company Development

• Concept of Village Company

- Purpose, Definition, Basic principle, Role and duty

• Village Company Designation

- Designation criteria : corporation of civil law, company of commercial law, the Company cooperatives, agricultural unions, etc, At least 5-founder, A particular person together with parties as less than 50% total equity
- Cancellation and termination of Village Company : Abandonment, Termination of contract, Violation, Not meeting the requirements, Lack of feasibility

• Governance of Village Company Development

- Top-down system : Establish and implement a plan of local governments within the scope of the basic plan of the central government
- Establish and implement a plan of the local government : Joint planning, Consultation and coordination and plans by the central government, Details of regulations through ordinances enacted
- Committee : Central Committee, Local Committee

• Village Company Supporting

- Contents of supporting : Financial Assistance, Independence Assistance
- Supporting apparatus : Village Company Supporting Center, Village Company Supporting Organizations

III Expected Effect

■ Material and information used as support for the implementation of policy and legislation

■ Reference used as legal data in the legislation process

Key Words

Village Company, Business-community, Regional economic activation, Community development, Social economic organization

The Legislative Studies on Safe Control of Tobacco Related Products

Researcher: Lee, Eubong(KLRI)

I Background and Purpose

■ Background and purpose of this study

- WHO is the international health agreement of Tobacco Control Framework Convention (Framework Convention on Tobacco Control) that prescribes the price and non-price policies for reduction of supply and demand of tobacco which Korea has ratified in 2005 with amendment of national law accordingly.
- Even though, on the products such as foods, drugs, cosmetics, or etc. that directly impact on the human body, the government is committed to securing public health by active regulations, in the case of tobacco, despite the smoking's harmful effects on human, the regulatory policies to reveal the harmfulness of tobacco products based on scientific information are insufficient.
- Although the current regulations on the tobacco's hazards to human health are simply limited to the strategies for inducement to reduce the smoking rate through the promotion of the tobacco's hazards and a price increase, it is required to introduce the hazard management policy based on science and technology.

■ Methodology

- This study reviews the tobacco-related status, analyzes the tobacco-related international agreement (the Framework Convention on Tobacco Control) and the national legislations of US, France, Germany, EU and Korea to comply with the international agreement, and suggests approaches for legislative improvement for current tobacco related legal framework in Korea.

II Main Contents

■ Tobacco-related status in Korea

- The Korean national smoking population rate during 2013 is comparatively higher with 23.2% than the OECD average of 20.7%, which can be interpreted as more significant given the big gap between the gender with 6.2% for women and 42.1% for man, even though the rate of man has been noticeably decreased since 1998 from 66.3%.

- However, the electronic cigarette smoking and passive smoking in the workplace is increasing.

■ The Framework Convention on Tobacco Control(FCTC)

- In addition to the national efforts on tobacco control led by the scientifically proven harmful effects of tobacco on the human body as well as increasing awareness of the right to public health, the Framework Convention on Tobacco Control(FCTC) was agreed for international tobacco control to overcome the regional differences.

- For the policy tools for tobacco control, FCTC implies the price and tax measures to reduce the demand for tobacco (Article 6), protection from exposure to tobacco smoke (Article 8), regulation of the contents of tobacco products (Article 9), regulation of tobacco product disclosures (Article 10), regulation of packaging and labelling of tobacco products (Article 11) and others, without any authority to enforce compliance.

■ Analysis of current national legislations regulating tobacco

- The major national laws in Korea implementing FCTC are the Tobacco Business Act, the Act for National Health Promotion and other laws: When it comes to the price and tax measures, there are charges for public health promotion articulated by the Act for National Health Promotion and the “tobacco consumption tax” by the Regional Tax Law.

- As to the regulations on the ingredients of tobacco products in Korea, the Tobacco Business Act articulates on the display of the amounts of nicotine and tar in tobacco cigarettes smoke upon the cigarette packaging and advertising, and as to the regulation on the display of tobacco products the Act for National Health Promotion prescribes on the display of the health warning notice and information on carcinogens.

- Through comparative analysis on tobacco-related legislations in France, Germany, US and EU, this study described how those legislations had developed to comply FCTC and recent trends of strict regulations on the components of tobacco products and the substances emitted from tobacco smoke.

■ Analysis of the bill, the Act on Safety Management of Tobacco Products the suggestions on the legislative approaches

- First, the definition on ‘tobacco’ covered under this bill shall be more clarified; second, to avoid overlapping among current legislations and the suggested bill, the bill shall more focus on the regulations on ingredients of the tobacco products and substances from smoke with stronger programs than those under the current laws.

- This study suggests that: information disclosure on contents of tobacco products would be more largely and strictly extended than those under the Tobacco Business Act; the standards on tobacco products and their ingredients would be established; the information on hazardous substances in tobaccos would be added to the health warning notice; expertise of test bodies should be reinforced.

Ⅲ Expected Effect

■ Academic effect

• Through reviewing the national legislations in Korea and several countries to comply FCTC, this analysis affords meaningful resources on how each member county responds to the international agreement.

■ Effect in Policy

• By reviewing the regulatory tools on control of hazards from tobacco, this research offers effective and secure legislative approaches for health protection and safety management filling the loophole of current regulations.

Key Words

tobacco hazardous substances management, contents information of tobacco products and smoke, non price regulation, Framework Convention on Tobacco Control, electronic cigarette

Comparative Legislative Analysis on the National Civil Service

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I Background and Purpose

■ Since a general reform in 1981, there are in the Act of national civil service only random alterations several times so that it contains the néccessité another general reshuffle.

• Therefore, the research is done in this report on developments in the legal system of civil service of the State in different countries and the UK, the US, Germany, France and Japan.

• For the research was given two problematics: first, the legal sytem of the national civil service and its evolution in recent years; secondly, the division between the legislative power and the regulatory.

II Main Contents

1. The United Kingdom

■ In the U.K., the Constitutional Reform and Governance Act 2010 was enacted as the fundamental rule on the issue.

• The Act removes the prerogative powers for the management of the Civil Service and forms the legal basis for the Civil Service.

• However, the Act sets minimal provisions regarding certain basic matters.

- Many matters are regulated by various forms of delegated legislation.

- In addition, most of the Prime Minister's power to manage the Civil Service has been delegated to government departments and government departments enjoy relatively higher levels of discretion regarding the management of their service.

■ Civil Service Reform under the structure of the law is ongoing to respond to many challenges.

• Civil Service Reform as a part of the administrative reform works is stimulising the changes of the Civil Service in many dimensions.

• The objectives of the reform are as below;

- ① forming a smaller, but effective Civil Service based on digital system, ② improving policy making capability, ③ implementing policy and sharpening accountability, ④ building capability by strengthening skills, deploying talent and improving organisational performance across the Civil Service, ⑤ creating a modern employment offer for staff that encourages and rewards a productive, professional and engaged workforce.

2. The United States

■ In the United States, the federal civil service was established in 1871. Over the last few decades, reformers have used the efficiency argument to successfully remove traditional public sector job protections at the federal and state levels. The Civil Service Reform Act of 1978 reformed the civil service of the United States federal government.

• New Public Management (NPM) is that the public personnel system should be recast in the image of the private sector. There are debate between NPM and public interest theory that the treatment of public employees should be consistent with principles of agency integrity and serve to enhance the public interest in professional and non-partisan implementation of policy.

■ Title 5 of U.S.C. governs the federal civil service systems and federal government structure(Title 5. Government Organization and Employees)

• Civil Service is defined as “all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services.”(5 U.S.C. § 2101) Civil service systems are in Part 2(Civil Service Functions and Responsibilities) and 3(Employees) of Title 5.

• There is no significant changes of civil service systems and related provision. since 2000.

• Civil service laws can be divided into federal statutes and federal regulations.

- Title 5(Administrative Personnel) of Code of Federal Regulations (CFR) consists with 30 Chapters. CFR combines with previously issued relations that are still in effect.

- In US legal system, legislature branch enacted more detailed and specifically provision and articles than Korea but still there are various delegations to executive branch so that department and agency pass huge numbers and broad very detailed administrative rules.

3. Germany

■ Federal Public Service Act of Germany (BBG) amended for the first time since 2009, established in 1953, it is a federal law that applies until now.

• This law consists of 150 provisions of (including § 111a, § 92a and § 84a) appointing federal officials, career (Laufbahn), transfer, dispatching, termination of civil service relationship,

- as well as appeals procedures for the personal disadvantages, it also includes provisions on the procedural protection of rights.

■ Federal Ministry of the Interior(Bundesministerium des Innern) as Federal agency in charge of personnel of the officials of executive functions does not operate as a centralized.

- Other independent federal agency that is responsible for matters relating to personnel of the civil service is a federal Civil Service Commission(Bundespersonalausschuss), as defined in the Federal Public Service Act of Germany in Chapter 8.

■ German administrative agency workers is composed of dual office structure (Zweispürigkeit des öffentlichen Dienstes), civil servants with public authority(Beamte) and civil contractual duty of the clerk(Angestellte).

- On the basis of Federal Public Service Act of Germany, Article 6, civil servants are separated in a professional civil service officers and honorary officers(Ehrenbeamte).
- Professional civil service officers can be classified according to the continuity of the working period and career(Laufbahn).
  - The career (Laufbahn) translatable into class group refers to a set of offices in charge of professional qualifications in the areas of education and apprenticeship, as in the federal Public Service Act in Chapter 3, Article 16 to Article 26.
- Gritty derive a common feature of the legislative mandate of the Federal Public Service Act enforcement order can be summarized as that the federal government has authorized a broad legislative mandate and for this constitutional examination is mitigated.

4. France

■ The institution of the civil service in France consists, At the legislative competence level, of the general status and the status of the civil service of the State(le statut général de la fonction public et le statut de la fonction public de l'Etat).

- While the fundamental elements are governed by the statutes for all the public service of the State, for the largest share of the public service of the state, each body acquires a special status.
- The competence of developing these specific regulatory Statutes is not one of the legislative.
  - These special statutes adopts the form of a decree(décret).
  - It should be noted that in the development and its amendment, the participation of the civil servants or public agents is guaranteed mainly through their representative.

■ So although the direction of developments of the institution of the national civil service is influenced by the context of major policies that are characterized by each government, it is found that a persistent piloting frames the developments.

- The status of civil service of the State is found in the state through the consistent evolution that were made in 2007, 2008, 2010 and 2012 recently.
  - It is the pursuit of balance between policies for efficiency and for the stability of the system which consists in particular of improving the rights of agents
  - Improving the rights of agents is particularly evident in the amendments of the system relating to the status of the contract staff who has recently set up.

5. Japan

■ **In the legal system of the civil service of the state in Japan, there are many elements that are comparable to those found in that of Korea.**

- So are the articles in the Constitution concerning the rights of citizens on the Recruiting public officials and fundamental concepts in the system.
- The basic elements are governed by the Civil Service Act of the State while the regulatory jurisdiction over techiques elements is delegated to that of the National Personnel Authority(NPA, 人事院).
  - The NPA is the peculiarity of the Japanese system of the law relating to civil service since the éloration the large part of the regulations falls under the regulatory competence of the NPA.

■ **While in December 2000, a civil service reform was implemented through the development of 'Administrative Reform Outline'(行政改革大綱), the objective of efficiency appears forward in the amendment the National Civil Service Act in 2007.**

- Since the reforms of 2000 and 2007 targets for performance are held in accounts further.
- In the Fundamental Act for reforming the civil service passed in 2008, the policy guidelines to improve the status of the public service are contained.
- In 2014, an evolution of the civil service system was set up so that the new office of the Directorate General of human resources in government.

III Expected Effect

■ **It is found that the legal system of the state civil service differs in the countries analyzed by the institution's history.**

- Therefore, we should understand the system with the functions of the institutions that surround it.
- For a common point in different countries searched, it is found that the form of legislative rules and that the regulation is used consistently with its own character.

Key Words

civil service, national civil service, legal système of civil service, public service, legislative power and regulatory power

A Study on the Current Local Government Ombudsman and Legislative Suggestions for Its Promotion

Researcher: Yang, Tae-Gun(KLRI)

I Background and Purpose

- Local Government Ombudsman has not got success in its proliferation since the Law on Civil Rights Commission did not stipulate it as obligatory institution.
- Proliferation of Local Government Ombudsman may fulfill such tasks of as, not only controlling maladministration under the principle of rule of law, protecting human rights and democratizing of local government, but also establishing constructive partnership with Civil Rights Commission.

II Main Contents

- The need for the proliferation of Local Government Ombudsman can be drawn from the fact that Ombudsman plays a significant role in strengthening rule of law, redressing administrative injustices, protecting civil rights, and, more importantly, realizing democracy in the perspective of local autonomy.
- The first legislative suggestion for the proliferation of Local Government Ombudsman is to make it as obligatory institution only in the level of Metropolitan City and Do.
- The second legislative suggestion for the proliferation of Local Government Ombudsman is, in addition to the status quo, to make routes of its establishment multiplied by giving local people the right to establish Local Government Ombudsman.
- The third legislative suggestion for the proliferation of Local Government Ombudsman is to combine the first legislative suggestion and the second one.

III Expected Effect

- It is expected to contribute to not only controlling maladministration under rule of law, protecting human rights and democratizing of local government but also promoting the institution of Local Government Ombudsman through the above mentioned legislative suggestions on the proliferation of Local Government Ombudsman.

Key Words

Local Government Ombudsman, rule of law, human rights protection, democracy, local autonomy

A Legal Analysis for Universal Postal Service

Researcher: Kim, Ji-Hoon(KLRI)

I Background and Purpose

- Most countries provide the general public universal service for communication which allows them to communicate with others at any time and any where and at a reasonable price. In Korea, Postal Service Act as well as Telecommunication Business Act provide the basic postal service.
- In general, legal provisions on the universal service for people include the concept and scope of the universal postal service, ways to provide it and charge imposed on users and other related issues.
- In the telecommunication sector, basic and universal service for telecommunication is provided by private provides not by the government. For this reason, the government and private operators have made effort to come up with standards to deal with cost-sharing methods for installation works of telecommunications facilities and other works and provide services at a reasonable price.
- When it comes to the postal service, the government provides the postal service which is governed by an administrative agency. For this reason, the universal postal service is not the subject for cost-sharing.
- To deal with issues on operational and maintenance costs of the universal postal service, occurring to those service providers, the government offers preferential to them so that they could make up for costs of maintenance.
- With advancement of new types of communications, profits, which the service providers made, has dwindled gradually. Lowering boundaries of the postal service market has encouraged new comers to enter and promoted competition among providers. For these reasons, the government is no longer able to handle issues over maintenance costs of the universal postal service.
- For the purpose of providing the universal postal service in a stable manner, it is required to examine thoroughly the current postal service.

II Main Contents

- The existing universal postal service is provided on the basis of the Postal Service Act, and supplemented by other legislations, such as other legislations such as Act on Special Cases Concerning the Management of Postal Service, Act on the Entrustment of Services of Post Office Counters, and etc.
- Those acts specify requirements to carry out certain postal services which are designated as the universal postal service, for example, standards of providing services, terms of use, delivery and so on.
- The government designates organizations for postal services who are agencies that takes overall charge of postal services to provide financial resources to the universal postal service. According to related laws, it is allowed to use revenues of accounts operated by the National Postal Office just in case of losses are not filled by profits and earnings that the universal postal service created.
- However, Article 14-2 Disposition of Profits and Losses, (2) of the Act on Special Cases Concerning the Management of Postal Service does not clearly state disbursement of surplus earnings but only imply possibilities of using the surplus. As a result, the providers are not fully made up for their losses.
- In turn, it would undermine soundness of the universal postal services, which leads to crisis of the overall postal service directly governed by the government. Therefor issues over losses of providers should be dealt with without delay.
- The problems that the postal service sector faces should be handled either by coming up with and implement practical methods to make up for losses while maintaining the current universal postal service or by cutting expenditures.

III Expected Effect

- Considering characteristics of the postal service that it is provided by a government organization, the paper proposes practical ways to improve the current system. From a mid-and-long term perspective, it could be used as a basis for coming up future measures.
- What is also critical to handle problems is to understand that improving the universal postal service system is prerequisite to deal with underlying problems of the postal business.

Key Words

the universal service, post, railroad, telecommunication, withholding reservation

A Legislative Study for Telecommunication Service User Protection - Focusing on Effective Relief Plan -

Researchers: Choi, Kyoungjin(Gachon Univ.)
Jung, Gyungoh(HANJOONG LLP) Lee, Jonggwan(Media & Future Institute)

I Purpose and Scope of Research

■ Purpose of Research

• Necessity of Policy-making for User-oriented Protection Policy

- Separation of Pre and Post Regulatory Agency

- Necessity of User Protection after Effectuation of Mobile Device Distribution Act

• Necessity of Efficiency Promotion of User Damages Relief

■ Scope of Research

• Examination of User Damages Relief Order as a reform plan for promotion of user damages relief

• Reinforcement of KCC's correction order

• Self regulation policy for user damages relief

II Contents

■ Analysis of current situation of user protection

• Separation of regulatory body

- Korea Communication Commission(KCC, hereafter) performs the main role on establishing and enforcing telecom user protection policy and regulation

- KCC has legislation power on ex-post regulation such as telecom market monitoring, supervising, and user protection

- KCC plays its role based on the Telecommunication Service Act, Mobile Device Distribution Act, and Act on Promotion of Utilization of Information and Communications Network

• Overall user protection policy and regulation is covered by the User Policy Bureau, and its departments

• Legislation for user protection

■ Legislative effort for telecommunication user protection

• Draft bill for Broadcasting Telecommunication User Protection Act

• Amendment bill for Telecommunications Service Act

• Amendment bill for Mobile Device Distribution Act

■ Reform Plan for Telecommunication User Protection

• Problems of present system

• Efficient Damages Relief Plan

III Expected Effect

■ This research can be used to legislate new law or amend the existing laws for promotion of telecommunication user damages relief

• Especially, for amendment of Telecommunications Service Act and Mobile Device Distribution Act

Key Words

Telecommunications Service User, Use Protection, User Relief One-stop Resolution, Damages Relief Order

The Legislative Analysis for Utilization of Drone

Researchers: Im, Hyun(Korea Univ.)
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I Background and Purpose

■ Background

• Enlargement of demand of drone

• Necessity of the analysis of current law and legislative improvement

• Especially, necessity of careful legislation for drone utilization that can be harmony with invasion or privacy and information protection

■ Purpose

• Analsys of legal issues of drone utilization, specifically

- Regulation and Problems of current aviation act

- Invasion of Privacy of drone

- Information Protection and drone

• Safety management of drone, specifically

- Regulation of current aviation act

- Legislative Improvement of Safety management of drone

• Implications deduction from the analysis of foreign legislatiton cases

• Suggestion for future legislative Challenges of drone Utilization

II Main Contents

■ Analsys of legal issues of drone utilization

• Regulation and Problems of current aviation act

• Invasion of Privacy of drone

• Information Protection and drone

• Safety Management of drone

■ Analsys of foreign legislation cases of drone utilization

• Laws and regulations of the United States

• Laws and regulations ot the United Kingdom

■ Suggestion for main legislative contents of drone utilization

• Suggestion for future legislative Challenges through the analysis of current law in korea and foreign lesialation cases

III Expected Effect

■ Academic Contribution

• Review of whole legal issue that is caused by drone

• Basic Research for Improvement of relevant legal system

■ Policy Contribution

• Basic Research for Utilization and Regulation of Drone

Key Words

unmanned aircraft system, drone, invasion ot privacy, information protection, safety

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