Overview of Legislation System of the Republic of Korea

By Ministry of Legislation of the Republic of Korea

1. System of Acts and Subordinate Statutes in Korea

Korea, which is a constitutional and law-governed state, has written laws of various forms in a certain hierarchy with the Constitution standing at the pinnacle as the paramount law. Korea's Acts and subordinate statutes form a consolidated system as a whole that is designed to prevent contradictions or conflicts among them.

■ Categories of Acts and Subordinate Statutes

A. Acts

Matters pertaining to the people’s fundamental rights and basic matters pertaining to the structure of government shall be prescribed by Acts that are enacted upon resolutions of the National Assembly, the representative body of the people (See Article 37 (2), 96 of the Constitution).

B. Subordinate Statutes

The administrative phenomenon is complex and varied, and requires the expertise and swift legislative response. For that reason, the Constitution of Korea grants the Executive the lawmaking power of a certain scope.

The subordinate statutes are categorized as follows:

Presidential Decree: Matters delegated by an Act within the scope of such delegation specifically defined and other matters necessary to enforce the Act are prescribed by a Presidential Decree that the President issues after going through deliberations of the State Council (Article 75 of the Constitution).

Ordinance of Prime Minister and Ordinance of Ministry: Matters delegated by an Act and a Presidential Decree and other matters necessary to enforce such Act and Presidential Decree are prescribed by an Ordinance of the Prime Minister or an ordinance of the relevant ministry of the government (Article 95 of the Constitution). The Ordinance of the Prime Minister is issued to deal with affairs belonging to such ministries as the Ministry of Planning and Budget, the Ministry of Legislation and the Patriots and Veterans Administration Agency which are under direct supervision by the Prime Minister, and the Ordinance of the Prime Minister stands on a par with the ordinance of ministry.

C. International Laws

The Constitution of Korea expressly stipulates the observance of international laws and makes treaties or conventions concluded and promulgated in accordance with the Constitution and generally accepted international laws have the same effect as domestic laws (Article 6 of
the Constitution). If the government wishes to conclude any treaty or convention in conflict with domestic laws, the Constitution requires the government to seek consent from the National Assembly in order to prevent potential conflicts between such treaty and domestic laws. There are some treaties or conventions that require domestic legislative measures for their enforcement.

D. Laws for Self-Rule of Local Governments

The Constitution guarantees the autonomy of local governments and the local governments exercise their autonomous lawmaking powers to enact their own ordinances and regulations (Article 117 (1) of the Constitution). Laws for the self-rule of local governments are enacted in two types: (i) ordinances enacted by resolutions of local legislature and (ii) regulations issued by the heads of local governments.

E. Emergency Executive Order

The Constitution empowers the President to issue an emergency executive order and an emergency financial and economic executive order in the event of national emergency, which have the effect of the laws. The President, if he issues any of such emergency executive orders, is required to seek approval from the National Assembly immediately after issuing the order and if he fails to obtain such approval from the National Assembly, the emergency executive order shall become invalid immediately. In recent years, such emergency executive orders have never been issued except for an emergency financial and economic executive order in 1993 and the ensued regulations which aimed at introducing a real-name financial system.

F. Internal Rules of Constitutional Bodies

Each of the National Assembly, the Supreme Court and the Constitutional Court may make its internal regulations to the extent not in conflict with Acts. In particular, the Supreme Court’s rules stipulate matters pertaining to the judicial system, such as registration and escrow, as well as litigation procedures (Articles 64, 108 and 113(2) of the Constitution).

G. Administrative Rules

Administrative rules, which are called as directives, regulations or public notices, are made for the purpose of assigning duties to officials of an administrative agency or allowing a higher administrative body to direct and supervise duties performed by officials of a lower administrative body or to set standards for performing such duties. In principle, the administrative rules are not binding on the general public or the court. In practice, the administrative rules have a nature of laws, because even such administrative rules, which are made for internal use of an administrative body, inevitably affect the general public and the court respects such rules as long as they are reasonable. Also, since it is difficult to specifically regulate matters of specialty or technology by Acts, the Presidential Decree, the
Ordinance of the Prime Minister or the ordinance of ministry, an administrative body in charge of enforcing relevant Acts and subordinate statutes is often delegated to stipulate such matters. Such administrative rules made under the delegation of Acts and subordinate statutes take the nature of laws. For example, the standards for compensating consumers for damages, which are issued under the Consumer Protection Act, and the foreign exchange transaction regulations, which are issued under the Foreign Exchange Transactions Act, are made in the form of a public notice by the Minister of Finance and Economy, but they take the nature of laws supplementing the substances of Acts and subordinate statutes.

### Hierarchy Among Laws

The various types of laws and regulations form a certain hierarchy in terms of basis and effect, and they may be divided into 5 classes as shown in the following table:

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<th>Class</th>
<th>Acts, Emergency executive order, and Emergency financial and economic executive order</th>
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<td>I</td>
<td>Constitution</td>
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<td>II</td>
<td>Presidential Decree</td>
<td>Rules of the National Assembly, Rules of the Supreme Court, and Rules of the Constitutional Court, Etc.</td>
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<td>III</td>
<td>Ordinance of the Prime Minister and Ordinance of Ministry</td>
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These laws form a certain hierarchy because lower laws that are enacted by the delegation of higher laws for the purpose of enforcing the higher laws are not permitted to contain rules which are in conflict with the higher laws. Therefore, the National Assembly, a lawmaking organ, and the Ministry of Legislation, an institution established for the purpose of controlling the process of legislation within the government, make a thorough review in the process of legislation in order that lower laws in conflict with higher laws may not be enacted. Whether enacted lower laws are in conflict with higher laws, a question which may arise in the course of
enforcing enacted laws, is determined by the Constitutional Court or the Supreme Court. The question of whether an Act is unconstitutional is addressed by the unconstitutionality review system and the constitutional petition system of the Constitutional Court and the question of whether subordinate statutes contravene the Constitution or an Act is reviewed by the Supreme Court (Articles 107 and 111 of the Constitution).

2. Procedures for Enacting Acts and Subordinate Statutes
   A. Overview
   The Korean Constitution empowers the National Assembly to enact Acts and the Executive and other organs to enact subordinate statutes. The power to enact Acts belongs exclusively to the National Assembly and the lawmaking power held by the Executive, etc. for subordinate statutes is confined to matters delegated by Acts and other matters necessary to enforce Acts. Since such subordinate statutes are required to be in conformity with Acts, the National Assembly is the supreme lawmaking organ.

   In many modern welfare-nations, however, the Executive branch is playing a leading role in performing state functions and the Executive is increasingly involved in legislation designed to provide the legal basis for administration. In the case of Acts, although the National Assembly has the lawmaking power, the Executive has the power to propose bills directly to the National Assembly as legislators do. Most of the bills are introduced by the Executive to the National Assembly because information on legislative needs is concentrated in the Executive. Under the presidential system of government, it is rare that the Executive is empowered to introduce bills directly to the Legislature. In the United States and other nations that have adopted the presidential system of government, the Executive exerts an influence in an indirect manner upon the Legislature's power to introduce bills.

   Also, the Executive can check the Legislature's legislative power through the exercise of its power to veto bills, which is universally accepted in presidential systems. In Korea, however, the ruling party has long retained a majority in the National Assembly and the ruling party and the Executive has regularly held policy consultations prior to introducing bills to the National Assembly, leaving little room for the Executive to veto bills.

   Thus, the Executive is empowered to propose and veto bills in addition to its delegated power to enact subordinate statutes. For this reason, the Executive’s legislative activities are perceived to be more active than the National Assembly’s. In Korea, it is quite natural that the greater attention is being paid to the Executive’s internal self-control of its legislative activities.

   Since establishment of its government, Korea has established and operated an independent and specialized self-legislative control agency called the Ministry of Legislation within the government in order to exercise overall control of and coordinate the government’s legislative activities and to review whether individual bills contravene higher laws or conflict with relevant laws. The Ministry also reviews juridical questions and the effectiveness, appropriateness and equity of policies.
Many legislative bills used to flood the Regular Session of the National Assembly convened for the purpose of deliberation on the budget. In an effort to solve the problem, the Ministry of Legislation has established and implemented the legislation planning system. This system would allow the Government to process the legislation more systematically and efficiently by estimating the demand for the legislation in advance, and by securing adequate time for the deliberation on legislative bills.

Korea has also paid attention to the democratization of procedures for legislation and put the advance legislation notice system into operation as a means to secure participation by the people in the legislation process. In addition, Korea has made efforts to publicize and disseminate enacted Acts and subordinate statutes.

B. Legislative Procedures for Acts

**Bills Proposed by the Executive**

In Korea, most of the enacted or amended Acts have been proposed by the Executive. Hence we first describe below the legislative procedures for bills introduced by the Executive to the National Assembly.

Each ministry which is in charge of relevant Acts is called the competent ministry and the competent ministry is determined according to the division of administrative affairs prescribed by the Government Organization Act. Looking at motives for enacting Acts, the competent ministry's judgment about legislation needs is the most important motive and the President's directions with respect to legislation, proposals for legislation from interested individuals and organizations and the revamp of Acts and subordinate statutes following a ruling by the Constitutional Court regarding unconstitutionality may become such motives. The competent ministry is in charge of drafting a bill. The ministry has to decide on policies to be reflected in the bill after consultations with other relevant ministries involved prior to drafting the bill.

With respect to a drafted bill, the competent ministry puts the public on notice about the legislation beforehand for a period of at least 20 days in principle. Of the opinions received from the public, the ministry will accept reasonable ones.

The bill which has been put to advance notice for legislation is submitted to the Ministry of Legislation for review. A total of 17 legislative officials with professional competence at the Ministry of Legislation review the constitutionality and the appropriateness of the bill as described above, confirm whether the policy has been agreed upon between relevant ministries, and, in case of any discrepancy between such relevant ministries, present their views from the legal standpoint for the coordination of such disagreement.

The bill that has passed the review by the Ministry of Legislation is put on the agenda of the vice ministerial meeting and the State Council attended by ministers for deliberations that
focus on whether views of relevant ministries with respect to the legislative policy have been properly reflected.

The bill, after going through the deliberation of the State Council, is signed by the President and then introduced to the National Assembly in the name of the Executive.

In the National Assembly, the standing committee in charge takes up the introduced bill for deliberation with the presence of the minister of the competent ministry and then forwards the bill to the Legislation and Judiciary Committee for deliberation. After such deliberation process, the National Assembly finally votes on the bill at a plenary session upon deliberating on the form and other matters of the bill.

The bill that is adopted at the National Assembly is transferred to the Executive. The Ministry of Legislation and the competent ministry, upon receiving the bill approved by the National Assembly, examine the bill and then forward it to the State Council for a decision on whether to exercise the power to veto the parliament-approved bill. Any bill against which the Executive exercises the veto power is made final and conclusive only when the National Assembly votes again for the bill (overriding veto). As to a bill against which the veto power is not exercised, the President promulgates the bill in the Official Gazette.

The legislative process is as shown in the table below.

| Drafting of Bill | ⇒ | Consultations With Related Ministries | ⇒ | Advance Legislation Notice | ⇒ | Review By the Ministry of Legislation |
| Deliberation of Vice Minisrial Meeting | ⇒ | Deliberation of the State Council | ⇒ | Approval by the President | ⇒ | Introduce Bill to the National Assembly |
| Deliberation of the Standing Committee | ⇒ | Deliberation of the Legislation and Judiciary Committee | ⇒ | Vote at Plenary Session of the National Assembly | ⇒ | Transfer to the Executive |
| the State Council | ⇒ | Promulgation |

Bills Proposed by Legislators

Any bill introduced by legislators to the National Assembly requires signatures of not less than 10 legislators. If a bill requires allocation of a budget, details of the budget should also be attached to the bill. In introducing a bill, legislators try to reflect the voices of their
constituents and also their own specialized background, etc. However, legislators are more concerned with legislating their political parties' fundamental policy goals. The ruling party, in particular, makes efforts to harmonize its legislative policy with that of the Executive. Procedures for legislation from putting the bill on the agenda of the standing committee to promulgating it are the same as those for bills introduced by the Executive to the National Assembly.

C. Procedures for Enacting Presidential Decree, Ordinance of Prime Minister and Ordinance of Ministry

The competent ministry in charge of the Act which is the basis for enacting a Presidential Decree drafts the Presidential Decree. Procedures of policy consultations with relevant ministries, advance legislation notice, review by the Ministry of Legislation, deliberations of the vice ministerial meeting and the State Council, and the approval of the President are the same as those for the legislation of the aforementioned bill, and the President finally promulgates the Presidential Decree in the Official Gazette.

An Ordinance of the Prime Minister becomes final and conclusive after the procedures of drafting the ordinance by the competent ministry such as the Ministry of Planning and Budget under direct supervision by the Prime Minister, advance legislation notice, review by the Ministry of Legislation and the approval of the Prime Minister. The Prime Minister finally promulgates the Ordinance of the Prime Minister in his name in the Official Gazette at the request of the competent ministry.

An ordinance of a ministry becomes final and conclusive after the procedures of drafting of the ordinance of the ministry by the competent ministry, such as the Ministry of Government Administration and Home Affairs and the Ministry of Finance and Economy, advance legislation notice and review by the Ministry of Legislation. The minister of the competent ministry finally promulgates the ordinance of the ministry in the Official Gazette.

D. Emergency Executive Order and Emergency Financial and Economic Executive Order

These emergency executive orders have the same legal effect as Acts and the government has to go through the same internal procedures as those for enacting Acts. More specifically, procedures from drafting an executive order by the competent ministry to the approval of the President are the same as those for enacting an Act (in most cases, the advance legislation notice is omitted due to the nature of its emergency). An emergency executive order approved by the President is finally promulgated by means of broadcasting or publication in the Official Gazette.

Any promulgated emergency executive order may be immediately enforced. But the Executive is required to seek approval of the National Assembly after promulgating it. If the Executive fails to obtain the approval of the National Assembly, the emergency executive order becomes invalid immediately thereafter.
E. Rules of National Assembly and Supreme Court

The rules of the National Assembly and the rules of the Supreme Court become final and conclusive by a resolution of the National Assembly and a resolution at a meeting of Justices of the Supreme Court, respectively. The National Assembly and the Supreme Court finally promulgate their rules by publishing the rules in their respective official bulletins.

F. Administrative Rules

Directives, regulations and public notices become final and conclusive after the head of each ministry publishes them. In many cases, administrative rules that have a nature of legal rules are published in the Official Gazette. Such administrative rules are required to be submitted to the Ministry of Legislation every 6 months for its review of whether the rules are contravene higher laws and regulations. The Minister of Legislation may recommend the ministry concerned to revise inappropriate administrative rules.

G. Ordinances of Local Governments

Heads of local governments or members of local legislature may introduce ordinances of local governments. The ordinance of a local government, after a resolution by the local legislature is transferred to the head of the local government, who in return publishes the ordinance in the local public bulletin. The veto power is permitted to be exercised against any draft ordinance. With respect to an ordinance in contravention of higher laws, a person may bring the case to the Supreme Court after its promulgation for a ruling that the ordinance is invalid.

Local rules are issued by the head of each local government and promulgated by publication in the local bulletin.

3. Amendments to Laws and Regulations, Dissemination and Utilization of Information on Laws and Regulations

A. Amendment to Laws and Regulations

In enacting, amending and repealing Acts and subordinate statutes, Korea has adopted the method of revision instead of amendment which has been adopted in the United States and the United Kingdom.

The amendment method permits the amended Acts and subordinate statutes and the existing Acts and subordinate statutes to exist separately without contents of the amended Acts and statutes being absorbed into the existing ones even after the amended Acts and statutes which add, delete or modify part of the existing Acts and subordinate statutes are enacted and
enforced. A person subject to the Acts and subordinate statutes can grasp the applicable Acts and statutes by comparing and analyzing the existing and amended Acts and statutes.

The revision method allows the revised Acts and statutes to be absorbed into the existing Acts and statutes and makes the resulting Acts and statutes enforceable immediately after the revised Acts and statutes which add, delete or revise part of the existing ones are enacted and enforced.

In case the amendment method is adopted, the compilation of Acts and subordinate statutes contains all the previous Acts and statutes by the time of their legislation, making it convenient to grasp the history of Acts and statutes. But it may be burdensome for a person who is subject to the application of Acts and statutes to understand such Acts and statutes now in force because he needs to review all the previous Acts and statutes.

In case the revision method is adopted, the compilation of Acts and subordinate statutes contains only the Acts and statutes presently in force, making it convenient to grasp the applicable Acts and statutes. But it is inconvenient for a person who wishes to grasp the history of Acts and statutes because he needs to look at the compilation of the history of Acts and statutes.

The revision method, in the case of enactment or whole revision, causes no specific trouble in understanding the contents of the Act or statute. In case of a partial amendment, however, since the amendment is confined to the minimum part of the existing Act or statute, it is difficult to determine what has been amended from the amended Act or statute and only comparison with the existing Act or statute makes it possible to understand the amended substances.

B. Dissemination and Utilization of Legislation Information

In Korea, most Acts and subordinate statutes are promulgated by publication in the Official Gazette and such Acts and statutes published in the Official Gazette constitute the official Acts and subordinate statutes of Korea. For example, even if an Act published in the Official Gazette is different from the original version of the Act which the National Assembly has adopted because of an error in the process of printing the Official Gazette, the Act has to be enforced in the form as published in the Official Gazette until such error is corrected by the Official Gazette. In case of any differences between the contents of various compilations of Acts and statutes and the contents as published in the Official Gazette, those published in the Official Gazette should prevail.

Since, however, the Official Gazette is published every day and the promulgation of Acts and statutes are made intermittently, it is very inconvenient to find the relevant Acts or statutes in the Official Gazette. In case of a partially amended Act and statute, as aforementioned, only amended provisions are published in the Official Gazette, making it virtually impossible to understand the contents of the amended provisions. Therefore, it is necessary to compile Acts
and subordinate statutes published in the Official Gazette and publish collections of Acts and subordinate statutes.

The Korea Legislation Research Institute, which is a government-invested research institution, publishes a compilation of the current Acts and subordinate statutes of the Republic of Korea and also publishes supplements every month for replacing the relevant pages with newly amended Acts and statutes. The Ministry of Legislation also posts the whole collection of Acts and statutes on the Internet, making it possible for the public to search the current Acts and statutes through the Internet within one week after such Acts and statutes are promulgated (website: http://www.moleg.go.kr). Such compilations of Acts and statutes are made under the editorial supervision and assistance of the Ministry of Legislation because errors may occur in the process of compiling amended provisions as published in the Official Gazette.

In order to make the Korean Acts and statutes accessible to foreigners, the Ministry of Legislation and the Korea Legislation Research Institute translated major Acts and statutes into English and published an English-version compilation of the Acts and subordinate statutes which consists of 20 volumes in 1997 and also publishes supplements and posts the whole compilation on the Internet for easier access thereto.

With respect to rules other than the Constitution, Acts, Presidential Decrees, Ordinances of the Prime Minister and ordinances of ministries, the legislation of which is assisted by the Ministry of Legislation, the relevant rulemaking entities, such as the National Assembly, the Supreme Court, the Constitutional Court and local governments, promulgate such rules by separate means and systematically compile and publish the rules. The administrative rules issued by the ministries, such as directives, regulations and public notices are published either in the Official Gazette or in separate booklets.

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