

Regulatory Reform in Korea

**Government Capacity to Assure High Quality
Regulation**



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government Capacity to Assure High Quality Regulation* analyses the institutional set-up and use of policy instruments in Korea. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Korea* published in 2000. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was principally prepared Rex Deighton-Smith, and Scott H. Jacobs, Regulatory Management and Reform in the Public Management Service, OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Korea. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Executive Summary

Background Report on Government Capacity to Produce High Quality Regulation

Can the national administration ensure that social and economic regulations are based on core principles of good regulation? Regulatory reform requires clear policies and the administrative machinery to carry them out, backed by concrete political support. Good regulatory practices must be built into the administration itself if the public sector is to use regulation to carry out public policies efficiently and effectively. Such practices include administrative capacities to judge when and how to regulate in a highly complex world, transparency, flexibility, policy co-ordination, understanding of markets and responsiveness to changing conditions.

Regulatory reform in Korea is rapidly evolving. The current government, which took office in early 1998, identified it as an essential policy response to the economic crisis that overtook Korea and other East Asian economies in 1997. During the impressive but still fragile recovery of 1999, the pace of regulatory reform continued unabated within the mix of policy reforms needed to lay the basis for sustainable long-term growth. The goal of reform is ambitious: to move from the state-led, authoritarian, and interventionist model of economic development followed since the 1950s to an open and market-oriented model, with strong competitive conditions and an emphasis on consumer choice, rule of law, and democratic values. An ambitious regulatory reform programme could boost GDP by 8% or more, according to recent work in Korea. Such change involves a long-term cultural shift and different roles and responsibilities for government, businesses, and consumers. Many existing traditions and rules must be replaced by market institutions and new policy instruments by which the government can protect public interests.

The reforms necessarily involve reorientation of the regulatory role of the public sector itself. Stating that “Any reform undertaken in Korea must begin with the government,” President Kim Dae-Jung launched a programme aimed at changing the role of the state in Korean economy and society. The current reform programme is sustained against strong domestic opposition primarily by consistent political support: the President actively promotes reform, an essential asset in an administration still shaped by a long tradition of top-down government, while the Office of the Prime Minister guides the work and services a high-level regulatory reform committee.

The reform initiatives prompted by the 1997 economic crisis build on a foundation of reforms that began much earlier. The development model that lifted Korea from poverty to the 11th largest economy in three decades was one of the great success stories of this century, yet doubts about the sustainability and effectiveness of state-led economic growth arose by the early 1980s. Early regulatory reform policies of the mid-1980s were limited and *ad hoc*, but significant changes began in the government of President Kim Young Sam from 1993 to 1997. A legacy of important legislation dates from this period, including laws on administrative procedures and freedom of information, and establishment of an ombudsman to deal with administrative abuses. Adoption of regulatory impact analysis in 1997 was one of the first reforms to implement systematic quality assurance for new regulations inside the public administration. In addition, economic deregulation initiatives were pursued across a wide range of areas.

The conceptual principles guiding today’s regulatory reform programme combine economic deregulation with attention to market openness and cost-effectiveness of social regulation, though there is still insufficient attention to net benefits and regulatory effectiveness. The objectives of regulatory reform are generally consistent with OECD recommendations:

- Eliminating, in principle, all anti-competitive economic regulations;
- Improving the efficiency of social regulation in areas such as environment, health and safety;
- Shifting from *ex ante* control to *ex post* management;
- Basing regulation on adequate legal authority; and
- Benchmarking of global standards.

Mechanisms to review and update existing regulations have made astonishingly rapid progress. The government set and met, in less than a year, an ambitious target of halving the number of regulations on the statute books, while reforming two fifths of the regulations that remain. The reviews embraced primary laws and subordinate regulation, as well as “quasi-regulation” such as administrative guidance and guidelines. The results of this item-by-item approach on the costs and benefits of regulation are difficult to measure -- and there were risks that ministries would simply discard less important regulations and retain those that really mattered -- but domestic and foreign analysts believe that, due to the ambitious target, genuine gains were made in reducing damaging regulation.

This approach is not a model for the future, however, since it focussed on numbers of regulations, rather than on regulatory quality and impacts, and neglected the vital aspects of institution and capacity building that are needed to construct market-oriented regulatory frameworks. Recognising the need for a more sophisticated approach, the Government began to shift toward a strategic and qualitative reform programme in 1999.

Unsurprisingly, given the pace of recent reforms, implementation is lagging. The Korean government has recognised the importance of establishing capacities for implementation as a follow-up to policy reforms, and has taken steps to shorten the time lag between policy change and results. Priority should be given to ensuring that new principles for the role of government and regulation are understood and accepted across the administration, including at local government levels, and accountability for results is enhanced. Acquisition of new skills in areas such as regulatory impact analysis and building new relations with stakeholders through public consultation is essential. More attention should be given to ensuring that rapidly developing civil society in Korea, now including some 8000 non-governmental organisations, has adequate and meaningful opportunities to participate in regulatory reform, including the processes of developing and reviewing regulation.

Policy options that should be considered by the Korean government include:

- ***Adopt principles of good regulation based on those accepted by Ministers in the 1997 OECD Report on Regulatory Reform. Adopt as an explicit principle the requirement that regulation will not be made or retained unless the benefits justify the costs.***

The policy framework for a programme aimed at improving regulatory quality, which is the next stage of reform, has not yet been defined. Adoption of a set of quality principles based on social welfare concepts to guide regulatory decisions throughout the government, from cradle to grave in the regulatory lifecycle, should be a key priority. The OECD report offers a policy framework that can be a useful guide.

- ***To ensure that a policy environment supportive of market competition develops, base regulatory reform on development of comprehensive sectoral reform plans containing the full set of steps needed to introduce effective competition, followed by rapid implementation and periodic, public evaluation.***

The OECD Report on Regulatory Reform states that “..reform should be guided by coherent and transparent policy frameworks that establish concrete objectives and the path for reaching them”. A more results-oriented reform approach aimed at market performance requires that review processes be structured to enhance understanding of interactions between groups of regulations affecting an economic or social sector, having a cumulative and overlapping impact, originating from different agencies or even different levels of government. Priority sectors for reform need to be identified and concrete programmes for achieving the necessary change spelt out. The linkages between regulatory reform policy and administrative reform should be stronger to ensure adequate co-ordination and a mutually supportive policy environment.

A significant programme of administrative reform has been underway simultaneously with the regulatory reform effort, but the two programmes have functioned largely independently. Co-ordination between these programmes should be accorded a higher priority in recognition of the fact that many reforms require changes to institutions, budgets and personnel in the public sector and that linkages between the programmes can improve the effectiveness of implementation and allow better co-ordination.

- ***To carry out a comprehensive reform strategy, broaden the responsibilities of the Regulatory Reform Committee to include issues of direct relevance to the success of regulatory reform in establishing and protecting market oriented economic policies. Such issues include relevant aspects of taxation and subsidies, industrial policies, administrative reform, and regional development policies.***

Establishing the complete conditions for market competition while efficiently protecting public interests such as health and safety requires co-ordinated actions in policy areas that can extend beyond “regulation” traditionally defined. Broadening the responsibilities of the Regulatory Reform Committee would be an effective means of reinforcing policy consistency, while drawing to a greater extent on the expertise of a body that has already proven itself effective in implementing large scale reforms.

- ***Review the linkages between regulatory reform policy and administrative reform to ensure adequate co-ordination and a mutually supportive policy environment.***

A significant programme of administrative reform has been underway simultaneously with the regulatory reform effort. Co-ordination between these programmes should be accorded a high priority in recognition of the fact that many reforms require changes to institutions, budgets and personnel in the public sector and that linkages between the programmes can improve the effectiveness of implementation and allow better co-ordination.

- ***Broaden the current membership of the Regulatory Reform Committee so that it represents major stakeholders in Korean civil society.***

The current membership of the Committee, including a majority of non-government members, was a good step toward an open and responsive approach to reform policy. Rapid development in recent years of civil society NGOs suggests a need to review the breadth of current representation on the Committee if it is to retain credibility and balance. Broader representation will be particularly important as Korea moves toward a regulatory quality approach based on concepts of social welfare. The planned review of the Committee’s structure during 2000 provides an opportunity to examine how additional significant stakeholders could be represented on this key decision-making body.

- ***Improve the policy foundation for the efficiency, independence and accountability of new independent regulatory agencies by developing guidelines for their systems of governance, policy coherence, working methods, and relations with the competition authority. A, high-level and independent review of these issues would be a useful step.***

Increased attention in Korea to the creation of market-oriented regulatory institutions will improve the legal and administrative environment for competition and business growth, especially as new markets are opened in areas formerly reserved to monopolies. Development of a framework for efficiency, accountability, and transparency will accelerate progress in this regard. An independent expert group could review the institutional architecture for market-oriented regulation to determine if a harmonised framework would improve efficiency and competition in regulated sectors.

- ***Consider the development of an explicit public consultation strategy aimed at improving the participation of civil society groups in the development and reform of regulation***

Major legislation implemented as part of the reform programme, in particular the Basic Act on Administrative Regulations, already acknowledges the importance of mandatory public consultation in developing and reviewing regulation. Opportunities for various stakeholders to participate in Korean policy processes are expanding. Consideration should be given to the benefits of an active strategy to promote dialogue on a wide range of government activities. Such an active approach is likely to yield particularly important benefits in the context of the fundamental shift in cultural attitudes which existing government policies on regulatory management and reform presuppose.

- ***Reform the Basic Act on Administrative Regulations to require that RIA be released to the public as part of the public consultation process.***

OECD published best practices on RIA stress that public involvement in RIA is essential to enhance openness and accountability. It is also necessary as a means of ensuring the quality of final RIAs and the decisions subsequently taken. The BAAR incorporates many of the OECD best practices on RIA, but does not currently require that RIAs be released as part of the public consultation process.

- ***Ensure that RIA disciplines are systematically applied to the review of existing regulations planned in the annual programmes of regulatory reform.***

The sunset requirements established under the BAAR already require, in effect, that RIA disciplines should be applied to future reviews of existing regulation. However, this provision does not cover the annual programmes of regulatory reform being implemented from 1999. Methodological consistency between different review mechanisms, as well as between the assessment of new proposals and existing regulation, would clearly be desirable *per se*, and would eliminate possible perverse incentives arising within Ministries in regard to the scheduling of reviews.

- ***Prepare and implement a programme aimed at assuring high levels of compliance with regulatory requirements, including development of means of incorporating compliance-friendly design principles as part of regulatory development.***

The adoption of explicit policies on compliance is rapidly becoming more widespread in OECD countries. In a context of continuing regulatory inflation, as well as the adoption of new forms of regulation, a focus on compliance is increasingly being seen as a means of ensuring that regulatory effectiveness is safeguarded or improved. The case for adopting a compliance strategy appears especially strong in Korea, given the widespread recognition of the failings of regulation making and of regulatory enforcement to date in this area.

- ***Review the success of reform initiatives taken to date to limit and to reform use of bureaucratic discretion, including administrative guidance.***

Changing the form of regulation in order to reduce the degree of administrative discretion and enhance transparency and predictability has, rightly, been a major focus of the reform programme to date. The success of the initiatives taken in this regard, and in particular in eliminating the use of administrative guidance, is a crucial element determining the overall impact of the reform programme. Consequently, measurement of the impact of these initiatives should form a key part of the monitoring of reform.

1. THE INSTITUTIONAL FRAMEWORK FOR REGULATORY REFORM IN KOREA

1.1. The administrative and legal environment in Korea

Regulatory reform in Korea is part of a rapid and profound reorientation in administrative, legal and economic policies that comprises what President Kim Dae-Jung calls “a new paradigm for socio-economic development.”¹ The aim of reform is ambitious: to move Korea from a highly interventionist and authoritarian model of economic development to a market oriented, open, and internationally focused model based on values of consumer choice, democracy, and rule of law. This shift has been underway for some years, and has coincided with other important political changes in the development of democracy and civil society in Korea. Much progress has been made, and it will be necessary to continue pushing forward over the next several years to complete the reforms.²

From the 1960s, the Korean government was deeply involved in the country’s economic development through intervention in industrial, labour, and credit markets. Initially, the scarcity of private capital, the lack of viable productive technologies and the fragmented nature of the market were seen as making such involvement virtually inevitable.³ Moving aggressively in the 1960s to a policy of export-led growth, the government tried to support development by directing scarce capital to what it believed were the highest productivity uses, by protecting infant industries from foreign competition and by encouraging co-operation between firms to improve productive capacities. Under President Park Chung Hee, development was pursued through “a variety of authoritarian capitalism, in which enterprises were privately owned but the management was shared between the government and its owners.”⁴ Japan’s industrial strategies were to a large extent used as models for Korean policy.

This model has been progressively abandoned since the 1980s, but an economic structure concentrated around large conglomerates, protected domestic markets, and extensive remnants of interventionist policies has survived. Concerns about “excessive competition” are still used to justify intervention (see background report to Chapter 3). It is important to note, however, that the policy environment has always been a mix of selective intervention and markets. A succession of privatisation programmes, for example, has been underway since 1968.⁵

The state-led development model has suffered increasing criticism since the early 1980s. An important early cause of this dissatisfaction was the recession of 1980 (the only year until 1998 in which Korean GDP declined), which was largely a result of the distortions introduced by the Heavy and Chemical Industry drive of 1973-79. However, longer term problems of inefficiency, moral hazard, and nontransparency had also become apparent by this time. Cosy relationships between the government and the huge conglomerates, the *chaebol*, led to corruption, the extent of which was revealed in damaging political scandals in the mid-1990s. The social safety net (medical care, injury insurance, unemployment insurance, and pension plans) was neglected, as were government capacities to provide environmental, health, safety, and consumer protections. Labour unions were repressed, leading to serious labour relations problems in the 1990s. In 1999, a government report argued that:

*In the end, development of a market economy was seriously hindered, as the government became increasingly bloated and unresponsive to demands for reform. The economy was hampered by collusive ties between government and businesses, arbitrary regulations, and corruption. The government looked upon regulations as ends, not the means to achieve efficient public service.*⁶

The government criticised the “quantity oriented economic growth” that had not achieved the desired quality of life.⁷ The conclusion was that “Any reform in Korea must begin with the government.”

Although regulatory reform is essential to increase government capacity to protect public interests, regulatory reform to date has been almost entirely aimed at reducing the role of the state in the economy. Due to demands for reduced bureaucracy and regulatory intervention, regulatory reform has been an official government policy for more than 15 years. All political parties have supported the principle of reform, as has the bulk of the business sector and the general public. However, notions of what is “reform” vary considerably. Businesses have sought “soft” reforms that reduce bureaucratic formalities, operating costs, and controls over their business activities. This tends to bias results toward increasing profits, rather than stimulating competitive pressures that benefit consumers and promote economic growth. Meanwhile, such reforms are opposed by bureaucrats who stand to lose power and influence. “Hard” reforms -- embracing improved competition and productive efficiency -- have been, until recently, less widely supported, and less prominent.⁸

This is not to say that such measures, aimed at reducing restrictions on entry and competition, were entirely absent in earlier reform programmes. Indeed, the 1986 abolition of the seven individual industry promotion laws, significantly reducing institutional barriers to entry in industries including shipping, petro-chemicals, electronics and textiles,⁹ was among the first steps taken. Membership in the OECD in 1996 stimulated more changes, particularly in the financial sector. However, most measures were more narrowly focussed on simply streamlining government interventions rather than reorienting them toward competition principles. For example, in 1989/90, five laws relating to industrial siting were merged into two. The 1992 package of regulatory reform measures noted that, to that date, all export transactions had required approval -- and promised to exempt from this requirement those valued at up to \$10 000 -- though it was conceded that this would exempt only 5.2% of transactions. Noting that the system of “mandatory employment of licence holding experts” had led to situations in which up to 17% of the workforce of SMEs was employed due to government requirements, the package made changes such as loosening requirements for firms employing more than 50 people to hire nutritionists so that only firms

employing more than 150 are subject to this requirement. Similarly, employment of a single environmental inspector was substituted for the previous requirement to employ up to three to cover different environmental emissions.¹⁰

Box 1. Good practices for improving the capacities of national administrations to assure high-quality regulation

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this report, and are reproduced below:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels.
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
3. Build regulatory management capacities.

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis.
2. Systematic public consultation procedures with affected interests.
3. Using alternatives to regulation.
4. Improving regulatory co-ordination.

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS (In addition to the strategies listed above)

1. Reviewing and updating existing regulations.
2. Reducing red tape and government formalities.

The economic crisis of 1997 provided the impetus for a large scale shift to “hard” reforms. Recognition that fundamental changes were needed to respond effectively to the crisis developed rapidly in Korea, and the inauguration of a new government in February 1998 provided further opportunity for deep change. A more radical regulatory reform programme was quickly assembled at the centre of the government’s policy for recovery. Reform responses embraced both deregulation and re-regulation, as the problems revealed include over-regulation, gaps in regulations and regulatory institutions, and poor quality regulations. The degree of “outward orientation” underlying the reforms is demonstrated by the adoption of OECD best practices as the basis for changes in some areas.

The underlying perspective is that the former model of state-led growth no longer serves Korea in an era of open and global markets that require competitiveness, adaptability and flexibility. The reform programme has been wisely designed to cover the entire range of regulatory activities to ensure that the new paradigm of market-led growth within a globally integrated economy permeates the policy apparatus. The government has adopted similarly far-reaching plans for administrative reform, with the objectives of producing a smaller and more efficient administration, of incorporating competitive principles in relations between government agencies and in creating a “customer orientation” within the administration.¹¹

The fundamental nature of these changes in the view of the role of government and their recent genesis inevitably means that implementation lags in many areas and that the major cultural shift required within the administration is, as yet, only begun. The confusion in policy actions seen, for example, in the telecommunications area (see background report on Chapter 6) suggests that interventionist habits are strong and likely to be durable.

1.2. *Recent regulatory reform initiatives to improve public administration capacities*

While regulatory reform programmes in Korea date from the 1980s, the government of President Kim Young-Sam (1993 - 1998) engineered a major shift toward a more active and wide-ranging approach to regulatory reform. This period saw the establishment of important reform bodies and several pieces of key legislation. Much of the current programme of reform builds upon foundations laid during this period. The major reform bodies created were the Presidential Commission on Administrative Reform, the Economic Deregulation Committee and the Industrial Deregulation Committee.

The Presidential Commission, established in April 1993, was the prototype of the current Regulatory Reform Committee. Its 15 members, drawn from outside government, included public administration scholars, representatives of business and private organisations, presidents of government research institutes and representatives of labour and the press. The Commission's role involved reviewing and deciding on reform proposals submitted by Ministries, local governments and the public. Though members of the Commission also had the right to initiate reform proposals, the process of reform by the Commission was essentially "bottom up" and reactive, an approach continued by its successor Regulatory Reform Committee. The Commission's decisions were reported to the President, who retained a right of veto over their implementation, though this was never used.

The Commission's guiding principles for reform were "...putting citizens' convenience first, abolishing authoritarian legacies, opening new opportunities for development for everyone and eliminating discrimination and privileges..."¹² In pursuit of these goals, the Commission promoted mandatory Regulatory Impact Analysis (RIA) for new regulations, development of "one stop service systems" for citizen interactions with the public administration, removal of many government-imposed entry barriers, and simplification and removal of licensing and permitting requirements in areas such as export inspections. In addition, administrative reforms including government restructuring, paperwork reduction and decentralisation were emphasised.

A Committee on Deregulation of Economic Administration was also established in 1993. It was seen as complementary to the President's Commission on Administrative Reform, since it dealt with economic deregulation issues, while the other dealt with administrative reform. Initially, the Committee was to operate only for 100 days (as part of the "100 Day Plan for a New Economy"), but this was greatly extended and the Committee, renamed the Economic Regulatory Reform Committee was transferred to the Fair Trade Commission in 1997. This committee was also predominantly composed of non-government members (19 of 25 members).

The third major committee established in 1993 was the Industrial Deregulation Committee. It was established by the Ministry of Commerce, Industry and Energy, under the authority of the Act on Special Measures for Industrial Deregulation (No. 4560) and continues to operate today. The Committee's purpose was to provide a mechanism for dealing with industry complaints and requests in relation to a number of regulatory areas including industrial zoning, factory construction requirements, and economic regulation of production and sales. However, as the Committee reports to a Minister, its operations remain subordinate to the other reform committees described above.

The invitation by the government to experts from academic, business, private organisations and the professions to participate in these Committees was an important strength in terms of their ability to generate reform initiatives and provide critical, independent analyses of those proposed by Ministries. However, these bodies were *ad hoc* in nature, with limited mandates and resources, and thus vulnerable to declining political support in the face of opposition to reform. They approached reform largely on a case-by-case, rather than strategic, basis, and hence their reforms, while sometimes important in isolation, were marginal in nature, with little prospect of fundamentally changing public administration or the market

environment for competition. The notion of a 100 day timeline for achieving a major programme of reform was unrealistic, as indicated by the fact that the Economic Regulatory Reform Committee ultimately enjoyed a much longer existence.

Within those limitations, much important legislation was passed during this period. In 1993, the Special Measure Act for Deregulation of Corporate Activity was passed to ease planning requirements for new factories. It also reformed import/export approvals, and product and machinery inspections and approvals. In 1994, the Basic Law on Administrative Regulations and Application implemented basic elements of a regulatory quality assurance system, including clarifying principles for regulation and administration (clarity of regulatory provisions, minimal administrative discretion, “one-stop shop” administrative procedures), and requiring Regulatory Impact Assessment, advance notice of proposed new regulation, and public consultation.¹³ In 1996, Korea’s first freedom of information legislation, the Act on Disclosure of Information by Public Agencies, was passed. The 1996 Administrative Procedures Act set out general requirements for developing and implementing new legislation and established the Administrative Appeals Commission to hear a wide range of administrative disputes. The APA’s requirements have been further supplemented by provisions of the 1997 Basic Act on Administrative Regulations¹⁴ (BAAR). The BAAR, much broader in its application, forms the legislative core of current regulatory reform policy in Korea and is a key driver of the reform process. According to explanatory material published with the Act:

*The aim of the BAAR is to break away from the hitherto fragmentary and dispersed attempts at regulatory reform and to move toward building a foundation for a more fundamental, enduring and systematic regulatory reform... The purpose of this Act is to promote private initiative and creativity in the social and economic sphere in order to improve the quality of life for the people and to enhance national competitiveness.*¹⁵

The Act, described in detail in Section 2.2. below, consists of five chapters:

- General principles requiring adequate legal authority for regulation, respect for “autonomy and order”, minimum necessary regulation, improved regulatory efficiency and improved transparency.
- Rules dealing with making new regulation, including the use of RIA, sunseting, review by Regulatory Reform Committee and the Office of Legislation.
- A Comprehensive Regulatory Improvement Plan, requiring that all existing regulation be reviewed by agencies in conjunction with the Regulatory Reform Committee.
- The establishment, membership and functions of the Regulatory Reform Committee.
- Supplementary rules, including regular reviews of progress and publication of an annual reform White Paper.

2. DRIVERS OF REGULATORY REFORM: NATIONAL POLICIES AND INSTITUTIONS

2.1. Regulatory reform policies and core principles

The 1997 *OECD Report on Regulatory Reform* recommends that countries “adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.” The 1995 *Recommendation of the OECD Council on Improving the Quality of*

*Government Regulation*¹⁶ contains a set of best practice principles against which reform policies can be measured. The Korean regulatory reform programme has quickly and consistently moved in the directions advocated by OECD countries. The formal aspects of the Korean reform programme at the level of policy and legislation are converging with, and in some areas surpassing, international good practices. There are important gaps, however, and the rapidity of change means that implementation in the ministries continues to lag in a number of areas, which is slowing the concrete benefits of reform for citizens and businesses.

The Korean government has enunciated five principles for its reform programme:

- Elimination, in principle, of all anti-competitive economic regulations.
- Improvement in the efficiency of social regulation in areas such as environment, health and safety.
- Shifting from ex ante control to ex post management.
- Regulation to be based on adequate legal authority.
- Global standards to be benchmarked.

These principles usefully address both economic regulations and social regulations, and distinguish how they are to be addressed. The policy direction is explicitly market-based. Yet these principles, while intended to provide operational guidance to the ministries, are less concrete and less comprehensive than principles used in some other countries or the OECD principles accepted by Ministers in 1997, which read:

Establish principles of “good regulation” to guide reform, drawing on the 1995 OECD Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals, and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimise costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.

To provide a firmer basis for efforts in the ministries and to hold ministries more accountable for performance, a clearer statement of principles for good regulation, based on the OECD recommendation, would be useful. The problem of making these core principles operational in the ministries is a real one. The principles currently guiding bureaucratic activity allow great latitude in interpretation and have the potential to frustrate reform. To ensure that reform principles are applied consistently, the Korean government should develop more explicit and measurable government-wide criteria for making decisions as to whether and how to regulate, and support those principle with written guidance to ministries.

The OECD recommends as a key principle that regulations should “produce benefits that justify costs, considering the distribution of effects across society.” This principle is referred to in various countries as the “proportionality” principle or, in a more rigorous and quantitative form, as the benefit-cost test. This test is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being “socially optimal” (*i.e.*, maximising welfare).¹⁷ Korea has taken an important step in this direction by adopting a legal requirement for benefit/cost analysis to be used in assessing new regulations, but the Korean government has not yet adopted the principle that regulations should not be adopted unless the benefits justify the costs. It is important to establish this test of policy optimality as an overall principle underlying regulatory decisions to create an explicit standard by which ministries justify the need for regulations and publicly test their conclusions.

Following from these principles, four areas of regulation have been identified for priority reform: reform of foreign exchange and transaction regulations to encourage foreign investment, reform of industrial and land use regulations to liberalise business activities, reform of monetary and business regulations to improve industrial competition, and reform of procedures and regulations related to everyday life for the citizen.¹⁸

Korean policies embrace a mix of regulatory quality and deregulation principles that, once fully implemented, will create a well balanced framework to improve regulatory activities into the future. On the one hand, there is a clear commitment to eliminate damaging government restrictions on market entry, exit, and prices, and to reducing the overall quantity of regulation. On the other hand, a wide range of initiatives related to regulatory quality, including adoption of the reform principles, adoption of RIA, implementation of enhanced consultation procedures, and scrutiny by the Regulatory Reform Committee have also been implemented and are continuing to be developed.

The current programme was launched with the President's commitment, now implemented, to reduce the number of regulations by 50%. This initial focus on deregulation and reducing regulatory burdens accurately reflects Korea's starting point, that is, one in which there was a large volume of low quality regulation, particularly in the economic sphere. The ambitious 50% reduction target was set in order to force a rapid reduction in burdens and create confidence in the government's commitment to reform.

The size of this quantitative reduction is important. Experiences in other countries show that it is not difficult to produce impressive results if non-monetary units such as page numbers or numbers of regulations are used instead of more relevant measures. Regulation that is no longer relevant or not enforced can be credited with removal from the statute books and consolidation of regulatory requirements can reduce the apparent numbers of rules. Also, regulators can compensate for the loss of regulations by writing new ones. For example, in the United States, efforts led to the removal of 16 000 pages from the Code of Federal Regulations (about 11% of the total) but it is unclear that this activity produced significant benefits, since these reported page reductions were almost entirely offset by new regulatory requirements in the same period.¹⁹ However, in Korea, ministries facing a dramatic reduction of 50% over an extremely short timeline of one year could not escape real and significant changes, particularly when combined with the strong scrutiny of the Committee over every regulation reviewed.

The ability to achieve a 50% reduction in regulations was heavily dependent on strong support for reform from the highest political levels. The President strongly supported the reform targets, while the Office of the Prime Minister also had a central role. Organisational support is another key factor: the role of the Regulatory Reform Committee was crucial in ensuring that the target was met. Some Ministries' proposed reform programmes were returned to them several times by the Committee for improvement before being accepted.²⁰

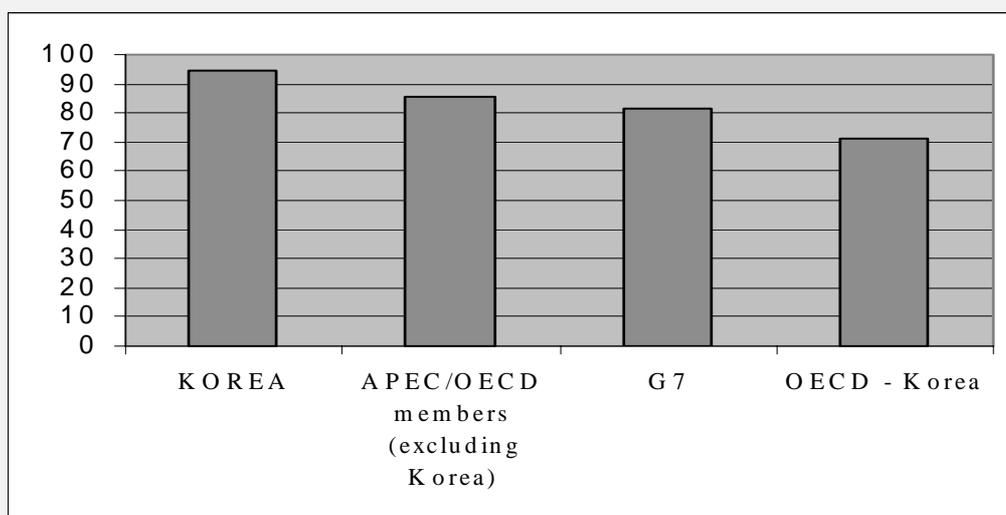
The quality aspects of regulations were not developed very deeply in this programme -- members of the Committee indicate that most of the regulations eliminated could not be justified under any current public policy, and hence they failed the most basic tests of need. The process, however, had severe weaknesses that suggest that it should not be repeated. In particular, there was a lack of time and capacity to assess regulatory benefits and costs, which are the best tests of regulatory desirability. The process was almost entirely reactive, and could not address the regulatory gaps and institution building that are needed in a quality regulatory system. The process of review and elimination was not very transparent to those not directly involved. The government has now indicated that it will move away from the quantitative approach and will further develop attention to regulatory quality in future reform activity. This is consistent with the overall trend in OECD countries, which is summed up by a former head of the US President's regulatory reform office, "The question is not how much regulation, but how good."²¹

A key direction of the current reforms has been, for the first time, to emphasise the feasibility of compliance with regulation. Historically, there has been a strong tendency for Korean regulation to embody “ideal” standards, with little attention paid to compliance. Rules tended to define ambitious goals, not practical requirements. This has important implications for the nature of enforcement activity and the rule of law. Implementation of RIA requirements, as well as enhancements to consultation, should provide a more effective check on the feasibility and appropriateness of regulatory standards.

A related issue is the tendency for Korean regulation to be formulated in vague and imprecise terms that deliberately provide much discretion in interpretation to regulatory bodies. This provided opportunities for extensive use of “administrative guidance” in interpreting and applying regulation. Reform efforts since 1997 have attempted to eliminate administrative guidance and other “quasi-regulatory” instruments. The government has directed that such material must either be legitimised by adoption as formal regulation or removed. This is discussed in more detail below.

Box 2. Indicator of policy and organisational commitment to regulatory reform

This synthetic indicator measures the existence and content of explicit government policies on regulatory reform and the organisational arrangements that have been put in place to support them. It scores highly policies that are adopted or revised by the current government, those that include explicit objectives and principles of good regulation and those that are supported by the establishment of a specific body with responsibility for promoting, supporting and reporting on progress on regulatory reform. Korea’s score on this indicator is among the highest in the OECD and is significantly ahead of the G7 average and that of the other member countries of both OECD and APEC. Because it measures formal aspects and not the intensity of implementation of reform policies, however, it may not a good proxy for policy results.



Source: Public Management Service, OECD.

2.2. Mechanisms to promote regulatory reform within the public administration

Mechanisms for managing and tracking reform inside the administration are needed to keep reform on schedule and to avoid a recurrence of over-regulation. It is often difficult for ministries to reform themselves, given countervailing pressures, and maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based. This requires the allocation of specific responsibilities and powers to agencies at the centre of government.

The Korean government has, particularly since 1997, established important central regulatory co-ordination and management capacities. Establishing central drivers of reform has been easier in Korea than in most countries due to the strong presidential system in Korea, which is perhaps the strongest centre of government in the OECD. Most important is the **Regulatory Reform Committee**, established legislatively in the 1997 Basic Act on Administrative Regulations, under the authority of the President. Article 23 of the Act provides the Committee with a general mandate to develop and co-ordinate regulatory policy and to review and approve regulations. Article 24 sets out seven functions for the Committee, requiring it to “deliberate and co-ordinate” on each of the following:

- The basic direction of regulatory policy and research and development on the regulatory system.
- Review of new and amended (strengthened) regulations.
- Review of existing regulations and “drawing up and enforcing the comprehensive plan of regulatory clearance” - *i.e.* the programme to reduce regulatory numbers by 50% carried out in 1998/1999.
- Registration and publication of regulations
- Obtaining and responding to public opinions on regulatory improvement.
- Monitoring and evaluation of regulatory improvement efforts of each agency; and
- Other matters approved by the Chair.

The Committee is composed of 15 to 20 members (it currently has 20 members), and a majority of members must be drawn from outside the civil service. Current membership includes 13 non-government members (from academia, the economics profession and business), the Prime Minister and six Ministers, representing the, Ministry of Finance and Economy, Ministry of Commerce, Industry and Energy, Ministry of Government Affairs and Home Administration, the Office of Government Policy Co-ordination, the Fair Trade Commission and the Ministry of Legislation. Members are appointed by the President and serve two year terms with provision for a second term. Dismissal can only occur if a member has been sentenced to imprisonment or is ill. The Committee is empowered to form sub-committees to consider specific areas (Article 28) and to employ experts to conduct research work on its behalf. The Committee is actively involved in the reform process, meeting fortnightly in normal circumstances and weekly when implementing the 50% reduction in regulation. The Committee has effectively exercised an approval function over Ministries’ plans for implementing the 50% regulatory reduction and is expected to operate in a similar way in relation to the targeted reform processes currently being established. It has adopted a robust approach in doing so and been successful in requiring Ministries to significantly upgrade initial reform proposals. In this respect it has been a crucial element in the achievement of rapid reform during 1998 and 1999.

The Committee is supported by a unit within the **Office of the Prime Minister**. This unit performs a secretariat function, including preparing meetings and agendas, liaising with the Cabinet and general management and co-ordination within the public administration. The unit is well resourced, with 30 civil servants and 10 experts seconded from research institutions and is headed by an Assistant Minister or Deputy Minister. A third body with an active role in reform is the **Ministry of Government Administration and Home Affairs**, which has taken the lead in the Government’s efforts to work with local governments to facilitate the implementation of reform and improve compliance and enforcement.

2.3. *Co-ordination between levels of government*

Korea is a unitary state with a highly centralised structure, although local responsibility has been enhanced since 1995 by the move to directly elect members of local councils and mayors. Local governments nevertheless have significant roles in implementing and enforcing national laws, in addition to the authority to regulate within their areas of jurisdiction. The national government has given local governments a role in regulatory reform, notably through the Basic Act on Administrative Regulations. Article 3(3) of the Act requires local governments to register and declare local Acts and regulations, review existing regulation and new proposals and “install organisations for reviewing regulations”.

The government notes²² that, while local government should also “co-operate closely with the Regulatory Reform Committee”, the focus on national level reform during 1998 meant that there were relatively few locally related initiatives. However, it is expected that 1999 will see a strengthening of institutional arrangements to “enable local government to link more closely with central government’s regulatory reform drive”. In particular, “...training programmes aimed at changing public servants’ attitude from being reform resistant to reform minded are being inaugurated”. This may address the complaint commonly heard at present that, in many areas in which regulatory reform has been undertaken, awareness of new arrangements at the local implementation levels is often poor. Delays of years before reforms at the national level filter down to local government actions are sometimes seen.

While the integration of reform initiatives at the local level is thus incomplete, some local governments have already implemented their own reform programmes and have achieved results. Box 3, below, summarises the programme of reform of Kyongju City, in the south-east of the Korean peninsula.

Box 3. **Regulatory reform in Kyongju City**

Kyongju is a regional city with a population of approximately 300 000. Its “Administrative Regulations Improvement Project” follows many of the outlines of the national regulatory reform programme. The objective is to “Improve local competitiveness and enhance the quality of life by implementing the elimination of unnecessary administrative regulations and the restriction of inefficient administrative regulations”.

Key initiatives under the programme include the formation of a committee (comprised of a majority of non-government members) to review regulation, the review of the stock of existing regulation, the identification and removal of “informal” regulations, the review and reform of administrative procedures, and the training of civil servants on regulatory quality issues.

The review of existing regulation has identified 233 rules, of which 29 have been abolished and 91 reformed. The focus of these reforms is on simplification. Overlapping regulations, redundant regulation and unduly burdensome procedural rules are identified and eliminated. Notably, a dedicated group has been established (in addition to the Regulatory Reform Committee) to reform administrative procedures. Six regulations lacking legal authority have been identified and removed, while two training courses have each trained 25 administrators on reform issues.

Source: *Administrative Regulations Consolidating Project*, City of Kyongju, July 1999.

3. ADMINISTRATIVE CAPACITIES FOR MAKING NEW REGULATION OF HIGH QUALITY

3.1. *Administrative transparency and predictability*

Transparency of procedures: Administrative Procedure Laws

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influence by special interests. Transparency also reinforces legitimacy and fairness of regulatory processes. Transparency is a multi-faceted concept that is not easy to change in practice. It involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; controls on administrative discretion; and implementation and appeals processes that are predictable and consistent. In most OECD countries, such procedures are established in legislation.²³

Korea has moved to improve the legal framework for transparency, first by adopting the Basic Law on Administrative Regulations and Application in 1994 and subsequently reinforcing its provisions by the 1997 Basic Act on Administrative Regulations and the Administrative Disclosure Act. These laws set out the essential requirements for transparency and consultation during the making of new regulation. The major elements of these requirements are:

- Ministries are expected to consult with affected parties prior to the drafting of new regulatory proposals. In practice, this consultation frequently includes use of public hearings.
- Consultation must be conducted with a wide range of interest groups, including private organisations, interested parties, research institutes, and experts. This is to be undertaken via “public hearings, notice of legislation or any other means”.²⁴ Scrutiny of the adequacy of the consultation conducted is provided by the Regulatory Review Committee. In practice, proposals are generally released to the public through a “notice and comment” procedure for a consultation period usually lasting 20 days.
- Drafts are submitted to the Regulatory Review Committee for scrutiny against regulatory reform policy criteria. As the Committee includes a majority of non-governmental appointees, this can be seen as a further element of public consultation.
- Legislative quality is also verified through review by the Legislation Agency and the State Council.

In addition to these processes for checking regulatory quality before adoption, Korea introduced or strengthened several mechanisms to safeguard citizens from arbitrary use of bureaucratic discretion and to provide effective means of redress. The **Administrative Procedure Act**, adopted in 1996 and taking effect in 1998, seeks “to advance a guarantee of fairness, transparency and confidence in administration and to protect the rights and interests of citizens ... by stipulating common matters regarding administrative procedures”.²⁵ Introduction of the Act was the culmination of a 30 year process against major opposition from the bureaucracy due to concern about the limits on administrative discretion implied by greater transparency and stricter procedures.²⁶ The provisions of the Act supersede the requirements of a Presidential Executive Order adopted in 1989. The Act is comprehensive in scope, including sections dealing with jurisdictions of agencies, rights of parties, the manner and timing of communicating decisions, procedures for seeking information and making decisions, the conduct of formal hearings and requirements for “pre-notification” of proposed laws and administrative actions.

Key aspects of the Act should be highlighted. The Act distinguishes between “dispositions” and “administrative guidance”. The latter is defined in Article 2(3) as “...*the administrative functions of guidance, recommendation and advice, or other acts by which an administrative authority may seek...certain feasibility or non-feasibility on the part of specified persons in order to realise administrative aims*”. Chapter 6 of the Act deals specifically with administrative guidance, and regulates but does not ban its use. Article 48 requires that the scope of guidance be the minimum necessary to attain its intended purpose and states that non-compliance with administrative guidance should not lead to disadvantageous treatment by the administrative agency. These provisions are equivalent to those adopted by Japan. In both cases, the presumption is that conformity with guidance is today voluntary; it assumes that “compulsory” uses of guidance in Korea have formally been abolished or converted into formal regulation in the review activity in 1998-9. While the use of informal instruments is very hard to determine, information indicates that the majority of such provisions have, in fact, been abolished. As of July 1999, 1840 “informal regulations contained in guidelines or instructions” had been identified, of which 1466 were abolished, 162 were formalised and 212 remained under review.²⁷

However, the remaining Articles suggest that guidance is still used and is not entirely voluntary in practice. These include a requirement that oral guidance must be rendered in written form on request (Article 49.2), provision for affected parties to submit arguments regarding the “manner and content” of guidance issued (Article 50) and provision for notifying the public where guidance affects more than one party. However, exemption from the majority of these provisions is possible where “extraordinary administrative inconvenience” would be occasioned.

The extent to which conformity with administrative guidance can be said to be voluntary must be considered in the cultural context. Section 1 notes that Korea has a history of extensive government intervention in the economy. There is a disposition to respect government action, which means that guidance is likely to have a high level of compliance even where those affected bear costs. Yet businesses complain about continued use of administrative guidance which is said to have become more informal and less transparent as a result of the legislated restrictions. The OECD review of regulatory reform in Japan²⁸ concluded that the use of administrative guidance, particularly if hidden and coercive, was not consistent with a market-led growth strategy and that strong deterrence would continue to be needed to ensure that coercive uses did not continue to be made of administrative guidance.²⁹ This appears to be a significant issue in Korea as well, although Korean officials have argued that the issue of administrative guidance will necessarily become less important as the government’s general policy of moving toward a market based economy and society is increasingly reflected in legislation and social behaviours. Consideration could, nonetheless, be given to allowing the KFTC or the Regulatory Reform Committee to play a continuing role in investigating all complaints by businesses of such practices.

Chapter 4 of the Act deals with **pre-announcement of legislation**, and Chapter 5 has similar provisions regarding major administrative decisions. Ministries are obliged to “widely notify”, though specific requirements are not established. Ministries are required, in general, to grant requests to view the full text of proposed laws. The length of pre-announcement periods must be a minimum of 20 days. Other standards and procedures regarding pre-announcement of legislation, including the processing of comments received and notification of results are required to be set out in a Presidential Decree. A general requirement to “respect” comments received is established, along with a duty to advise those who make submissions of the results of agency consideration of them. Exemptions from the pre-announcement requirement seem quite broad, though the Ministry of Legislation has the power to recommend that pre-announcement be undertaken at the time of its review of draft legislation.

Chapter 2 of the Act deals with “dispositions”, including provisions for the **submission of arguments by the public and formal hearings** in relation to dispositions, and provisions relating to **public hearings**. While these provisions generally provide a firm basis for ensuring procedural fairness

and transparency, two points are notable. First, use of such hearings is effectively at the discretion of the ministry making the dispositions, other than in cases where other laws require that such hearings be held. Second, while ministries are required to set standard timelines for processing different categories of “dispositions”, there is little recourse if these timelines are not met. The applicant “may request the administrative agency concerned or the supervisory administrative agency for a forthright process”.

A further step in controlling the use of administrative discretion was taken in 1994, when the Civil Petitions Treatment Act established the Public Grievance Resolution Committee, or Ombudsman’s Office. The Office quickly came to be widely used by the public: 6 271 petitions were notified to it in the first half of 1999. Of these, approximately 2 000 were the subject of an investigation, and around 40% were resolved in favour of the petitioner.³⁰ About 6% of investigated cases result in broader changes, as a result of recommendations to change a procedure covering a category of issues. In addition, a total of 42 recommendations to make regulatory changes have been made by the Office since 1994, and over three quarters of these were accepted by the Ministries concerned.

Transparency for affected groups: use of public consultation

As noted above, public consultation during the drafting of new regulation occurs at two stages: an initial consultation to determine general views prior to the development of a regulatory proposal, followed by consultation based on a draft regulation. Article 9 of the Basic Act on Administrative Regulations requires administrative agencies, in all cases where new or amended regulation is proposed, to:

...collect views from other administrative agencies, private organisations, interested parties, research institutes and experts through public hearings, notice of legislation, or any other means.

This provision imposes a duty for widespread consultation, but leaves near total discretion to the regulatory agency as to the methods of consultation to be used. The role given to the Regulatory Review Committee by Article 10 of the Act provides an important check on the use of this discretion. According to Article 10, regulatory agencies must submit to the Committee a summary of the views received, together with the RIA and a “self-assessment” of the RIA. In practice, the Committee has taken an important role in ensuring that the consultation process is conducted thoroughly and effectively, as Ministries are aware that the Committee frequently returns regulatory proposals submitted to it for further consideration.

A similar situation exists in relation to the Act’s provisions for annual review plans for existing regulation (Articles 19 - 21). Ministries are required to seek the views of affected groups as the basis for formulating these plans, though there are no specific requirements as to how this is done. The stipulation that the plans be reviewed and, ultimately, approved by the Regulatory Review Committee provides a measure of assurance that the consultation requirement will be given due weight by ministries.

A second key consideration in assessing consultation performance, in addition to these legislated provisions, is the broader process of administrative reforms being undertaken by the government and their expected impacts on the culture of the civil service. A key element of these public sector reforms is the push to develop greater “customer orientation” among civil servants. Elements of this policy include the adoption in an increasing number of agencies of Citizens’ Charters, along the lines of the UK model, the use of a Public Customer Satisfaction Index to evaluate agency performance, and the establishment of an Internet hotline to deal with service related public complaints.³¹ These measures should have the effect of increasing the receptiveness of officials to views expressed during consultation, though commentators have emphasised that listening habits are likely to be slow to develop, given the history of bureaucratic discretion and an absence of public questioning of its use.

Another important development has been the rise of non-governmental organisations (NGOs) in Korea over the past decade. These organisations were rare until the late 1980s, but their growth since then has been extremely rapid. There may be now as many as 8000. Korean officials argue that government policy has been instrumental in this rapid NGO growth, as major new legislation such as the Administrative Procedures Act and the Administrative Disclosure Act has provided greatly increased opportunities for input on government policy and legislation from the non-government sector. In contrast to the situation in most OECD countries, many of the NGOs are active across a wide range of policy areas, rather than focussed on a single set of issues such as environmental protection or consumer protection. Examples of broad coalitions include the Citizens' Coalition for Economic Justice and the Citizens' Coalition for Better Government.

Box 4. **Civil society in Korea: a snapshot of two non-governmental organisations**

Citizens' Coalition for Economic Justice (CCEJ)

The CCEJ was founded in 1989 with an initial membership of 500. Its initial concerns were to address economic injustices, seen as largely a result of the *chaebol* system, to promote democratic development and to address environmental degradation. CCEJ now numbers its membership "in the tens of thousands". The major concerns of CCEJ today are:

- Economic justice.
- Sustainable development.
- Participatory democracy.
- Social protection for the weak.
- Korean reunification.
- Global solidarity.

In pursuit of these goals, the CCEJ is organised into a Policy Research Committee and several "Special Committees", including the Citizens' Legislative Committee, Labour-Management Relations Reform Committee, Special Committee for Local Autonomy and Agricultural Reform Committee. In addition, there are the Centre for Urban Reform, Korea Economic Justice Institute, Anti-Corruption Centre, Centre for Environment and Development, Korea Reunification Society, Right Farming Life Co-operative and Al-Dul Thrift Shop.

People's Solidarity for Participatory Democracy (PSPD)

PSPD was founded in 1994 to promote participatory democracy and human rights. It advocates social justice, presents alternative policies and encourages participation. PSPD has 2000 members and subscribers, including 300 academic and other experts. PSPD activities are grouped into three broad areas:

- 1. Abuse of Power.** A number of standing and special bodies have been formed to monitor the use of power in different areas and to advocate reform. These include Judicial Watch, Politics Watch, *Chaebol* Watch, Overseas Korean Enterprise Watch and Local Administration Watch.
- 2. Promotion of alternative policies.** There are three key PSPD bodies in this area. The Social Welfare Committee advocates policy reform and increased government spending in a range of welfare areas, such as pensions and benefits, as well as raising awareness of welfare and equity issues. The Participatory Economy Committee seeks tax reform, lobbies for minority shareholder rights and worker participation in management and monitors corporate corruption and mismanagement. The Council for Democracy in Science and Technology advocates the introduction of a Technology Assessment System and promotes awareness of the social justice implications of scientific and technological development.

3. Empowerment of the population. This programme is divided into three campaign areas. The Transparent Society Campaign has a strong anti-corruption focus, with a whistleblower hotline, and advocacy of whistleblower protection and, more broadly, the adoption of specific anti-corruption legislation. The Regain Citizens' Rights Campaign supports citizens taking action against abuses of administrative power, advocates public "right to know" and provides guidance on access to government information. The Minority Shareholder Rights Campaign monitors violations of minority shareholders' rights and participates at general meetings, takes legal actions against directors and advocates policy changes to enhance minority shareholders' legal rights.

Source: Citizens' Coalition for Economic Justice. November 1997; www.pspd.org.

The government is generally seen as having been open to inputs from the NGO sector, though some dissatisfaction is, unsurprisingly, also voiced. Although selected NGOs were invited to nominate members to the Regulatory Reform Committee, no NGO representatives were ultimately appointed. Instead, NGO representatives have been included in various *ad hoc* sub-committees and on "working groups" that constitute a third level in this structure. A similar situation has arisen in regard to labour representation, despite the fact that the RRC's predecessor body, the Presidential Commission on Administrative Reform, included representation from labour and the press. Government officials have indicated a number of reasons for the lack of NGO or labour representatives on the Committee. For example, the RRC is a Ministerial committee and there were difficulties in identifying people sufficiently representative of civil society sectors and possessed of sufficiently broad expertise (given the Committee's role as an expert group), to merit inclusion. However, it is also conceded that disputes between the Government and much of the NGO sector on some policy issues at the time of the establishment of the committee may also have been significant. Some NGOs see their exclusion as a sign of an unwillingness to add critical voices to a central element of the reform programme. Indeed, doubts about the value of participation in various forums have been expressed by major NGOs.

Public officials counter that the overall picture is one of considerable openness. Despite the lack of civil society representatives on the Committee, they are extensively involved in sub-committees and working groups, have the ability to request consultation on specific issues, and can raise particular issues for consideration by the Committee. In addition, a tripartite labour issues committee has been established at the initiative of the President. It is also argued that regulating Ministries have ongoing consultative relationships with a range of civil society groups which provide additional sources of input to the policy process. Notwithstanding this view, officials indicate that, given the imminent expiry of the current two-year terms of its members, the Committee is likely to be reorganised in the first half of 2000, and the Prime Minister has indicated that the addition of civil society representation will be considered. The current business focus of the Committee, and of regulatory reform efforts more generally, can be seen as a result of the context of economic crisis, and officials argue that this focus is expected to change markedly as the recover gathers pace and the reform programme moves into its second, more qualitative, stage.

Objectives and mechanisms of public consultation. Previous OECD work on the use of public consultation in Member countries³² identified six major objectives of public consultation and documented a wide variation in the objectives of country programmes. Public consultation can assist in:

- Supporting democratic values.
- Building consensus and political support.
- Improving regulatory quality through information collection.
- Reducing regulatory costs on enterprises, citizens and administrations.
- Quickening responsiveness.
- Carrying out strategic agendas.

Among these objectives, the most important roles for consultation in Korea have been reducing regulatory costs, improving regulatory quality and supporting democratic values. These are fundamental goals of the regulatory reform effort. The mechanisms that allow reform issues to be raised by NGOs, as well as the requirements that ministries seek opinions, indicate a desire to address reforms to priority areas of concern of stakeholders. In addition, the relative openness of the consultation mechanisms used in Korea indicates the importance of consultation as a means of supporting democratic values of openness and accountability. “Notice and comment” procedures, which allow all groups to participate in consultation, are widely used in Korea, as are public hearings. At the same time, more targeted mechanisms, such as the establishment of either standing or *ad hoc* consultative committees appears to be expanding. Some NGOs indicate that opportunities to participate in these committees are becoming more widespread. These mechanisms are generally used as means of improving regulatory quality by assuring the flow of expert advice and information to regulators.

In sum, use of consultation in Korea appears to be relatively well established, notwithstanding the recent implementation of many of the key mechanisms and the fact that the development of a wide range of civil society interlocutors is a recent phenomenon. However, regulators still have a high level of discretion about the mechanics of the consultation process. In addition, the effectiveness of consultation can be limited to the extent that proposed regulation is imprecise in its drafting and provides for significant administrative discretion in its application. As noted elsewhere in this report, this has historically been a key feature of Korean regulation, though the government has moved to address this issue as part of the current reform process.

The time periods allowed for consultation in Korea, typically twenty days, are relatively short. For example, in the United States, consultation period of 60 days are more likely to be found. This reflects the reality that, for representative groups in particular, the process of consulting constituent parties and formulating agreed positions can be a difficult and time-consuming one. A further issue is that systematic attempts to act positively to generate stakeholder inputs have not been undertaken to date in Korea. The experience of a number of OECD countries indicates that such positive efforts can be crucial to success, particularly in the early stages of efforts to develop consultation and dialogue. These are likely to be important areas for further improvement as Korea continues to refine its consultative processes. More broadly, a longer term view of the benefits of extensive consultation is essential as, in the short term, reform initiatives can be rendered more difficult and sensitive by a more open and transparent consultation process. Nonetheless, the experience of a number of Member countries indicates that a well developed dialogue with stakeholders is crucial to sustainable reform. Constructing and maintaining a broad base in support of reform requires ensuring that all voices are heard and all interests made explicit.

Transparency in implementation of regulation: communication, compliance and enforcement

The effectiveness of regulation is crucially dependent on the awareness of the regulated community of the regulatory requirements, and on the feasibility of compliance. These elements must, in turn, be supported by adequate enforcement measures that are consistent and predictably applied. Korea has implemented measures to assure the accessibility of laws, and has taken a major step by making all laws and regulations available on the Internet via the homepage of the Ministry of Legislation (<http://www.moleg.go.kr>). The Internet is a mechanism now being used in a majority of OECD countries. In addition, a comprehensive register of regulations in force has been compiled by the Regulatory Reform Committee (<http://www.rrc.go.kr>) and can be searched by the general public. The register has positive security, meaning that only those regulations listed in it are enforceable. Active promotion of the register is important as, notwithstanding its implementation, complaints are heard regarding the difficulty of determining what regulatory standards apply.

There is a policy requiring legislation to be drafted in plain language, while guidance material on plain language drafting techniques has been issued. However, the role of the Ministry of Legislation in assuring drafting quality is less extensive than in many other OECD countries, being limited to checking draft laws prepared within responsible ministries, rather than themselves conducting the drafting process on the basis of detailed instructions. Moreover, the Ministry of Legislation believes that draft legislation is generally prepared by policy officers within the Ministries, in consultation with legal officers, rather than drafted by internal lawdrafting specialists.³³

Despite these tools, and the fact that some have been in place for many years (for example, the requirement for plain language lawdrafting has existed since 1948), major problems in relation to compliance and enforcement have long been acknowledged. As noted in Section 2.1., regulatory standards have tended to be set at unreasonably strict levels, while regulatory drafting styles have left very large areas of discretion to officials. Unrealistic regulatory standards necessarily lead to low levels of compliance, while extensive bureaucratic discretion means that there is likely to be little confidence in the impartiality of enforcement or the likelihood that enforcement activity can restore and maintain high levels of compliance. According to some commentators, the result in Korea has historically been one in which regulated firms direct their efforts into circumventing enforcement activity, rather than attempting to comply with regulated standards.³⁴

Progress in reducing discretion has clearly been made as part of the current reform programme. Although the focus of the programme has been quantitative, the question of clarity and transparency of regulation formed one of the criteria against which regulation was assessed during the 1998-99 Comprehensive Plan for Regulatory Clearance. In addition, the Administrative Procedure Act has formally eliminated the use of “compulsory” administrative guidance. Further action has also been foreshadowed, with the Regulatory Reform Committee indicating that a more qualitative perspective will be taken during the next phase of reform and that further reducing the excessive use of bureaucratic discretion will be one element of this.

In contrast, little attention has yet been given to *ex ante* means of ensuring that high levels of regulatory compliance will be achieved and industry representatives continue to regard the compliance issue as a high priority for reform. Compliance friendly regulatory design is being explicitly considered in a small, but increasing, number of OECD Member countries. A recent paper on this issue prepared for the OECD concludes that:

*Compliance considerations must be designed into policy-making and regulation from the beginning. Compliance issues cannot just be part of an enforcement strategy tacked on at the end of the policy-making process. Ex ante compliance analysis ensures that policy makers and regulation drafters consider what policy objectives they actually want to achieve, whether it is feasible to achieve that, and if so how is the best way to do so.*³⁵

Recent OECD work on compliance found that at least five member countries are developing and implementing specific regulatory compliance initiatives. A pioneer in the field is the Netherlands, which has established a specific branch within the Ministry of Justice to assist regulators on compliance issues and has published the “Table of Eleven” compliance factors.³⁶ In the current context in Korea, a consideration of the potential value of compliance initiatives such as these could form a sound basis for a Korean initiative on regulatory compliance.

3.2. Choice of policy instruments: regulation and alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. The range of policy tools and their uses is expanding as experimentation occurs, learning is diffused and understanding of the potential role of

markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically strong disincentives for public servants to be innovative. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulation are to make serious headway into the policy system.

As in many other OECD countries, the area of environmental regulation represents one of the most innovative policy areas in Korea in terms of the adoption of alternatives to traditional command and control regulation. Significant steps have been taken in implementing a range of market based alternatives as well as in implementing a system of voluntary agreements. In the former category, there are currently five major charges levied on various elements of the Korean economy and society. All but one of these market instruments was introduced during the 1990s. The exception, emission charges, was introduced during 1983. The five major economic instruments are described below.³⁷

Emission charge system

This charge was established as a means to ensure compliance with permissible discharge limits. Thus, firms became liable to these charges if they were found to have breached their discharge limits, with the charge levied intended to equate to the costs of treating the excess emissions. In 1992, the system was revised to incorporate a two part charge, with the basic charge being determined by the size of the firm while the treatment charges continued to vary with the amount of excess discharges. A further amendment to the system which took effect in 1996 levied charges in cases where discharges were within permissible limits but the water discharged did not meet effluent quality standards. At the same time, the calculation of the charge was changed from one based solely on concentrations of pollutants emitted to one which also took account of the volume of pollutants emitted. The charges are levied in relation to a set of 10 air pollutants, 17 water pollutants and two specific types of livestock wastewater pollution. Offensive odours are also considered to be pollutants under this law.

From 1991 to 1996, the total number of charges levied varied between 3099 and 4267 and the total amount levied varied from 22.2 billion won to 10.4 billion won. In general the trend has been to a smaller total collection, while the number of charges imposed has not shown a clear trend. Further changes to the charge made in 1997 were intended to reorient its purpose from being essentially a mechanism to encourage compliance by levying sanctions to one which provided incentives to reduce emissions well below permitted maxima. This was done by varying the incidence of the charge so that it became applicable to all emissions above 30% of the maximum permitted. Thus, firms now face an incentive to reduce emissions to 30% of their permitted levels.

Environmental improvement charges

These charges were established via legislation in 1991 and were implemented from 1993. They are applied to the owners of commercial buildings of more than a certain area and, from 1995, of diesel powered vehicles. The charges do not apply to residential buildings (including apartment blocks) or to manufacturing facilities. Substantial revisions to the scheme in 1994 broadened the application of the charges (standardising the “threshold” for application to buildings at 160m²), while the charges applied to diesel vehicles were substantially increased in 1997. The charges are imposed and collected by local mayors or governors. Revenue from the charge increased from 38.6 billion won in 1994 to 287.0 billion won in 1998. As of 1998, more than half of the total revenue collected by the five market instruments was derived from these charges.

The charges are based on the polluter pays principle and vary directly with the volume of the pollutants discharged. They are calculated on the amount of fuel used in the building or, in the case of vehicles, on the estimated volume of exhaust, given an assumed average distance travelled. Thus, they are

intended to promote energy efficiency and reduced emissions (notably, diesel vehicles equipped with catalytic converters are exempt from the charges). In addition, environmental services provided by local government, including water supply, sewerage and sewerage treatment and solid waste collection are all subjected to volume based user charges which fully cover the operating costs of provision, though they do not generally cover capital costs.

Deposit-refund system

This scheme aims to promote recycling in major waste producing industries. It commenced operation in 1992 covering 17 item types in seven industry sectors. Experience with the system, and the move to include some of the items in other charging systems, lead to its modification in 1996, so that it subsequently covered 12 item types in the following six industry sectors: food/drinks/medicines; detergent; batteries; tyres, lubricants and home appliances. Firms are required to set aside determined amounts as deposits (calculated on the basis of the number of units or total mass produced, depending on product type) and are granted refunds to the extent that the items are recovered by the manufacturer. In 1997, a total of 42.9 billion won was deposited, while 13.5 billion won was refunded. While this represents a relatively low recovery ratio of 31.6%, the ratio has risen rapidly from a starting point of 7.8% in 1993. Recovery rates have varied widely between the different items included in the scheme. For example, in 1994, the recovery rate was 8.6% for beverage containers, 22.5% for lubricants, 47.6% for batteries and 49.2% for tyres.³⁸

However, it is acknowledged that the deposit rates for the programme have been set at a level far below that of the estimated real costs of recovery. In fact, the deposits were in 1997 estimated to constitute no more than 35% of these costs. As a result, a policy of a phased increase in deposit requirements was adopted, with a 50% level to be achieved by 2000 and full cost based deposits subsequently levied. In addition, a small but rising proportion of the deposit amounts unclaimed by manufacturers are paid out to local authorities, schools, community organisations etc. for the retrieval of products with low retrieval rates.

Waste production charges

These charges, introduced in 1993, deal with certain kinds of waste not covered by the deposit-refund system. The emphasis is on promoting waste reduction and resource conservation, with producers charged for materials and containers for harmful substances that are difficult to collect and recycle.³⁹ About three-quarters of the revenue collected by this charge derives from the production of synthetic resins. In total, in 1997, 43 billion won in charges was imposed on 15 items in ten business sectors.

Water quality improvement charges.

Introduced in 1995, these charges are imposed on manufacturers and importers of bottled water. The purpose of the charge is said to be to ensure that the costs of groundwater protection are borne by manufacturers who produce bottled waters by developing groundwater resources. However, the Ministry of Environment also notes that:

*The sale of bottled water is in direct conflict with the government policy for tap water. The government is responsible for supplying drinking water to the general public and for preserving the quality of surface water and drinking water. These activities are closely related to the preservation of the quality of bottled water, thus they must also be responsible for securing the necessary financial resources for the protection of water quality.*⁴⁰

Thus, it seems clear that this charge has more than one motive. Indeed, the Ministry also states that the charge can be seen as a special consumption tax, as bottled water is regarded by it as substitutable with tap water.

Other market measures -- taxes and subsidies.

In addition to the above programmes, the Korean Government provides a series of effective subsidies, in the form of long-term, low interest loans, to firms for the establishment of facilities that prevent, treat or recycle pollutants. Some use is also made of the tax system, via deductions for some firms engaged in conservation activities and for investments in anti-pollution facilities and waste recycling. Taxes considered to have positive environmental side-effects by limiting harmful consumption cover petrol, light oils, cars and electronic products. The Government has also announced an intention to ensure that energy prices reflect true costs, but the OECD concluded in 1997⁴¹ that “*as yet, there has been no ‘green tax reform’ as such*”.

In conclusion, though starting from a low base, the extent to which economic instruments are used in pursuit of environmental goals in Korea has increased rapidly over the past decade. Most of the programmes adopted have been modified as experience in their implementation has accumulated. The modifications have improved the effectiveness of the programmes, indicating that a well-functioning policy feedback loop exists in this area. The importance of these programmes, measured in terms of the revenue they generate, has also grown rapidly. However, by 1997 (the most recent data available) the revenue generated by the five programmes discussed above totalled only US\$356 million. The OECD’s Environmental Performance Review of Korea argues that, while the hypothecation of these funds for environmental improvements has meant that significant revenue has been made available for these purposes, the rates at which the charges are levied remain too low to significantly affect behaviour. Moreover, no use is currently being made of tradable permit schemes in Korea and, although the environment ministry has commissioned research on the issue, officials have expressed a degree of scepticism as to their performance. The Environmental Performance Review nonetheless concludes that the Government recognises the importance of improving economic signals as a means of achieving policy goals, while the value of information based approaches is also increasingly taken into account in policy-making.⁴²

3.3. *Understanding regulatory impacts: the use of Regulatory Impact Analysis (RIA)*

The 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 OECD Report on Regulatory Reform recommended that governments “integrate regulatory impact analysis into the development review and reform of regulations”. A list of best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries*⁴³ and provides a framework for the following description and assessment of RIA practice in Korea.

The first attempts to require the use of RIA in Korea were made by the President’s Commission on Administrative Reform in 1993. However, the current system was adopted in 1997, when the requirements were legislatively established via the Basic Act on Administrative Regulations. The basic requirements for preparing RIA are contained in Article 7 of the Act, while related requirements are found throughout Chapter 2 of the Act, which deals more generally with the making of new and amended regulation. Additional detail on RIA requirements is provided by Presidential Decree, with eight elements that must be addressed in RIA being specified (along with 19 sub-elements), as follows:

- Necessity of establishing a new regulation, or reinforcing an existing one (nature and cause of the problem, whether regulation is necessary to solve the problem, method by which regulatory objectives are determined).
- Feasibility of regulatory objectives (social constraints, such as opposition from affected groups, technical and administrative feasibility).
- Existence of alternatives and risk of regulatory duplication (possible use of existing regulations, possible use of non-regulatory measures, degree of overlap with existing regulations).
- Comparative analysis of costs and benefits (social and economic).
- Elements that might hinder competition (hindrances to competition, or to business activities).
- Objectivity and transparency of the contents of the regulation (accuracy, consistency and comprehensiveness of regulatory standards/processes, legal basis and duration of the regulations).
- Requirements concerning organisational structure, personnel and budget (budget/manpower needed, possibility of using existing resources), and
- Appropriateness of documents and procedures required in terms of civil appeals (appropriateness of documents, time period for action and the agencies tasked with handling appeals).

The Korean system of RIA is therefore strongly based on formal legal authority and is relatively unusual in not distinguishing between primary and subordinate legislation in terms of the RIA requirements. It must be emphasised that the system took effect only on 1 June 1998. Consequently, the following analysis of RIA in Korea is based largely on the features of the formal system and the administrative steps taken or in prospect for its administration. It is too soon to draw strong conclusions about the practice of these requirements.

Maximise political commitment to RIA. Use of RIA to support reform should be supported at the highest levels of government. The Korean system rates highly on this criterion. The strong role taken by the Regulatory Reform Committee in overseeing and monitoring RIA performance, and that body's direct link to the President, ensure that a clear message is conveyed to regulating ministries concerning the importance which government is attaching to RIA disciplines. As in the case in Denmark, where the Regulation Committee performs a similar function, RIA is able to play a role in determining the shape of the legislative programme presented to the Parliament.

Allocate responsibility for RIA programme elements carefully. To ensure "ownership" by the regulators, while at the same time establishing quality control and consistency, responsibilities should be shared between regulators and a central quality control unit. The Korean system rates highly on this criterion. As in most countries, RIA in Korea is initially conducted by the regulating agency. Two levels of review follow. Firstly, according to Article 7(2) of the Basic Act on Administrative Regulations, regulatory agency heads have a responsibility to review the validity of the RIA conducted, including a requirement that they seek and obtain views from relevant experts. On the basis of this review, they must "define the object, scope and method" of the regulations to be put forward. Secondly, Article 10 of the Act requires agencies to submit both the RIA and the results of their self-reviews to the Regulatory Reform Committee, along with a summary of the views of parties consulted. This material forms the basis of the review by the Committee (supported by a Secretariat located within the Office of the Prime Minister).

Train the regulators. Regulators must have the skills to do high quality RIA. Given the very recent adoption of RIA in Korea, it is unsurprising that officials and other experts generally agree that there is a significant “implementation gap” at present, and that the level of RIA sophistication achieved in practice is, as yet, quite low. However, efforts have been undertaken to provide necessary skills to regulatory agency staff and there are continuing. A RIA handbook was published in late 1998 and drew extensively on those in use in Canada and Australia as well as OECD materials. Three RIA workshops have been held to date for officials - two during 1998 and one during 1999. Currently, work is underway on the compilation of a book of “model” RIA to be distributed to Ministries to provide concrete examples of the kinds of analysis that are required. In addition, work is being carried out on the topics of regulatory alternatives and compliance issues. Finally, it should be noted that the Korean government has existing training institutions that provide a range of ongoing training courses to civil servants. Therefore, a delivery mechanism for future RIA training initiatives is already in place, while a one week training course dedicated specifically to RIA skills is currently under development for delivery by one of these institutions, the Central Officials Training Institute.

Use a consistent, but flexible, analytical method. Korea rates highly on this criterion, in that it has adopted a formal requirement for benefit/cost analysis to be used in conducting RIA. The BAAR also requires that alternatives to regulation be identified and assessed. However, the lack of an adequate skills base among officials, noted above, means that this is clearly an area of the highest priority for the further development of the Korean RIA system,.

Develop and implement data collection strategies. The conduct of high quality RIA necessarily imposes significant data requirements and data availability is one of the key determinants of RIA quality. Ensuring that relevant data can be generated at lowest cost is clearly important for successful RIA strategies and a number of OECD countries have begun to develop strategies to ensure that essential data is available for RIA purposes. For example, Denmark has adopted a programme of Business Test Panels to collect data on the administrative compliance costs of proposed regulation. The European Commission has recently commenced a pilot study in seven countries which uses a similar mechanism but extends its ambit to include all regulatory compliance costs.⁴⁴ In addition to these survey based approaches, other options used include engineering studies, targeted public consultation strategies and econometric approaches. Korea has yet to implement such strategies and work in this area may represent an important area for further development of its RIA programme.

Target RIA efforts. RIA resources should be targeted to those regulations where impacts are the most significant and where the prospects are best for altering outcomes. Korea rates highly on this criterion. The Korean RIA requirements apply to both primary and subordinate legislation, in contrast to many OECD countries in which the focus is exclusively on one or the other area. In addition, the BAAR includes a set of criteria for determining whether regulation is to be regarded as “significant” or “non-significant”. This helps target RIA resources in that regulation judged non-significant can be subjected to a solely qualitative analysis, while certain elements of the assessment can be omitted if judged unnecessary. “Significant” regulation is that which meets one or more of the following criteria:

- An annual impact exceeding 10 billion won.
- An impact on more than 1 million people.
- A clear restriction on market competition.
- A clear departure from international standards.

This is a well chosen set of criteria in terms of its ability to highlight regulation likely to require a full and detailed analysis. It is consistent with the OECD's emphasis on the importance of competition and trade aspects of regulatory quality as well as providing a monetary threshold as a "rule of thumb" as is done, for example, in the United States. One criterion used in several countries which has not been explicitly adopted here is that of whether the proposed regulation would be likely to have a significant impact on individual rights -- although this may be regarded as implicit in the second criterion.

Integrate RIA with the policy development process, beginning as early as possible. If RIA is to achieve its potential impact on regulatory quality, its insights must be used effectively by policy makers. This necessarily implies that it be considered an integral part of the policy development process from an early stage. The basic strength of the Korean process in this regard derives from the role of the Regulatory Reform Committee, which must review and approve the RIA and related material before a draft regulation can be sent to the Ministry of Legislation. This strong role for the Committee provides a powerful basis for ensuring that RIA becomes influential in policy choice. However, as noted above, the quality of RIA so far achieved remains very low, so that the Committee's ability to exercise this role effectively must be extremely constrained. Achievement of the cultural change required among regulators has been found invariably to be a long term task. It is also one that is crucially dependent on training inputs as well as support from the highest levels of the administration and the political system. This is clearly an area to be further developed in Korea as a high priority.

Involve the public extensively. RIA should be closely linked with consultation processes if its value is to be maximised. Providing RIA data will enhance the quality of the consultation process, particularly in relation to less well organised and resourced groups, and supports transparency and democratic accountability. Publishing RIA is also a key quality control element, as affected groups are often among the best placed to identify faulty assumptions, poor reasoning and inadequate data. The Korean programme does not score highly on this criterion, as the current system does not include publication of the RIA documents. This constitutes an important weak point in the current RIA programme and should be a priority for its further development.

Apply RIA to existing, as well as new, regulation. RIA disciplines are equally useful in the review of existing regulation as in the *ex ante* assessment of new regulatory proposals. Indeed, the *ex post* nature of regulatory review means that data problems will be fewer and the quality of the resulting analysis potentially higher. Korean performance in this area is mixed. There is little evidence that the programme of review of existing regulation recently completed was conducted according to clear methodological criteria equivalent to the current RIA requirements. However, Article 8 of the Basic Act on Administrative Regulation sets out what has been described as a "soft" sunset arrangement for both laws and subordinate regulations. This effectively means that a new RIA must be conducted and reviewed by the Committee wherever Ministries intend to extend the life of a law or lower level rule beyond the maximum of five years provided for in Article 8. This effectively provides for an assessment of the practical impact of all regulations adopted under BAAR, even though this provision will be somewhat delayed (*i.e.* occurring after five years in most cases).

In sum, Korea has implemented a strong legislative underpinning for a system of RIA. Its legislation has been shaped to a significant degree by OECD recommendations and best practices as well as drawing on the experiences of other countries that have extensive experience in implementing RIA. The applicability of the system to both laws and rules, together with the use of a distinction between significant and non-significant regulation to aid targeting of efforts is a key strength. So too is the clear commitment to the use of benefit/cost analysis and to the identification and analysis of alternatives to regulatory proposals. The strong involvement of the powerful Regulatory Reform Committee, including legislated provision for a review of the RIA over up to 60 days, plus the power to recommend that proposals be withdrawn or modified, provides a quality control mechanism that can be expected to be highly effective -

particularly given the Committee's majority of non-governmental members. The key area for further development in terms of the structure of the RIA system is that of its integration with the public consultation process.

The recent implementation of the RIA requirements means judgements as to their effectiveness in practice must be tentative and partial. It is notable that the first year of operation of this system saw 884 regulations (*i.e.* laws plus subordinate instruments) reviewed by the Regulatory Review Committee and thus subjected to RIA. It is not clear what proportion of these that have been subjected to full RIA and what proportion have undergone the lesser standard of analysis required for non-significant regulation. However, the process has clearly had a significant impact, with 241 of the proposed regulations being rejected by the Committee and a further 81 voluntarily withdrawn by the Ministries in question.⁴⁵ Those responsible for the RIA programme also argue that less visible benefits have been obtained, with the RIA requirements causing regulating Ministries to consider alternative policy options more extensively and systematically prior to their proposals being sent to the Committee. Some high quality RIA have been generated in policy areas such as environmental protection and fisheries management, often as a result of "contracting out" the RIA task to Ministry affiliated research institutes. These RIA have been used to inform the advice given to the Regulatory Reform Committee by various working groups constituted under its authority. Despite this progress, however, it is believed that the bulk of the RIA is still being conducted at a low level of sophistication.⁴⁶ However, as responsibility for RIA has been allocated to senior officials within each Ministry (at Assistant Director level) adequate skills are expected to be committed to the task of developing RIA.

3.4. Building regulatory agencies

Implementing systems for regulatory scrutiny and review is necessary but not sufficient for a successful programme of regulatory management and reform. Also of primary importance is the development of well-designed regulatory institutions. The key issue is how accountable and independent institutions, which resist capture by interest groups, either public or private, can be established. Relative to the policy and legal reforms in Korea, the pace of institution building is lagging, but now seems to be gaining more attention.

With the establishment of the Financial Supervisory Commission, a new type of regulatory institution has appeared in Korea -- the independent regulator. Such bodies in OECD countries have three characteristics: a high degree of technical specialisation, a concentration on regulatory or enforcement aspects, leaving policy or normative matters to the ministries, and a greater degree of operational autonomy than that possessed by ministries.

The evolution of the institutional framework for regulation in Korea is not consistent. The Financial Supervisory Commission enjoys many of the attributes and powers of a truly independent regulator. By contrast, in the telecommunications sector the Korea Communications Commission (KCC) is under the jurisdiction of the Ministry of Information and Communications, which, directly and through its supervision of the KCC, has the power to regulate the entire industry (see background report to Chapter 6). The creation of the KCC was an important step in improving the institutional structure of regulation, but is not yet an effective independent regulatory body able to create and maintain the conditions for effective competition that maximises user welfare. More progress can be seen in the electricity sector. The Korean government released in January 1999 the Basic Plan for Restructuring the Electricity Industry in Korea, which proposes to introduce competition in the generation and retail supply of electricity. An independent regulator is to be created within two years.

The move to establish independent bodies offers great potential in improving regulatory efficiency. In other countries, specialised and more autonomous regulators have created important "checks and balances" to match the powers of ministries and interest groups and increase the speed and quality of regulatory decisions. Their operation tends to be more transparent and accountable. In Korea, as in many

countries, the *ad hoc* creation of the new regulatory structures seem to lack a coherent approach. It is not too early to begin to develop common approaches to issues such as working methods, relations with ministries and with the KFTC, accountability and transparency mechanisms, and evaluation and oversight of their actions. An important contributor to the quality and effectiveness of the new regulatory bodies will be the training of regulators to work within a market environment. Experience in OECD Member countries shows that other key design principles for successful independent regulatory bodies include the establishment of the regulatory body via specific legislation, with key regulatory objectives explicitly stated; appointment mechanisms for chief regulators and other key staff that insulate them from pressures from political sources or vested interests, particularly the use of fixed terms and limited grounds for dismissal; principles for regulatory decision-making, as well as key process elements, that are clearly defined and included in laws; limited and highly specific grounds for Ministerial direction to regulators; and transparency in relation to key decision elements.

In addition, a key threshold question on the design of independent regulators is whether separate bodies should be created for each key sector (the model adopted, for example, in the United Kingdom) or whether an overarching body should be created with authority over many sectors (as in Australia). The former model is held to allow more easily for the development of sector specific expertise and insight, as well as providing for a clearer set of regulatory objectives. However, overarching regulators are thought to be less susceptible to regulatory capture by incumbent interests, due to their broader remit and wider set of regulatory objectives. A further key benefit of an overarching regulator is enhanced consistency in regulatory decisions in different sectors.

4. DYNAMIC CHANGE: KEEPING REGULATIONS UP TO DATE

The OECD Report on Regulatory Reform recommends that governments “review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively”. Through most of the fifteen years of regulatory reform efforts in Korea, review activity has been *ad hoc*, lacking in a strategic basis, and incomplete. Adoption in 1997 of the Basic Act on Administrative Regulations, and the consequent creation of the Regulatory Review Committee, represented a quantum leap, establishing for the first time a systematic mechanism for managing the quality of Korean regulation over time. This mechanism consists of three parts.

Comprehensive Regulatory Improvement Plan. Firstly, the stock of regulation was to be audited and drastically reduced via the Comprehensive Regulatory Improvement Plan. The first part of the Plan involved the setting, by the Regulatory Reform Committee, of a target of reducing the existing number of regulations from 11 125 to 5 695 within 12 months of the target being set in April 1998. The process of formulating and implementing the specific changes to achieve this target had several steps, as follows:

- Firstly, Department heads are required, under Article 19 of the BAAR, to formulate a draft plan for reform of regulation under their jurisdiction, after consultation with “interested parties and experts”. These plans are then submitted to the Regulatory Reform Committee.
- Secondly, the plans are reviewed at working level by the Office of Prime Minister, in its capacity as Secretariat to the Committee. Technical specialists are likely to be invited on an *ad hoc* basis to provide input to this review.
- Thirdly, the relevant subcommittee of the Regulatory Reform Committee will review the plans.
- Fourth, the full Committee reviews the plans.

In practice, the process has been one in which the draft plans have been returned to agencies, sometimes on several occasions, for improvement. In one case highlighted to the review team, a Ministry's initial proposals provided for an 18% reduction in regulatory numbers, while a 44% reduction was ultimately achieved after the plan had been to the Committee on three occasions. Overall, the implementation of the Plan resulted in the Government introducing 344 Bills to the National Assembly for approval during 1998. As of June 1999, 297 of these had been passed by the Assembly, with 47 pending, indicating a strong legislative basis for the reform process. Overall, 5430 regulations were eliminated within approximately one year as a result of this programme - a result which essentially represents the achievement of the 50% target initially set. A further 2408 regulations, or more than 40% of those remaining, were revised to greater or lesser extents as part of the programme, while 707 of a total of 934 subordinate regulations were also altered. Finally, 1840 "informal regulations", not resting on proper legal authority were identified and either abolished or, in a minority of cases (162 at the time of writing) formalised.

A quantitative approach to regulatory reform has limitations both as a strategy and as a yardstick of performance. The Korean Government clearly recognises this fact, given that the target of a 50% reduction in regulatory numbers was established as only one part of a longer-term strategy for reform (discussed below). However, it was considered as an important starting point both as a means of "kick-starting" prompt and drastic action at a time of crisis and as a recognition that the context for the new reform strategy was one of a massive level of over-regulation. An evaluation of the results of this aspect of the reform programme is necessarily preliminary at this stage, but a number of points can be made.

Firstly, while a number of countries have set - and met - quantitative targets for reducing regulatory numbers without significantly altering the substantive regulatory structure, the sheer size of the reduction target in Korea has meant that the quantitative reduction has necessarily translated into real changes. Additionally, the programme has been based on a number of clear review criteria. The most important of these have been:

- In principle elimination of economic regulations restricting competition or conflicting with international standards,
- Improved quality (*i.e.* efficiency and effectiveness) of social regulations,
- In principle shift from *ex ante* controls to *ex post* management, with a change in presumptions from restriction to liberalisation.
- Regulations to be based on proper legal authority in all cases (*i.e.* compulsory administrative guidance to be eliminated),
- Maximising transparency and clarity of regulation, including minimisation of administrative discretion, and
- Benchmarking of global standards.⁴⁷

These criteria in effect provide a clear qualitative dimension to the reform programme undertaken in 1998-99, whereas the focus has clearly been on its "headline" quantitative element. This is important to note, given that the programme to date has been criticised within Korea as being unduly quantitatively focused and therefore as constituting a crude reform strategy.

Annual Regulatory Improvement Plans. The second element of the Comprehensive Regulatory Improvement Plan as mandated by the BAAR is the requirement of Articles 19 - 21 that agencies and the Regulatory Reform Committee prepare annual plans. These are clearly envisaged as being of a more

strategically targeted and qualitatively based nature than the initial programme completed in 1998-99. The requirements include both “top down” and “bottom up” elements. The bottom up requirement (Article 19(1)) is that heads of administrative agencies must prepare their annual reform plans by a process of collecting opinions from both experts and affected parties. However, Articles 19(2) and 20(2) requires that these plans be submitted to the Committee. Article 20(1) establishes the “top down” element by requiring the Committee to draw up an annual “guideline” for these reform plans by selecting either particular regulatory areas or specific regulations as the focal points. Secondly, the Committee is required to draft a government wide reform plan by integrating the agency plans, and obtaining Presidential and State Council approval. These plans are then required to be disclosed to the public. An accountability mechanism is provided in Article 21, which requires agency heads to notify the Committee of their progress in implementing the elements of the comprehensive plan for which they are responsible. Additionally, Article 22 creates a link between the regulatory and administrative reform programmes, by requiring that the Committee notify central administrative agencies of regulatory changes in order that organisational and budgeting changes can be made accordingly.

Overall, this qualitative model for the future reform programme can perhaps be characterised as predominantly “top down” in nature, in that the government wide plan to be drawn up by the committee (and, by implication, the Ministry plans to be approved by it) are to be directed toward a list of fifty major tasks, or areas of regulation that have been identified centrally. Alternatively, the key point might be considered to be the fact that the lead role in determining reform strategy has been removed, to a large extent, from the regulating agencies and attributed instead to central co-ordinating bodies with considerable input from outside government. Thus, on the one hand, agencies must consult with experts and affected parties in developing draft plans while, on the other, the Committee, with its majority of non-government members and the President and Council of State determine and approve the overall plan. Judgements about the performance of this model in practice can clearly not yet be made. However, the allocation of responsibilities foreshadowed in the Act seems to provide an appropriate balance between the need to ensure that regulators feel responsible for reform outcomes and the need to ensure strategic direction and resistance to “capture” by interest groups by ensuring a strong central role.

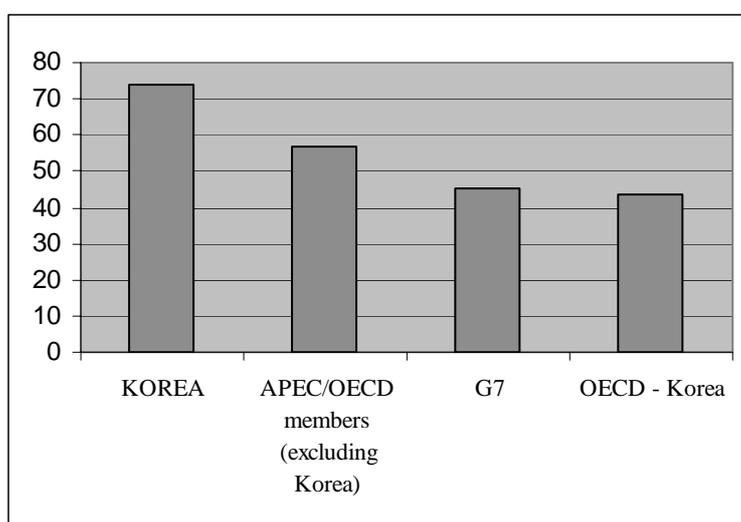
Sunsetting of regulation. The third element of the BAAR’s systematic approach to reforming existing regulations is provided by Article 8, governing the duration of new regulations. Where regulations “have no clear reason to continuously exist”, their maximum duration is not “in principle” to exceed five years. This is supplemented by a requirement that the duration of regulations should be the minimum needed to achieve their objectives. Where agencies believe that regulations should be extended beyond this time, they must ask the Committee to review them, along with RIA and self-assessments as applied to new regulations under Article 10, at least one year prior to their expiry. Government officials have described the effect of this provision as a “soft sunseting”. The systematic use of sunseting puts Korea among a very small group of OECD member countries. According to the OECD Regulatory Indicators Database, only one other country routinely uses sunseting for primary legislation and only two others routinely use it for lower-level rules, although over half of the OECD Member countries state that they make some use of sunseting.

Information on the effectiveness and efficiency of sunseting, and on the challenges of managing it in practice is thus quite limited. However a recent study⁴⁸ reviewed the use of sunseting in several Australian States and concluded that its use has removed much redundant regulation from the statute books and played a significant role in encouraging the updating and rewriting of much that has remained. A comparison of the different sunseting periods used across jurisdictions showed that four of the five states using sunseting opted for a ten year cycle, with only New South Wales adopting a five year cycle, as in Korea. The NSW experience with sunseting, accumulated over more than a decade, has lead all the major participants in the process to the view that a five year cycle is unreasonably short and has lead to wasted effort on review requirements as well as widespread abuse of the limited exemption provisions made in the

legislation governing the process. Korean officials have argued that the choice of a five year cycle reflects the rapidly changing regulatory environment. There may indeed be gains from an early revisiting of the justification of regulation in a context in which the rigour with which RIA is conducted is expected to advance rapidly. However, the fact that most primary legislation is subject to this requirement, in addition to subordinate regulation, suggests that the five year sunseting runs a real risk of overwhelming expert RIA/review resources and detracting from the strategic targeting of such resources.

Box 5. Index of review activity

This indicator considers the extent of review activity undertaken in key areas of legislation in recent years and the frequency with which major reforms result. In addition, it looks at whether systematic review mechanisms, such as sunseting or licence reduction programmes are in place as well as the existence of opportunities for the public to propose specific reviews. Korea scores very highly on this indicator, being well ahead of the OECD average, the G7 average and the average for countries belonging to both OECD and APEC. This reflects the high level of review activity undertaken in recent years, its systematic underpinnings and, in particular, the extensive use made of sunseting in Korea.



Source: Public Management Service, OECD.

Reducing administrative burdens. In common with 16 other OECD countries, Korea has adopted initiatives specifically aimed at reducing the administrative burden imposed by regulations. The Korean programme has two focal points: the adoption of “one-stop shops” for regulatory approvals and the use of new technologies to streamline the processing of approvals. A particular focus of the “one-stop-shop” approach is on foreign investors, in line with the emphasis in the regulatory reform programme on opening Korea to the global economy. However, the Government notes that, while a one-stop-shop has been put in place, fundamental problems remain in relation to the need for regulatory authorities to be delegated by the various regulatory authorities.⁴⁹ This issue is fundamental to attempts to move from the central provision of information on licences and permits to their issue at a central point, and probably largely explains why 17 Member countries have adopted the former mechanism, while only eight have adopted the latter.⁵⁰

The major technological initiative being pursued to reduce administrative costs is the introduction of an Electronic Data Interchange (EDI) system. This is currently being implemented in relation to import/export clearances.

Business licence and permit reductions. Attempts to reduce the burden imposed by business licence and permit requirements constitute a particularly prominent element of administrative burden reduction programmes in many countries. This is often the result of a re-evaluation of the purposes served

by many different licences and their relative efficiency compared with other control mechanism. In addition, rationalisation of related licences to create a much smaller and more integrated set of approvals is often pursued in areas in which continued *ex ante* controls are considered necessary. Reducing the burden of licence and permit requirements is often seen as a key element of efforts to promote entrepreneurialism and new business start-ups. According to the OECD Regulatory Indicators Database, 17 Member countries currently have a programme designed to review and reduce the number of business licences and permits, while 12 are co-ordinating such programmes with sub-national levels of government.

Regulation requiring licences and permits has been a particular focus of the programme of systematic regulatory review undertaken in Korea during 1998-99, as the objective of shifting from *ex ante* to *ex post* controls is central to the reform programme. Other objectives pursued in reforming this area are the simplification of the administrative processes and formalities used and a shift away from administrative discretion and toward registration and notification systems that imply automatic approval once transparent pre-conditions are met. These moves are intended to ease both entry to and exit from an industry. In order to manage the reform and improve transparency the Regulatory Reform Committee established in 1998 a central register on which all licences, permits and approvals must be recorded. The number of these requirements entered on the register fell from 2 563 in August 1998 to 2 186 in May 1999 -- a reduction of around 15%. This represents a significant reduction within such a short period of time. However, the number of remaining licences is large, at least by comparison with the relatively small group of eight OECD Member countries that are able to provide a count of the total number of licences and permits they administer. The average number of licences and permits among this group is 1 829, while two countries - Great Britain and Norway - each have fewer than 350 licences and permits. While some caution is needed in comparing these figures, they nonetheless suggest that the scope for further rationalisation of the structure of licences and permits remains large.

The changes made in this area have clearly had a significant impact. Industry representatives acknowledge a widespread movement from licensing to registration, and from registration to notifications and consequently see a clear diminution in the use of these requirements as a means of limiting competition. While some concerns continue to be expressed about the paperwork burdens and delays involved in obtaining approvals for new start up businesses, there is a clear view that major improvements have occurred.⁵¹

5. CONCLUSIONS AND POLICY OPTIONS FOR REFORM

5.1. *General assessment of current strengths and weaknesses*

Regulatory reform is being pursued in Korea with vigour and determination since the economic crisis in 1997. Considerable progress has already been seen. This outcome owes much to the fact that many important legislative and organisational underpinnings for reform were put in place during the mid-1990s. However, it also reflects the fact that the current Government determined that a programme of radical and comprehensive regulatory reform should constitute one of the fundamental policy responses to the crisis and a key means of restoring economic confidence and growth. The extent of the political commitment is therefore one of the most important strengths of the regulatory reform programme in Korea. Allied to this is the sense of urgency and momentum created by the economic crisis. These two factors are vital to overcome the entrenched interests opposing reform which are necessarily a by-product of the fact that the Korean economy has developed as one of the most interventionist among OECD countries.

The interventionist history provides one of the key challenges for the success of reform. The government's strong push to develop a market oriented economy with strong competitive conditions must overcome resistance from companies in a wide range of industries which profit from various restrictions and interventions and a citizenry that is accustomed to government taking a strong role in a wide range of

social and economic areas. For both groups, embracing the reform agenda will require a significant cultural change. This rarely occurs in the short term, although the background of economic crisis can be expected to encourage acceptance of the need for change. Perhaps more importantly, even prior to the onset of the economic crisis, questioning of the continued effectiveness of the state-led model of economic development was heard from a variety of sources. Moreover, the fact that the regulatory reform programme forms a part of a much larger government reform agenda can be expected to aid its acceptance and speed of implementation.

A strong legislative and organisational basis for reform has now been put in place. The Basic Act on Administrative Regulations establishes procedures for making and reforming regulation that are largely consistent with OECD best practices. The Act provides the basis for the Regulatory Reform Committee, which has been crucial to the success of reform. Other important legislation put in place in the mid 1990s includes the Administrative Procedures Act, which has controlled the use of administrative guidance and other forms of discretion, the Administrative Disclosure Act and the Freedom of Information Act. The establishment of an Ombudsman's office, and the rapid growth in its use as a successful means of challenging and redressing inappropriate administrative decisions have also been of considerable importance. Korean officials believe that this strong legislative base for reform constitutes one reason for confidence that the reform programme will not be wound back or lose momentum as the economic crisis recedes and growth resumes at former levels. A second reason for confidence is, of course, the speed with which economic growth has recovered, leading to a widespread positive perception of the role of the prominent reform programme in achieving this result.

A mixed picture emerges in relation to the degree of strategic orientation of the reform programme. While most of the elements of a quality control system for the development of new regulations are now in place, the strategic orientation of the programme to reform existing regulations has been lacking, with far greater prominence being given to the targets for quantitative reduction in the number of regulations in force than to the identification of key strategic areas for reform. In this regard, the Korean reforms have much in common with the Japanese approach, in which reformers have focused on the number of "items" in the reform programme, rather than on the importance of those items in improving the overall regulatory environment. While the Korean programme incorporates a number of broad objectives at its core, there is a lack of tactical, or operational, mechanisms to ensure their implementation in practice. The focus is instead diverted to more quantitative proxy measures of reform.⁵² The focus of the Korean reform programme is now changing, and the adoption of a quantitative reduction target as the basis for the 1998-99 programme of reforms is explained as a response to the need to "kick-start" a programme of major reform within a short period. The content of the annual reform plans that are developed in the next stages will be important in assessing the extent to which reform has shifted toward qualitative considerations, delivery of efficient social and economic policies, and a sound strategic basis for effective governance.

The Korean government has recognised the importance of establishing capacities for implementation as a follow-up to policy reforms. Its efforts to shorten the time lag between policy change and results include continued political support, monitoring from the centre of government, and establishing a series of working groups in various policy areas. Further attention to development of implementation capacities in a range of areas would accelerate reform results. These include ensuring that commitment to and accountability for the reform programme as a whole, as well as the changes made in particular areas of regulation, are enhanced throughout the administration, including local governments. Moreover, while initiatives have been taken in the areas of recruitment and training, the development of the skills and technical capacities required to implement the new approaches to regulation must remain a high priority.

The regulatory reform programme currently enjoys a significant degree of credibility with a range of important groups in society, including industry, small business and consumer associations. The orientation of the programme toward serving wider social values of economic opportunity, efficiency and responsiveness to the citizen is likely to be a key factor in this, as more narrowly targeted reform programmes generally have less success in generating broad constituencies in their support. For example, the major association representing SMEs in Korea believes that its constituents have benefited from reduced disincentives to entry to many industries and a more supportive policy environment, including better access to resources and opportunities, since the former policy emphasis on supporting *chaebol* development has been wound back. At the same time, it cautions that many SMEs among its membership cannot easily perceive the differences in their operating environments as a result of the massive reduction in the numbers of regulations in force over 1998-99.⁵³ Similarly, representatives of larger business applaud the removal of many regulatory barriers to competition, but express concern over the need to maintain adequate scrutiny and management of new regulation being introduced.⁵⁴ Important NGOs, such as the Citizens' Coalition for Economic Justice, have applauded the reform programme's overall objective of moving toward a more market oriented economic system, while raising concerns that reform should not be judged primarily according to quantitative criteria.

Thus, maintaining and strengthening the support of key groups in society should be an important consideration for the future of the programme. This requires that different groups be able to see the tangible benefits of reform. However, perceptions of the general attitudes to reform manifested by the government are also important. Some industry representatives suggest that changes in the attitudes of government regulators away from a desire to "regulate everything", which they believe has been visible now for several years, is in some respects the most important reform.⁵⁵ Some new research suggests that the level of satisfaction with Government regulatory reform efforts among business groups has risen significantly in recent years and is now at high levels. More than 50% of firms surveyed in one study indicated they were "satisfied" with Government reform efforts, compared with a level of 16% in a study conducted by the same organisation several years ago.⁵⁶ Clearly, the maintenance of this support will be dependent on the momentum of regulatory reform also being maintained, particularly as recovery from economic crisis proceeds and the perceived urgency of reform diminishes.

5.2. Potential benefits and costs of further regulatory reform

The benefits of further regulatory reform in Korea will be considerable. While the progress made since the early 1990s, and in particular since the economic crisis of 1997-1998, is impressive, much remains to be done. The adoption of appropriate objectives for reform and of a wide range of international best practices and principles, provides a sound basis for further reform and should ensure that efforts devoted to implementation will yield significant gains. Recent modelling work undertaken in Korea⁵⁷ using an OECD derived methodology concludes that, over a ten year time horizon, a thoroughgoing programme of reform in five key sectors (electricity, telecommunications, construction, road freight transport and distribution) should yield an increase in GDP of approximately 8.6% and a reduction in consumer prices of 7.2%. These estimates are significantly higher than those calculated for a range of Member countries by the OECD in 1997⁵⁸ a fact attributed by the study's authors to Korea's starting point being one of a heavier regulatory burden resulting from stronger government intervention as part of previous growth strategies.

The rapid recovery of the Korean economy from the economic crisis of 1997-1998 indicates the level of confidence in the adaptability of the economy and society to new challenges and the determination of policy-makers to implement far reaching reforms in order to ensure this adaptation. The completion of the current reform agenda requires significant changes in cultural attitudes and assumptions. While concerns about the continued appropriateness of the "government lead" model of growth have been heard in Korea for some years, there is as yet no broad social consensus in support of the Government's policy of

moving to a market-oriented economy. Fostering the cultural change that such a shift implies is a key challenge for policy. Managing this change to ensure that consumers, small business and others are equipped to protect their interests in a more open and competitive marketplace is essential if unnecessary costs are to be avoided and support for reform is to be maintained and enhanced.

The reform process to date has significantly increased opportunities for participation in the regulatory process by a wide range of groups in society. Nonetheless, this remains a key area in which further benefits are yet to be attained. Increased participation will further reinforce democratic values and improve the quality of information obtained and hence the quality of resulting regulation.

Finally, the move toward a market-oriented model of development necessarily implies a rapid opening of the Korean economy and society. Much change has already taken place at the economic level and this will have wider impacts over time. The impact of globalisation on a society such as Korea's which has historically been relatively less open than many others will be significant and must be taken into account in designing reform policy. As noted above, cultural change is an inevitable requirement.

5.3. Policy options for consideration

Three key challenges for future regulatory reform in Korea can be identified. First, the management interactions between central government bodies and regulating ministries should be made more systematic and predictable. Second, to help sustain reform, improved means should be developed for "institutionalising" the dialogue between government policy-makers and business, labour and civil society organisations. Third, the reform programme should focus more specifically on user oriented measures that consciously address the reform needs of identified major constituencies. To meet these key challenges, the Korean government should consider the following specific steps for future reform:

More systematic interactions between central bodies and regulating ministries.

- ***Adopt principles of good regulation based on those accepted by Ministers in the 1997 OECD Report on Regulatory Reform. Adopt as an explicit principle the requirement that regulation will not be made or retained unless the benefits exceed the costs.***

The regulatory principles in the current regulatory reform programme are clearer and closer to international best practices than those in previous programmes. The inclusion of quality standards for both economic and social regulations is a good step, as is the principle that all regulations shall have a sound legal basis. Yet gaps remain in defining the dimensions of regulatory quality. In particular, although benefit-cost analysis must be carried out before a regulation is adopted, the Korean government does not require that regulations shall only be adopted if costs are justified by benefits. Development of a more complete set of quality principles, able to provide a consistent framework for regulatory actions throughout the public administration, is essential as reform moves into its next phase.

- ***To ensure that a policy supportive of market competition develops, regulatory reform should be based on development of comprehensive sectoral reform plans containing the full set of steps needed to introduce effective competition, followed by rapid implementation and periodic, public evaluation.***

The 1997 OECD Report reads, "Regulatory reform should be guided by coherent and transparent policy frameworks that establish concrete objectives and the path for reaching them... Such programmes will both enhance the credibility of reform, and reduce the costs of reform by signalling to the wide range

of potentially affected interests what is to come. The emphasis on broad programmes is deliberate, since the likelihood of success is increased by including at the outset the full mix of policies needed to gain full benefits of reform".⁵⁹ Korea's quantitative approach to regulatory reform -- based on targets to reduce the number of regulations, but with no clear strategy or endpoint for introducing competition into the sector -- is now evolving into a more results-oriented approach aimed at market performance. This requires that review processes be structured to enhance understanding of interactions between groups of regulations affecting an economic or social sector, having a cumulative and overlapping impact, originating from different agencies or even different levels of government. These linkages are often not analysed..

Priority sectors for reform need to be identified and concrete programmes for achieving the necessary change spelt out. Experiences in other countries demonstrate the effectiveness and speed of comprehensive sectoral plans based on all policy measures needed for results, including regulations but also other forms of intervention such as subsidies, procurement policies, and tax policies. The "reinvention" of sectoral regimes -- based in part on international benchmarks -- allows reformers to consider policy linkages and related measures needed to make reform effective, to package related reforms into a coherent programme, and to reassure market entrants that reform is credible and predictable. Adopting reform steps in law, as opposed to leaving the timing or steps to the ministries, will further strengthen the accountability, credibility, and sustainability of reform.

The comprehensive reform strategy will raise some trade-offs and additional difficulties, however. Moving forward quickly on a broader front may require more attention to design of transitional programmes that reduce opposition to change. And a comprehensive plan will require reformers to cut across a partitioned and segmented government structure, which will increase transactions costs and upfront delays.

- ***To carry out a comprehensive reform strategy, broaden the responsibilities of the Regulatory Reform Committee to include issues of direct relevance to the success of regulatory reform in establishing and protecting market oriented economic policies. Such issues include taxation and subsidies, industrial policies, and regional development policies.***

The work of the Regulatory Reform Committee is central to regulatory reform and should continue while ways of strengthening it are considered. As noted, successful regulatory reform is based on ensuring that market conditions favourable to effective competition are established as widely as possible, while social protections are established and maintained in ways that are as market friendly as possible. Assuring these outcomes requires integrated actions in a range of policy areas that can extend beyond "regulation" traditionally defined. Broadening the responsibilities of the Regulatory Reform Committee would constitute an effective means of reinforcing this policy consistency, while drawing to a greater extent on the expertise of a body that has already proven itself effective in implementing and monitoring large scale reforms.

- ***Review the linkages between regulatory reform policy and administrative reform to ensure adequate co-ordination and a mutually supportive policy environment.***

A significant programme of administrative reform has been underway simultaneously with the regulatory reform effort. Co-ordination between these programmes should be accorded a high priority in recognition of the fact that many reforms require changes to institutions, budgets and personnel in the public sector and that linkages between the programmes can improve the effectiveness of implementation and allow better co-ordination.

- ***Improve the policy foundation for the efficiency, independence and accountability of new independent regulatory agencies by developing guidelines for their systems of governance, policy coherence, working methods, and relations with the competition authority. A, high-level and independent review of these issues would be a useful step.***

Increased attention in Korea to the creation of market-oriented regulatory institutions will improve the legal and administrative environment for competition and business growth. This is even more consequential when new markets are opened in areas formerly reserved to monopolies. However, the Korean government has not prepared any framework for efficiency, accountability, and transparency and, as in most countries, institutions are being developed on an *ad hoc* basis. For example, it may be useful to evaluate the feasibility in Korea of a multi-sectoral regulatory institution to share resources, facilitate learning across industries, reduce the risk of industry or political capture, and deal with blurring industry boundaries. An independent expert group could review the institutional architecture for market-oriented regulation in order to determine if a new harmonised framework would improve efficiency and competition in regulated areas of the economy. Recent experiences in the United Kingdom, where a *Green Paper* was recently prepared,⁶⁰ and the in-depth work done by the inter-ministerial commission of Chile could be models.

- ***Ensure that RIA disciplines are systematically applied to the review of existing regulations planned in the annual programmes of regulatory reform.***

The sunseting requirements established under the BAAR already require, in effect, that RIA disciplines should be applied to future reviews of existing regulation. However, this provision does not cover the annual programmes of regulatory reform being implemented from 1999. There is no apparent justification for this distinction, as the benefits of applying a systematic methodology to annual review programmes are equally great as for sunseting requirements. Methodological consistency between different review mechanisms, as well as between the assessment of new proposals and existing regulation, would clearly be desirable *per se*, and would eliminate possible perverse incentives arising within Ministries in regard to the scheduling of reviews.

- ***Improve quality control mechanisms for RIA by ensuring that all draft RIA are reviewed by an expert regulatory reform body at the centre of the government administration.***

RIA is already subject to an important quality control check via the need for all proposed legislation to be approved by the Regulation Reform Committee. However, a prior requirement to submit draft RIA for review by a reform body within the administration proper would enhance this scrutiny by allowing a more detailed and timely review to be undertaken and drawing more fully on specific analytical expertise within the administration. It would also ensure effective review of lower level rules. Review by such a body is consistent with OECD best practice recommendations for RIA.

Institutionalise a dialogue between government and business, labour and civil society groupings.

- ***Broaden the current membership of the Regulatory Reform Committee to include representation from major Korean civil society groups.***

The current membership of the Committee, including a majority of non-government members, indicates an open and responsive approach to reform policy. However, the rapid development in recent years of a range of civil society groupings, including many with a broad range of policy interests, implies a need to review the breadth of current representation on the Committee. The foreshadowed review of the Committee's restructure during 2000 provides an opportunity to ensure that additional significant strands

of opinion are directly represented on this key decision-making body. Ensuring such representation can be expected to have a directly beneficial impact on the crucial task of ensuring that strong constituencies for reform are developed and maintained. This is essential for the long-term success of regulatory management and reform.

- ***Consider the development of an explicit public consultation strategy aimed at improving the participation of civil society groups in the development and reform of regulation***

Major legislation implemented as part of the reform programme, in particular the Basic Act on Administrative Regulations, already contains significant acknowledgement of the importance of public consultation to the processes of developing and reviewing regulation. However, given the rapid recent development of civil society organisations, consideration should be given to the benefits of an active strategy to promote dialogue on a wide range of government activities. Such an active approach is likely to yield particularly important benefits in the context of the fundamental shift in cultural attitudes which existing government policies on regulatory management and reform presuppose. This can constitute an important part of the process of developing a broad constituency in favour of reform. In particular, consideration might be given to requirements for Ministries to identify explicitly the range of “stakeholders” with whom they should interact on a frequent basis and to a systematic auditing of such interactions.

- ***Reform the Basic Act on Administrative Regulations to require that RIA be released to the public as part of the public consultation process.***

OECD published best practices on RIA stress that “public involvement in RIA is essential to enhance openness and accountability. It is also necessary as a means of ensuring the quality of final RIAs and the decisions subsequently taken”.⁶¹ The BAAR incorporates many of the OECD best practices on RIA, but does not currently require that RIA be released as part of the public consultation process. Public release of RIA makes decision-making more transparent, while providing greater opportunity for affected groups to challenge conclusions and contribute additional or better data.

- ***Focus reform on user oriented programmes which meet the specific needs of identified constituent groups. Prepare and implement a programme aimed at assuring high levels of compliance with regulatory requirements, including development of means of incorporating compliance-friendly design principles as part of regulatory development.***

Adoption of explicit policies on compliance is rapidly becoming more widespread in OECD countries. In a context of continuing regulatory inflation, as well as the adoption of new forms of regulation, a focus on compliance is increasingly being seen as a means of ensuring that regulatory effectiveness is safeguarded or improved. The case for adopting a compliance strategy appears especially strong in Korea, given the widespread recognition of the failings of regulation making and of regulatory enforcement to date in this area. A number of major steps have already been taken as part of the reform programme that can be expected to address the issue at least in part. However, a dedicated compliance strategy is needed to ensure that relevant tools are developed and skills disseminated throughout the administration.

- *Review the success of reform initiatives taken to date to limit and reform the use of bureaucratic discretion, including administrative guidance.*

Changing the form of regulation in order to greatly reduce the degree of administrative discretion and enhance transparency and predictability has, rightly, been a major focus of the reform programme to date. The success of the initiatives taken in this regard, and in particular in eliminating the use of administrative guidance, is a crucial element determining the overall impact of the reform programme. Consequently, measurement of the impact of these initiatives should form a key part of the monitoring of reform. Moves in this direction can be expected to meet strong opposition within the administration, due to the negative impact on the powers of bureaucrats that they imply. Thus, the Government must be ready to take further initiatives to ensure that its objectives are met should this be required.

NOTES

1. Government of Korea (1999), *Djnomics: A new foundation for the Korean economy*, published for the Ministry of Finance and Economy by the Korea Development Institute, p. v.
2. The interventionist role of the state may have been supported by Confucian values emphasising obedience to authority: "It is implicitly accepted that whatever the government does is for the benefit of the society. Under these social values, whatever the government does is assumed to be in the public interest. Even today, many Koreans believe that it is in their interest for private citizens to have the government's blessing to do any kind of business, whether there are specific regulations affecting them or not." Kim Jong Seok (1999), "Korea's Regulatory Reform: An Overview," Hong Im University, mimeo.
3. Kim Pan Suk (1999), "Recent Administrative Reform In Korea: A Case Study of the Kim Dae Jung Administration", paper prepared for the Public Administration and Development Jubilee Conference, St Anne's College, University of Oxford, p. 5.
4. Jones, David Martin (1998), "The politics of economic governance," in Maidment, Richard, *et al.*, eds, *Governance in the Asia-Pacific*, Routledge, London, p. 176.
5. In the first privatisation programme, 11 public enterprises -- including Korean Airlines, Incheon Iron and Steel and the Commercial Bank of Korea -- were sold between 1968 and 1973. A second programme in the early 1980s sold off a further six public enterprises, while in 1987-1989 a plan to sell off the 10 largest and most profitable public enterprises - including Pohang Iron and Steel and Korean Electric Power Corporation - was developed. This latter plan foundered due to the apparent inability of the market to absorb such a flow of new stocks, leading to falls in stock values and negative political consequences. A fourth privatisation initiative was launched by the Kim Young-Sam government from 1993.
6. Government of Korea (1999), *Djnomics: A new foundation for the Korean economy*, p. 67.
7. *Ibid.*, pp. 199-218.
8. *Ibid.*, pp. 1-2.
9. Il Seob Soh (1992), "The Recent Comprehensive Package of Deregulation Policies", August, p. 11.
10. *Ibid.*, pp 12-13.
11. Kim Pan-Suk, 1999, *op cit*, p. 6.
12. *Regulatory Reform in Korea*, 1998, *op. cit.*, p. 1.
13. *Regulatory Reform of Korea*, *op cit*, p. 6.
14. *Basic Act on Administrative Regulations*, Act No. 5368, August 22, 1997. References to this Act are to the English edition, dated June 1999, which includes explanatory and supplementary material.
15. *Ibid.*, pp. 11, 21.
16. Recommendation of the OECD Council on Improving the Quality of Government Regulation, incorporating the OECD Reference Checklist for Regulatory Decision-Making, Paris, 1995.
17. Deighton-Smith, Rex (1997), p. 221.
18. Korean communication to the OECD, May 1999.
19. General Accounting Office (1997), "Agencies' efforts to eliminate and revise rules yield mixed results", p. 2.
20. For example, the Ministry of Public Administration's draft plan went to the RRC three times before approval was granted, communication from the government of Korea, July 1999).
21. Sally Katzen, former Head of the Office of Information and Regulatory Affairs, US OMB (1999).
22. Communication from the Government of Korea, May 1999.

23. According to the OECD Public Management Service, 17 OECD countries establish procedures for making legislation by law, while 16 countries do so for lower-level rules.
24. Basic Act on Administrative Regulations, Article 9.
25. Administrative Procedures Act. Act No. 5241, December 31, 1996.
26. Communication with the Government of Korea, July 1999.
27. *Institutionalization for Sustained Regulatory Reform in Korea*. Office of the Prime Minister, July 1999 (mimeo).
28. OECD (1999), *The OECD Review of Regulatory Reform in Japan*, Paris.
29. OECD (1999), *The OECD Review of Regulatory Reform in Japan*, pp. 160-163 and 179.
30. Data supplied to OECD by the Government of Korea.
31. Kim Pan Suk (1999), *op cit.*, pp. 15-16.
32. "Public Consultation in Regulatory Development: Practices and Experiences in Ten OECD Countries", PUMA/OECD, 1994.
33. *Lawdrafting in Korea*. Paper prepared by Ministry of Legislation for meeting with OECD officials, Seoul, 12 July 1999, mimeo, p. 1.
34. Seminar with academic regulatory reform experts & OECD review team, Seoul, 7 July 1999.
35. *The State of Regulatory Compliance: Issues, Trends and Challenges*, p. 46. Official document (limited availability), discussed at the meeting of the Public Management Committee's Working Party on Regulatory Management and Reform, Paris, June 28-29, 1999.
36. See *The OECD Review of Regulatory Reform in the Netherlands*, OECD (1999), Paris.
37. The following section draws from *Environment Protection in Korea*. Ministry of Environment (1997), pp. 130 - 143 and from discussions with officials of the Ministry in Seoul, July 12, 1999.
38. OECD (1997), *OECD Environmental Performance Reviews: Korea*, Paris, p. 133.
39. Examples include antifreeze, fluorescent lamps, chewing gum, disposable diapers, insecticides, butane gas products and cosmetics.
40. *Environmental Protection in Korea, 1997, op cit.*, p. 142.
41. *OECD Environmental Performance Reviews: Korea, op cit.*, p. 134.
42. OECD (1997), *OECD Environmental Performance Reviews: Korea*, Paris, pp. 140-141.
43. OECD (1997), Paris.
44. OECD (2000), *The OECD Review of Regulatory Reform, Regulatory Reform in Denmark*, "Background Report on Government Capacity to Assure High Quality Regulation", Paris.
45. *Institutionalisation for Sustained Regulatory Reform in Korea. Ibid.*
46. Meeting with officials of the Office of the Prime Minister, Seoul, 9 July 1999.
47. Korean communication to OECD, May 1999; *Institutionalisation for Sustained Regulatory Reform in Korea, op cit.*, Section 2.3.
48. *Report by the Public Management Service of the OECD on Regulatory Impact Assessment in New South Wales*. PUMA/OECD. Published by the Regulation Review Committee, Parliament of New South Wales, Report No. 18/51, January 1999. See especially pp. 38-40.
49. Korean Government communication to the OECD, May 1999.
50. Data for March 1998, drawn from the OECD Regulatory Indicators Database.

51. Meetings with the Federation of Small and Medium Enterprises and the Korean Federation of Industry, Seoul, 8 July 1999.
52. See *The OECD Review of Regulatory Reform in Japan*, pp. 153-155.
53. Meeting with officials of the Korean Federation of Small Business, Overseas Co-operation Team, Seoul, July 8, 1999.
54. Meeting with officials of the Federation of Korean Industries, Seoul, 8 July, 1999.
55. Meeting with officials of the Korean Federation of Small Business, *op cit.*
56. Study by the Business Research Team, Korean Chamber of Commerce and Industry. Unpublished at the time of writing. Cited by officials of the Federation of Korean Industries.
57. *The Economy-Wide Effects of Regulatory Reform in Korea*, Regulatory Reform Committee, Korean Institute for Industrial Economics and Trade, October 1999 (not yet published).
58. See OECD (1997), *The OECD Report on Regulatory Reform*, *op cit.*, Vol. 2, Chapter 1.
59. OECD (1997), *The OECD Report on Regulatory Reform: Synthesis*, p. 38.
60. DTI (1998), *A Fair Deal for Consumers. Modernising the Framework for Utility Regulation*.
61. OECD (1997), *Regulatory Impact Analysis: Best Practices in OECD Countries*, *op cit.*, Paris, p. 220.