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The Role of Law in Korean Economic Development

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INTRODUCTION

Part I . Historical Perspective of Korean Economy and Law

1. Economic Development and Growth in Korea

Korea has achieved astonishing economic growth, with the implementation of six consecutive five-year economic development plans, starting from 1962. According to data of the year 2007, Korea's national per capita income has grown to over 20,000 U.S. dollars and also its annual trade to 730 billion U.S. dollars. Major commodities of export have changed to industrial products and heavy chemical goods from agricultural products and light industry goods; heavy chemical goods constitute 83.1 per cent of whole exports while light industry goods 9.3 per cent and agricultural goods only 1.1 per cent, according to 2005's data.

Korea had suffered great economic dislocation such as shortage of resources and inflation in the early stage of development, due to abrupt severance of economic ties with Japan and North Korea and destruction of infrastructure during the Korean War. Export was at a very low level, so the government used aid funds to import undersupplied goods and maintained high tariff barriers to mitigate extreme foreign exchange shortage. Moreover, a system of multiple exchange rates was implemented to alleviate the shortage. Fear of economic crisis began to rise among the people as U.S. aid in forms of direct cash started to decrease after 1957.

President Park Chung-Hee, who took over the control of the government by military revolution, successfully transformed Korean economic structure into an export-oriented rapid-developing economy by establishing a powerful and comprehensive industry-centered export aid system. In the 1960s. The government tried to maintain competitive export price by implementing reforms such as unifying exchange rates by the reform of 1964 and 1965. The government also established a comprehensive export support system by providing low interest loans, preferential tax rates and powerful administrative support. Timely accession to the GATT in 1967 made it easier for Korea to enter into markets of GATT members. The government restricted imports while fostering production of alternative national goods by setting trade barriers including tariff rate averaging 40 per cent. As a result, a fast economic growth owing mainly to labor-intensive light industries was achieved. However, the trade balance was aggravated due to heavy foreign reliance of raw materials. The government also tried to secure government income by establishing the National Tax Service in 1966.

Korea underwent oil-shock twice in 1970s, and the government prevented chain reaction bankruptcies of enterprises by freezing private loans in 1972. At the same time, it began to invest in heavy chemical industry to be the future of exportation. For selected industries, the government offered great privileges to foster production of alternative national goods. Also, the government threw in intensive financial policies, provided tax favors and established heavy chemical industrial complexes. However, overinvestment and stagnation of the world economy led to

mass-production of internationally noncompetitive heavy chemical enterprises. Although the rate of economic growth stayed high thanks to the development boom in the Middle-East, Korea suffered from inflation running over 20 per cent per year, owing to government overexpenditure, and increase in foreign capital induction gave rise to chance of foreign loan crises.

In order to overcome problems related to heavy chemical industry investment in the 1970s, the government promoted liberalization of imports, carried out industrial reconstruction, abandoned the policy of fostering selected industries and took a new policy of indirect support system in the 1980s. More specifically, the government encouraged competition while helping enterprises to develop new technology and its human resources, ultimately rationalizing the industries. Import liberalization plan, import liberalization rate rose up to 95 per cent in 1988. Apart from the liberalization, most of existing export-aid policies were also abolished. The retrenchment in government spending which lasted for a considerable period of time in the 1980's led to a sound financial situation, and annual inflation rate decreased to 2.8 per cent between 1983 and 1987, stabilizing market prices.

In 1980s the government liberalized and fostered foreign direct investment (FDI). FDI intensified competition among enterprises and promoted industrial sophistication by introducing new foreign technologies. The FDI liberalization began in 1981, and by 1985 the liberalization rate reached 75 per cent. In 1989, export duty imposed on FDI establishments

was abolished, maximizing FDI liberalization. Along with FDI, overseas direct investment (ODI) was also strongly encouraged. In the Mid 1980s, current account surplus fostered ODI liberalization. ODI was seen as a useful tool to expand overseas, to overcome overseas trade barriers and to acquire foreign technologies. In the mid-1980s, heavy chemical industries, which suffered insolvency in the 1970s, led the era of fast-growing export owing to the 'three-low boom'. Such change in the industries was also attributable to their own efforts to survive and improvement in export conditions.

Starting from the mid- 1980s Korea finally escaped chronic current account deficit and achieved a surplus. Such developments brought international pressure to graduate from privilege of Article XVIII (B) of GATT. Korea had to give in to this international demand by decreasing tariffs and intensifying import liberalization. Such measures of import liberalization were included in the negotiations of tariff concessions in the Uruguay Round. The average rate of tariff concession was dramatically reduced from 18 per cent to 8.3 per cent. Along with these changes, Korea joined the Organization for Economic Cooperation and Development in 1996, which roughly symbolized that Korea entered the league of developed countries. As a member of the OECD to promote a market economy, establish a pluralistic democracy and construct a society respecting human rights, Korea made considerable changes to related economic policies. It established a market economy led by private citizens, privatized the economy to raise efficiency and reduced government aid which contradicted the free market system.

However, from late 1980's to the financial crisis in 1997, labor-management disputes surged and wages dramatically increased due to the Declaration of Democratization of 1984. Combined with appreciation of Won in Won-dollar rates, competitiveness in exports greatly decreased which led to extreme current account deficit, 4.1 per cent of the Gross Domestic Product in 1996. Also, ignoring absence of financial supervision and institutional safety devices, the government executed liberalization of foreign exchange and capital which led to great rise in short-term foreign loans and failure to maintain sound foreign currency reserves. For instance, the foreign currency reserve of late 1996 was \$33.2 billion, which was only 2.7 months worth of total imports and 44 per cent of short-term foreign loans.

In 1997, Korea was hit by financial crisis which was originally erupted in Asia, but was able to overcome the crisis in relatively short time by receiving aids from the International Monetary Fund which was led by the U.S. Korea reduced foreign exchange demand and prevented outflow of capital by executing high interest policy in the early stage of the crisis. The implementation of a more expansionary currency policy, and reconstruction of monetary circulation and enterprises helped retrieving credibility from foreign investors. Korea achieved 9.5 per cent and 8.5 per cent GDP growth rate in 1999 and 2000 respectively. Decrease in capital investments contributed to great reduction in imports, which ultimately led to high current account surplus in 1998-1999. At the same time, Korea began to seek ways to increase efficiency in welfare system and to decrease poverty, in order to solve social conflicts resulting from

fast economic growth and to achieve social unification. Also, Korea, as a small open economy, has been exerting great efforts to make full use of recent regionalization of the world economy by attempting to engage in free trade agreements and to establish globalization. Starting with Chile in early 2000, Korea has concluded free trade agreements with Singapore, EFTA, ASEAN and the U.S. However, an FTA between Korea and the U.S. is waiting for ratification in order for it to be effective.

Korea's economic development can be summarized as following: In the 1960's Korea achieved fast economic growth mainly from export by government's comprehensive export aid system. In the 1970s Korea failed to foster internationally competitive heavy chemical industries. In the 1980s, learning from the previous failure, Korea began liberalization of imports, reconstruction of industries, introduction of competition, and transformation from direct aid to indirect aid system. From the mid-1980s Korea achieved current account surplus which accelerated imports liberalization. In the late 1990s Korea underwent financial crisis, but overcame the crises by reforming corporate governance. In the 2000s, as multilateral free trade made slow progress under the World Trade Organization, Korea attempted to engage in more free trade agreements and has achieved bilateral open economy with a number of countries including the U.S.

2. Economy as Provided in the Korean Constitution

The Constitution is the highest law in Korea and forms the basis of the legal system including national policies. Korea's economic policies

and their implementations must ultimately have their legal basis in the Constitution. In this respect, in order to understand the roles of laws in Korea's economic development, one should observe the constitutional provisions related to the economy. Various provisions concerning the economy were first established in the original Constitution of 1948, and then substantially revised through the second amendment of 1954, the fifth amendment of 1962 and the ninth amendment of 1987.

The original Constitution of 1948, which was largely influenced by the Weimar Constitution of Germany, guaranteed the private property system, but at the same time enabled the State to practice considerable regulation. Its Article 84(1) prescribed the goal of Korea's market system as "realization of social justice and balanced development of national economy." Article 84(2) established imposition of restrictions on national economic activity as a principle by stating that "people's freedom of economic activity is limited to achieve the purpose referred to in paragraph (1)." These articles suggest that the original Constitution intended to build an economic system based on revised capitalism with some socialist styled elements. Specific clauses to confirm the view were as follows: "natural powers available for economic use are State-owned", "quasi-public enterprises are State-owned or public-managed", "private enterprises can be state-owned or public-managed if required by national security or urgent national need", and "foreign trade is under State's control".

However, the socialist-like economy system of the original Constitution was transformed into the liberalistic economy system by the second amendment of 1954. Even though the economic goals prescribed in

Article 84(1) stayed unrevised, other revisions suggested the change: “licenses to exploit, develop or utilize natural powers available for economic use may be granted for a period of time” rather than State-owned in principle, “quasi-public enterprises shall be private-owned in principle” rather than State-owned in principle, and “foreign trade is under State’s control according to the conditions as prescribed by Act”, which implied free foreign trade as a principle.

The fifth amendment of 1962 stated the main economic principle of the Constitution as “respect for the freedom and creative initiative of enterprises and individuals in economic affairs”, which clearly confirmed the liberalistic economy system. However, Article 84(1) of the original Constitution which stated the goal of economic order as “realization of social justice and balanced development of national economy” stayed put. There were also minor additions such as the ‘prohibition of tenant farming’ and the ‘establishment of the National Council for Economy and the Sciences to foster foreign trade and achieve development of national economy and science’.

The articles related to the economy now in force, which was the result of the ninth amendment of 1987, consist of a principle clause and specific clauses to concretize the principle. The principle clause, which is located in the preamble, declares that State should afford equal opportunities to every person and elevate the quality of life for all citizens, representing the modification of traditional capitalism. This declaration is specified in Article 119: (1) the economic order of Korea should be based on a respect for the freedom and creative initiative of enterprises and individuals in economic affairs; (2) the State may regulate

and coordinate economic affairs in order to maintain the balanced growth and stability of the national economy, to ensure proper distribution of income, to prevent the domination of the market and the abuse of economic power, and to democratize the economy through harmony among the economic agents. According to this Article, the freedom of economic activity is guaranteed by the first paragraph, but it can be restricted for public necessity by the second paragraph. In another word, Korea's economic order is based on free-market economy but permits regulation in order to prevent contradiction inherent in the system and to afford social welfare and justice. In short, the Constitution now in force prescribes the economic order to be a social market economy. The Supreme Court and the Constitutional Court of Korea also agree with this view. Since a social market economy is based on the capitalism and free-market economy, the regulation for public necessities must have an independent legal ground.

The details of the provisions related to the economy in the current Constitution in force are as follows. First, licenses to exploit, develop or utilize minerals and all other important underground resources, marine resources, water power, and natural powers available for economic use may be granted for a period of time under the conditions as prescribed by Act, as provided in Article 120(1) of the Constitution. The MINING INDUSTRY ACT, the FISHERIES ACT, the ELECTRIC UTILITY ACT, and the PUBLIC WATER MANAGEMENT ACT were legislated to prescribe such conditions.

Second, the land and natural resources should be protected by the State, and the State should establish a plan necessary for their balanced

development and utilization, as provided in Article 120(2) of the Constitution. Acts such as the FRAMEWORK ACT ON THE NATIONAL LAND, the NATIONAL LAND PLANNING AND UTILIZATION ACT and the FARMLAND ACT were legislated to carry out the constitutional request.

Third, the State should endeavor to realize the land-to-the-tillers principle with respect to agricultural land, and tenant farming would be prohibited, as provided in Article 121(1) of the Constitution. However, the leasing of agricultural land and the consignment management of agricultural land to increase agricultural productivity and to ensure the rational utilization of agricultural land or due to unavoidable circumstances should be recognized under the conditions as prescribed by Act, as provided in Article 121(2) of the Constitution.

Fourth, the State may impose, under the conditions as prescribed by Act, restrictions or obligations necessary for the efficient and balanced utilization, development and preservation of the land of the nation, as provided in Article 122 of the Constitution. Acts such as the FRAMEWORK ACT ON THE NATIONAL LAND, the NATIONAL LAND PLANNING AND UTILIZATION ACT AND FARMLAND ACT were legislated to prescribe such conditions.

Fifth, the State should establish and implement a plan to comprehensively develop and support the farm and fishing communities in order to protect and foster agriculture and fisheries, as provided in Article 123(1) of the Constitution. Acts such as the FRAMEWORK ACT ON AGRICULTURE AND RURAL COMMUNITY, the AGRICULTURE COOPERATIVES ACT and the FISHERIES COOPERATIVES ACT were legislated to perform the constitutional duty.

2. Economy as Provided in the Korean Constitution

Sixth, the State should protect and foster small and medium enterprises, as provided in Article 123(3) of the Constitution. Acts such as the FRAMEWORK ACT ON SMALL AND MEDIUM ENTERPRISES, and the SMALL AND MEDIUM ENTERPRISES COOPERATIVES ACT were legislated to serve the duty.

Seventh, the State should guarantee the consumer protection movement intended to encourage sound consumption activities and improvement in the quality of products under the conditions as prescribed by Act, as provided in Article 124 of the Constitution. Acts such as the PRODUCT LIABILITY ACT and the CONSUMER PROTECTION ACT were legislated to carry out the duty.

Eighth, the State should foster foreign trade, and may regulate and coordinate it, as provided in Article 125 of the Constitution. Acts such as the FOREIGN TRADE ACT were legislated to serve the duty.

Ninth, private enterprises should not be nationalized nor transferred to ownership by a local government, nor should their management be controlled or administered by the State, except in cases as prescribed by Act to meet urgent necessities of national defense or the national economy, as provided in Article 126(1) of the Constitution.

Tenth, the State should strive to develop the national economy by developing science and technology, information and human resources and encouraging innovation, as provided in Article 127(1) of the Constitution. Acts such as the FRAMEWORK ACT ON SCIENCE AND TECHNOLOGY were legislated to carry out the duty.

Eleventh and the last, the State was to establish a system of national standards, as provided in Article 127(2) of the Constitution. Acts such as the FRAMEWORK ACT ON NATIONAL STANDARD and the INDUSTRIAL STANDARDIZATION ACT were legislated to carry out the duty.

It is rare for a liberal democratic country to create provisions governing the economy separately from provisions on fundamental rights in establishing its constitution. In this respect, the Constitution of Korea has a unique character of having nine articles related to the economy, in a whole independent chapter devoted to that purpose. However, there also exists critical views, asserting that those provisions may rather obstruct sound economic development. These views recently provoked an argument whether to abolish such provisions, so it is worthy of paying attention to whether and how these articles would be amended.

Note of Explanation

In this paper, ten areas of law related to economic development in Korea are discussed in accordance with the time-period from the independence in 1945 until the present. However, every aspect in the ten areas of law are not discussed because it would be beyond the authors' competence considering the time and efforts to be given for this paper. Thus, one of the most significant aspect in each area of law is analysed as follows: first, laws governing the government; second, IP law in laws governing property rights; third, laws relating to business governance; fourth, labor law in laws governing production factors; fifth, foreign trade laws; sixth, laws relating to industrial policy; seventh, laws governing financial sector; eighth, competition law in laws governing private economic activity; ninth, laws on dispute settlement; and tenth, legal system of economy towards North Korea. The number of laws analysed in this paper is over eighty as found in the appendix.

Part II. Legal System in the Early Years of the Republic of Korea (-1960)

1. Economic Situations and Policy Needs for Legal Changes

Timeline

1945	8.15 restoration of national independence
1947	formation of the United Nations Temporary Commission on Korea
1948	5.10 general election; formation of the first government
1950	the Korean War
1953	the Armistice Agreement; the first currency reform according to the EMERGENCY MEASURES ON CURRENCY ACT
1960	4.19 revolution; formation of Chang Myeon Cabinet

On August 15, 1945, Japan was defeated and a new government was formed by 1948 in Korea. Korea's economy had to depend on foreign aids from countries such as the U.S. after being attacked by North Korea in 1950. For example, financial aid from the U.S. for eight years between 1954 and 1961 reached 2.1 billion dollars, which is nearly 15 per cent of 13.9 billion, the GNP of the same period. Industrial equipment ruined by the war were mostly restored to the level before the war, but constant GNP was 1.9 billion dollars and the national per capita income was only 79 dollars. Nearly 35 per cent of Korea's finance (average of 1961-1965) and 73 per cent of the national defense expenditure was still covered by U.S. financial aid.

Korea could not produce the daily necessities of its populace, and thus had to solve the shortage problem through imports. On the other hand, Korea's exportation was limited to certain minerals such as tungsten. Before 1960, Korea's industrial policy was production of alternative national goods. Accordingly, industries which were once import-dependent, such as sugar manufacturing, milling, raw cotton, cement and clothing, were fostered. By 1960, national production of nondurable goods was almost complete.

Around 1958, once the economy seemed to stabilize, the First Republic drafted a Three-Year Plan for Economic Development. This plan was to be put to action from 1962 but was faltered due to 4.19 student uprising in 1960. This plan was the first independent and comprehensive economic development plan concerning Korea's economy. Development objectives of economic growth, investment, employment and balance of international payment were suggested in this plan, and it greatly affected the drawing up of future development plans. The Second Republic, formed as a result of 4.19 student uprising of 1960, turned to a change in policies as a remedy for the difficult economic state. As a result, the government replaced price stabilization policy that had been promoted since the First Republic with economic growth policy. However, owing to political warfare and social confusion caused by absence of national leadership, it was hard to anticipate a consistent development plan for the economy. The social disruption and confusion, in result, triggered the 5.16 military revolution.

2. The Areas of Law with Major Changes

1) Laws governing the government including administrative law

(1) Development of Laws on Government Organization related to the Economy

a) The Economic Planning Bureau, The Ministry of Finance

With the establishment of the independent Korean government of 1948, The Bureau of Planing (later the Economic Planning Bureau) and the Ministry of Fiance was created to act as the central pillars of the governmental organization in the area of economy. The ministry of finance was in charge of national tax policy, maintenance of the national treasury, government accounting, circulation of currency and foreign currency and exchange policy and execution. These organizations, with their strong initiative and authority, played a central role in Korea's rapid and compressed economic development.

b) The Ministry of Resources, The Ministry of Resources and Energy, The Ministry of Commerce and Industry, The Ministry of Commerce, Industry and Energy

Although there were many changes in organization of ministries related to resources and industry, from the establishment of the government in 1948 to 1977, Ministry of Commerce and industry retained its organization and exercised jurisdiction over matters of commerce, trade and industry.

c) The Ministry of Construction, The Ministry of Transportation, The Ministry of Construction and Transportation, The Ministry of Maritime Affairs and Fisheries

Later to be evolved into many other organizations, the Ministry of Construction had its roots in the Ministry of Reconstruction established in 1955, and later to be incorporated into the Ministry of Construction and Transportation. The Ministry of Transportation was in existence from the very early stages of government organization in 1948, and later incorporated into the Ministry of Construction and Transportation.

2) Laws governing property rights including IP laws

(1) The Establishment of the IP Laws

After the annexation of the Korean peninsula by Japan in 1910, Japanese rules on industrial property rights, including patents, were imposed in Korea. After the liberation from Japanese rule, from 1946 on, the American military administration issued order no. 91 to covering the field. However, the regulation was a temporary and all-encompassing measure regulating patents, utility model, and establishment of offices to administer the process as well. In 1961, separate legislations for patent, utility model and industrial design were adopted; ACT ON PATENT ATTORNEY was also adopted to regulate attorneys providing legal aid related to industrial property.

Moreover, in 1958, the ACT ON PROTECTION OF INVENTION was created to promote interest in inventions in a then largely agrarian economy, but the Act became a dead letter, was replaced by the ACT ON PROMOTION OF INVENTION in 1994. In 1964, the UNFAIR COMPETITION PREVENTION ACT was adopted to prohibit incursion on business interest of others. The Act was extended to include prohibition of incursion on business confidentiality, and thus was renamed UNFAIR COMPETITION

PREVENTION AND TRADE SECRET PROTECTION ACT.

(2) Enactment of the COPYRIGHT ACT of 1957

a) Background on Adoption of the COPYRIGHT ACT of 1957

The concept of copyright was introduced to Korea in late 19th century, as advanced western institutions were then flowing into the country. In 1908, an imperial decree was issued to impose Japanese copyright regulations in Korea. After the annexation of Korea by Japan, on August 29, 1910, a decree was issued by the Japanese authority to impose Japanese copyright law, and it stayed in force throughout the Japanese colonial rule, the American occupation of Korea and even after the establishment of an independent Korean government. On January 28, 1957, a Korean COPYRIGHT ACT was finally enacted.

b) Main Elements of the COPYRIGHT ACT of 1957

The main elements of the Act upon introduction were as follows: First, definition of copyright and copyright holder was illustrated. Registration of copyright to provide protection against third-party incursion, and extension of copyright to natural duration of holders' life and 30 years after death. Concerning copyright of foreigners, the Act, for all practical purposes, denied protection by stating that unless there exists a treaty to regulate otherwise on the matter, the first domestic publisher of the copyrighted material should be protected. Since Korea did not sign any bilateral agreements or multilateral instruments, this provision, in reality, implied that foreign copyright was not protected. If the Act lacks specific provisions to counter certain type of incursion, provisions of the CIVIL ACT and other regulations should be applied. If a bona fide, non-

negligent person gained profit by incursion of copyright, present enrichment was to be returned. Use of phonograph, recordings, films and others in broadcasting was designated as “non-incursions”, thus allowing unlicensed use.

3) Laws governing production factors including labor law

(1) The First Constitution of 1948

The establishment of the Korean government in 1948 marked an watershed in the formation and development of its labor laws. The 1948 Constitution, proclaiming the idea of a welfare state and securing basic labor rights, shaped the basis of labor legislation founded on modern principles of labor laws. Article 17 of the Constitution was the basis for labor legislation with regard to individual labor relationship as it provided that workers' rights and obligations as well as the standards of working conditions should be determined by law. It also provided that female and minor workers should be given special protection. Further Article 18 provided the foundation for collective labor relationship by stating that workers' right to association, collective bargaining and collective action should be protected as prescribed by law. In particular, Article 18 recognized workers' right to equal allotment of profits in private enterprises aimed at profit-making, but it became meaningless since no laws were enacted to materialize it.¹⁾

1) Article 18 of the First Constitution stipulated that “Workers have the right to equal allotment of profits as prescribed by Act in private enterprises aimed at profit-making.” The right to equal allotment of profits was included in the Constitution, first, to reflect the current of the then ideology of social democracy proclaimed by Constitutions of each country enacted after the end of the Second World War, and second, to reflect the interests of workers strongly demanding participation in the process of managing

(2) Enactment of the Four Labor Laws of 1953

In 1953, 5 years after the adoption of the First Constitution, the four labor laws, namely the LABOR UNION LAW, the LABOR DISPUTES ADJUSTMENT ACT, the LABOR RELATIONS COMMISSION ACT and finally the LABOR STANDARDS ACT were enacted. The former three laws were promulgated and enforced on March 8, 1953, and the last-mentioned Act was promulgated on May 10 and put into force after 90 days from the promulgation date.

The purpose of the LABOR STANDARDS ACT was to set the standards for the conditions of labor in conformity with paragraph 1 of Article 32 of the Constitution, thereby securing and improving the living standards of workers and achieving a well-balanced development of the national economy. The essential contents of the Act covered the following. First, a labor contract which did not meet the standards provided for in this Act should be null and void to that extent. Second, an employer should clearly state remuneration, contractual working hours and other terms of employment. Third, the Ministry of Social Affairs²⁾

and disposing the Japanese property after the defeat of Japan. (Hyung-Bae Kim, Labor Laws, 40 Years of Labor Economy, Korea Employers Federation, 1989, pp. 69-70; Ministry of Labor, History of Labor Administration, Part 3 Protection Policy of Employees, 2006, p. 23 [, , 40 , , 1989 , pp. 69-70; , 3 , 2006 , p. 23]). The provision, however, was deleted in the Third Republic's Constitution taking effect on December 26, 1962.

2) Article 1 of the first Regulation on Organization of the Ministry of Social Affairs (Presidential Decree No. 25, November 4, 1948), enacted after the establishment of the Korean government in 1948, specified that "The Ministry of Social Affairs is in charge of affairs relating to health, welfare, labor, housing and women." The Ministry in February, 1955, was integrated with The Ministry of Health to reorganize as the Ministry of Health and Social Affairs.

could determine the minimum wage for workers engaged in certain businesses or occupation, upon approval of the Labor Relations Commission. Fourth, the standard of working hours per day is 8 hours and that of per week was 48 hours. But it would be 60 hours per week if the parties concerned reached agreement and be extended upon approval of the Ministry of Social Affairs if special circumstances existed. Fifth, other than the person with an employment permit issued by the Ministry of Social Affairs should not be employed as a worker, and no employer should employ a female or those under the age of 18 for hazardous and dangerous work in terms of morality or health. Sixth, for a worker who suffered from an occupational injury or disease, an employer should provide not only necessary medical treatment at his own expense or bear corresponding expenses, but also compensation for the suspension of work during the period of medical treatment. Seventh, to ensure the standards of the conditions of labor, a labor inspector should be placed in the Ministry of Social Affairs, special metropolitan cities, Provinces, Si and Gun.

The purpose of the LABOR UNION ACT was to improve the economic and social status of workers by protecting and fostering trade unions' movements through substantially securing of the workers' rights of autonomous association and collective bargaining. For achieving this aim, the Act stipulated the principle of free organization of trade unions, guarantee of external autonomy and internal democracy of trade unions, approval of union's right of collective bargaining and assurance of conclusion of collective agreement, normative effect and extended effect of collective agreement and prohibition of employer's unfair labor practices.

(3) Evaluation

The basic labor relations laws adopted in 1953 were not formulated based upon actual circumstances of the Korean labor relations nor thorough examination and research of foreign legal system, but a mere indiscriminate imitation of the Japanese labor laws. To be exact, the collective labor laws mirrored the Japan's revised Labor Union Law of 1949, and accommodated the principle of free organization of trade unions, guarantee of autonomy and democracy of trade unions, self-determined collective bargaining and independent adjustment of labor disputes. Moreover, the Labor Standards Act incorporated forward-looking legislation in terms of its content by accepting the Japanese labor standards, but its implementation was not properly carried out because of the discrepancy prevailing between the law and the realities in the market. In fact, while the Korean labor laws stood on the basis of the continental law system with respect to the general structure, especially in the legal theories concerning labor contract and collective agreement, the American labor system was encompassed as well, resulting in a compound legal system. The Japanese labor laws were also greatly influenced by the American labor law system under the jurisdiction of the U.S. military after the war. The American systems which Korea accepted through Japan included unfair labor practice, cooling-off period of labor disputes, adjustment system by the Labor Relations Commission and the establishment of the Labor Relations Commission. As Korea, without sufficiently undergoing the stream of modern labor movements, incorporated the fundamentals and the system of labor law historically advanced in developed capitalistic countries uncritically, the Korean labor

law system could not correspond with the social environment nor maintain legal effectiveness.³⁾

4) Laws governing market access including foreign investment

After her independence, Korea executed her foreign trade policy by military administration statutes, Presidential Decrees, public notifications of the Ministry of Commerce and other temporary administrative orders without legal grounds. Which means, until then foreign trade administration was based on the military administration's Decree No. 149 (August 25, 1947) during military administration and the Presidential Decree No. 324 (April 10, 1950) after the establishment of the Korean government. However, these laws contained many contents which did not reflect the reality. Moreover, even though notices and public notifications occasionally proclaimed and enforced by the Ministry of Commerce were the substantial basis for foreign trade administration, these partial change of circumstances caused continuous alterations and abolitions leading to chaos in trade administration. Accordingly, the necessity for legislation increased in order to establish foreign trade system and to create basis for foreign trade administration. The TRADE ACT was accordingly enacted on December 13, 1957 as Act No. 460.

The aim of the TRADE ACT was to institutionally guarantee the unification of foreign trade administration, to ensure fairness, totality and accuracy in foreign trade plans and other matters by constituting the Korea Trade Commission as an influential consultative body, and to

3) Ministry of Labor, History of Labor Administration, Part 4 Labor Relations Policy, 2006, p. 27; Ministry of Government Legislation, Fifty Years of Legal History of Korea, 1999, p. 1990 [, 4 , 2006 , p. 27; , 50 (), 1999 , p. 1990 .].

legislate the prohibition of imports from the communist bloc. The essential contents were as follows. First, the Korea Trade Commission was organized under the Ministry of Commerce. Second, exports and imports from the communist bloc were prohibited. Third, exporters and importers were required to fulfill certain qualifications, and to register themselves to the Ministry of Commerce according to the Ordinance of the Ministry of Commerce. Fourth, the government was allowed to provide subsidy on exports according to a presidential decree or take other necessary measures on goods that needed promotion in export.

Through the fifth amendment of the Customs Law, customs duties were charged evenly regardless of whether it was consumer goods or producer goods were changed to incorporate the industry-protective standpoints. The method of confirming customs value based on the inverse calculation of market price uniformly was converted to the foreign exchange customs system from 1960 to reflect the actual price of import goods purchased with different foreign currencies.

5) Laws governing to industrial policy

The Japanese civil law was applied in Korea until the Commercial Act, which was declared by the National Supreme Council for Reconstruction on 10 January 1962 and was proclaimed on 1 January 1963.

6) Laws governing financial sector including securities market

(1) Enactment of the BANKING ACT of 1950

The BANKING ACT was enacted on 5 May 1950, consisted of 9 chapters including general provisions, capital stock and reserves, banking

operations, prohibited matters, banking business regulations, reserves and reserve assets for deposits, inspection, financial statements and *etc.* The purpose of legislation was identical to that of the BANK OF KOREA ACT which was proclaimed on the same day. these two Acts having a complementary structure. In fact, significant provisions under the BANKING ACT reconstituted those of the BANK OF KOREA ACT governing main functions and authorities of Monetary Board, Office of Bank Supervision *etc* under the latter.

According to the Act, financial institutions should be established as legal persons, and they would be established with the authorization by the Monetary Board upon the recommendation of the Director of the Office of Bank Supervision of the Bank of Korea. Second, in case of either liquidation or bankruptcy of a financial institution, the Director of the Office of Bank Supervision of the Bank of Korea or one of his deputies would be designated as liquidator or trustee in bankruptcy. Third, no financial institutions could invest in debentures or other negotiable instruments with maturities exceeding three years in excess of 20/100 of acceptance of demand deposit. Fourth, any financial institution intending to engage directly in business other than banking business should first obtain the authorization from the Monetary Board or the Director of the Office of Bank Supervision of the Bank of Korea. Fifth, the Director of the Office of Bank Supervision of the Bank of Korea would be responsible for the periodic inspection of financial institutions.

(2) Enactment of the BANK OF KOREA ACT of 1950

The BANK OF KOREA ACT was enacted on 5 May 1950 in order to maintain the stability of the value of money for the development of the

national economy and to ensure the economic development and efficient utilization of national resources by operating the nation's banking and credit system in a sound manner and improving the functions thereof. The main issues were as follows. First, the 1,500 million Won capital of the Bank of Korea would be invested by the government. Second, the Monetary Board would be established in the Bank of Korea and shall, within the purview of the provisions of this Act, formulate policies for monetary, credit, and foreign exchange, and be responsible for the general direction and supervision of business, the management, and business management of the Bank of Korea. Third, the Bank of Korea should have the sole right to issue currency within Korea and could accept and hold deposits on behalf of banking institutions operating in the Republic of Korea. Fourth, the Bank of Korea could conduct credit loan transactions with financial institutions operating in Korea.

7) Laws on dispute settlement including courts, arbitration and mediation

(1) The First Constitution of 1948

The independence of the judiciary was guaranteed by the Constitution of Korea adopted on July 17, 1948. The Court Organization Act, enacted the following year, paved the way for building a modern legal system based on the three-tier and three-instance structure. The Korean Constitution underwent several amendments that were translated through the revision of the Court Organization Act. However, the three-tier and three-instance system remained intact. The Supreme Court as the highest court of the State, and the high courts and district courts were composed as well. The Constitution and the COURT ORGANIZATION ACT required the courts

to render judgments in civil, criminal, administrative procedures and election lawsuit. The adjudication on the constitutionality of laws was under the jurisdiction of the Constitutional Committee. The fundamentals determined by the First Constitution formed the basic structure of the Korean court system.⁴⁾

(2) Enactment of the COURT ORGANIZATION ACT of 1949

Through an arduous process of President's refusal on the bill and the return to the National Assembly, the COURT ORGANIZATION ACT (Act No. 51) was enacted on September 26, 1949. It was prescribed that the appointment of the Justice and the Chief Justice of the Supreme Court was to be executed by the President upon recommendation of the Council of Judges composed of the Chief Justice and the Justices of the Supreme Court and the Chief Justice of each High Court. This was to reinforce the independence of the Court to allow the judiciary to take the initiative in constituting the highest court.⁵⁾ The retirement age of the Chief Justice of the Supreme Court was seventy, whereas the rest was sixty-five.

(3) Civil Laws

Since an independent CIVIL PROCEDURE ACT was not yet enacted even after the establishment of the Korean government, the Japanese

4) Jong-Sup Chong, Changes and Problems of the Korean Legal System, Journal for the Study of Constitutional Law, Vol. 4 No. 2 (1998), p. 192 [, ‘ , 4 1 (1998 6), p. 192].

5) Ki-Choon Song, A Critical Study on the History of the Korean Judicial System, Journal for the Study of the World Constitution, Vol. 12 No. 1 (2006), p. 168 [, ‘ , 12 1 (2006 6), p. 168].

Civil Procedure Act still in force according to the 'Imperial Decree No. 7 on Civil Affairs' promulgated in 1912 during the Japanese occupation was applied with a partial modification. The CIVIL ACT was enacted and proclaimed on February 22, 1958 and taken effect from January 1, 1960, abolishing the previous Civil Act validated by Article 1 of the Decree above. The CIVIL PROCEDURE ACT was enacted on April 4, 1960 as Act No. 547, and was effective from July 1.

(4) Enactment of The PATENT ACT of 1946

The PATENT ACT of 1946 was promulgated by military administration's Decree No. 91 on October 5, 1946, and was put into effect from October 15. Consequently, the Japanese laws regarding intellectual property, in particular, laws on patent, utility model and design were all abolished. However, laws on trademark and copyright were still in effect.

The Act contained provisions on patent trials. Within the Patent Office existed the Bureau of Trial in which the trial and the appellate trial were set up. They were in charge of the cases prescribed by the PATENT ACT, along with trials and appellate trials on the confirmation of the scope of patents filed by persons interested in the execution of an invention or a design. In addition, those who were dissatisfied with the trial decision were able to appeal to the Supreme Court only if the decision seemed to violate the laws and subordinate regulations.

3. Economic Assessment of the Legal System

	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960
Gross National Product ⁶⁾				14.0	15.0	14.0	15.0	17.0	19.0	19.0	19.0
Per Capita Gross National Income ⁷⁾				67.0	70.0	65.0	66.0	74.0	80.0	81.0	79.0
Rate of Economic Growth ⁸⁾					5.6	4.5	-1.3	7.6	5.5	3.9	1.2
Balance on Current Account ⁹⁾	23.1	52.8	61.2	-67.8	-33.4	-36.3	-23.1	-2.6	37.7	16.4	13.4
Trade Balance ¹⁰⁾	-54.6	-113.9	-186.4	-305.7	-218.2	-309.9	-354.8	-370.9	-326.4	-253.6	-272.5
Export Volumes ¹¹⁾			27.7	39.6	24.2	18.0	24.6	22.2	16.5	19.8	32.8
Import Volumes ¹²⁾			214.2	345.4	243.3	341.4	386.1	442.2	378.2	303.8	343.5
Trade-GNI Ratio				13.0	9.5	12.9	15.5	14.2	13.6	13.7	16.8
Composition of the Economy											
Agriculture				47.3	39.8	44.5	46.9	45.2	40.7	33.8	36.8
Manufacture, Mining				10.1	12.7	12.6	12.7	12.7	14.4	15.9	15.9
Services				40.0	44.4	39.3	37.1	37.9	40.7	46.0	43.2
Others				2.6	3.1	3.6	3.3	4.2	4.2	4.3	4.1
Unemployment											
Foreign Direct Investment ¹³⁾											

* The following figures are based on the statistics obtained with the help of the Bank of Korea.

6) Nominal value, figures in billions of dollars

7) Nominal value, figures in dollars

8) Percentage based on real gross domestic product figures.

9) Figures in millions of dollars

10) Figures in millions of dollars

11) Figures in millions of dollars

12) Figures in millions of dollars

13) Net declared value, figures in thousands of dollars

1. Economic Situations and Policy Needs for Legal Changes

The gross national product showed 35 per cent increase, from 14 billion dollars in 1953 to 19 billion dollars in 1960. The per capita gross national income increased from 67 dollars in 1953 to 79 dollars in 1960, increasing over 17 per cent. During this period, the Korean economy grew at an average growth rate just under 3.8 per cent. The balance on current account was in the red from 1953 to 1957, although the figures turned positive from 1958 to 1960. The trade balance turned negative until the year 1960, The trade-GNI ratio gradually increased during the period, reaching 16.8 per cent in 1960. Within the era, Korean national economy remained largely agrarian, with agriculture composing more than 40 per cent of the economy, while the percentage manufacturing and mining together stayed in the teens.

Part III. Legal System of Economy for Export Drive (1961-1971)

1. Economic Situations and Policy Needs for Legal Changes

Timeline

1961	5.16 military revolution
1962	the first Five-Year Plan for Economic Development (~1966); second currency reform according to the EMERGENCY MEASURES ON CURRENCY ACT
1963	formation of Park Chung-Hee government
1965	Treaty of Basic Relations between Korea and Japan
1967	the second Five-Year Plan for Economic Development (~1971)
1970	Saemaeul (new community) Movement; completion of the Gyeongbu expressway

The characteristic that stood out during this period was the consolidation of export aid system. In the 1960s, the era when Korea started to get down to industrialization, it broke free from its original industrialization promotion policy of fostering production of alternative national goods. It started to enforce an export-orientated foreign trade-aimed policy. This was to overcome pragmatic problems such as material shortage and limited domestic market. In other words, the Park Chung-Hee government of the Third Republic turned to export-orientated policy once the regime figured out that economic development with limited domestic resources would be impossible. In 1961, the government converted its economic policy objective from stabilization to growth, and from production of alternative national goods to encouraging exportation, and established the first Five-Year Plan for Economic Development to achieve such objectives.

The core of the first Five-Year Plan for Economic Development was to prepare the foundation for economic development by expansion of energy sources such as electricity and coal and key industries, and by replenishing social overhead capital. Also, it sought to increase farmhouse income by improving agricultural productivity and to keep balance of international payments by increasing exportation. The government formed and put into practice the comprehensive policy on promotion of exports in 1964 and achieved the mark of 100 million dollars in exports. To commemorate such achievement and to ruminate the importance of exportation, November 30th was established as 'Export Day'.

At the occasion, the government concluded that it should lead the mobilization and distribution of resources for industrialization. Accordingly, a government-lead development pattern was devised, and government

supervision strengthened especially in financial aspects. Commercial banks were nationalized and the government had strengthened control over the central bank to heighten authority regarding mobilization and distribution of development funds. Such an economic growth strategy called for immense capital, which was sufficed by attracting foreign loans, and through the bilateral agreement with Japan which secured compensation and cooperation funds. The government could begin investing heavily in the export industry.

The second Five-Year Plan for Economic Development aimed for self-sufficiency in food, forestation, sophistication in the chemistry and steel industry, and the target of 700 million dollars in exports. To achieve this goal, nearly 600 million dollars were raised from Japan, as a result of the bilateral negotiation with that country. Also, within eight years, from 1965 to 1973, Korean economy rapidly developed on account of war demands from Vietnam.

To conclude, the Third Republic adopted government-led industrialization and pursued an economic growth first agenda. The execution of the Five-Year Plan for Economic Development, allowed for Korea to enter an era of rapid industrialization, or in other words, 'Miracle of the Han River.' During the first Five-Year Plan for Economic Development period (1962-1966), average annual economic growth recorded 8.3 per cent and GNP per capita rose from 83 dollars to 125 dollars. The second Five-Year Plan for Economic Development (1967-1971) also recorded a high average growth of 10.5 per cent and GNP per capita rose from 125

dollars to 266 dollars. Also, during this period, dependence on export rose from 13.7 per cent to 17.8 per cent.

2. The Areas of Law with Major Changes

1) Laws governing the government including administrative law

(1) Development of Laws on Government Organization related to the Economy: The Economic Planning Bureau, The Ministry of Finance

The Bureau of Planning was expanded to The Economic Planning Bureau in 1961, and was given the vital task of developing the 5-year Economic Development Plan and the drawing up the government budget.

(2) Evaluation

From the 1960s onward, the desire of the Korea for economic development could be seen from the creation of the National Council for Reconstruction. Along with the establishment of the Ministry of Construction and Transportation in 1961, these developments indicated that economy is gaining prominence in government organization. The Ministry of Commerce and Industry, the Office of Foreign Investment also became important along with the Economic Planning Bureau.

2) Laws governing property rights including IP law

(1) The PATENT ACT of 1961

a) Background on the Adoption of the PATENT ACT of 1961

The PATENT ACT was originally enacted by the American military administration in 1946, and included various provisions concerning patent,

utility model and industrial design. The mixed nature of the Act caused confusion, and to mend the problem, separate legislations were proposed accordingly the PATENT ACT was enacted on December 31, 1961, followed by 12 subsequent revisions.

b) Main Elements of the PATENT ACT of 1961

Main Elements of the Act upon Introduction were as follows: First, only new inventions applicable to purposes of industry should be deemed worthy of patent. Second, definition of unpatentable inventions and the limits on the right of patent. Third, exceptions should be made in cases where the invention loses its new-ness by public exhibition or trial. Fourth, when there are two or more application to the same invention, the applicant having the earlier date of filing should have precedence. Fifth, if an invention was deemed necessary for the purposes of national defense, it would be liable for expropriation. Sixth, for persons without an address in the Republic of Korea, all patent related business must be represented by an agent who has an address in Korea. Seventh, if an agent was not qualified to conduct a patent-related procedure, replacement should be permitted. Eighth, if on the time of application, a bona fide inventor was utilizing the invention, right of usage would be granted. Ninth, if the patent holder neglected to exercise the right of patent for a period of time exceeding 3 years, the patent should either be withdrawn or be issued to another person. Tenth, a patent would be protected for a period of 15 years.

c) Amendment of the PATENT ACT in 1963

The amendments of March 3, 1963, was amended to clarify the rules on the definition of an invention and the procedures related to patent.

Main contents of amendment were as follows: First, the rule of confining patent to inventions related to “the purposes of industry” was abolished. Second, definition of invention was inserted. Third, rules on priority claim on patent application were revised. Fourth, rules on amendment of patent application were created. Fifth, Carrying out or making public patent documents was banned. Sixth, rules on priority claims were added. Seventh, rules on abuse of patent rights were added. Eighth, independence of the office of patent examiner was prescribed.

(2) The UTILITY MODEL ACT of 1961

a) Background on the Adoption of the UTILITY MODEL ACT of 1961

Previous legislation on utility model also included provisions concerning patent, invention, and even those related to the establishment of the patent office. The legislation was unclear, inconsistent and confusing. On December 31, 1961, separate UTILITY MODEL ACT was enacted to correct the problem.

b) Main Elements of the UTILITY MODEL ACT of 1961

Main Elements of the Act upon Introduction were as follows: First, only new inventions applicable to purposes of industry would be granted status of utility model. Second, exceptions would be made in cases where the invention loses its novelty against the will of the holder of rights. Third, when there were two or more application to the same invention, the applicant having the earlier date of filing should have priority. Fourth, Applicant of a patent or a industrial design should be allowed to alter the application to that of utility. Fifth, at the time of application, if there exist a bona fide person exercising and/or facilities of the utility

model should have the right of exercise. Sixth, A utility model right should extend for a period of 12 years. Seventh, examination, registration, and withdrawal of utility model rights were also included.

c) Amendment of the UTILITY MODEL ACT in 1963

Imperfections in definition of novelty and in priority claims were complemented by the amendment. The main contents of amendment were as follows. First, conditions where novelty of an application be denied. Second, patent or industrial design applications should be permitted to be accepted as applications for utility model. Third, procedures for cases where an application for patent shared identical characteristics with those of an application for utility model were revised. Fourth, performers of utility model are permitted to claim invalidity of a utility model right before a court of law. Fifth, exclusion period for model right invalidity trials were extended from 2 years to 5 years.

(3) Industrial Design Protection

a) Adoption of the INDUSTRIAL DESIGN PROTECTION ACT of 1961

Previous legislation on industrial design was made with provisions concerning patent, invention, and even those related to the establishment of the patent office. The legislation was unclear, inconsistent and confusing. On December 31, 1961, separate INDUSTRIAL DESIGN PROTECTION ACT was enacted to correct the problem.

b) Main Elements of the INDUSTRIAL DESIGN PROTECTION ACT of 1961

Main Elements of the Act upon Introduction are as follows: First, only new designs applicable to purposes of industry should be accepted as

industrial design. Second, exceptions should be made in cases where the invention loses its novelty against the will of the holder of rights. Third, when there are two or more application to the same design, the applicant having the earlier date of filing should have priority. Fourth, applications for utility model were permitted to be accepted as applications for industrial design.

3) Laws governing business governance including corporate law

In the COMMERCIAL ACT which was enacted on 20 January 1962, systems were adopted regarding directors and representative suits by shareholders. According to the Act, directors should be elected by the promoters or from the inaugural general meeting during its incorporation, and from general shareholders' meeting after the incorporation. Electing directors was to be an exclusive authority of the general shareholders' meeting, thus delegating its authority to another person was prohibited even through general meeting resolutions. If the amount of remuneration to be received by directors was not fixed by the articles of incorporation, it should be determined by a resolution at a general shareholders' meeting. This provision on the remuneration for directors was a mandatory provision, and thus even the board of directors or the representative director, as well as the controlling shareholders, would not allowed to make a decision on the contrary. Since the remuneration for directors had an implication of evaluation and compensation, it was by nature subject to shareholders' decision.

The system of representative suits by shareholders was a litigation process designed to impose liability on such a director by the shareholders

on behalf of the company in case the company neglected to impose liability on the director. Another objective behind this system was that companies' rational business management could be guided by preventing in advance the director's breach of duty, and that minority shareholders' interests could be protected by preserving company interest through restricting director's possible arbitrary management.

Election of directors was a shareholders' fundamental right. In order for the election process to work effectively, shareholders should participate in the nomination of directors and be able to exercise a voting right for each candidate and the list of candidates. On the other hand, although the system of representative suits was adopted in order for shareholders to monitor directors' illegal activities, it was practically never used in Korea. The purpose of this system, however, was to restrict the abuse of authorities by board of directors through the separation of ownership and management.

4) Laws governing production factors including labor law

With the occurrence of the May 16th Military Revolution, the enforcement of the four labor laws of 1953 were temporarily suspended with Decree No. 6, and the 'Temporary Measure for Workers' Collective Activities' was subsequently proclaimed by Act No. 672 on August 20, 1961. The military government controlled the labor relations by martial laws or emergency measures, and such restraints were reflected in subsequent labor legislation unchanged. The LABOR STANDARDS ACT was partly amended (Act No. 791) for the first time since the enactment of the four labor laws, and after the establishment of the Third Republic,

the LABOR UNION ACT was amended twice and the LABOR DISPUTES ADJUSTMENT ACT together with the LABOR RELATIONS COMMISSION ACT were amended three times respectively. In addition, the following laws were enacted: the SEAFARERS ACT (1962); the INDUSTRIAL ACCIDENT COMPENSATION INSURANCE ACT (1963); the EMPLOYMENT SECURITY ACT (1961); and the TEMPORARY ACT ON SPECIAL CASES CONCERNING TRADE UNIONS AND LABOR DISPUTE ADJUSTMENT OF FOREIGN-INVESTED ENTERPRISE (1970).¹⁴⁾

(1) Amendment of the LABOR UNION ACT in 1963

The LABOR UNION ACT was amended twice by Act No. 1329 on April 17, 1963 and Act No. 1481 on December 7, 1963. The following were included in the amendments. First, if a workers' organization impedes the normal operation of an existing trade union, it should not be approved as a trade union. Secondly, the establishment of the Labor-Management Consultation Council was provided. Thirdly, the prohibition on political activities by trade unions was strengthened. Fourthly, the system of free organization of trade unions was replaced by the general standard system. Fifthly, the right to appoint a convener of a trade union's extraordinary general meeting was granted to the administrative

14) The Act (Act No. 2192) was enacted in January 1, 1970 to prescribe special cases concerning trade unions and labor dispute adjustment, and it aimed at contributing to the development of national economy by promoting labor-management cooperation in foreign-invested enterprises and by inducing foreign capital. The Act applied to electricity, electronic, chemical, oil, steel, metal, ceramic, transport and tour businesses in which more than \$100,000 were invested, and businesses which export the whole quantity of goods even if the investment did not reach such amount. Businesses falling under this scope of application were accorded special treatment regarding the establishment of a trade union, and the procedure of dispute adjustment under the LABOR DISPUTES ADJUSTMENT ACT was excluded as compulsory arbitration applied. The Act was amended in 1981 and 1983, but was abolished in 1986.

agency. Sixthly, the preventive system adopted prior to the amendment regarding unfair labor practices by employers was changed to the remedial system. Lastly, provisions intending or premising nationwide united formation of trade unions were provided.

(2) Amendment of the LABOR STANDARDS ACT in 1961

The peculiarities of the amendment to the LABOR STANDARDS ACT on December 4, 1961 can be summarized as intensification of State centering of labor administration on public interests, and reinforcement of labor protecting legislation. The main points of the amendment were as follows. If the amount of average wages is lower than that of ordinary wages, the latter was to be deemed the former. They also included a retirement allowance system, an exception to payment of business suspension allowance, accumulation of monthly paid leave, new exceptions to working hours and recess hours, and assurance of maternity leave before and after childbirth.

(3) Evaluation

The labor legislation at the outset of the Third Republic strongly disclosed the intention that the State should actively interfere in labor relations. This was expressed in terms of reinforcement of labor protecting legislation, establishment of labor administration centered on public interests, restrictions on labor disputes, introduction of sound remedial measures for unfair labor practices.¹⁵⁾ In short, the labor legislation of the Third Republic was regarded as government-led.¹⁶⁾

15) Ministry of Labor, History of Labor Administration, Part 1 Summary, 2006, p. 61 [, 1 , 2006 , p. 61].

16) Ministry of Labor, History of Labor Administration, Part 3 Protection Policy of Employees, 2006, p. 45 [, 3 , p. 45].

5) Laws governing market access including foreign investment

In the 1960s, there was substantial expansion in the legal system of foreign trade. After the enactment of the TRADE ACT on December 13, 1957, which was the first fundamental law for foreign trade management, the EXPORT ASSOCIATION ACT was enacted by Act No. 711 on September 9, 1961 to regulate the establishment, management, dissolution of export associations and other necessary matters. On September 9, the TEMPORARY ACT ON PROVIDING SUBSIDY TO PROMOTE EXPORTS was adopted to regulate the procedure on granting subsidy. In addition, the EXPORT PROMOTION ACT was proclaimed by Act No. 1033 on March 20, 1962. On October 4, 1962, the EXPORT INSPECTION ACT was enacted in order to maintain and promote the quality and outcome of export goods.

(1) Enactment of the EXPORT ASSOCIATION ACT of 1961

The EXPORT ASSOCIATION ACT was enacted to prevent practices disturbing the export order, such as unfair competition, to enhance the common interests of exporters, and to contribute to the promotion of export. The essential contents were as follows. First, the association should contribute to the establishment of order among exporters and members would be able to freely enter and withdraw from their association. The right to resolution and the right to vote were to be fair and noncommercial. Second, members would be those who handle same kinds of goods, but producers of the goods would join the association in accordance with the articles of association. Third, the association could conclude agreements with foreign importers on price, number, quality,

way of payment and method of export of goods. Fourth, the Minister of Commerce could inspect on operations of the association and could dismiss the executive or suspend the management of businesses according to the result of the inspection.

(2) Enactment of the TEMPORARY ACT ON PROVIDING
SUBSIDY TO PROMOTE EXPORTS of 1961

The TEMPORARY ACT ON PROVIDING SUBSIDY TO PROMOTE EXPORTS substituted the previous Guidelines on Payment of Subsidy for Exports and the Guidelines on Payment of Expenses for Pioneering Export Market in order to provide subsidy within a suitable time and to enhance efficiency in the payment of subsidy. The essential contents were as follows. First, the Minister of Commerce could delegate operations on payment of subsidy to enhance exports to the Governor of the Bank of Korea. In such case, the Minister of Commerce would direct the budget instruction document of the subsidy for export promotion to the Bank of Korea. Second, when the Governor of the Bank of Korea was delegated the authority, the Governor could appoint a financial commissioner and a disbursement commissioner according to the FINANCE ACT to execute the operation.

(3) Enactment of the EXPORT PROMOTION ACT of 1962

The EXPORT PROMOTION ACT was enacted to execute strong export promotion plans in a way to achieve yearly export plan according to the first 5-year economic development plan through improving international payment and developing domestic industries. The essential contents were as follows. First, the government should give privilege on

the usage of foreign currency for imports of raw materials used to produce export goods. Second, export license was restricted to exporters without certain accomplishment and those with certain accomplishment who established foreign branch could form a private trade delegation. Third, exporters and importers could get a loan on trade capital simply through a joint liability on guarantee for the loan. Fourth, for the promotion of export, violations of the Act were to be severely punished.

(4) Enactment of the EXPORT INSPECTION ACT of 1962

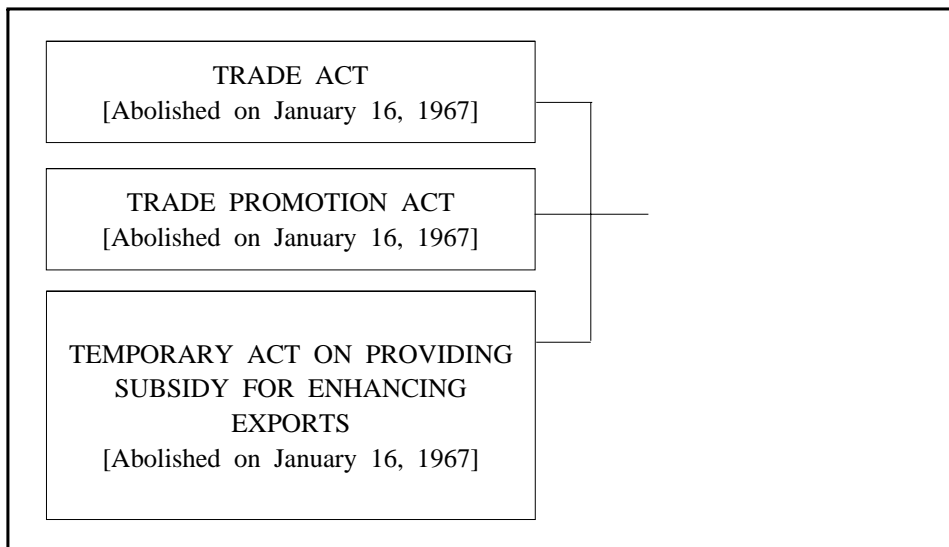
The EXPORT INSPECTION ACT was enacted to enhance the exports. To maintain and promote quality and outcome of export goods and to smoothly operate export examination procedure, it unified the articles incorporated in the laws governing foreign trade. The essential contents were as follows. First, export goods which needed export inspection, and quality, standard or packing condition of such goods would be decided by the Ordinance of the Ministry of Commerce. Second, the agency performing examination and the procedure was determined by the Act. Third, the Export Inspection Council would be established to review important matters on export inspection, and those who had objection to agency's decision could raise objections.

(5) The TRADE TRANSACTION ACT of 1967

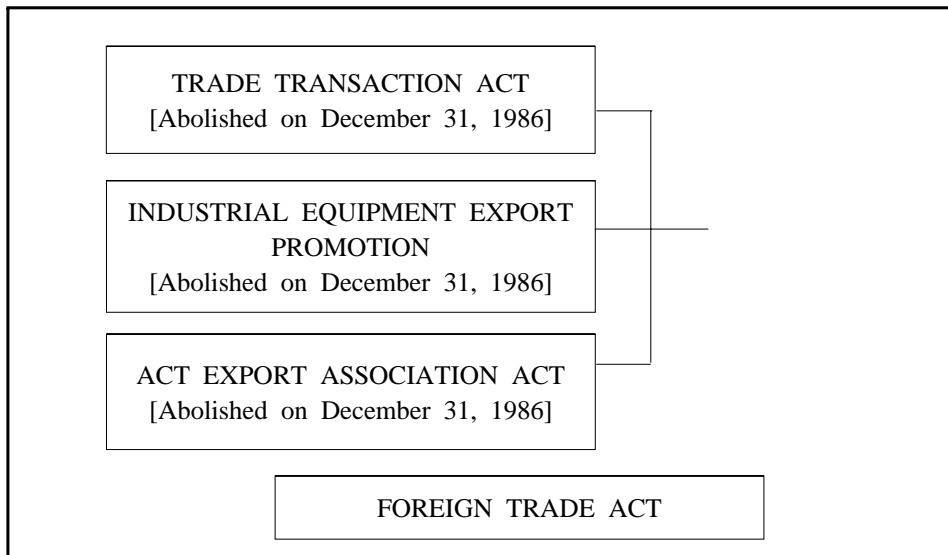
a) Enactment of the TRADE TRANSACTION ACT of 1967

The TRADE ACT which was the fundamental law on trade management, and the TRADE PROMOTION ACT which focused on trade enhancement, and the TEMPORARY ACT ON PROVIDING SUBSIDY FOR ENHANCING EXPORTS which offered subsidy to promote exports were all enacted for

trade management and promotion of export. Hence, the aim of these latter two Acts coincided with that of the TRADE ACT which was to promote trade, to control import, to balance international payment and to develop national economy. However, because these aims were scattered in these three laws, there was a need to reorganize them to form a unified law. Also, as the scale of imports and exports steeply increased every year,¹⁷⁾ and diversification of trading countries and sophistication of trade and payment methods along with the shift in export commodities from primary goods to heavy chemical industry had taken place, an enactment of a new legislation was inevitable in order to regulate trade efficiently. Subsequently, these laws were unified to form the TRADE TRANSACTION ACT enacted on January 16, 1967 as Act No. 1878.



17) The volume of export in 1957, when the TRADE ACT was enacted, was \$23 million, but it increased by 14 times amounting to \$320 million in 1967, when the TRADE TRANSACTION ACT was enacted. Imports also increased by 2.3 times from \$442 million in 1957 to \$996 million in 1967. (Ministry of Commerce, 40 Years of Import Promotion, 1988, p. 156 [, 40 , 1988 , p. 156]).



Further, there was change in the Constitutional provision on trade.¹⁸⁾ In the Constitution amended on November 29, 1954, Article 87 stipulated that “Foreign trade is under the control of the State as prescribed by Act.” The ‘control’ here in the provision referred to the adjustment of exports and imports according to the State's policy since foreign trade was closely related to the national economy. However, in the Constitution amended on December 26, 1962, Article 116 provided that “The State shall support foreign trade and may regulate and adjust.” That is, foreign trade was an aim to be supported given its significance, but it was to be regulated and adjusted so that the national economy could actively develop outward and subsequently protect and support the domestic industry.

18) Ministry of Commerce, 40 Years of Import Promotion, 1988, pp. 155-156 [, 40 , 1988 , pp. 155-156].

The essential contents of the TRADE TRANSACTION ACT were as follows. First, those who wished to be engaged in export or import of goods as an occupation should receive a permission from the Ministry of Commerce if no other Acts stipulated otherwise. Second, those who wished to export or import goods should acquire a permission or an approval from the Ministry of Commerce as prescribed by the Presidential Decree. Third, the Minister of Commerce should fix matters governing exports or imports comprehensively, and announce them every year or twice in a year 30 days before their implementation. Fourth, traders who handle the same or the same category of goods in order to establish export or import order of the same or the same category of goods could organize an export association or an import association. Fifth, the Minister of Commerce could provide subsidy to those who export goods recognized as needing export promotion within the range of budget as prescribed by the Presidential Decree. Sixth, the Korea Trade Commission was established under the jurisdiction of the Ministry of Commerce. Seventh, the Minister of Commerce should examine whether export and import of goods were carried out as prescribed by the Presidential Decree.

b) Amendment of the TRADE TRANSACTION ACT in 1970

To promote export through the expansion of export market in compliance with the international trend of increase in trade between the East and the West, the prohibition of trade with the communist bloc was fully revised. A retention clause was included to allow trade with the communist bloc for those prescribed by law.

(6) Enactment of the ACT ON THE ESTABLISHMENT OF FREE EXPORT ZONES of 1970

The ACT ON THE ESTABLISHMENT OF FREE EXPORT ZONES was enacted on January 1, 1970. A free export zone would be established in the southern coastal region, which had easier access to the international transportation line, in order to induce foreign investment. This would bring promotion in export, increase in employment, and development in technology, thus, resulting in the development of national economy.

6) Laws governing industrial policy

The government laid out a legal foundation to enforce an eclectic industrial policy where the government would select 7 specific manufacturing industries and promote their growth. Accordingly, the 7 industrial Acts were enacted as follows.

(1) The MACHINERY INDUSTRY PROMOTION ACT of 1967

a) Enactment of the MACHINERY INDUSTRY PROMOTION ACT of 1967

THE MACHINERY INDUSTRY PROMOTION ACT was legislated on 30 March, 1967 to catalyze a rational growth of the machinery industry and to support its promotion and development. There were 3 important amendments to this Act thereafter.

The essential contents of this Act were as follows. First, the Master Plan for the Promotion of the Machinery Industry and an execution plan for this master plan had to be drawn up. Second, those who wanted to engage in businesses related to the machinery industry were required to

register. Third, the long-term, low-interest Machinery Industry Support Fund by means of financial funds was established to allow loaning for certain businesses. Fourth, a list of home-produced machinery facilities was specified, and the percentage of imported machinery facilities requiring localization was fixed and publicly announced to restrict importation of those machinery facilities that could be produced within the country. Fifth, the Machinery Industry Deliberation Council was established to respond to inquiries pertaining to machinery industry.

b) Amendment of the MACHINERY INDUSTRY PROMOTION ACT
in 1971

Considering the importance of machinery industry and its role as a leading industry in a country's industrialization process, the amendment in 1971 focused on establishing a powerful, systematic support for the rational growth of the machinery industry as well as establishing the foundation for a long-term development of the machinery industry. Its essential contents were as followed. First, matters requiring stipulation by the Master Plan for the Promotion of the Machinery Industry were added. Second, allowing the issuance of government bond for the establishment of the Machinery Industry Promotion Fund was allowed. Third, the establishment of a machinery industry complex was stipulated. Fourth, a tax reduction provision for certain machinery industry entrepreneurs was added.

(2) The SHIPBUILDING INDUSTRY PROMOTION ACT of 1967

The SHIPBUILDING INDUSTRY PROMOTION ACT was enacted on 30 March 1967 for the purpose of stimulating the shipbuilding industry by improving shipbuilding technology and encouraging domestic

shipbuilding. The essential contents of the Act were as follows. First, the Master Plan for the Promotion of the Shipbuilding Industry was set up. Second, the long-term, low-interest Shipbuilding Fund by means of financial funds was established to allow loaning for certain businesses. Third, shipbuilders were allowed to found mutual aid organization of shipbuilding. Fourth, those who want to engage in the shipbuilding business was required to be permitted. Fifth, shipbuilders were allowed to obtain government approval for the structure, performance and construction process in building or rebuilding ships. Sixth, the Shipbuilding Industry Deliberation Council was established to respond to inquiries pertaining to shipbuilding industry.

(3) The TEMPORARY MEASURES ON FACILITIES FOR THE
TEXTILE INDUSTRY of 1967

The TEMPORARY MEASURES ON FACILITIES FOR THE TEXTILE INDUSTRY was enacted on 3 March 1967 for the purpose of properly regulating the installation and usage of facilities for the textile industry, reforming the structure, strengthening the international competitiveness of the textile industry by encouraging government-business cooperation for the replacement and maintenance of facilities, and controlling excessive concentration of private investment in consumer goods industry. The essential contents of the Act were as follows. First, facilities for the textile industry were to be defined as machinery or facilities used in such processes as spinning, manufacturing, embroidery, dyeing processes. Second, registration at the Ministry of Trade were required of those who wanted to engage in businesses related to the manufacturing and processing of textile products using facilities for the textile industry.

Third, the Textile Industry Deliberation Council was established. Fourth, the Minister of Trade was authorized to inspect, as needed, the installation and usage of such facilities.

(4) The ELECTRONIC INDUSTRY PROMOTION ACT of 1969

The ELECTRONIC INDUSTRY PROMOTION ACT was enacted on 28 January 1969 to promote the modernization of industrial facilities and technology and the healthy development of the domestic economy by promoting electronic industry. The essential contents of the Act were as follows. First, an electronic industry promotion policy was established and implemented. Second, those engaged in the electronic industry were to be registered. Third, only tested goods were allowed to be sold except for those goods manufactured by those who owned certain specified examination facilities, if the electronic devices required strict quality controls in their manufacturing process. Fourth, the Electronic Industry Support Fund by means of financial funds was established, and related agencies and organizations were allowed to undertake such businesses as development, research, technical training or pioneering overseas markets.

(5) The IRON AND STEEL INDUSTRY SUPPORT ACT of 1970

In order to amply support the iron and steel industry, the basic industry that provides essential basic materials, the IRON AND STEEL INDUSTRY SUPPORT ACT was enacted on 1 January 1970. It went through an important amendment thereafter. The essential contents at the time of the Act were as follows. First, a standard for the facilities of the iron and steel industry was fixed. Second, a standard for the designation of iron and steel industry entrepreneurs was fixed. Third, the entrepreneur

who owned batch production facilities capable of producing at least 1,000,000 tons of steel and more half of whose capital was financed by either the government or a person designated by the government was specified to benefit from the government's administrative and financial aids. Fourth, privileges were granted to those who provided iron ore to iron and steel industry entrepreneurs at the price set by the Minister of Trade. Fifth, prior approval for the importation of iron ore was required. Sixth, establishment of the Iron and Steel Industry Support Fund was established by means of financial funds.

(6) The PETROCHEMICAL INDUSTRY SUPPORT ACT of 1970

The PETROCHEMICAL INDUSTRY SUPPORT ACT was enacted on 1 January 1970 to contribute to the development of the domestic economy by fairly supporting the petrochemical industry. Its essential contents were as follows. First, the Master Plan for the Support of the Petrochemical Industry was established. Second, at the request of the Minister of Trade, a prearranged location for the petrochemical industry complex was designated and publicly announced by the Minister of Construction. Third, those who wanted to engage in the petrochemical industry were required to be registered.

(7) The NONFERROUS METALS REFINING INDUSTRY ACT
of 1971

The NONFERROUS METALS REFINING INDUSTRY ACT was enacted on 22 January 1971 to contribute to the healthy development of the domestic economy by meeting the demand for metals, which was the original material for manufacturing industries, through supporting the

nonferrous metals refining industry, and at the same time smoothing the consumption of minerals, the raw material for metal refining. Its essential contents were as follows. First, the Master Plan for the Support of the Refining Industry was established and the gist of the Master Plan was publicly announced. Second, a mineral sales contract was to be prepared, if an entrepreneur wanted to buy and refine minerals.

(8) The ACT ON CONSTRUCTION AND DEVELOPMENT OF INDUSTRIAL COMPLEXES FOR THE EXPORT INDUSTRY of 1964

The ACT ON CONSTRUCTION AND DEVELOPMENT OF INDUSTRIAL COMPLEXES FOR THE EXPORT INDUSTRY was enacted on 14 September 1964 in order to plan and direct a project consisting of the construction and management of an industrial complex for the export industry. The Act went through 2 important amendments later on. Its essential contents were as follows. First, a prearranged industrial complex was designated, at the request of the Minister of Trade and by the Minister of Construction. Second, the Industrial Complex Development Corporation was established upon obtaining a permission from the Minister of Trade.

(9) Evaluation

During this period the Korean economy expanded considerably, achieving an average growth of 9 per cent per annum. In addition, industrial policies during this time provided indiscriminate financial and tax-related aids to export-leading industries as a whole and brought about the

positive aspect of stimulating competition among export industries. However, this period was also characterized by the settlement of a distinct Korean conglomerate-centered (or 'Chaebol'-centered) industrial structure, caused by the rigorous implementation of industrial policies fueled by an export-oriented industrialization. Moreover, foreign debts accumulated because of an export-oriented economic development strategy, dependent on foreign investment and labor-oriented light industry, and the increased importation of raw materials for the production of light industry goods worsened the balance of international payments. Furthermore, the selective government support for the export industry caused disparity between the export industry and other industries, such as agricultural, fishing and other domestic industries which received relatively less governmental aid.¹⁹⁾

7) Laws governing financial sector including securities market

After the 5·16 Military Revolution of 1961, in order to strengthen the control over financial institutions by granting authority of approval by appointing the officers of financial institutions to the Superintendent of the Office of Bank Supervision of the Bank of Korea (at the time Director of the Office of Bank Supervision), the ACT ON TEMPORARY MEASURE ON FINANCIAL INSTITUTIONS was adopted and proclaimed. The government under this Act, held the right to implement personnel management for financial institutions until the Act was abolished in 1982.

The government made amendments to the BANK OF KOREA ACT in 1962 to transfer most of authorities of monetary and financial policies to

19) Yong-man Yoon/Taek-dong Yeo, <Korean Economic Policy>, 2005, p. 33

the Ministry of Finance. Hence, the supply of funds needed for the economic development would be easily implemented from the central bank's power issuing notes. The right to recommend the appointing of the governor of the Bank of Korea was also transferred from the Prime Minister to the Minister of Finance. And the Monetary Board, which was the highest decision making organ of the Bank of Korea, was renamed to Monetary Board Operating Committee so as to reduce its functions.

The authority to conduct inspections on the Bank of Korea was newly granted to the Ministry of Finance, and thus the autonomy of the central bank was diminished as the right to decide upon the matters of budget and closing accounts of the Bank of Korea was transferred to the Ministry of Finance. Also, in order to provide financial support for government invested projects through the central bank's power to issue notes, provisions were newly inserted to enable the Bank of Korea to directly underwrite the government guaranteed bonds issued by the government invested institutions. Most of the provisions related to foreign exchange policies and service were also abolished for the purpose of integration of foreign exchange system which led for the Ministry of Finance to assume the function of foreign exchange policy planning and management.

On the other hand, the Korean government drastically revised the KOREA DEVELOPMENT BANK ACT in 1961 to intensify financial support for the long-term industrial investment. Accordingly, there was a huge increase in the capital of the Korea Development Bank, and provisions were newly inserted related to payment guarantees for foreign loans. Also, the financing of long-term operational funds for companies

invested by the government or by the Korea Development Bank was allowed, as well as for the temporary loans from the Bank of Korea. As a result, the scope of business of the Korea Development Bank was enlarged and the business overlaps between commercial banks and the Korea Development Bank increased.

Moreover, the financial system was reorganized and expanded during this period with the establishment and maintenance of financial institutions. In order to support policy funds for specific areas, laws establishing special banks in diverse fields were enacted including the INDUSTRIAL BANK OF KOREA ACT, the KOOK-MIN BANK ACT, the FOREIGN EXCHANGE BANK OF KOREA ACT, and the KOREA HOUSING AND COMMERCIAL BANK ACT. And 10 local banks including Daegu Bank and Busan Bank were also established for reinvigoration of local financing and development of local economy.

(1) Amendment of the BANKING ACT in 1962

The BANKING ACT was amended on 24 May 1962 in order to strengthen the economic system to raise funds to support the five-year plan for economic development which began in 1962. The main issues were as follows. First, the scope for asset management was increased by raising the ownership ratio of risk assets, other than cash, reserved deposits in the Bank of Korea and foreign financial institutions, and other assets excluding the currency stabilization bonds of the Bank of Korea, from less than 10 times to less than 15 times of equity capital. Second, the limit of legal capital was raised from 100 million Won to 1.5 billion Won, and more than 10 per cent of net profit was to be reserved in every settlement term by newly inserting reserve regulations for capital

adequacy of financial institutions. Third, in order to supply for the long and mid term equipment funds, the investment restrictions on debentures and securities with a period of redemption or stock acceptance of not less than 3 years was raised from 20 per cent to 25 per cent, while State bond was added to be the subject of investment without such restrictions.

(2) Amendment of the BANK OF KOREA ACT in 1962

The amendments the BANK OF KOREA ACT on 24 May 1962 were as follows. First, the Bank of Korea was, from the amendment, to be a non-capitalized special corporation, which used to be a government invested special corporation. Second, the Monetary Board was renamed as the Monetary Board Operating Committee, whereas the Quarter of Bank Supervision was reorganized into the Office of Bank Supervision to strengthen its independent position and function. Third, the Bank of Korea was to accumulate no less than 5/100 of its net profit until the reserve reached 20 billion Won, and was allowed to hold reserves for special purposes with government approval. Fourth, the scope of responsibilities of the Bank of Korea was adjusted in order to integrate the foreign exchange control system under the FOREIGN EXCHANGE CONTROL ACT of 1961.

(3) The SECURITIES AND EXCHANGE ACT of 1962

The Korean Stock Exchange was established on 3 March 1956. At the time, most ongoing transactions in the stock market were of the existing stocks, and the issue market was yet to be active. Instead of the stocks, government bonds were the main subject for the transaction in the

circulation market. Thus entrepreneurs could not rely on the stock market to raise funds. In order to revitalize the stock market through government's Five-year Plan for Economic Development, the SECURITIES AND EXCHANGE ACT was enacted on 15 January 1962.

The main contents were as follows. First, the term securities was defined. Second, in relation to the public offering of new securities and of outstanding securities, no issuer would make public offering without filing the registration statement to the Minister of Finance according to the relevant decrees. Third, when claim was made by any securities purchaser, the securities could not be purchased or sold unless the prospectus prepared by the issuer has been given.

a) Amendment of the SECURITIES AND EXCHANGE ACT in 1963

The SECURITIES AND EXCHANGE ACT was amended on 16 December 1963, and the details were as follows. First, securities issuer's compensation for damage against the investors would be newly provided. Second, the capital limit of securities companies would be raised. Third, authorities to issue annulment orders for excessively speculative transactions would be granted to the Minister of Finance. Fourth, the requirements of license cancellation of the securities companies' business was strengthened. Fifth, the joint compensation fund for damage incurred from contravention of contracts was to be established at the Korea Stock Exchange to compensate for the damage incurred from the contravention of contracts by the exchanging members. Sixth, securities finance companies would be established through authorization.

b) Amendment of the SECURITIES AND EXCHANGE ACT in 1968

The SECURITIES AND EXCHANGE ACT was amended on 31 December 1968 as follows. First, authorization of operation of securities companies would be categorized into business focusing on stock sales and the business underwriting securities as side business. The securities companies' capital would be set at the minimum of 30 million Won and 50 million Won respectively according to the categorization. Second, the rate of debt in relation to the net amount of property of securities companies would be prohibited from exceeding the rate set by the Presidential Decree. Third, the system of reserve funds for securities transaction would be provided. Fourth, the officer of a securities company would be jointly liable for compensation when he neglects to perform his duties on purpose or by negligence, or causes any damage to a third person in the course of performing his duties for such securities company.

(4) Enactment of the FURTHERANCE OF THE CAPITAL MARKET ACT of 1968

The FURTHERANCE OF THE CAPITAL MARKET ACT was enacted on 22 November 1968 to make a decisive contribution to revitalize securities market of Korea. The Act was introduced to promote corporate disclosure and distribution of shares as well as creation of investment environment in order to develop a healthy capital market. The main points of the Act were as follows. First, in case where the profit distribution rate of listed corporation was less than the rate prescribed in the Presidential Decree, preferential dividend would be allowed for

shareholders other than the government until the rate reaches the rate, and the dividend rate of government owned shares would be lowered. Second, corporate disclosure would be encouraged by lowering the tax rate for the disclosed corporation than that for undisclosed corporations. Third, the Korea Investment And Development Corporation was to be established in order to promoted the issuance, distribution, and subscription of securities.

(5) Enactment of the SECURITIES INVESTMENT TRUST
BUSINESS ACT of 1969

The SECURITIES INVESTMENT TRUST BUSINESS ACT was enacted on 4 August 1969 to make possible indirect investments using the system of securities investment trust in Korea. The system of securities investment trust would allow securities participation to increase by making investments on be half of and for small and average investors without professional knowledge about securities.

The main points of the Act were as follows. First, the contract for the securities investment trust would be concluded, only when a management company were the truster and a trustee company were the trustee. Second, the beneficial right to the investment trust was to be divided equally, and the divided beneficial rights were to be represented by the beneficiary certificates, while the transfer and exercise of such beneficial rights were to be done by means of the beneficiary certificates. Third, the beneficiary certificates were to be issued by the management company, upon authorization of the Minister of Finance and confirmation of the management company. Fourth, any beneficiary could always request the management company issuing the beneficiary certificates to

repurchase them. Fifth, any person desiring to carry on the business of a management company, was to be a joint stock company with the paid-in capital of more than 500 million Won, and obtain the permission of the Minister of Finance.

(6) Evaluation

The amended BANK OF KOREA ACT brought currency credit policy and foreign exchange policy as chief measures for the government's economic development policy. Since then the system of government driven financial development was settled. Accordingly, funds needed for economic development were easily provided by the reserve funds, however causing the chronic price instability in Korea as compared to that of Japan and Taiwan.

Also, restructuring of the system of support to export activated the short term trade bill discounting market, which was then in its infancy in Korea, through the rediscount system of the Bank of Korea. However, price stabilizing function of the currency diminished as the export supporting financial system enabled the reserve money to respond almost automatically to the economic fluctuation in the export market.

On the contrary, the raise of deposit interests and the additional establishment of financial institutions such as special banks and local banks contributed to the inducement of the debenture capital into the bank sector. The amount of demand deposits increased drastically from 2.9 billion Won in 1964 to 4.8 billion in 1965, 5.1 billion in 1966 and 11.8 billion in 1968. And the saving deposits were also drastically raised from 1.5 billion Won in 1964 to 3.1 billion in 1965, 7 billion in 1966,

25.6 billion in 1968.²⁰⁾

The measure of readjusting the interest rate to a realistic level played a decisive role in transferring the money from the private money market, which was out of government control, to the bank sector, which was under stronger government influence. This led the average interest rate for savings to exceed 20 per cent. Hence the scope of the governmental control on the financial sector enlarged and the governmental influence on the overall capital flow within the Korean economy increased. However, the readjustment aggravated the profitability of the financial institutions putting heavy burden on the corporate interest. Despite the enactment of the SECURITIES AND EXCHANGE ACT, the management of the Korea Stock Exchange was still immature and the market was also unstable.

8) Laws on dispute settlement including courts, arbitration and mediation

(1) Amendment of the COURT ORGANIZATION ACT in 1961

The COURT ORGANIZATION ACT was amended on August 12, 1961 by Act No. 679 to modify the three-tier and three-instance structure to four-tier and three-instance structure, and thus to alleviate the duties of the Supreme Court. The collegiate division of district courts took partial charge of the second trial, and the appellate division of higher courts was partly in charge of the third trial. However, there were criticisms that coherence of legal interpretation was difficult to achieve. Accordingly, the COURT ORGANIZATION ACT was amended on December 13, 1963

20) Ministry of Government Legislation, 50 Years of Legal History of Korea, p. 1276

by Act No. 1496 to abolish the appellate division in higher courts, and once again, the trial on an appeal was granted to the Supreme Court.

The COURT ORGANIZATION ACT was amended as many as 6 times after the 5·16 military coup d'état until the Third Republic's Constitution took effect on December 17, 1963. The one distinct feature in such process was the specialization of courts to maximize the functions and effectiveness of the courts.²¹⁾ However, considering the fact that the Seoul Criminal District Court had acted as a stooge of the government at the time, branching out the Seoul District Court into separate courts in charge of civil and criminal cases respectively could not simply be evaluated positively in terms of speciality.²²⁾

(2) Civil Laws

The CIVIL PROCEDURE LAW was amended by Act No. 706 on September 1, 1961 to simplify the preparation of a judgment document. For the purposes of preventing the delay of resolving civil cases and of swiftly fulfilling the rights and obligations of citizens along with accelerating the process of dispute settlement, the ACT ON SPECIAL CASES CONCERNING THE SETTLEMENT OF CIVIL DISPUTES BY SUMMARY PROCEEDINGS was enacted on December 31, 1970 by Act No. 2254. The Act aimed for the prompt treatment of civil cases by providing special rules regarding the settlement of compulsory execution

21) National Court Administration, History of the Courts, 1995, p. 565 [, 1995 , p. 565].

22) Jong-Sup Chong, Changes and Problems of the Korean Legal System, Journal for the Study of Constitutional Law, Vol. 4 No. 2 (1998), p. 208 [, , 4 1 (1998 6), p. 208].

and auction. Additionally, joint law and notary public offices were also able to handle notary affairs as same as a notary public.

(3) Enactment of the PATENT ACT of 1961

The PATENT ACT of 1946 enacted by military administration's Decree No. 91 not only was irrational in terms of its structure, but also contained contradicting and vague provisions. The military government after the 5-16 coup d'état decided to subdivide the Act into separate laws. Accordingly, on December 31, 1961, the new PATENT ACT was promulgated as Act No. 950. Further, as the DESIGN ACT and the UTILITY MODEL ACT were enacted respectively on the same day, the previous Patent Act of 1946 lost its effect. Nevertheless, the patent litigation system maintained its original structure.

Moreover, the PATENT ATTORNEY ACT was enacted as Act No. 864 on December 31, 1961. According to the Act, a patent attorney could engage in the business of acting as an agent on the matters to be directed to the Patent Office or courts concerning patent, utility model, design or trademark.

Notable judgments rendered during this period were as follows. First, the grand bench of the Supreme Court held that utility model was to be granted only to new technical devices, and devices publicly known could not be included in the scope.²³⁾ Secondly, paragraph 2 of Article 4 of the Utility Model Act enacted in 1961 excluded devices described in a publication distributed domestically prior to the filing of the utility model

23) Supreme Court Decision 63Hu45 Delivered on October 22, 1964 [Confirmation Of The Scope Of Utility Model Right]

application from the scope, but there were disagreements as to the meaning of 'distributed'. The Supreme Court held that 'distributed' referred to the state of things where unspecified majority could see the publication. Hence, if a Japanese publication was obtained by the Patent Office in the Ministry of Commerce and was under the condition which unspecified majority could read it, then it was to be regarded as distributed.²⁴⁾

3. The Nature of Legal Changes

1) Rule-based or Discretionary, Market-led or State-led

After the military takeover of 1961, the top priority for the Third Republic was to revive the economy which was still in ruin. By executing the First and the Second Five-Year Economic Development Plans, however, the government aggressively enforced its policy however without much legal basis. The government's financial policy was to provide maximum financial support needed for industrial investments. So the autonomy of the central bank diminished as enactments were made to grant most of the monetary and financial authorities to the Ministry of Finance. Since the growth of the national economy through the expansion of trade was the most crucial task during the Third Republic, the government put great effort into devising trade policies for this purpose. The EXPORT PROMOTION ACT enacted in 1962 allowed the government to give privilege on the usage of foreign currency for imports of raw materials used to produce export goods. Moreover, export license was restricted to exporters without certain accomplishments.

24) Supreme Court Decision 68Hu4 Delivered on March 10, 1970

Accordingly, the government had discretionary authority to allow and restrict export and import. Overall, during this period, the economic growth of Korea was led by the government with significant discretion allowed in relevant laws and subordinate regulations.

2) Was the resolution of economic and business disputes efficient?

(1) Changes in Number of Lawyers

(unit: persons)

1960	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
456	491	581	594	635	662	679	687	679	702	719	748

* source: Korean Bar Association

Between 1950 and 1963, law division of the higher civil service examination was to be passed in order to enter the legal profession. It was held according to the REGULATION ON THE APPOINTMENT, TRAINING AND EXAMINATION OF PROBATIONARY JUDICIAL OFFICERS enacted on January 24, 1950. It was carried out 16 times until 1963. The requisite for legal professions was changed to a bar examination enforced through the KOREAN BAR EXAMINATION DECREE proclaimed on May 9, 1963. It was held 49 times up to 2007. Until 1969, those who obtained an average score of 60 were able to pass the examination, but it was changed to a quota system to expand the manpower in the legal profession. After 1964, the number of lawyers increased steadily every year.

(2) Number of Claims to the Korean Commercial Arbitration Board

(unit: claims)

	Arbitration	Good Offices	Total
1967-1969	17	88	105
1970	7	119	126
1971	2	66	68

* source: Korean Commercial Arbitration Board

The number of arbitration claims referred to the Korean Commercial Arbitration Board was quite small. But the number of good offices claims was quite higher than that of arbitration, and in particular, exceeded 100 in 1970.

4. Economic Assessment of the Legal System

	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
Gross National Product ²⁵⁾	21.0	23.0	27.0	29.0	30.0	37.0	43.0	52.0	66.0	82.0	95.0
Per Capita Gross National Income ²⁶⁾	82.0	87.0	100.0	103.0	105.0	125.0	142.0	169.0	210.0	254.0	290.0
Rate of Economic Growth ²⁷⁾	5.9	2.1	9.1	9.7	5.7	12.2	5.9	11.3	13.8	8.8	8.2

25) Nominal value, figures in billions of dollars

26) Nominal value, figures in dollars

27) Percentage based on real gross domestic product figures.

Part III. Legal System of Economy for Export Drive (1961-1971)

	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971
Balance on Current Account ²⁸⁾	33.1	-55.5	-143.3	-26.1	9.1	-103.4	-191.9	-440.3	-548.6	-622.5	-847.5
Trade Balance ²⁹⁾	-242.2	-335.3	-410.2	-244.9	-240.3	-429.5	-574.2	-835.7	-991.7	-922.0	-1045.9
Export Volumes ³⁰⁾	40.9	54.8	86.8	119.1	175.1	250.3	320.2	455.4	622.5	835.2	1067.6
Import Volumes ³¹⁾	316.1	421.8	560.3	404.4	463.4	716.4	996.2	1462.9	1823.6	1984.0	2394.3
Trade-GNI Ratio	21.2	22.6	21.2	20.2	25.4	32.2	36.0	40.6	41.4	40.0	43.3
Composition of the Economy											
Agriculture	39.1	37.0	43.4	46.8	38.0	44.5	46.9	45.2	40.7	33.8	36.8
Manufacture, Mining	15.5	16.4	16.3	17.4	20.0	20.5	21.0	21.6	21.7	19.6	19.3
Services	41.0	42.1	36.3	32.1	37.2	39.6	43.0	43.5	43.2	44.7	45.4
Others	4.4	4.5	4.0	3.7	4.8	5.1	5.4	6.2	7.2	6.5	5.7
Unemployment						7.1	6.1	5	4.7	4.4	4.4
Foreign Direct Investment ³²⁾		3,575	5,737	654	21,824	15,621	28,272	25,631	48,579	75,892	40,246

* The following figures are based on the statistics obtained with the help of the Bank of Korea.

28) Figures in millions of dollars

29) Figures in millions of dollars

30) Figures in millions of dollars

31) Figures in millions of dollars

32) Net declared value, figures in thousands of dollars

1. Economic Situations and Policy Needs for Legal Changes

The gross national product was increased from 21 billion dollars in 1961 to 95 billion dollars in 1971 showing a 352 per cent growth. The per capita gross national income increased from 82 dollars in 1961 to 290 dollars in 1971 showing a 254 per cent increase. During this period, the Korean economy grew by the average growth rate of 8.4 per cent. The balance on current account generally showed a negative, and the volume of deficit especially increased after 1968. The trade balance also remained negative between the 1961-1971 period, especially from 1966 the deficit margin widened substantially. The trade-GNI ratio doubled within the period, reaching 40 per cent in 1968. Throughout the 1960s, more than 40 per cent of the national economy was agriculture. However, from 1970, agriculture started to go below 30 per cent. The average unemployment rate for the period reached 5.3 per cent and the foreign direct investment was on a continuous increase since 1965.

Part IV. Legal System of Economy for Heavy and Chemical Industry Drive (1972-1979)

1. Economic Situations and Policy Needs for Legal Changes

Timeline

1972	third Five-Year Plan for Economic Development (~1976); Joint Declaration of the Two Koreas
1977	fourth Five-Year Plan for Economic Development (~1981); 10 billion dollars of export
1979	Assassination of President Park

The distinctive feature of this era was drive for heavy chemical industries and for sophistication of exports. The third Five-Year Plan for Economic Development, empowered with prior two precedents, pursued economic development of farming and fishing villages, continued promotion of exports by pursuing substantial increase in exportation, pursued sophistication of industry focusing on heavy chemical industry and tried to correct the balance of international payments by internationalization and improving competitiveness of industries. Especially, in June 1973, the policy of heavy industrialization was established to concentrate support for steel, shipbuilding, nonferrous metals, machinery, electronic engineering and chemical industries by giving them monetary and tax benefits and by securing capital with positive attraction of foreign capital.

In the 1970s, the government played a bigger role, especially by tightening in financial matters such as regulation of interest and capital distribution. As economic growth and increase in export became substantial by mid-1960s, corporations greatly increased investment. However, the invested resources were supplied by bank loans and foreign loans. As a result, corporate debt ratios rose significantly. To resolve such problems and to save insolvent enterprises, the government proclaimed emergency measures in August 3, 1972, mainly dealing with matters such as private loans. Fixed deposit annual interest rates dropped from 17.4 per cent to 12.6 per cent, and general loan interest rates dropped from 20.0 per cent to 16.5 per cent.

However, as a trade policy to soften the impact of the worldwide oil-shock that began from 1973 and the worldwide raw material

fluctuation, a flexible tariff system was carried out for a drastic reduction of tariffs on essential raw materials. The international balance of payments was more or less improved by 1976-1977. When the goal to reach 10 billion dollars in exports resulted in a current account surplus for the first time ever in 1977, the government hurried to adopt an open-door policy. Thus, the fourth Five-Year Plan for Economic Development (1977-1981) aimed to work out economic development on the basis of growth, balance and efficiency, keep technical innovation and increase efficiency. Trade policy during this period also pursued trade liberalization to find an equilibrium between growth and stabilizing domestic prices by securing foreign raw materials, due to the second oil shock, resource nationalism and trade protection.

As a result of the government's export drive policy and promotion of heavy industries, the industrial structure changed in that agriculture and fishery dropped from 26 per cent in 1970 to 20 per cent in 1979, and the manufacturing industry rose from 20.8 per cent to 26.9 per cent. Also, within the manufacturing industry during the same period, light industry proportion dropped from 62.2 per cent to 48.8 per cent, while the heavy chemical industry rose from 37.8 per cent to 51.9 per cent. During the third Five-Year Plan for Economic Development, despite both domestic and international difficulties, average annual growth rate recorded 9.7 per cent.

2. The Areas of Law with Major Changes

1) Laws governing the government including administrative law

- (1) The Ministry of Construction, The Ministry of Transportation, The Ministry of Construction and Transportation, The Ministry of Maritime Affairs and Fisheries

In 1968, The Board of Small and Medium Sized Businesses was established to promote the activities of small and medium sized businesses in an economic environment dominated by large economic businesses. In the same year, the Board of Electricity was reorganized into the Board of Power, indicative of future establishment of a separate Ministry of Energy and Resources. Upon the creation of the new ministry, matters related to mining and energy was transferred to the new ministry from the Ministry of Commerce and Industry, which then became more focused on international trade and industry; In 1978, the Office of Trade Promotion was established, followed by the establishment of the Korea Trade Commission in 1987.

(2) Emergence of Environmental Issues

In 1966, the Office of Forestry was established as a subsidiary to the Ministry of Internal Affairs to pursue often conflicting values of development and preservation. While in the earliest phases of the economic development drive little attention was paid to reforestation and preservation of existing forests, however from the late 1960s, however, through the successful activities of the Office of Forestry, Korea became one of the rare cases in which both extensive reforestation and economic development were achieved. The Office of Forestry was later reorganized

and placed under the current equivalent of the Ministry for Food, Agriculture, Forestry and Fisheries.

2) Laws governing property rights including IP law

(1) Amendment of the PATENT ACT in 1973

In 1973, the PATENT ACT was amended to add exactness to the process of examination and trial, to prevent the abuse of patent rights to guarantee free business conducts and to provide sufficient protection for inventions considered vital to national industry. The main point of the amendment were as follows. First, materials produced by the process of nuclear fission and conversion, although easily adapted by domestic engineers, would be costly if foreign patent rights were exercised. Therefore, related technologies were excluded from the protection of the Act. Second, to prevent obsolete technologies of advanced countries from obtaining patent rights, inventions which were published in foreign publications would lose their novelty in Korea as well, thus implementing an international approach. Third, provision for granting compensations for inventions by government officials was created. Fourth, goods designated for export should be shipped for reasons of national credit, even under a patent dispute. Fifth, for the promotion of active use and industrial application of the patent system, reports of implementation were introduced. Sixth, for the promotion of clearing of unsuitable patents, exclusion period for invalidation trials was in principle abolished.

(2) Amendment of the UTILITY MODEL ACT in 1973

Following the amendment of the PATENT ACT, which was applied *mutatis mutandis*, in the UTILITY MODEL ACT, the Act was amended.

The main amendments were as follows. First, to prevent obsolete technologies of advanced countries from obtaining model utility rights, utility models which were published in foreign publications would lose their novelty in Korea. Second, goods designated for export should be shipped for reasons of national credit, even when under dispute. Third, for the promotion of active use and industrial application of the utility model system, reports of implementation were mandatory, and withdrawal of model utility rights and compulsory exercise of model utility rights were permitted. Fourth, provision for granting compensations for utility models developed by government officials was added. Fifth, qualifications for utility model examiners were coordinated, and training programs were introduced. Sixth, for the promotion of restructuring unsuitable patents, exclusion period for invalidation trials was abolished.

(3) Amendment of the INDUSTRIAL DESIGN PROTECTION ACT
in 1973

INDUSTRIAL DESIGN PROTECTION ACT was amended along with other intellectual property regulations. Main points of the amendment were as follows. First, to prevent obsolete design of advanced countries from seeking industrial design protection, industrial design which were published in foreign publications were to lose their novelty in Korea. Second, for the promotion of active use and industrial application of the industrial design protection system, reports of implementation were mandatory, withdrawal of non-active industrial design rights and compulsory exercise of industrial design rights were permitted. Third, provision for granting compensations for industrial design created by government officials was created. Fourth, only those industrial design

with outward esthetic presentation would be subject to industrial design protection.

3) Laws governing production factors including labor law

(1) Promulgation of the 'Yushin' Constitution in 1972

Korea, in order to achieve its modernization, maintained economic development as its first priority policy and undergone marked economic growth in the 1960s. However, after declaring national emergency on December 6, 1971, the pressing need was on national security. The ACT ON SPECIAL MEASURES FOR NATIONAL INTEGRITY, applied according to the Labor Administration's³³⁾ Established Rule No. 103 of February 29, 1972 and No. 104 of March 24 titled "Outline on Coordinating Affairs under the State of National Emergency", made labor movements practically meaningless. As collective bargaining and collective action were restrained, self-government between labor and management eventually lost its significance, and labor relationship led by the government was followed.

To institutionally concretize the so-called "Yushin" (Restoration) Order established in October 1972, the Yushin Constitution was promulgated on

33) In February, 1955, the Ministry of Social Affairs and the Ministry of Health were reorganized as the Ministry of Health and Social Affairs, and in September, 1963, the Labor Administration under the jurisdiction of the Minister of Health and Social Affairs was established. According to Article 1 of the Regulation on Organization of Office of the Labor Administration, the functions of the Administration included 'trade unions, the Labor Relations Commission, labor inspectors, working conditions, safety management, accident compensation and industrial accident compensation insurance, employment security, adjustment of supply and demand of labor, unemployment measures, labor statistics, welfare of workers and other affairs related to labor'. It intended to replace the jurisdiction of the Bureau of Labor in the Ministry of Health and Social Affairs.

December 27, 1972. Consequently, the provisions guaranteeing basic labor rights were amended. The three labor rights, i.e. the right to association, collective bargaining and collective action, were guaranteed within the range determined by Act, and the right to collective action of public officials or of workers employed in the State, local government, state-operated enterprise, public utilities or workplaces having important effects to national economy could be either restricted or denied. Having grounds on such amended provisions, the LABOR UNION ACT (Act No. 2610), the LABOR DISPUTES ADJUSTMENT ACT (Act No. 2608) and the LABOR RELATIONS COMMISSION ACT (Act No. 2609) were amended respectively.

In late 1973, the global economic depression caused by the first oil shock and a downward domestic economy and unstable state of employment had great effect on labor-management relations. As a result, a series of violations of the LABOR STANDARDS ACT, such as unfair dismissals and delays of wage payment, occurred continuously. Frequent violations of collective agreements and unfair labor practices led to repeated confusion in labor relations, and hence, locked in a vicious circle. For the purpose of eliminating social instability and correcting the labor relations, the 'Third Presidential Emergency Measure for Stabilization of National Living' was proclaimed on January 14, 1974. The measure contained provisions on labor relations in chapter four (Improvement of Labor Conditions). It included preferential reimbursement of wage claims prior to that of taxes, etc., strengthening of penal provisions in the LABOR STANDARDS ACT, punishment on noncompliers of collective agreement and tightening of penal provisions regarding unfair labor practices. The measure was originally intended as a temporary

measure for a year. On December, 1974, however, just before the expiry, the provisions on protection of workers under the measure were incorporated in corresponding labor laws. This paved a way for the amendment of the LABOR STANDARDS ACT on December 24, 1974, and subsequently, the Enforcement Decree of the Act was amended in April and June of 1975.

(2) Amendment of the LABOR STANDARDS ACT in 1974

The LABOR STANDARDS ACT was amended towards extending its protection and scope of application, and reinforcing penal provisions. The most notable amendment was the extension of the provision on protection of safety, health and accident compensation to businesses and workplaces in which five or more and 16 or less workers were ordinarily employed, starting on January 1, 1976. Other amendments included the following: preferential reimbursement of wage claims; the extension of extinctive prescription of wage claims from 2 to 3 years; special protection to minor workers aged between 16 or older and 18 regarding standard working hours³⁴); levelling out of lump sum compensation related to accident compensation at the standard prescribed in the INDUSTRIAL ACCIDENT COMPENSATION INSURANCE ACT; strengthening of penal provisions; and transfer of the authority under the Act from the Minister of Health and Social Affairs to the Administrator of the Labor Administration.

34) Article 55 stipulated that “Working hours of a person aged between 13 and 18 shall not exceed 7 hours per day and forty-two hours per week. However, the working hours may be extended up to two hours per day upon permission from the Administrator of the Labor Administration.”

(3) Amendment of the LABOR UNION ACT in 1974

Together with the amendment of the LABOR STANDARDS ACT, the LABOR UNION ACT and the LABOR DISPUTES ADJUSTMENT ACT were also amended. The LABOR UNION ACT was amended by Act No. 2076, and the major contents were as follows. The operation of the Labor-Management Consultation Council was further concretized. Union members were allowed to adopt a resolution by majority when special provisions regarding modifications to union bylaws and discharge of union officials were stipulated. In addition, penal provisions on violators of the order or judgment of the Labor Relations Commission and on noncompliance of collective agreements were toughened. Further, the LABOR DISPUTES ADJUSTMENT ACT amended by Act No. 2707 transferred the authority under the Act of the Minister of Health and Social Affairs to the Administrator of the Labor Administration, and reinforced the penal provisions.

Additionally, the SEAFARERS ACT (1973), the EMPLOYMENT SECURITY ACT (1974) and the INDUSTRIAL ACCIDENT COMPENSATION INSURANCE ACT (1973, 1976, 1977) were amended, and the FRAMEWORK ACT ON VOCATIONAL TRAINING enacted in 1976 was also amended (1979).

(4) Evaluation

Under the Yushin Order, regulations on labor disputes were further strengthened under the name of maintaining industrial peace and eliminating social instability. The manpower of labor administration was strengthened as a consequence.³⁵⁾ The labor legislations during this period

was led by the government, and the government interfered in labor-management disputes actively while extending the scope of application of the LABOR STANDARDS LAW and tightening the penal provisions on violations of the Act. In spite of such interference by the government and legislation protecting workers, the working conditions were not improved in substance, and hence, discontent of workers skyrocketed.³⁵⁾ The employer's ability to pay was below the level required by the LABOR STANDARDS ACT or labor administration, and more significantly the maldistribution of income and wealth intensified owing to the government's economic policy proclaiming the 'growth first, distribution later'. The contradiction of distribution structure which became more apparent in the late 1970s acted as a factor hindering the stability of labor-management relationship and national security.

4) Laws governing market access including foreign investment

As mentioned above, the 1960s was a period of forming the basis for improving the trade system and settling the export support system. In the 1970s, based on such foundation, trade earnestly began to grow. Under these circumstances, the TRADE TRANSACTION ACT was amended twice.

(1) Amendment of the TRADE TRANSACTION ACT in 1972

In the amendment of December 30, 1972, prohibition of imports and exports with the communist bloc was deleted in order to meet the

35) Ministry of Labor, History of Labor Administration, Part 1 Summary, p. 61 [, 1 , 2006 , p. 61].

36) Ministry of Labor, History of Labor Administration, Part 3 Protection Policy of Employees, p. 45 [, 3 , p. 45].

international trend of increase in trade between the East and the West. Imports and exports with the communist bloc were allowed just like other countries, but areas which required special regulation on imports and exports, such as hostile countries, were determined by the Presidential Decree. Through this amendment to the TRADE TRANSACTION ACT, expansion of trade with the Eastern European bloc was increasingly accelerated.

(2) Amendment of the TRADE TRANSACTION ACT in 1975

The contents of the amendment on July 25, 1975 were as follows. First, the requirements for qualification of those who wished to export self-manufactured products could differ from that of other general exporters. Second, reasons for disqualification of exporters and requisites for revocation of exports and imports permission would be determined. Third, the Minister of Commerce could issue an order to maintain the system of imports and exports, and adopt special measures to regulate foreign trade in case of war, mishap or any other emergency situations. Fourth, the range of prohibition of practices disturbing the export and import order was expanded.

(4) Evaluation

Since its enactment in 1967, the TRADE TRANSACTION ACT was only revised partially three times in 1970, 1972 and 1975, even though there was a great change in domestic and foreign trade environment. As a result, the TRADE TRANSACTION ACT had lost its suitability to adapt to increase in scale of trade, diversification of trade method, and change in international trade environment, as it could be seen through the

evaluation below.

First, there were excess regulations on foreign trade. The purpose of the TRADE TRANSACTION ACT was to promote export and to control import in order to accelerate healthy development of foreign trade. Therefore, under such managed trade system of export acceleration and import regulation, there was a possibility of causing trade disputes. Moreover, it restricted qualification of exporters and demanded license or permission from the Minister of Commerce on all exports and imports of goods except for cases allowed by special treatment. Also, the standard price of import and export goods, maximum price or minimum price were announced so that the imports and exports were to be formed at these prices.

Second, protection for domestic industries in response to import liberalization was insufficient. As the government positively promoted import liberalization, the possibility of causing damage to domestic industries, due to excess imports or sudden increase of imports, also increased. But there was no remedy system corresponding to the import liberalization.

Third, the maintenance of import and export system was inadequate. In order to respond to the evermore growing import regulation in developed countries, it was desirable for the industries to maintain a fair trade order voluntarily. The government would also encourage free and fair trade. However, unfair trade practices, such as imports and exports violating industrial property right, copyright and other intellectual property rights and export and import of goods with false indication of origin, were not prohibited or appropriately regulated. Moreover, there was no legal

ground on which the private business circle could form an organization for autonomous activities.

Fourth, complex trade related legislations needed improvement. With regard to trade management, there was lack of mutual connection between the laws which were related, such as the TRADE TRANSACTION ACT, the INDUSTRIAL EQUIPMENT EXPORT PROMOTION ACT and the EXPORT ASSOCIATION ACT. Further, after 20 years of operation of the TRADE TRANSACTION ACT, some articles became unnecessary because they did not correspond to the realities of the market. Also, in incorporating the practical demands through subordinate regulations, there were instances where these regulations were beyond the scope of the original purpose of the laws concerned.

The need to reorganize the whole legal system of trade was brought forward as these problems emerged. Consequently, the FOREIGN TRADE ACT was newly enacted in 1986.³⁷⁾

5) Laws governing industrial policy

(1) Amendment of the ACT ON TEMPORARY MEASURES ON FACILITIES FOR THE TEXTILE INDUSTRY in 1975

The ACT ON TEMPORARY MEASURES ON FACILITIES FOR THE TEXTILE INDUSTRY was amended on 31 December 1975 to focus on supporting the rational growth of the textile industry by preventing the flood of non-permitted or unregistered facilities for the textile industry through reinforcing punishments for such facilities. Its essential contents

37) Ministry of Commerce, 40 Years of Import Promotion, 1988, pp. 160-161 [, 40 , 1988 , pp. 160-161].

were as follows. First, usage of no-permit or unregistered facilities was ordered to be prohibited. Second, constructors of facilities for the textile industry were provided only to those facilities with permit or those which were reported. Third, those who wanted to replace facilities for the textile industry were required to report.

The Act, with the enactment of the TEXTILE INDUSTRY MODERNIZATION PROMOTION ACT on 28 December 1979, was abolished.

(2) Enactment of the TEXTILE INDUSTRY MODERNIZATION PROMOTION ACT of 1979

The TEXTILE INDUSTRY MODERNIZATION PROMOTION ACT was enacted on 28 December 1979 for the purpose of contributing, by catalyzing the modernization of the textile industry, to the strengthening the international competitiveness of textile products and to the balanced development of the domestic economy. Its essential contents were as follows. First, the Master Plan for the Modernization of the Textile Industry and an execution plan for this Master Plan were drawn up. Second, the Textile Industry Modernization Fund was established to be run and managed by the Korea Textile Industry Association and financed by government donations, and donations, loans and revenues of the Korea Textile Industry Association in order to secure the necessary financial resources for the modernization of the textile industry. Third, industrial complexes for the textile industry were constructed. Fourth, the Textile Industry Deliberation Council was established under the Ministry of Trade to deliberate on matters pertaining to the modernization of the textile industry.

(3) Amendment of the ACT ON CONSTRUCTION AND DEVELOPMENT OF INDUSTRIAL COMPLEXES FOR THE EXPORT INDUSTRY in 1973

The Industrial Complex Management Administration was newly established to undertake businesses related to the industrial complexes of the export industry. Accordingly, the ACT ON CONSTRUCTION AND DEVELOPMENT OF INDUSTRIAL COMPLEXES FOR THE EXPORT INDUSTRY was amended on 5 March 1973 to focus on readjusting some necessary provisions. Its essential contents were as follows. First, the development corporation would be a non-profit organization in charge of the construction and management of the industrial complex. Second, the construction of the industrial complex would in principal be undertaken by the development corporation and, if necessary, the Minister of Construction could also undertake the construction of the complex. Third occupant enterprises would be designated by the head of the Industrial Complex Management Administration.

The Act was abolished on 31 December 1977 along with the amendment of the INDUSTRIAL COMPLEX MANAGEMENT ACT.

(4) The INDUSTRIAL COMPLEX MANAGEMENT ACT of 1975

a) Enactment of the INDUSTRIAL COMPLEX MANAGEMENT ACT of 1975

The INDUSTRIAL COMPLEX MANAGEMENT ACT was enacted on 31 December 1975 for the purpose of promoting healthy development of the domestic economy by stipulating basic details pertaining to industrial complexes and rationally running the complexes. The essential contents of

the Act were as follows. First, that industrial complexes would be managed by State or local governments or by the Industrial Complex Management Corporation. Second, the Industrial Complex Management Corporation would be established with the permission of the head of the Industrial Complex Management Administration. Third, the local governments or Industrial Complex Management Corporations managing industrial complexes would be required to draw up a master plan for management and an annual business plan and to obtain the approval of the head of the Industrial Complex Management Administration. Fourth, that enterprises wanting to move into the complexes would need to make contracts with the organ managing those complexes.

b) Amendment of the INDUSTRIAL COMPLEX MANAGEMENT
ACT in 1977

The INDUSTRIAL COMPLEX MANAGEMENT ACT was amended on 31 December 1977. The contents of this amendment were as follows. First, the Act on the Construction and Development of Industrial Complexes for the Export and Import Industries would be abolished, and the Industrial Complex Management Administration established under the abolished law would become the management corporation of this law. Second, details concerning the available period of State property and the maintenance and repairing of public facilities within the industrial complexes were stipulated. Third, the provision for the compulsory installation of disaster prevention facilities in the industrial complex managing organ was added.

(5) Enactment of the INDUSTRIAL PLACEMENT ACT of 1977

The rapid expansion of the Korean economy resulted in the maldistribution of industrial concentration and the overcrowding of industrial complexes caused by haphazard factory expansion within cities. A casual regional distribution of industries would not have added to a continuous development. Thus the INDUSTRIAL PLACEMENT ACT was enacted on 31 December 1977 for an overall systematic placement of industries. Its essential contents were as follows. First, factories, grouped by industry and region, were properly placed by means of establishing and implementing the Master Plan for Industrial Placement throughout the whole territory. Second, nationwide periodic inspection for factory locations was made and, based on this, the standards for factory locations were fixed and publicly announced. Third, those who wanted to construct or expand specific factories need to, before entering into construction or extension, report to the Minister of Trade. If the Minister, after inspecting the factory location, deems it not suitable according to the standards set, he could advise changes of the location, building a facility suitable for the location, or order adjustments or changes of factory location or business plan. Fourth, the Minister of Trade could designate areas that required concentration of factory construction as promotion areas, and the maintenance of supporting facilities was primarily carried out in those promotion areas. Fifth, those who wanted to construct factory complexes within promotion areas should have the Minister of Trade designate their prearranged locations. Sixth, the Minister of Trade could designate as special industrial maintenance zones those areas which were neither transition expedition areas nor limited construction areas, but

needed restrictions as to the haphazard expansion of factories and especially required factory maintenance for the conservation of the environment around the areas. Seventh, within special industrial maintenance zones, any construction or extension of factories that violated the industrial maintenance implementation plan, which was established and carried out by the governor of the province with the approval of the Minister of Trade, would be banned. Eighth, the governor of the province, if he sees it necessary for the carrying out of the industrial maintenance implementation plan, could order the repairing of facilities or the transition to those factories subject to the maintenance plan. Ninth the Industrial Placement Deliberation Council was established for the deliberation on important matters pertaining to the replacement of factories and the maintenance of factory locations.

(6) Enactment of the INDUSTRIAL DESIGN PROMOTION ACT of 1977

The INDUSTRIAL DESIGN PROMOTION ACT was enacted on 31 December 1977 in order to lay the legal foundation to promote the strengthening of international competitiveness of domestic industries by facilitating research and development of industrial designs, and supporting the promotion activities for industrial designs. The essential contents of the Act were as follows. First, the Design and Packaging Promotion Council was established. Second, legal basis for the establishment, running and fund-raising of Korea Design and Packaging Center was specified. Third, details to support the research and development activities of professional designers and packaging engineers were stipulated. Fourth, necessary donations for this center were provided and the center was monitored by means of business reports.

(7) Evaluation

During this period, the heavy chemical industry policy was successful in elevating the national industrial structure, and, along with giving birth to global scale enterprises, laid the foundation for entering highly value-added industries that had been led by Japan and other advanced countries. However, it was criticized that, in a country where human labor was relatively abundant but natural resource was scarce, the government concentrated on excessive, repetitive investment in capital-oriented industries. Until the heavy chemical industries had settled down, the government limited the importation of raw materials by enforcing the use of domestically produced parts and encouraged replacement of imported goods by domestically finished products, which also resulted in the slowing of liberalization of finance and trade. Furthermore, the government's intensified support for privileged enterprises accelerated the growth of multi-enterprise conglomerates, characterized by family-entrained ownership and management, and these 'haebol's focused on excessive business expansion through the cozy relations between politics and business, while strengthening their monopoly in the market.

6) Laws governing financial sector including securities market

In order to attract the underground financing market into the regular financing system, after the 8·3 Measure, the government enacted the SHORT-TERM FINANCING ACT, the MUTUAL CREDIT UNION ACT, and the MUTUAL CREDIT ASSOCIATION ACT, and accordingly the Mutual Credit Union was established to replace the Fisherman's Cooperative. Moreover, 15 financial investment companies were set up

under the SHORT-TERM FINANCING ACT between 1972 and 1979. The financial investment company played a significant role in raising short term business funds instead of the private money market by selling commercial papers with the interest rate 1-2 per cent higher than that of the commercial banks.

The MERCHANT BANKS ACT was enacted in order to support influx of foreign capital for corporations after 1976 and to adopt mid-term and long-term commercial loans in the private sector which led to the establishment of 6 merchant banks. Such financial institutions other than banks developed rather quickly during this period for reasons of wider scope of business and the 1-2 per cent higher profit rate than that of average commercial banks.

The government actively executed the fostering of the capital market in order to encourage direct financing of enterprises. After the enactment of the PUBLIC OFFERING ACT on 30 December 1972, the government recommended public offering of stocks by designating those corporations receiving financial support exceeding specific amount as institutions subject to public offering, while imposing disadvantages in tax and putting restrictions on financial support for those not responding. Moreover, the system of public disclosure of corporations was established to protect investor's rights and promote the development of capital market by establishing the investment entrust company in 1974 as well as the Securities and Exchange Commission and the Securities Supervisory Board in 1977.

The government also took two additional measures supporting heavy industries: the establishment of the National Investment Fund and the

expansion of the financial support of the Bank of Korea. Establishing the National Investment Fund was considered as typical financial support to foster heavy industries. And in order to meet the needs to efficiently supply funds to heavy industrial investment, the NATIONAL INVESTMENT FUND ACT was enacted on December 1973.

(1) Amendment of the BANKING ACT in 1977

The BANKING ACT was amended on 30 December 1977 in order to increase public credibility of financial institutions as the economy grew and financial business became globalized, and to complement the BANKING ACT in accordance with the revised the BANK OF KOREA ACT. The changes were as follows. First, the maximum payment guarantee on financial institutions would be raised from 15 times to 20 times of the total amount of existing reserves and capital in order to reinforce the financial support and to perform financial business effectively as the economy grew. The following guarantee overlaps were excluded from the subject for guarantee, debts guaranteed or accepted by the government, debts made for the government, the Korea Credit Guarantee Fund, insurance companies, etc. Second, in order to induce huge financial institutions for public credibility, legal reserves would be raised from 1.5 billion Won to 25 billion Won for existing national banks, and from 150 million Won to 1 billion Won for local banks respectively. Third, authorities to instruct and to order that are necessary for healthy management of banks were granted to the Superintendent of the Office of the Bank Supervision of the Bank of Korea.

(2) Amendment of the BANK OF KOREA ACT in 1977

The BANK OF KOREA ACT was amended on 30 December 1977 as follows. First, the Monetary Board Operating Committee may, in cases necessary, request reserve assets for deposits separately from reserves for deposits. Second, the minimum ratio of 10 per cent on reserves for deposits would be abolished. Third, the minimum ratio of reserves that individual banks were required to hold was to be calculated monthly as directed by the Monetary Board Operating Committee. Fourth, the Bank of Korea would be allowed to import deposits from financial institutions other than banks. Fifth, in case where misconduct is detected from the inspection of the Office of Bank Supervision, related measures should be taken and the result should be reported to the Monetary Board Operating Committee.

(3) Amendment of the SECURITIES AND EXCHANGE ACT in 1976

The SECURITIES AND EXCHANGE ACT was amended on 22 December 1976. The purpose of the amendment was to construct a system to raise large amount of domestic capital needed for the economic development followed by growth of the securities market. The main points were as follows. First, the securities issuers would be registered prior to their listing. Second, the system of tender offer for securities for the purpose of business management stabilization would be adopted. Third, purchase or sale transactions of officers and employees of securities companies to establish fair trade would be restricted. Fourth, the largest shareholder would be liable to compensate for the damages caused by the officers of securities companies neglecting to perform his duties.

Fifth, listed corporations became obliged to submit semi-annual reports. Sixth, the Securities and Exchange Commission would be established in order to review and decide the issue-management of securities and the matters concerning supervision of securities institution. Seventh, the Securities Supervisory Board would also be established to perform an executive role for the Securities and Exchange Commission. Eighth, in order to expand the system of public disclosure of information, important matters concerning the business management of listed corporations were to be reported to the Securities Supervisory Board. Ninth, listed corporations were to issue and to manage securities according to the Securities Handling Regulations provided by the Securities Supervisory Board to efficiently manage the listed securities.

(4) Evaluation

The government's influence on the entire financial market was further increased due to the fostering of financial institutions other than banks and of the capital market. In other words, instead of shrinking the existing financial market such as the underground money market which was out of governmental control, the government established financial institutions other than banks under its control. Also, as the system was set up for the government to directly regulate the capital market, the government could thereby control the overall financial market. Although financial investment funds were established and managed by private financial funds and public finances, in reality, most of the fund was supplied by private financial institutions including banks. And the scope of management increased from 69.8 billion Won in 1974 to 828.3 billion Won in 1978, providing more than 60 per cent of long-term investment

funds needed for heavy industries from 1975 to 1980.

7) Laws on dispute settlement including courts, arbitration and mediation

(1) Enactment of the TRIAL OF SMALL CLAIMS ACT of 1973

One of the features of the civil procedure was that the small claims system was newly established. The TRIAL OF SMALL CLAIMS ACT was enacted by Act No. 2547 on February 24, 1973, and was effected from September 1. The purpose of the Act was to deal with small civil claims swiftly by using simple procedures in district courts and their branch courts. The small claims system still plays an important role in civil cases.

(2) Amendment of the PATENT ACT in 1973

In 1973, the laws relating to intellectual property, i.e. the PATENT LAW, the UTILITY MODEL ACT, the DESIGN ACT and the TRADEMARK ACT were all amended overall. The purpose of the amendment of the PATENT ACT was to ensure strictness in the examination of patent application and in judgments, and to remove the side effects of the patent system which could impede the liberal activities of businesses. At the same time, it aimed at protecting new and valuable inventions strongly so that it could contribute to the development of the national economy.

(3) Evaluation

This period was an age of authoritarianism as represented by the 'Yushin' Constitution and emergency measures. The internal participation

from the courts in the composition of the Supreme Court was excluded, and the Chief Justice held the right to recommend the appointment of Justices while the President exercised the right to appoint them. This infringed the courts' autonomy of personnel management and rapidly intensified the bureaucracy and hierarchy in the judiciary.³⁸⁾

3. The Nature of Legal Changes

1) Rule-based or Discretionary, Market-led or State-led

From the Third Five-Year Economic Development Plan, the government started restructuring the economy of export from light industry towards heavy and chemical industry. The INDUSTRIAL COMPLEX MANAGEMENT ACT and the INDUSTRIAL PLACEMENT ACT were enacted to set grounds for strategic industries such as iron-steel, petrochemical, shipbuilding, machinery, *etc.* During this period, State control over financial sector was further intensified in order to provide exclusive financial support for heavy and chemical industries. The government actively executed the fostering of the capital market in order to encourage direct financing of enterprises and more discretionary practices were introduced such as granting the Bank of Korea comprehensive authorities for instructing and ordering banks. The TRADE TRANSACTION ACT imposed excessive control on foreign trade. It demanded license or permission from the Minister of Commerce on all exports and imports of goods except for cases allowed by special

38) Ki-Choon Song, A Critical Study on the History of the Korean Judicial System, Journal for the Study of the World Constitution, Vol. 12 No. 1 (2006), p. 179 [, , 12 1 (2006 6), p. 179].

treatment. Also, the standard price of import and export goods, and maximum price or minimum price were announced so that the imports and exports were to be formed at these prices. Overall, during this period, the economic growth of Korea was led by the government with significant discretion allowed in relevant laws and subordinate regulations.

2) Was the resolution of economic and business disputes efficient?

(1) Changes in Number of Lawyers

(unit: persons)

1972	1973	1974	1975	1976	1977	1978	1979
745	785	812	809	819	811	832	890

* source: Korean Bar Association

The number of successful applicants for the Korean Bar Examination stayed around 800 during the period between 1972 and 1978. However, it reached 890 in 1979 to meet the increasing demands for legal professions.

(2) Number of Claims to the Korean Commercial Arbitration Board

(unit: claims)

	Arbitration	Good Offices	Total
1972	4	95	99
1973	5	111	116
1974	13	124	137
1975	11	177	188
1976	15	188	203
1977	32	305	337

Part IV. Legal System of Economy for Heavy and Chemical Industry Drive (1972-1979)

	Arbitration	Good Offices	Total
1978	38	501	539
1979	20	644	664

* source: Korean Commercial Arbitration Board

The number of arbitration claims was quite small compared to that of mediation claims referred to the Korean Commercial Arbitration Board. Good Offices claims exceeded 500 in 1978, and increased by 28 per cent the following year.

4. Economic Assessment of the Legal System

	1972	1973	1974	1975	1976	1977	1978	1979
Gross National Product ³⁹⁾	107.0	137.0	192.0	212.0	293.0	377.0	529.0	629.0
Per Capita Gross National Income ⁴⁰⁾	320.0	401.0	554.0	602.0	818.0	1,034.0	1,431.0	1,676.0
Rate of Economic Growth ⁴¹⁾	4.5	12.0	7.2	5.9	10.6	10.0	9.3	6.8
Balance on Current Account ⁴²⁾	-371.2	-308.8	-2,022.7	-1,886.9	-313.6	12.6	-1,085.2	-4,151.1
Trade Balance ⁴³⁾	-573.9	-566.0	-1,936.0	-1,671.4	-590.5	-476.6	-1,780.8	-4,395.5

39) Nominal value, figures in billions of dollars

40) Nominal value, figures in dollars

41) Percentage based on real gross domestic product figures.

42) Figures in millions of dollars

43) Figures in millions of dollars

4. Economic Assessment of the Legal System

	1972	1973	1974	1975	1976	1977	1978	1979
Export Volumes ⁴⁴⁾	1,624.1	3,225.0	4,460.4	5,081.0	7,715.3	10,046.5	12,710.6	15,055.5
Import Volumes ⁴⁵⁾	2,522.0	4,240.3	6,851.8	7,274.4	8,773.6	10,810.5	14,971.9	20,338.6
Trade-GNI Ratio	46.6	63.6	68.0	66.2	65.3	65.3	64.6	64.8
Composition of the Economy								
Agriculture	28.7	26.7	26.6	27.1	25.7	24.4	22.4	20.9
Manufacture, Mining	20.8	23.7	23.3	23.5	25.4	25.5	25.7	25.9
Services	45.1	44.0	45.0	43.6	43.2	43.2	43.0	43.0
Others	5.4	5.6	5.1	5.8	5.7	6.9	8.9	10.2
Unemployment	4.5	3.9	4	4.1	3.9	3.8	3.2	3.8
Foreign Direct Investment ⁴⁶⁾	121,973	318,151	152,830	207,317	79,154	83,626	149,426	191,300

* The following figures are based on the statistics obtained with the help of the Bank of Korea.

The gross national product increased from 107 billion dollars in 1972 to 629 billion dollars in 1979 showing a 488 per cent growth. The per

44) Figures in millions of dollars

45) Figures in millions of dollars

46) Net declared value, figures in thousands of dollars

capita gross national income was also increased from 320 dollars in 1972 to 1,676 dollars in 1979 showing a 424 per cent increase. During this period, the Korean economy grew by the average growth rate of 8.3 per cent. The balance on current account recorded a deficit except in 1977 showing a dramatic increase between 1974 and 1975, and between 1978 and 1979. The trade balance also showed a steep decrease between the same years. The trade-GNI ratio went over 60 percent whereas the agricultural composition of the economy was reduced below 30 per cent while manufacture and mining gradually increased to near 30 per cent. The unemployment rate remained 3 to 4 per cent during this period and the foreign direct investment reached highest in 1973 but remained relatively low for the other years.

Part V. Legal System of Economy for Consolidation (1980-1986)

1. Economic Situations and Policy Needs for Legal Changes

Timeline

1981	5.18 Gwangju Mass Uprising
1981	Establishment of the Jeon Doo-Hwan government
1982	fifth Five-Year Plan for Economic Development (~1986)

A remarkable point of this era was the autonomous trade liberalization for industry restructuring. Nearing the end of the 1970s, there was a decline in efficiency of government-led economic growth policies such as those in the 1960s and early 1970s, and it was understood that extreme

intervention by the government was a hindrance to efficiency. After the assassination of President Park in 1979, many people came to expect and hope for a change of pace politically. They economically hoped for a autonomous structure, different from the government-led regime. In the Constitutional amendment process for the Fifth Republic, there was an agreement to newly establish a provision against monopoly to proclaim the creation of a new economic order.

The fifth Five-Year Plan for Economic Development (1982-1986), breaking free from the growth centered policy prevalent at that time, intended to achieve stabilized prices and market competition, and improve less developed areas and industries. It turned away from government-led intensification of the industries of the 1970s, and the necessity for nongovernmental-initiated economic management started to get recognized. Diversification of foreign investment was promoted with the expansion of the open-market policy, and the capital market was gradually open through the internationalization of the financial market. At the same time, the heavy chemical industry was to be controlled through government-led regulation and support to solve the overinvestment and extreme competition that resulted from the promotion policies in the 1970s.

As such, in the 1980s, an industrial policy to strengthen the function to distribute resources the basis of market was put to action. At the same time, direct governmental intervention in the market decreased. However, despite such industrial restructuring policies, Korean economy

faced stagnation near the end of the 1980s, and was unable to reach its goal of sophistication of the industries. Korea underwent social instability in both 1979 and 1980 and also two times of oil-shock in the 1980s. For the first time since launching the Five-Year Plan for Economic Development, a minus growth was recorded.

2. The Areas of Law with Major Changes

1) Laws governing the government including administrative law

(1) Establishment of the Fair Trade Commission

To promote the basics of a free market economy, such as 'free and fair competition', in 1976, the Department of fair trade was established inside the Board of Price Policy of the Economic Planning Bureau. In 1981, following the announcement of the MONOPOLY REGULATION AND FAIR TRADE ACT in 1980, the Fair Trade Commission was established as a subsidiary of the Economic Planning Bureau

(2) Rising Importance of Intangible Assets

From the 1980s, organizations considered to be mainly concerned with social and cultural matters went through a process of divergence, and the result was that through such process, economic aspects of the fields of culture and society in general became more prominent. For example, the Ministry of Culture and Education gradually evolved into the likes of the Ministry of Sports and the Ministry of Tourism, and in the process, these new Ministries began to play a more significant role in related industries and businesses. This change can be attributed to the increased importance

of culture, arts, tourism and sports and others in economy. The increased importance of competent Ministries also would be attributed to this trend.

In 1976, the Office of Intellectual Property was established, followed by the Radio Communication Development Commission. Such developments could be understood as a move to adapt to the increased importance of intellectual property.

(3) Increased Concern to the Environment

With the creation of the Office of Environment Protection in 1980, there existed substantial interest in the field of environmental protection. Even before the creation of the Office of Environment Protection, the Ministry of Commerce and Industry, through its Office of Promotion of Industrial Development and the Office of Industrial Complex Management, was aware of the problem of the environment, largely due to the heavily industrial nature of the economic development at the time. The establishment of the Office of Environment Protection introduced the concept of 'preservation', and also posed a conflict of interests with the Office of Forestry demanding future restructuring in the area. The Office of Environment Protection was later elevated to a full-fledged Ministry in 1994 and continued its role as the counter-balance to development orientated policies.

2) Laws governing property rights including IP law

(1) The PATENT ACT of 1961

a) Amendment of the PATENT ACT in 1980

Provisions of PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY were incorporated in to the PATENT ACT,

to be in step with the global norm and to promote the development of heavy industries. The main points of the amendment are as follows: First, to delimit the extent of a patent right more clearly, a more detailed description of the invention was required; in accordance with the practice of advanced countries, names of the inventor, agent, business address, date of application and the title of the invention were to be included in the application. Second, as required in the Paris Convention, provisions to provide national treatment and right of priority claims to citizens of signatory entities were added. Third, to prevent unnecessary investment and research, early disclosure of patent application was introduced. Fourth, to promote swift examination of the applications, only those applications presented with request of examination were to be examined.

b) Amendment of the PATENT ACT in 1982

In preparation for the accession to the PATENT COOPERATION TREATY, elements required for international patent application in the Treaty were introduced. The main points of the amendment were as follows. First, in cases of international patent applications, applicants were limited to national of Korea and foreigners with address in Korea, date of submission of application documents was to be considered as date of application. Second, in case of foreigners applying for patents in their national states, date of application in that foreign state was to be considered as the date of application in Korea as well. In priority claims, deadline for submission of documents supporting the priority claims for international applications was extended from one and half year to one and three quarter year. Publication of international application was also postponed to one and three quarter year, and in such cases, translated

versions of the documents were to be presented before the deadline. In cases where there exist irregularities between the original and the translation, only the parts in agreement were to be accepted patent rights. Third, in cases of incapacity of examiners, applicants were given the right to acquire a decision on the invalidity of the examination, which was formerly prohibited.

c) Amendment of the PATENT ACT in 1986

Following the international trend of industrial property, patents on substance were introduced. To promote sincere utilization of patent rights, the system of ordinary patent utilization was revised. To provide prompt recognition of patent rights, pre-examination process was introduced. The main points of the amendment were as follows. First, inventions related to medication, which were formerly denied patent rights, were incorporated into the system of patents. Second, in cases where an invention loses its novelty against the will of the inventor, the applicant was required to submit a document explaining of the situation within 30 days of the event. However, the new rule abolished the time limit. Third, patent rights related to medication were not to be extended to preparation of medication as stated in the PHARMACEUTICAL AFFAIRS ACT. Fourth, ordinary licence, which was granted in cases of non-practice of patent rights by the holder of the patent for more than 3 years, was revised. Fifth, duration of patent right was extended from 12 years to 15 years. Inventions which require a long period of development, such as inventions in medicine, were granted 5 more years of patent rights. Sixth, in case of appeal to the examination, if the application documents were revised within 30 days of the appeal, the application should be re-examined

by the examiners. Seventh, Upper limit on patent right violation fines was lifted upwards.

(2) The UTILITY MODEL ACT of 1961

a) Amendment of the UTILITY MODEL ACT in 1980

In line with the amendment of the PATENT ACT, the UTILITY MODEL ACT was also amended to meet the requirements of the PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

b) Amendment of the UTILITY MODEL ACT in 1982

As was the case with the PATENT ACT, the Act was amended in preparation to the accession to the PATENT COOPERATION TREATY system.

c) Amendment of the UTILITY MODEL ACT in 1986

In cases where an utility model loses its novelty against the will of the developer, the applicant was required to submit a document in explanation of the situation within 30 days of the event. However, the new rule abolished the time limit.

(3) The INDUSTRIAL DESIGN PROTECTION ACT of 1961

a) Amendment of the INDUSTRIAL DESIGN PROTECTION ACT in 1980

Common elements of the PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY were inserted to the INDUSTRIAL DESIGN PROTECTION ACT. Designs which could be easily created from existing structures or the nature were to be denied registration.

b) Amendment of the INDUSTRIAL DESIGN PROTECTION ACT in 1982

In case of incapacity of examiners, applicants were given the right to acquire a decision on the invalidity of the examination, which was formerly prohibited.

c) Amendment of the INDUSTRIAL DESIGN PROTECTION ACT in 1986

In cases where an industrial design lost its novelty against the will of the designer, the applicant was required to submit a document explaining the situation within 30 days of the event. However, the new rule abolished the time limit.

(4) The COPYRIGHT ACT of 1957

a) Amendment of the COPYRIGHT ACT in 1986

The COPYRIGHT ACT, which had not been revised a single time for the past 30 years since its initial introduction, was criticized for its backwardness, especially in its lack of clear definition of terminology and its vague rules on copyright ownership, and because of these shortcomings, the Act was blamed for rampant copyright violation in Korea from the 1970's. It also lacked any provisions to adapt to changing and expanding nature of copyrights. Work on its amendment was initiated in 1976, but due to delays in the National Assembly, it finally went into effect on December 31, 1986. In addition, a minute book of negotiations between Korea and the United States on protection of foreign copyright was published on July 21, 1986.

Main contents of the amendment were as follows. First, definition and illustration of copyrighted material were updated, and materials such as

computer programs were included in the revised and expanded provision. Second, protection on foreign copyright was reinforced by introduction of provisions which granted protection of foreign copyright on a bilateral basis- that is, while foreign copyrights under the protection of international instruments would be protected by Korean authorities, copyrights of those nations which do not respect that of Korea would be protected reciprocally. Moreover, violation of foreign copyright prior to the amendment was not to be held liable, there by denying retroactive application. Third, if a person working for a corporation creates copyrighted materials, unless there exists other rules, the ownership of the copyright should be retained by the corporation. Fourth, property rights of copyright was expanded to right of reproduction, right public performance, right of broadcasting, right of transmission and right of production of derivative works. Fifth, in cases which it was impossible to obtain permission of usage from the holder of the copyright, the minister in charge of copyright should have the power to grant usage upon payment of appropriate deposit. Sixth, neighboring rights to copyright were created to grant stage performers, broadcasters and producers of phonograph independent rights for 20-year period. Seventh, provisions on copyright management services were introduced to regulate the business operations related to copyright agency, commission and trust.

3) Laws governing business governance including corporate law

As business enterprises grew in size, there came in existence more interested parties concerned and an increase in the relative importance of corporations in the national economy. This led to a stronger request for

fair auditing over corporations. In order to strengthen autonomous corporate audit function, the business audit authority was only granted to the auditor who had accounting audit authority through the amendment of the COMMERCIAL ACT on April 10, 1984.

4) Laws governing production factors including labor law

(1) Amendment to the Constitution (1980)

After the breakdown of the “Yushin” Order in 1979, taking advantage of loosened government control, labor movement once again started to soar. However, initiated by the expanded measure of extraordinary martial law on May 17, 1980, series of emergency measures hardened the level of restrictions on labor movements. Moreover, at the time when the Fifth Republic began, the National Security Legislation Council modified the central labor relations laws to adopt those measures restraining the movements above.

The Fifth Republic's Constitution held the following characteristics concerning labor relations. According to Article 30, the State should endeavor to promote the employment of workers and to guarantee optimum wages in the area of individual labor relationship, anticipating the enactment of the MINIMUM WAGE ACT as a part of labor protection legislation. In addition, the standards of working conditions should be determined by law in such a way as to guarantee human dignity. The phrase 'guarantee of human dignity' was newly provided in the Constitution. Those who have given distinguished service to the State was also to be protected. According to Article 31 regulating collective labor relationship. of the three primary labor rights, only the exercise of

right to collective action was limited by law whereas the right to association and collective bargaining were free of any constraint. Formerly all three rights were protected as prescribed by law. Accordingly, the four labor laws (LABOR UNION ACT, LABOR DISPUTES ADJUSTMENT ACT, LABOR RELATIONS COMMISSION ACT and LABOR STANDARDS ACT) were amended overall by the National Integrity Legislation Council, and the LABOR-MANAGEMENT CONSULTATIVE COUNCIL ACT was enacted as well.

(2) Amendment of the LABOR STANDARDS ACT in 1981

The LABOR STANDARDS ACT, by the resolution of the National Security Legislation Council on December 30, 1980, was amended and promulgated on January 29, 1981. It reflected Korea's down-to-earth particularities of the late 1970s and various other problems. The purpose of the amendment was to revise realistically inadequate factors in order to cope with changes in economic circumstances and labor-management relations, and to rationalize labor management in workplaces and to contribute to protection of workers and development of businesses by complementing elements mutually benefitting the parties to labor-management. The key amendments included prohibition of differentiation of retirement allowance, preferential reimbursement of wage claims, imposition of joint liability to a direct upper-tier contractor for wage payment delays by a subcontractor, alleviation of rigid restrictions on working hours and elucidation of the period for payment of money and valuables.

(3) Amendment of the LABOR UNION ACT of 1953

a) Amendment of the LABOR UNION ACT in 1980

The purpose of the amendment carried out on December 31, 1980 was, first, to promote workers' welfare and to contribute to the stabilization of the national economy by supporting the trade union to improve economic and social status of workers and to maintain and enhance labor conditions, and second, to initiate democratic operation through reaching consensus within the trade union by correcting irrational and inadequate factors in organization and operation of trade unions. The main contents of the amendments were as follows. First, third party interference was prohibited into labor-management problems except the parties who have directly entered into labor relationship with regard to activities of the trade union concerned and those who hold legitimate authority. Secondly, a trade union which has been established by a small minority of workers would not be composed and run against the consensus of a majority. Thirdly, workers' representative would hold the authority to bargain with the employers association over a collective agreement and other necessary matters in the interest of the trade union and its members. Fourthly, the term of validity of a collective agreement was extended to 3 years. Fifthly, union shop system was regarded as unfair labor practices in that the entry to and withdrawal from a trade union could only occur according to the intention of particular workers.

b) Amendment of the LABOR UNION ACT in 1986

The collective labor relations laws, as amended in late 1980, were strongly criticized from all levels of the society with regard to provisions

intruding the labor-management autonomy. The areas of concern were compulsory form of trade union organization, interference by administrative agency, prohibition on third party interference, restriction on purposes of usage of union fund, disapproval of union shop system, restriction on delegation of collective bargaining, restriction and prohibition of industrial action, extension of cooling-off period, and compulsory arbitration on general businesses. Consequently, the LABOR UNION ACT and the LABOR DISPUTES ADJUSTMENT ACT had to be substantially amended. The following were the principal amendments to the LABOR UNION ACT. First, a higher ranking trade union was omitted from the definition of a third party. Second, the obligation to use certain percentage of union dues on welfare projects was deleted to enhance the autonomy of trade unions. Third, correction order against trade unions could not be implemented unless ordinary order on union bylaws and resolutions of general meetings was made. Fourth, in delegating bargaining authority to higher ranking organization of trade unions, report to administrative agency was required instead of its approval in case majority of members of a unit trade union gave consent. Fifth, employers who committed unfair labor practices were now subject to penal punishment in order to prevent unfair labor practices, provided the employee concerned did not express otherwise.

(4) Enactment of the MINIMUM WAGE ACT of 1986

Through the enactment of the MINIMUM WAGE ACT (Act No. 3927) aimed at stabilizing low waged workers' living by legally securing the level of minimum wage, it became possible to institutionally secure the settlement of low wage problems which had solely relied upon

2. The Areas of Law with Major Changes

administrative guidance. The main contents were as follows. The Act was to be applied to businesses or workplaces in the manufacturing industry which ordinarily employ ten or more workers. The minimum wage was determined by the Minister of Labor according to the minimum wage proposal which was deliberated and approved by the Minimum Wage Council. If a employment contract provided for a wage that was less than the minimum wage rate, the relevant parts concerning the wage should be null and void. The invalidated parts should be considered to stipulate that the same wage as the minimum wage rate would be paid.

Change in Level of Minimum Wage

(unit: places, Korean won, per cent)

Year	Applied Industry	Business under Application	Hourly Rate	Increase Rate
1988	manufacturing industry employing ten or more workers	34,984	Group1 462.50 Group2 487.50	-
1989	manufacturing, mining, construction industry employing ten or more workers	39,977	600	Group1 29.7 Group2 23.7
1990	all industries employing ten or more workers	78,016	690	15.0
1991	all industries employing ten or more workers	82,923	820	18.8

Part V. Legal System of Economy for Consolidation (1980-1986)

Year	Applied Industry	Business under Application	Hourly Rate	Increase Rate
1992	all industries employing ten or more workers	88,771	925	12.8
1993	all industries employing ten or more workers	98,695	1,005	8.6
1994 (1~8)	all industries employing ten or more workers	103,774	1,085	7.96
1995.9~1995.8	all industries employing ten or more workers	112,374	1,170	7.8
1995.9~1996.8	all industries employing ten or more workers	117,658	1,275	8.97
1996.9~1997.8	all industries employing ten or more workers	122,351	1,400	9.8
1997.9~1998.8	all industries employing ten or more workers	128,812	1,485	6.1
1998.9~1999.8	all industries employing ten or more workers	118,359	1,525	2.7
1999.9~2000.8	all industries employing ten or more workers	199,272	1,600	4.9
2000.9~2001.8	all industries employing five or more workers (~2000.11.23)	317,266	1,865	16.6
	all industries employing one or more workers (2000.11.24~)	1,017,146		

2. The Areas of Law with Major Changes

Year	Applied Industry	Business under Application	Hourly Rate	Increase Rate
2001.9~ 2002.8	all industries employing one or more workers	1,100,768	2,100	12.6
2002.9~ 2003.8	all industries employing one or more workers	3,046,554	2,275	8.3
2003.9~ 2004.8	all industries employing one or more workers	3,131,963	2,510	10.3
2004.9~ 2005.8	all industries employing one or more workers	3,187,916	2,840	13.1
2005.9~ 2006.12	all industries employing one or more workers	3,189,890	3,100	9.2
2007.1~ 2007.12	all industries employing one or more workers	-	3,480	12.3
2008.1~ 2008.12	all industries employing one or more workers		3,770	8.3

* source: Homepage of the Minimum Wage Council, 2008⁴⁷⁾

5) Laws governing market access including foreign investment

(1) Enactment of the FOREIGN TRADE ACT of 1986

A legal system suited for new circumstances was necessary as the domestic and foreign trade environments changed greatly in the 1980s

47) Minimum Wage Council, 'Present Status of Minimum Wage' and 'Trend of Rate of Effect', http://www.minimumwage.go.kr/w_status.jsp and http://www.minimumwage.go.kr/w_progress.jsp, Last Visited September 22, 2008 [, 「 」 「 」].

compared to the period when the TRADE TRANSACTION ACT was enacted in 1967. Different aspects could be seen in terms of increase in the scale of trade, advanced export system and new protectionism in international trade order. Also, as domestic and foreign environment were changing, Korea's trade and industrial policies underwent great changes. Above all, the basis of the industrial policies shifted from government-oriented to private-oriented in order to promote market economy, and the focus on protection and regulation was moved to an autonomous system. Further, as the INDUSTRIAL DEVELOPMENT ACT was enacted, the system of private-led autonomous adjustment based on competition was able to establish. In addition, as shown on the table below, import liberalization rate has increased from 87.7 per cent in 1985 to 91.5 per cent in 1986.

Change of Import Liberalization Rate

(unit: per cent)

1965	1967	1971	1975	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
37	67	60	59	53.8	64.9	67.6	68.6	74.7	76.6	80.4	84.8	87.7	91.5

* source: Ministry of Commerce

Following domestic and foreign environment changes, the foreign trade system was partially revised and supplemented three times in 1970, 1972 and 1975 since the enactment of the TRADE TRANSACTION ACT of 1967. But it lacked the compatibility to appropriately adapt to the sharp increase in scale of trade, diversification of trade method and change in international trade order. Accordingly, the FOREIGN TRADE ACT was enacted as Act No. 3895 on December 31, 1986. In order to change the

system of managed trade based on export promotion and import regulation to a system complying to open-door policy and internationalization of economy and trade, various constraints stipulated in the TRADE TRANSACTION ACT were alleviated in the new Act. Export and import procedures were also simplified so that foreign traders could save costs. Moreover, by adequately responding to the increase in number of trading businesses, import regulations of developed countries and other changes in foreign trade environment, an advanced trade system which could maintain export and import order and realize fair trade was to be established, along with a system and procedures for swiftly remedying the industrial injuries caused by import liberalization.

The main contents of the Act were as follows. First, the Minister of Commerce could exempt the permission of import and export on goods, transaction form or payment method of goods as prescribed by Presidential Decree. Second, the Minister of Commerce could preferentially give permission to imports of raw materials and machineries which earned foreign currency through subsequent export of finished products. But exceptions were allowed when it was necessary for promoting the usage of domestic raw materials and machineries. Third, in order to remedy domestic industries from injuries caused by the opening of imports, the industrial influence examination system was newly introduced. Fourth, to elevate the image of the Korean goods so as to pursue substantial export, the design protection system of exports was established. Fifth, traders and those who consigned trade of goods could establish export associations or import associations upon authorization from the Minister of Commerce. Sixth, to deliberate on important matters in trade

policy, the Trade Policy Council was established under the Ministry of Commerce. Seventh, the TRADE TRANSACTION ACT, the INDUSTRIAL EQUIPMENT EXPORT PROMOTION ACT and the EXPORT ASSOCIATION ACT were abolished.

(2) Evaluation

The trade policies in the 1980s departed from mercantilism and protectionism of the 1960s and the 1970s to a system of free trade. In an earlier stage of economic development, the supply of financial resources needed to support basic industries and to expand the infrastructure could only depend on exports. However, in the 1980s, sufficient supply of actual resources, such as capital goods or raw materials, through imports was the key to an advanced economic development. The increase and liberalization of imports improved the efficiency of the distribution of resources in the domestic economy, seeking improvements through quality upgrade, with the introduction of the principle of competition. Also, imports of cheap foreign products contributed to the stabilization of domestic prices and enhancement of consumer welfare.

6) Laws governing industrial policy

(1) The MACHINERY INDUSTRY PROMOTION ACT of 1967

a) Amendment of the MACHINERY INDUSTRY PROMOTION ACT in 1981

The amendment of March 30, 1981 newly inserted the business feasibility examination for investments in large-sized facilities of the machinery industry, laid out the foundation for the establishment of the

Korea Institute for Productivity Technology, and reinstated the Korea Machinery Industry Promotion Institute as a special legal person for the smooth implementation of the various machinery industry promotion policies. Its essential contents were as follows. First, that, prior to registration of factories of specific machinery industry, adequacy examination for any construction or extension would be required. Second, for specific ground transportation devices, adequacy examination on their manufacturing and assembling plan, investment plan and other plans concerning the supplience of basic materials would be required. Third, donations, loans, etc. of entrepreneurs and related organizations would be added to the financial resources of Machinery Industry Promotion Fund. Fourth, the Korea Institute for Productivity Technology should be established as a special legal person in order for an effective technology development. Fifth the Korea Machinery Industry Promotion Institute should be established as a special legal person.

b) Amendment of the MACHINERY INDUSTRY PROMOTION ACT
in 1982

The MACHINERY INDUSTRY PROMOTION ACT was amended on December 16, 1982 to augment efficiency by unifying the functions of the Korea Institute for Productivity Technology and the Corporation for the Promotion of Small and Medium Enterprises, which was the original organ in charge of technological instruction. The subject areas of technological instruction and the technological levels of these two organizations were very similar, and thus it was hardly possible to differentiate between each of their undertakings. Moreover, even in the view of the beneficiary, the separation of the functions of the two

organizations could cause confusion in choosing the competent organ. Accordingly, maintaining the dual system was irrational. The essential contents of this amendment were as follows. First, the legal basis for the establishment of the Korea Institute for Productivity Technology was deleted for its assimilation with the Corporation for the Promotion of Small and Medium Enterprises. Second, the Promotion of Small and Medium Enterprises comprehensively succeeded to the Korea Institute for Productivity Technology by Corporation in respect of property, rights and liabilities.

The Act was abolished along with the enactment of the INDUSTRIAL DEVELOPMENT ACT on January 8, 1986.

(2) Amendment of the SHIPBUILDING INDUSTRY PROMOTION ACT in 1980

The SHIPBUILDING INDUSTRY PROMOTION ACT was amended on May 19, 1980 to encourage the development of the shipbuilding industry by rational overseeing and supporting medium and small sized shipyards, and achieving technological development and improvement of productivity along with the remarkable growth of the shipbuilding industry. Its essential contents were as follows. First, shipbuilding material manufacturing, manufacturing of yachts and machine repairing were added into the shipbuilding business. Second, the Minister of Trade would advise or coordinate in matters related to the construction, extension and abolition of facilities, the practical application of technology and the systematization of the shipbuilding business. Third, for the purpose of curbing repetitive or excessive investment and ensuring their proper functions, shipbuilding businesses would be required to register following a prior coordination

for the construction or extension of shipyards or material factories larger than a specific size. Fourth, the reporting system would replace the approval system for the building of ships smaller than a specific size. Fifth, the application of certain laws for the export on a deferred-payment basis of ships by means of chartering.

The Act was abolished along with the enactment of the INDUSTRIAL DEVELOPMENT ACT on January 8, 1986.

(3) Amendment of the ELECTRONIC INDUSTRY PROMOTION ACT in 1981

The rapid development of electronic technology and the expansion of its influence to other industries made its structural elevation indispensable, and especially development of the core technology such as semi-conductors and computers was necessary. For this reason, the ELECTRONIC INDUSTRY PROMOTION ACT was amended to rationally reorganize the support system and to establish a system that could support the electronic industry on a nation wide scale. Its essential contents were as follows. First, computers, the essential part catalyzing the elevation of the electronic industry, were added into the boundary of electronic devices. Second, the Master Plan for the Promotion of the Electronic Industry system, which called for a uniform support, was replaced by the Master Plan for the Elevation of the Electronic Industry system, which called for individual support according to the products' characteristics and their levels of development. Third, Electronic Industry Promotion Fund was established. Fourth, a special legal person was awarded for the Korea Electronic Industry Promotion Association.

The Act was abolished along with the enactment of the INDUSTRIAL DEVELOPMENT ACT on January 8, 1986.

- (4) Abolishment of the TEXTILE INDUSTRY MODERNIZATION PROMOTION ACT of 1979, the IRON AND STEEL INDUSTRY SUPPORT ACT of 1970, the PETROCHEMICAL INDUSTRY SUPPORT ACT of 1970, and the NONFERROUS METALS REFINING INDUSTRY ACT of 1971 in 1986

The TEXTILE INDUSTRY MODERNIZATION PROMOTION ACT of 1979, the IRON AND STEEL INDUSTRY SUPPORT ACT of 1970, the PETROCHEMICAL INDUSTRY SUPPORT ACT of 1970, and the NON-FERROUS METALS REFINING INDUSTRY ACT of 1971 were abolished on 8 January 1986 along with the enactment of the INDUSTRIAL DEVELOPMENT ACT on January 8, 1986.

- (5) Enactment of the INDUSTRIAL DEVELOPMENT ACT of 1986

At the early stage of fostering manufacturing industries in the early 1970s, separate legislations were enacted by categories of industries, and entered into force under the government's lead in order to directly support and foster each field of the manufacturing industry. However, by that time, the Korean standard of industrial foundation had ameliorated, and in accordance with the government's policy to turn towards the laissez-faire industrial development policies, the 7 original acts concerning the supporting and fostering of manufacturing industries were abolished. Instead, to stimulate the rationalization of industry and to promote a balanced development of factories by improving the industrial technology and productivity, the INDUSTRIAL DEVELOPMENT ACT was enacted

on January 1, 1986. The essential contents were as follows. First, the Minister of Commerce and Trade would designate industries to be rationalized. Second, industrial Development Fund would be established to provide the necessary budget to stimulate a balanced development and rationalization of industries. Third, the Industrial Development Council comprising of entrepreneurs and experts on industry would be organized. Fourth, entrepreneurs would be allowed to form a mutual aid organization of machinery for the purpose to guarantee quality and warrant defects and a mutual aid organization of shipbuilding for the purpose to compensate for the loss sustained by a ship due to an accident occurring during shipbuilding or before delivery. Fifth, the Monopoly Regulation and FAIR TRANSACTION ACT should not be applied to joint activities, business tie-ups, mergers executed under the rationalization plan by an industry. If the Minister of Commerce and Trade wished to establish a rationalization plan by an industry consisting of joint activities, business tie-ups, merger and etc, he/she should consult with the Fair Trade Commission in advance.

(6) Evaluation

Liberalization of the economy and opening of the market in the early 1980s did not cause the collapse of manufacturing infrastructure of infant industries. Main items of Korea's exports in the 1960s were wigs, plywood, fabrics, and the likes, but later on exports of electronics, machinery, ships, steel, automobiles increased instead. The shift in major exports in spite of the undercutting of governmental aid and the protection of heavy chemical industries after the 1980s signified that the heavy chemical industries itself gained international competitiveness.

In this sense, since the 1980s, it could be said that Korea successfully carried out the transition from State-led economy to market economy. Unfortunately, despite this success, there were structural flaws. That was, the Korean development between the 1960s and the 1970s was characterized by an economy almost entirely reliant on government intervention, which was well past the level of subsidies or protection. This meant structuring a whole new system of enterprises and finance, and the role of the government needed to change accordingly. This was something much more difficult to achieve than mere subsidy reduction or lowering protection level.

Whatever it might be, the most significant achievement was that the fundamental problem of the Korean economy was solved by stabilizing the price of commodities, and with this as the basis, facing the 3 advantageous phenomena, “cheap interest rate, low currency rate, low oil price” of the global economy from 1986, it strengthened the quality of economic structure with surplus on balance of current account, self-sustainment of financial capital.

7) Laws governing financial sector including securities market

The privatization of banks was carried out in order to increase efficiency of credit allocation in the 1980s. After the privatization of the Korea Commercial Bank, the remaining 4 banks in operation came under private management. In addition, as problems arose from the financial liberalization process, the government intensified the credit loan management system of banks simultaneously with the policy of financial liberalization.

(1) Amendment of the BANKING ACT in 1982

The BANKING ACT was amended on 31 December 1982 to mitigate regulations which were detrimental to financial institutions, and to prevent possible side-effects such as unfair credit loans for large shareholders. The main points were as follows. First, the comprehensive authority of the Superintendent of the Office of Bank Supervision to give orders relating to the business management of banks would be deleted. Second, the minimum amount of stocks required for the same person to own or vote would be limited to 8 per cent of the total number of outstanding stocks of financial institutions. Third, the credit loan control for the same person would be reinforced.

(2) Amendment of the SECURITIES AND EXCHANGE ACT in 1982

The SECURITIES AND EXCHANGE ACT was amended on 29 March 1982 in order to transform to an economic system led by private sector, to establish a system of fair trade, to encourage autonomous investing environment, and to strengthen the system of investor protection contributing to the development of securities market. The main points were as follows. First, the effective date of registration statement for the public offering of new or outstanding securities and the issuance of new securities would be changed, from the date designated separately by the Securities and Exchange Commission after receiving the registration statement to such date as the time period prescribed by the Order by Minister of Finance elapses. Second, the consent of the Securities and Exchange Commission would be required when the largest shareholder of a securities company transfers his ownership of stocks or newly transfers

securities companies' stocks in order to become the largest shareholder. Third, a license from the Minister of Finance should be obtained in case where a Korean securities company intending to engage in securities business in a foreign country, or in case where a foreign securities company intending to establish a branch office or any other business office in order to operate the securities business in Korea. Fourth, no person would be allowed to commit an act disseminating intentionally the false quotations or untrue facts or other rumors or using a deceptive scheme for the purpose of gaining unjust benefits with respect to purchase and sale or other transaction of securities.

(3) Evaluation

In 1980s, the government gradually promoted liberalization on the basis of economic policy of steady growth. The leading policies were decrease in policy financing, privatization of commercial banks, promoting liberalization of interest rates and opening of the capital market etc. The policy financing which occupied 50 per cent of the total amount of credit loans in the 1970s was reduced in the 1980s by abolishing or reducing the system of trade financial support etc

8) Laws governing private economic activity including competition law

(1) The MONOPOLY REGULATION AND FAIR TRADE ACT of 1980

a) Enactment of the MONOPOLY REGULATION AND FAIR TRADE ACT of 1980

THE PRICE STABILIZATION AND FAIR TRADE ACT was enacted on December 31, 1980, to achieve two goals, price stability and fair trade

practices. However, the main focus of the Act was on price stabilization rather than establishing fair trade practices. In addition, the Act sought to control inflationary pressure with stop-gap measures, rather than to eliminate fundamental causes of price increase. The Act, while doing virtually nothing to revise the structure of the market playing the pivotal role in price determination, sought to control the price directly by taking measures such as imposition of maximum price on goods. These kinds of measures were actually detrimental to the task of fighting inflation, since it jeopardized the market system of price. As a result of such near-sighted approach to the problem, the Act was not able to play a positive role in curbing the inflation in the late 1970s.

At the end of 1970s, the government began its preparation to enact a fair trade act, along with the implementation of retrenchment policy to address fundamental cause of inflation. While the government worked to improve competition law, political and economic environment in Korea also moved in a more favorable direction for the enactment of a fair trade law. After the assassination of then, President Park on October 26, 1979, the Korean people had a strong desire for new order in politics. On the economic front, the Korean society yearned for the establishment of more free market economy, rather than sustaining the government-led economic system. In 1980, the new administration initiated a constitutional amendment including provisions prohibiting monopoly, showing the new administration's commitment to the idea of free market. As public consensus was building up on the implementation of a fair trade act, the government declared the guidelines to enact the MONOPOLY REGULATION AND FAIR TRADE ACT, aiming to prevent the formation of

monopoly and regulate abusive behavior of business conglomerates.

Major Elements of the Act were as follows.

First, market-dominating enterprises should not engage in practices such as; unreasonable pricing policy of a good or service fees, arbitrary control of the sale of goods or the rendering of services, unfair interference in the business activities of other enterprises and entering into illicit price increase pacts with other suppliers.

Second, to prevent the creation of monopolistic and oligopolistic market structure, business combinations led by merger, stock acquisition, interlocking directorate and business transfer that restrain competition would be subject to regulation.

Third, cartels such as price fixing, product quota, and restriction in facilities should be registered to the Korea Fair Trade Commission. When the provisions on the registration were violated, the violating activities should be immediately corrected. However, exceptions were made for cartels formed for the purpose of overcoming economic depression and rationalizing industry.

Fourth, business associations whose activities are anti-competitive were prohibited and thus, the establishment and break-up of business associations were subject to notification.

Fifth, government agencies seeking the enactment or amendment of Acts or plan to impose administrative order or sanctions that would restrain competition should consult with the Minister of Economic Planning Board in advance.

Sixth, the Korea Fair Trade Commission requires the revision or correction of international contracts restraining competition, which is signed for joint investment, loan, and technology transfer.

Seventh, unfair trade practices such as resale price maintenance (RPM), refusal to deal and discriminatory price were prohibited. The unfair trade practices fall into 2 categories, general unfair trade practices and special unfair trade practices. The former is universally applied to all businesses while the latter targeted specific businesses or behavior such as unfair trade practices related to promotional goods, subcontract and discount sales of retailers.

Eighth, the Fair Trade Commission was to be responsible for the enforcement of the MONOPOLY REGULATION AND FAIR TRADE ACT and the inspection officers in the Commission would be in charge of case investigation and review of the cases. The Commission is a deliberation body that reviews and pass resolution on issues related to the enforcement and violation of the MONOPOLY REGULATION AND FAIR TRADE ACT before the Minister of Economic Planning Board made the final decision. The commission is composed of 3 standing and 2 non-standing commissioners, a total of 5 including the Chairman. The commission was to be a quasi-judiciary body, in charge of investigation, imposition of sanctions, and establishment of the scope and criteria for unfair trade practices. The inspection officers have been appointed to separate the process of case review and deliberation/resolution, therefore to handle the case with fairness and discretion.

b) Amendment of the MONOPOLY REGULATION AND FAIR
TRADE ACT in 1986

The policy of countermeasure against concentration of economic power, implemented into the Act in 1986, was introduced to curb the expansion of certain conglomerates known as “chaebol” in Korea. Criticism against uncontrolled expansion of the chaebol existed before, but no policy measure was taken against it. The adoption of anti-chaebol policy could be understood in context with the social atmosphere of the era. Late 1980's were a turbulent time for Korean society, marked by huge mass demonstrations demanding political freedom and economic justice. The countermeasure against concentration of economic power would be understood in this context. From the understanding that excessive chaebol domination of economy was detrimental in achieving balanced economic development.

The single most important aspect of the amendment of 1986 was the introduction of provisions to implement the countermeasures against concentration of economic power. It was the practice of chaebols to expand their business without any real capital by acquiring excessive loans. Such practice consequently resulted in dismal financial structure of the chaebol, and also supported certain stakeholders to virtually rule the company, making management independent to ownership impossible. Thus, the new provisions were focused on prohibition of expansion without real capital investment. For the purpose, the establishment of new holdings company was prohibited, and conversion of existing entities into a holdings company was banned and cross-financing between subsidiaries of large chaebols was also prohibited.

(2) Enactment of the FAIR SUBCONTRACT TRANSACTIONS ACT of 1984

While subcontract transaction was increasing in its importance, taking up a bigger part in national economy, the transaction was not mutually beneficial to both contractor and subcontractors. The contractor, usually the stronger party, took advantage of their superior position in bargaining and thus, small and medium-sized subcontractors had to suffer disadvantages in signing subcontracts. Therefore, the Fair Subcontract Transactions Act was enacted to regulate unfair subcontract transactions, thereby establishing a level playing ground in subcontract transaction that would enable both parties to develop mutually beneficial relationship and promote sound economic growth.

Under these goals, the Notification on Unfair Trade Practices in Subcontract Transaction was enacted based on Art. 15 of the MONOPOLY REGULATION AND FAIR TRADE ACT in December 31, 1982, and enforced by the Economic Planning Bureau from April 1, 1983. The FAIR SUBCONTRACT TRANSACTIONS ACT was passed by the National Assembly on December 31, 1984 and went into effect from April 1, 1985.

(3) The CONSUMER PROTECTION ACT of 1980

a) Enactment of the CONSUMER PROTECTION ACT of 1980

From the 1960s to the 1970s, terms such as “consumer protection policy” or “legislation to protect consumers” did not exist, since rapid government-led economic development was in its full strength. Throughout

this period, such terms were virtually unknown to the public, and little effort was made on the part of the government to protect consumer interests. However, from the 1980's onwards, public conscientiousness to the quality of life increased as the fruits of economic development were realized. Along with rising public concern to the quality of life, the issue of consumer rights also surfaced. The Korean government responded to such developments by adopting the CONSUMER PROTECTION ACT in January 4, 1980.

b) Main Elements of the CONSUMER PROTECTION ACT of 1980

The CONSUMER PROTECTION ACT laid out the basic responsibilities of the government and the producers, and at the same time, set out fundamental guidelines in consumer protection policy. According to the Act, the government should act in support to the activities and formation of various consumer right organizations, and set rules concerning the regulation of measurement units, industrial standard, presentation and advertisement. Moreover, the authorities should provide necessary information and measures to protect consumer rights. The producers should to consort to the consumer protection measures taken by the government, as well as to actively avoid hazard and to report defections in their products.

9) Laws on dispute settlement including courts, arbitration and mediation

(1) Amendment of the Constitution in 1980

On October 27, 1980, the amended Constitution was promulgated. However, the judiciary still maintained its three-tier structure and the Supreme Court remained the highest among the courts. The Chief Justice

was appointed by the President upon approval of the National Assembly. The Justices were appointed by the President upon recommendation of the Chief Justice, but the judges were appointed by the Chief Justice.

(2) Civil Laws

According to the ACT ON CONCILIATION OF RENTED HOUSE AND RENTED LAND enacted on January 15, 1962, disputes concerning rents, security money for lease on a deposit basis, and any other related matters underwent mediation procedures in the Mediation Committee when the court accepted the application by the parties concerned. This paved the way for the mediation system, which was generally evaluated to be a simpler and more adequate dispute settlement method than strict and often delayed court judgments, to be used actively.

(3) Amendment of the PATENT ACT in 1980, 1982, 1986

The PATENT ACT was amended three times in 1980, 1982 and 1986. However, the fact that it was a one-tier instance held at the Supreme Court remained the same.

3. The Nature of Legal Changes

1) Rule-based or Discretionary, Market-led or State-led

There was a significant policy shift in the Fifth Five-Year Economic Development Plan towards market economy. For example, the INDUSTRIAL DEVELOPMENT ACT was enacted in order to rationalize the industry. Privatization of banks was carried out in order to increase efficiency of credit allocation in the 1980s. The BANKING ACT was amended in

order to mitigate regulations that were obstacles for financial institutions such as deleting the comprehensive authority of the Superintendent of the Office of Bank Supervision to give orders relating to the business management of banks. As enterprises grew in size, the relative importance of corporations was recognized in the national economy. This led to a stronger request for fair audit over enterprises. In order to strengthen corporate autonomous audit function, the business audit authority was only granted to the auditor who had account audit authority through the amendment of the COMMERCIAL ACT. The trade policy in the 1980s was converted from mercantilism and protectionism of the 1960s and the 1970s to a system of free trade. Accordingly, the basis of the industrial policies shifted from government-oriented to private-oriented in order to promote market economy, and the focus on protection and regulation was moved to an autonomous system. However, the FOREIGN TRADE ACT enacted in 1986 still conferred certain authorities to the Minister of Commerce to exempt approvals and to grant privileges to those who qualified the requisites. Overall, during this time, the economic growth of Korea began to be based on the autonomous market with less government discretion as provided in relevant laws and subordinate regulations.

2) Was the resolution of economic and business disputes efficient?

(1) Changes in Number of Lawyers

(unit: persons)

1980	1981	1982	1983	1984	1985	1986
940	1,013	1,058	1,098	1,066	1,320	1,414

* source: Korean Bar Association

2. The Areas of Law with Major Changes

The number of successful applicants passing the Korean bar examination exceeded 1,000 in 1981 again to meet the increasing demands for legal profession. It continued the upward trend throughout the first half of the 1980s.

(2) Number of Claims to the Korean Commercial Arbitration Board

(unit: claims)

	Arbitration	Good Offices	Total
1980	26	509	535
1981	34	509	543
1982	58	494	552
1983	66	480	546
1984	70	566	636
1985	70	482	552
1986	57	482	539

* source: Korean Commercial Arbitration Board

The number of arbitration claims referred to the Korean Commercial Arbitration Board steadily increased in the early 1980s. But it slightly decreased in 1986. However, the number of mediation claims decreased in the first half of the 1980s.

4. Economic Assessment of the Legal System

	1980	1981	1982	1983	1984	1985	1986
Gross National Product ⁴⁸⁾	627.0	697.0	744.0	828.0	912.0	942.0	1,089.0

48) Nominal value, figures in billions of dollars

Part V. Legal System of Economy for Consolidation (1980-1986)

	1980	1981	1982	1983	1984	1985	1986
Per Capita Gross National Income ⁴⁹⁾	1,645.0	1,800.0	1,893.0	2,076.0	2,257.0	2,039.0	2,643.0
Gross National Product ⁵⁰⁾	627.0	697.0	744.0	828.0	912.0	942.0	1,089.0
Per Capita Gross National Income ⁵¹⁾	1,645.0	1,800.0	1,893.0	2,076.0	2,257.0	2,039.0	2,643.0
Rate of Economic Growth ⁵²⁾	-1.5	6.2	7.3	10.8	8.1	6.8	10.6
Balance on Current Account ⁵³⁾	-5312.2	-4606.6	-2550.5	-1,524.1	-1,293.1	-795.1	4,709.4
Trade Balance ⁵⁴⁾	-4,613.4	-3,848.8	-2,837.2	-1,848.5	-1,089.1	-20.2	4299.1
Export Volumes ⁵⁵⁾	17,504.9	21,253.8	21,853.8	24,445.1	29,244.9	30,283.1	34,714.5
Import Volumes ⁵⁶⁾	22,291.7	26,131.4	24,250.8	26,192.2	30,631.4	31,135.7	31,583.9
Trade-GNI Ratio	80.1	83.9	78.7	74.9	75.1	70.9	72.9
Composition of the Economy							
Agriculture	16.2	17.0	15.9	14.6	13.7	13.5	12.0

49) Nominal value, figures in dollars

50) Nominal value, figures in billions of dollars

51) Nominal value, figures in dollars

52) Percentage based on real gross domestic product figures.

53) Figures in millions of dollars

54) Figures in millions of dollars

55) Figures in millions of dollars

56) Figures in millions of dollars

2. The Areas of Law with Major Changes

	1980	1981	1982	1983	1984	1985	1986
Manufacture, Mining	26.4	27.1	27.0	27.9	29.2	28.7	30.4
Services	47.3	46.7	47.0	46.9	46.6	47.4	47.6
Others	10.1	9.2	10.1	10.6	10.5	10.4	10.0
Unemployment	5.2	4.5	4.4	4.1	3.8	4	3.8
Foreign Direct Investment ⁵⁷⁾	143,136	153,161	189,026	269,424	422,346	532,197	354,736

* The following figures are based on the statistics obtained with the help of the Bank of Korea.

The gross national product was increased from 627 billion dollars in 1980 to 1,089 billion dollars in 1986, showing a 74 per cent growth. The per capita gross national income, on the other hand, recorded 1,645 dollars in 1980 and 2,643 dollars in 1986, showing a 61 per cent increase. The 2,000 dollar break was made in 1983. During this period, the Korean economy grew by the average growth rate of 6.9 per cent. The balance on current account showed a gradual decrease in its deficit between 1980 and 1986, and recorded surplus of 4,709 million dollars in 1986. The trade balance also recorded negative during the same period between 1980 and 1985 but recorded positive of 4,299 million dollars in 1986. The trade-GNI ratio went over 80 percent initially but soon dropped under 80 per cent after 1982. The agricultural composition of the economy was reduced below 20 per cent, whereas manufacture and mining gradually increased to 30 per cent. The unemployment rate

57) Net declared value, figures in thousands of dollars

remained average of 4.3 per cent and volume of foreign direct investment showed a continuous increase.

Part VI. Legal System of Economy for Globalization (1987-1996)

1. Economic Situations and Policy Needs for Legal Changes

Timeline

1987	sixth Five-Year Plan for Economic and Social Development (~1991); 20 billion dollars of export; June Mass Democratic Movement
1988	formation of Roh Tae-Woo government; Seoul Olympics
1990	diplomatic relations with the Soviet Union
1991	admission into the UN with North Korea
1992	diplomatic relations with China
1993	formation of Kim Young-sam government; Five-Year Plan for New Economy (~1997); real name financial system
1995	Local Autonomy reinstated
1996	Accession to the OECD
1997	IMF relief

The point standing out in this era was the trade liberalization due to international pressure. In 1986, Korea's economy was back on track with a current account surplus. As Korea entered an economic boom with annual economic growth rates exceeding 10 per cent, the necessity for governmental financial support for trading companies decreased. On the other hand, as the aspiration for social equality was expressed in June 29, 1987, the government started to focus on income redistribution

policies. After the 6·29 Declaration, there were social demands for decentralization of economic strength along with political democratization. To support such demands, regulation of monetary distribution following social-political consideration actually increased, such as intensifying credit loan supervision of large enterprises and increasing supportive finance for small and medium enterprises. On the other hand, with the surplus in international payment balance, policy funding that had been given in light of the industrialization policy decreased greatly.

The sixth Economic and Social Development Plan (1987-1991) aimed to advance economically and to improve welfare, on the basis of efficiency and balance. During this period, the government broke free from export promotion pursued at times of economic deficit, and set 'stabilization and trade surplus' as the new goal for trade policy. As a result, export promotion policy was adjusted to meet international standards, while finding ways to maintain an extended, stabilized balance such as maintaining a moderate surplus level in trade by increasing import.

With the establishment of the civilian government in 1993, a blueprint for financial reform was drawn up, and financial self-regulation was promoted. In 1993, the government pronounced a new five-year economic development plan (1993-1997) that set a goal of establishing an advanced economy during this period with people's participation and creativity as its driving force. It presented specific tasks, such as reformation of financial and administrative regulation and economic awareness. The

real-name financial transaction system followed to ensure transparent financial transaction and achieve economic justice. Liberalization of interest rates was executed in four steps as the core of financial liberalization. As a result, liberalization of interest rates heightened the price function of interest although very limited in its degree. It also served as a great stimulus to competition between financial agencies.

2. The Areas of Law with Major Changes

1) Laws governing the government including administrative law

(1) Developments of Laws on Government Organization Related to Economy

In 1994, the Economic Planning Bureau and the Ministry of Finance was merged into a single unit, and was renamed the Ministry of Finance and Economy. In addition, its various roles in government budget, financial market watch, trade negotiation and currency policy were transferred to the Office of Government Budget, the Financial Supervisory Commission, the Ministry of Foreign Affairs and Trade and to the Bank of Korea respectively, further decentralizing the authority in the area of economy.

(2) The Fair Trade Commission

The Fair Trade Commission was detached from the Economic Planning Bureau and was made an independent unit. In 1996, the Commissioner of the Fair Trade Commission was elevated to a ministerial-level status, further expanding its capacities.

(3) Evaluation

From the 1980s on, the trend of government organization could be characterized as convergence of organizations in charge of domestic industry and foreign trade. This trend is most evident in the case of the Ministry of Foreign Affairs and the Ministry of Industry and Energy. Trade policy functions of the Ministry of Finance and Economy and the Ministry of Culture and Tourism could also be cited as a part of this trend towards convergence.

2) Laws governing property rights including IP law

(1) The PATENT ACT of 1961

a) Amendment of the PATENT ACT in 1995

Since existing system of patent examination was designed to hold the first and the second level of examination at the Korean Intellectual Property Office, applicants only had single chance of judicial review by the Supreme Court of Korea. This caused controversy that the system was unsuitable and unconstitutional. In response, the COURT ORGANIZATION ACT was revised, and the Patent Court was created as the preliminary judicial procedure, and the existing system of administrative examination was merged into a single unit, thereby establishing an independent system of patent review procedure, with the Patent Court serving as exclusive appeals court for patent cases.

b) Amendment of the PATENT ACT in 1995

In an effort to embrace the changes from establishment of the new World Trade Organization, certain provisions were amended to conform

to the AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS. The main points of the amendment were as follows. First, rights of the Patent was expanded to sale or renting of the patented invention to provide better protection. Second, materials created by process of nuclear fission, which were excluded from the protection of patent system, was incorporated into the system of patents. Third, duration of patent rights was extended from 15 years to 20 years after notification.

(2) The UTILITY MODEL ACT of 1961

a) Amendment of the UTILITY MODEL ACT in 1995

Since existing system of utility model examination was designed to hold the first and the second level of examination at the Korean Intellectual Property Office, applicants only had single chance of judicial review by the Supreme Court of Korea. This caused controversy that the system was unsuitable and unconstitutional. In response, the COURT ORGANIZATION ACT was revised, and the Patent Court was created as the preliminary judicial procedure, and the existing system of administrative examination was merged into a single unit, thereby establishing an independent system of patent review procedure, with the Patent Court serving as exclusive appeals court for model utility cases.

b) Amendment of the UTILITY MODEL ACT in 1995

In an effort to embrace the changes caused from establishment of the new World Trade Organization, certain provisions were amended to conform to the AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS. The main points of the amendment

were as follows. First, rights of the utility model registration was expanded to sale or renting of the patented utility model to provide better protection. Second, duration of registered utility model rights were extended from 10 years to 15 years after application.

(3) The INDUSTRIAL DESIGN PROTECTION ACT of 1961

a) Amendment of the INDUSTRIAL DESIGN PROTECTION ACT in 1990

Designs already made public overseas which were allowed to registered as industrial design in Korea, were not to be accepted for registration. In addition, the rights of registered industrial design was extended to similar designs to reduce confusion.

b) Amendment of the INDUSTRIAL DESIGN PROTECTION ACT in 1993

Many elements of international and foreign legislations on industrial design were implemented to further improve and to globalize the system. First, the terms “design” and “creation”, which caused confusion, was standardized as “creation”. Second, following the global trend shown in the Uruguay Rounds negotiations on intellectual property, the duration of industrial design were extended from 8 years to 10 years.

c) Amendment of the INDUSTRIAL DESIGN PROTECTION ACT in 1995

Since existing system of industrial design examination was designed to hold the first and the second level of examination at the Korean Intellectual Property Office, applicants only had single chance of judicial review by the Supreme Court of Korea. This caused controversy that the system was unsuitable and unconstitutional. In response, the COURT ORGANIZATION ACT was revised, and the Patent Court was created as

the preliminary judicial procedure, and the existing system of administrative examination was merged into a single unit, thereby establishing an independent system of patent review procedure, with the Patent Court serving as exclusive appeals court for industrial design cases.

In addition, the publication of industrial design application was introduced to provide protection from early stages. The system enabled applicants to file for publication of their design, with the evidences to prove the originality of their designs. Once made public, other persons were not allowed to file application for the design, and if violated, the violators were liable to a certain fine, and the violated application was granted right to preferential examination.

(4) The COPYRIGHT ACT of 1957

a) Amendment of the COPYRIGHT ACT in 1994

To actively correspond to the changing nature of copyright, as shown in the Korea- United States Intellectual Property Negotiations and the progress of Uruguay Rounds, the COPYRIGHT ACT was revised. First, Databases were now considered as independent objects of copyright. Second, Property right of copyright was granted to those materials created for educational textbooks, although a 5-year grace period of suspension was given. Third, Distributors, performers and holders of phonogram production rights were granted the right to rent phonograms for commercial purposes. Fourth, Neighboring right to copyright was extended from 20 to 50 years. Fifth, Possession of articles in violation of copyright for purposes of distributing such articles were to be considered as violation of copyright.

b) Amendment of the COPYRIGHT ACT in 1995

Following the establishment of the World Trade Organization in January 1, 1995, and in preparation to the accession to the BERN CONVENTION, the COPYRIGHT ACT was amended were made to conform the domestic regulations to the global standards. First, Prior to the revision, foreign copyrights were protected in cases where the copyright was validated after Korean accession to specific agreements. The new provision stated that foreign copyrights would be protected regardless such factors. Second, In preparation to the accession to the BERN CONVENTION, the mandatory translation grants which were issued by the minister in charge of copyright affairs were abolished. Third, Performers of copyrighted materials were granted not only the rights to record the performances, but also to copy the recordings. Fourth, To minimize the impact of retroactive protection of foreign copyright, the protection period of certain foreign copyrights were adjusted.

3) Laws governing business governance including corporate law

In order to actively adapt to rapidly progressing socio-economic changes which took place over some 10 years after the amendment of COMMERCIAL ACT in 1984, and to ultimately enhance international competitiveness of Korean corporations by providing practical and international environment for commercial transactions, the COMMERCIAL ACT was amended on 29 December, 1995. In relation to the auditor system, the amendment extended auditor's term of office from 2 years to 3 years, guaranteed substantial audit authority between the controlling

company and its subsidiary company, and ensured healthy business management of stock companies by strengthening the authority of the auditor.

4) Laws governing production factors including labor law

(1) Amendment of the Constitution in 1987

The Sixth Republic began in 1987 with the ninth amendment of the Constitution. Its Articles 32 and 33 stipulated the right to work and three primary labor rights. What were different from Fifth Republic's Constitution with regard to Article 32 were as follows. First, the enforcement of minimum wage system was provided. Second, special protections to working women and working children were separately provided in paragraphs 4 and 5. Third, working women should not be subject to unjust discrimination in terms of employment, wages and working conditions. The fundamental structure of Article 32 was constituted on, first, the basic principle that standards of working conditions were to be determined in a way as to guarantee 'human dignity', following the previous Constitution before the amendment, and second, national obligation to implement minimum wage system in relation to 1986 Minimum Wage Act. Article 33 guaranteed the three primary labor rights without any reservations as the reservation on the right to collective action was deleted. The collective labor rights of public officials and the right to collective action of workers employed by important defense industries, nevertheless, could be restricted or denied, but were certainly more protected compared to the previous provision.

(2) Amendment of the LABOR STANDARDS ACT, the LABOR UNION ACT and the LABOR DISPUTES ADJUSTMENT ACT in 1987

a) Contents of the Amendments

With the 6-29 Declaration in 1987, the labor movements experienced a chaos as a result of labor disputes, and amendments to labor relations laws to stabilize labor-management relationship were inevitable to settle the chaos. Accordingly, labor laws went through drastic modifications along with the amendment to the Constitution. First, in the LABOR STANDARDS ACT, priority reimbursement for wages of the final three months was included, and varied working hour system was abolished in order to protect workers' health from long working hours.

The main contents of the amendments to the LABOR UNION ACT were as follows. First, the form of trade unions confined to a company union was liberalized in a system of free organization. Second, cancellation and modification order of union bylaws and resolution were limited to cases of violations of laws, and modification, supplementation and correction order were only allowed to guarantee autonomy of trade unions. Third, the authority to dissolve trade unions and to issue an order to correct union officials were deleted. Fourth, union shop system was once again restored. With regard to the LABOR DISPUTES ADJUSTMENT ACT, there were attempts to promote an atmosphere of settling labor-management problems autonomously. Thus, procedure of labor dispute was enhanced reasonably for swift settlement, and restrictions on the exercise of workers' right of collective action was alleviated to institutionally secure normal industrial action.

b) Evaluation

The modifications to labor laws in 1987 went along with the amendment of the Constitution under the circumstances of political democratization. Nevertheless, because the amendments were discussed on the verge of the presidential election, and the parties in control were the government and the ruling party, it is now assessed that attempts to reflect public opinion were insufficient. Even though the laws were amended overall, they revealed certain limitations in regulating labor-management relations thereafter. The strengthening of the provision on prohibition of multiple trade unions particularly acted as a cause for destabilizing future labor-management relations.⁵⁸⁾

(3) Amendment of the LABOR STANDARDS ACT in 1989

a) Contents of the Amendments

In 1988, with the start of the Sixth Republic and the composition of the thirteenth National Assembly with a minority for the ruling party, discussion for the amendment of labor laws resumed. The amendment bills passed the Assembly after arriving at an agreement between the ruling party and the opposition in December 1988. The LABOR UNION ACT and the LABOR STANDARDS ACT, in particular, underwent great changes. Except for the LABOR STANDARDS ACT, however, in March 1989, the amendment bills of the LABOR UNION ACT and the LABOR DISPUTES ADJUSTMENT ACT were returned to the National Assembly and accordingly abrogated, as the President refused them. The problems

58) Ministry of Labor, Transition of Labor Laws After 1987: History of Amendments and Change of Policy, 1999, p. 11 [, '87 : , 1999, p. 11].

brought up were the admission of public officials' trade union and teachers' trade union, the abolition of restriction on political activities of trade unions and removal of provision on prohibition of labor practices by public officials and workers employed in defense industries. Subsequently, on March 29, 1989, along with the LABOR STANDARDS ACT, the ACT ON THE EQUAL EMPLOYMENT FOR BOTH SEXES and the INDUSTRIAL ACCIDENT COMPENSATION INSURANCE ACT were amended, and the ACT ON THE ENCOURAGEMENT OF TECHNICAL SKILLS⁵⁹⁾ was enacted.

The main contents of the amendments to the LABOR STANDARDS ACT were as follows. First, the scope of application was extended to all businesses in which five or more workers were ordinarily employed. Second, reasons for immediate dismissal were to be specified and causes attributable to workers were to be approved by the Minister of Labor. Third, remedial system by the Labor Relations Commission for unfair dismissal, layoff and suspension from office was established. Fourth, retirement allowance and accident compensation were included in the priority reimbursement of three months wage claims. Fifth, standard working hours were reduced to 44 hours. Sixth, number of annual paid leave days was extended. Further, as a result of the amendment to the INDUSTRIAL SAFETY AND HEALTH ACT, provisions on safety and health stipulated in chapter 6 of the LABOR STANDARDS ACT were all removed.

59) The purpose of this Act is to encourage the obtainments of technical skills, to promote the development of technical skills, to ensure the technician devotes himself, with dignity and pride, to the business in which he is engaged and to promote the economic and social position of the technician. (Article 1) The Act is composed of 22 Articles, and has been amended eight times so far.

b) Evaluation

The 1989 labor law amendments were initiated and led by the three opposition parties. In particular, there was a demand for amendments from the labor movements, and they were driven by public hearings and active discussions in the National Assembly. It is now evaluated that the amendments during this period was led by a more democratic process than any other period. However, efforts in earnest consultation and compromise between the multiple interested parties were still insufficient.⁶⁰⁾

(4) Enactment of the ACT ON THE EQUAL EMPLOYMENT FOR BOTH SEXES of 1987

On the basis of the idea of gender equality prescribed in the Constitution, the ACT ON THE EQUAL EMPLOYMENT FOR BOTH SEXES was newly enacted in 1987. The Act aims to guarantee equal opportunity and treatment of both sexes and to enhance the status of female workers.

(5) Labor Laws of the Kim Young-Sam Government between 1993 and 1997

a) 1993-1995

After the start of Kim Young-Sam government in 1993, there were forward-looking attempts to amend the labor laws based on the results discussed through the 'Labor Relations Law Research Committee'. But agreement on key issues, such as introduction of dismissal for managerial

60) Ministry of Labor, Transition of Labor Laws After 1987: History of Amendments and Change of Policy, 1999, p. 11 [, '87 : , 1999, p. 11].

reasons, removal of provision on prohibition of third party interference and admission of multiple trade unions, was not reached because of opposing views between labor and management. Instead, in order to prepare for mass unemployment and to maintain the balance between demand and supply of labor, the FRAMEWORK ACT ON EMPLOYMENT POLICY⁶¹⁾ and the EMPLOYMENT INSURANCE ACT⁶²⁾ was enacted in 1993, and the EMPLOYMENT SECURITY AND PROMOTION ACT was revised overall and was renamed as the EMPLOYMENT SECURITY ACT. In 1994, the INDUSTRIAL ACCIDENT COMPENSATION INSURANCE ACT was amended, first, to establish the Korea Labor Welfare Corporation to secure specialty and efficiency of affairs related to compensation and insurance of industrial accidents, and second, to form 'industrial accident compensation insurance fund' in substitute for 'industrial accident insurance special accounts'.

b) Amendment of Labor Laws in 1996

Kim Young-Sam government, launched in 1993, led the renovation of laws and system of labor relations under the conception that in order to promote national competitiveness and quality of worker's life at the same time in response to the era of globalization and information of the 21st century, laws and system which were developed based on antagonistic

61) The Act was enacted as Act No. 4643 in 1993. The Act aims to support the unemployed in low productive industry.

62) The Act was enacted as Act No. 4644 in 1993. The purpose of the Act is to improve vocational qualifications of workers, to prevent unemployment and to expand employment opportunities, as part of a positive employment policy, and to stabilize the livelihood of workers and to thereby contribute to economic and social development by enforcing employment insurance system which focuses on solving economic and social difficulties of workers brought about by unemployment.

and conflictive relationship in the authoritarianism age of the past should be constructed on the grounds of participation and cooperation'. The government, accordingly, established the 'Committee on Labor Relations Reform. Behind the steer for this reform, there was the pressure from developed countries demanding international labor standards, even of minimum level, aimed at equalizing conditions of competition in an effort to prevent unfair trade under the system of the World Trade Organization.

The amendment of the LABOR STANDARDS ACT substantially modified the parts on dismissal and working hours focusing on easing of restrictions imposed on the labor market and reinforcement of flexibility, improvement of irrational system and practices. In addition, the LABOR UNION ACT and the LABOR DISPUTES ADJUSTMENT ACT were combined to newly form the TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT on December 31, 1996. By changing the title of the existing LABOR-MANAGEMENT CONSULTATIVE COUNCIL ACT into the ACT ON THE PROMOTION OF WORKER PARTICIPATION AND COOPERATION, matters subject to agreement were included on top of matters subject to consultation and to be reported in the Council's function to extend the range of worker's participation. As there were acute criticisms as to the validity of voting process in the National Assembly, the Act was annulled and a new version of the TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT was enacted on March 13, 1997. The Act has been amended 21 times so far. The Act was also annulled due to criticisms regarding the validity of voting process in the National Assembly on December 31, 1996. On March 13,

1997, it was enacted again and since then, it has been amended five times. Moreover, the Labor Relations Commission Act was amended in the direction to improve independence and specialty of the Commission.

The principal modifications were as follows. First, regarding the LABOR STANDARDS ACT, various new systems were introduced: the system of dismissal for managerial reasons; variable working hour systems including flexible, selective, discretionary working hour systems; provision on protection of part-time workers; retirement allowance interim adjustment system and retirement pension insurance system. Secondly, for the TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT, the following modifications were carried out: deletion of provision on prohibition of political activities by trade unions; admission of multiple establishment of trade unions (interim measures imposed); introduction of full-time official of trade union; granting of right to conclude collective agreement to workers' representative; revision of provision on prohibition of third party interference; exceptional allowance of replacements during industrial action period; initiation of mediation-prepositive principle system; removal of good-offices procedures from mediation; introduction of emergency compliance order of court with regard to unfair labor practices.

The 1996 amendment, however, received criticisms that it was enforced solely by the ruling party, and that it only reflected the interests of employers compared to the proposal of the Committee on Labor Relations Reform. Due to strong resistance from the labor circle, all the related laws were abolished and went through a process of enacting new legislations in the following year.

Further, in order to improve the employment and to enhance the welfare of construction workers, the ACT ON EMPLOYMENT OF IMPROVEMENT, ETC. FOR CONSTRUCTION WORKERS (Act No. 5249) was enacted on December 31, 1996.

c) New Enactment of Labor Laws of 1997

The labor laws amended on December 31, 1996 and put into effect on March 1, 1997 caused a process of abolishing the existing four labor laws and adopting new forms due to procedural and contextual reasons already mentioned above. The purpose of the 1997 amendment can be summarized as development of basic labor rights and progress of flexibility in the labor market, enforcement of mediation and arbitration system, improvement of unfair labor relations practices and reinforcement of employee participation system. The main contents are as follows.

Regarding the LABOR STANDARDS ACT, provision on dismissal for managerial reasons was modified so that provision on 'urgent managerial needs', approval by the Labor Relations Commission for dismissing more than a certain number of workers prescribed, and preferential re-employment obligation were deleted. Further, limitation on maximum working hours per day was included in flexible working hour system (unit period of one month), and the ceiling for the length of annual leave was removed. With regard to the TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT, first, the terms 'social movements' were deleted from the grounds for disqualification of a trade union in cases where the aims of the organization are mainly directed at 'political or social movements'. Second, replacements during a period of industrial action were confined to persons who were related to the business operations.

Third, industrial action demanding wage payments during a period of industrial action became penalized. Also, shortening of mediation period for labor dispute and deferment period for higher organization in establishment of multiple trade unions were abolished, and the provision on prohibition of concurrent offices for trade unions' officials was deleted.

5) Laws governing market access including foreign investment

(1) Amendment of the FOREIGN TRADE ACT in 1989

The first amendment on the FOREIGN TRADE ACT was made in December 1989. The purpose of the amendment was to conform to the international economic circumstances where increase of trade volume and import liberalization triggered the internationalization of economy. For this, the industrial injury remedy system was adjusted according to the General Agreement on Tariffs and Trade (GATT), and the functions of the Korea Trade Commission were extended. The essential contents were as follows. First, the application for investigation of industrial injuries caused by sharp increase of imports was accepted if there was substantial injury or concern of injury. Second, the functions of the Korea Trade Commission were expanded to include investigation and determination industrial injury along with recommendation of remedial measures. Third, the Korea Trade Commission was given authority to investigate material injuries caused by dumping or subsidized goods.

(2) Amendment of the FOREIGN TRADE ACT in 1992

The purpose of the amendment in December 1992, was to advance Korea's trade system to correspond to the changes in international trade

environment and to build a foundation for enhancing the international competitiveness of trade and industry. Accordingly, the Minister of Commerce announced trade policies of the following year annually, and the trade license system was converted to a reporting system.

(3) Amendment of the FOREIGN TRADE ACT in 1996

Through the amendment of December 1996, the trade management system was greatly revised to support the originality and autonomy of the private sector, and the remedy system against industrial injuries was supplemented to prepare for extended opening of markets. Also, trade support was concretized to ease the international business activities of enterprises. For these purposes, the following amendments were put into force. First, trading business, along with trading agency business no longer required registration. Second, goods were imported and exported freely, except for certain goods designated by the Minister of Trade and Industry. Third, determinations on origin of goods were rendered when the Minister of Trade and Industry decided necessary or when trade businesses or merchants requested. Fourth, those who carried out unfair import or export practices were subject to adjustment orders or were imposed surcharges. They were punished if they failed to comply with such orders.

(4) Enactment of the ACT ON THE PROMOTION OF OFFICE
AUTOMATION FOR TRADE of 1991

Along with the amendments to the FOREIGN TRADE ACT, the ACT ON THE PROMOTION OF OFFICE AUTOMATION FOR TRADE was enacted to simplify trade procedures. The purpose of the Act was to

contribute to the development of the national economy by pursuing simplification of the trade formalities and rapid circulation of trade information through promoting automation of trade affairs.

6) Laws governing industrial policy

(1) The INDUSTRIAL DEVELOPMENT ACT of 1986

a) Amendment of the INDUSTRIAL DEVELOPMENT ACT in 1995

In order to actively counter the rapid changes brought on by internationalization, liberalization and other external and internal economic situations, the ACT ON THE ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION was enacted and related articles of the INDUSTRIAL DEVELOPMENT ACT were amended to effectively support industrial development. The essential contents were as follows. First, the scope of application of this Act would be expanded to industries and related industries close-knit with the improvement of industrial competitiveness in order to reinforce aid on knowledge-intensive industry, industry supporting service industry, and other industries which contribute to the amelioration of industrial competitiveness. Second, 10-Year direction for a long-term development would be formulated to provide a development prospect on industry. Third, the scope of advanced technology and advanced product would be determined to stimulate advanced industrial structure in line with long-term development direction. Fourth, the establishment of policies for strengthening competitiveness by industry category, if necessary, would be allowed to effectively promote long-term development direction. Fifth, the Minister of Trade, Industry and Energy

would establish policies to promote the conversion of industrial structures into industrial structures saving resources to reform the industrial structures on resource usage. Sixth, policies to induce the specialization in the industry operated by the entrepreneur would be devised in order to strengthen the competitiveness of the industry. Seventh, as to the industry basic development project, a task to reform the administration, the managing institutions would be expanded to allow active participation by various bodies pursuing technology development. Eighth, specialized agencies supporting the practical usage of developed technology would be fostered, and policies to promote the sales of developed products would be strengthened.

b) Amendment of the INDUSTRIAL DEVELOPMENT ACT in 1995

In order to improve the competitiveness of the industry, the INDUSTRY DEVELOPMENT ACT was amended on November 22, 1995 so as to allocate the fund mainly on undertakings concerned with building the industrial infrastructure. The essential contents were as follows. First, the legal ground for supporting undertaking for developing innovative technology and undertaking for developing prototype through financial funds instead of the industrial development fund as originally provided. Second, the name of the Industrial Development Fund would be changed to the Industrial Foundation Fund, and the scope of support was expanded to undertakings which were deemed necessary to strengthen the industrial foundation such as undertakings aimed at building an environmentally friendly industrial structure through improvement in the manufacturing process, structural improvement of the distribution industry and the like.

(2) Abolishment of the INDUSTRIAL COMPLEX MANAGEMENT ACT of 1975, INDUSTRIAL PLACEMENT ACT of 1977 in 1990

The INDUSTRIAL COMPLEX MANAGEMENT ACT of 1975, INDUSTRIAL PLACEMENT ACT of 1977 were abolished along with the enactment of the INDUSTRIAL PLACEMENT AND FACTORY CONSTRUCTION ACT on January 13, 1990.

(3) The INDUSTRIAL PLACEMENT AND FACTORY CONSTRUCTION ACT of 1990

a) Enactment of the INDUSTRIAL PLACEMENT AND FACTORY CONSTRUCTION ACT of 1990

Statutes and systems pertaining to the location of industry were so complicated that filing procedures for authorization, and permission regarding factory establishment were overlapped to cause inconvenience. Therefore in an effort to simplify the factory establishment procedure, INDUSTRIAL PLACEMENT AND FACTORY CONSTRUCTION ACT was enacted on 13 January 1990 by combining and modifying the INDUSTRIAL PLACEMENT ACT and the INDUSTRIAL COMPLEX MANAGEMENT ACT. The main parts were as follows. First, public service center for the establishment of factories would be established at Do/Si/Gun/Gu to serve the purpose of systematic handling of authorization and permission of factory establishment. Accordingly, the administrative procedure would be simplified in allotting industrial sites and granting construction permission. Second, the head of Si/Gun/Gu should hand over the certificate of factory registration to such factories that received the certificate of business registration before 31 December 1989, in accordance with the standards and procedure determined by the Minister of Trade,

Industry and Energy in consultation with the head of the administrative agency concerned.

b) Amendment of The INDUSTRIAL PLACEMENT AND FACTORY CONSTRUCTION ACT in 1994

The Act was amended on 7 January 1994 to greatly simplify the procedure on securing the location and establishing factories to facilitate installment of factories by corporations and to improve the management system on industrial complex which caused much inconvenience to occupant enterprises in industrial complex. However, the amendment also required the reform of the system on establishing factories in Seoul metropolitan area in accordance with the SEOUL METROPOLITAN AREA READJUSTMENT PLANNING ACT. The main parts of the amendment were as follows. First, the public announcement on standards for factory site should incorporate the details from statutes related to lands regarding business type, size, and scope of a factory on designated area for special utilization in order to allow enterprises to easily find whether establishing a factory would be permissible in an industrial site. Second, to simplify procedures of factory establishment, acquisition of approval to establish factories substitute factory establishment declaration or permission. When the acquired approval would be deemed authorization to convert the farmland and grant of other related permission on land. Third, an overseas industrial complex development plan should be worked out and reported to promote a reasonable development of such overseas Industrial complexes. Fourth, business complex for the exclusive use of foreign investment enterprises would be established and managed to stimulate investment by foreign corporations. Fifth, in case of altering

trivial matters like altering the line of work by the occupant enterprise, a report system would replace a system requiring complete consent from all the industrial complex administrative corporations of the industrial complex.

c) Amendment of The INDUSTRIAL PLACEMENT AND FACTORY CONSTRUCTION ACT in 1995

The Act was amended on December 29, 1995 to simplify the procedure on establishing factories, and to promote efficient management of industrial complex by reforming the industrial complex to extend to information and high-tech industry. The main contents were as follows. First, the approval system which originally was divided into approval, permission, declaration depending on the region or the characteristics of the site would be unified. Second, the procedure was simplified by discarding the requirement of a separate permission by the head of Si/Gun/Gu to establish a factory, and only requiring an occupancy contract if the person wished to establish a factory in an industrial complex situated in metropolitan area. Third, an exception would be allowed to the ACT ON STATE OWNED PROPERTY so that factory buildings and permanent structure would be established on the leased sites inside the business complex for the exclusive use by foreign enterprises. Fourth, small and medium enterprises, once faced with difficulty in acquiring industrial site, would be allowed to parcel-out the industrial complex to lease lands.

d) Amendment of The INDUSTRIAL PLACEMENT AND FACTORY CONSTRUCTION ACT in 1996

The Act was amended on December 31, 1996 to induce the price lowering of plots in industrial complexes. The main contents were as

follows. First, the scope of apartment-type factory would be clarified to facilitate tax reduction allowed by other statutes. Second, factory establishment by small and medium enterprises would be promoted through expanding the building area of factories that would be built without construction approval. Third, factory establishing procedure would be simplified by presuming the approval to establish a factory as the acquisition of construction permission instead of demanding separate such approval or permission. Fourth, the leasing price would be equivalent to the construction cost in case where the State or the local government seeks to establish an apartment-type factory on the acquitted site and lease it. Fifth, state-owned land in the industrial complex would be permitted to be sold and leased as factory sites, and the price or the rent would be set lower than other normal state-owned land. Sixth, the collection of management cost from occupant enterprises inside the industrial complex would be abolished to appease their financial burden. Seventh the nationwide organization, the Korea Industrial Complex Corporation would be established in lieu of the 5 separate industrial complex administrative corporations, to manage the national industrial complex in a unified manner.

(4) Enactment of the ACT ON ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION of 1994

The ACT ON ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION was enacted on December 27, 1994, by building up the legal ground for the establishment of projects on technology foundation, for example, fostering human resources, stimulating the circulation of information, acquiring research facilities, in order to

promote technology policy in accordance with the international norm and to take a systematic approach on promoting an industrial policy oriented to technology that could strengthen the competitive power of the industry. The main contents were as follows. First, this Act would apply to the formulation of the technology foundation for industrial development as well as the development for the mining and energy industry under the jurisdiction of the Minister of Trade, Industry and Energy. Second, the legal ground for contribution made by the government and the promoters of the following project would be established. Projects to establish technology foundation, for example, training and education of technical personnel, promotion of collecting, analyzing, and circulating industrial information, expanding technological research facilities, supporting for collective research of technology, developing projects for new technology, promoting international cooperation on technology, and providing a technical diagnosis and guidance would be implemented by efficiently executing the plan for technology foundation in consultation with the head of a central administrative agency concerned. Third, to stimulate the distribution of industrial information, the issue on the establishment and implementation of an industrial information network as well as the validity of electronic documents through industrial information network, and security management of industrial information should be stipulated. Fourth, to efficiently promote development in industrial technology and to discover and dispatch technical personnel the Korea Institutional Technology Institute would be established. Fifth, the legal basis on the foundation and support of the Industrial Technology Research Institute and private industrial technology research institutes would be integrated

from the Special Measures for Supporting the Structural Improvement and Managerial Stabilization of Small and Medium Enterprises to the Act.

(5) The INDUSTRIAL DESIGN AND PACKAGING PROMOTION ACT of 1977

a) Amendment of the INDUSTRIAL DESIGN AND PACKAGING PROMOTION ACT in 1991

As the importance of industrial design and packaging in the promotion of industries increased, the INDUSTRIAL DESIGN AND PACKAGING PROMOTION ACT was amended on January 14, 1991 to contribute to trade promotion by strengthening the industrial competitiveness through supporting the research, development and advancement enterprises that would elevate the technological standards in the areas of outdated industrial design and packaging. Its essential contents were as follows. First, an overall plan for the research, development and promotion of industrial design and packaging would be established and publicly announced, and research and development business for industrial design and packaging would be implemented. Related organs participating in the research and development business would be supported with a part or all of the necessary funds within the amount stipulated by the business of industrial foundation technology development under the INDUSTRIAL DEVELOPMENT ACT. Second, the government would select and award quality industrial design and packaging as quality design award or quality packaging award, and if necessary, support the marketing of those products with quality design certificates attached to them. Third, the cultivation of industrial design and packaging professionals as well as for the academic-industrial cooperation would be promoted. Fourth, the name

of the Korea Industrial Design and Packaging Center would be changed to the Institute for Industrial Design Packaging Development. Its functions would be reinforced with the governmental support, when necessary, for carrying out its businesses.

b) Amendment of the INDUSTRIAL DESIGN AND PACKAGING PROMOTION ACT in 1996

The INDUSTRIAL DESIGN AND PACKAGING PROMOTION ACT was amended on December 30, 1996, by expanding governmental support in the field of industrial design and reinforcing its protection, to make it possible for industrial designing to actively respond to the liberalization and globalization tendencies of the national economy and contribute to the strengthening of the international competitiveness of Korean industries. Its essential contents were as follows. First, the name of the INDUSTRIAL DESIGN AND PACKAGING PROMOTION ACT would be changed to the INDUSTRIAL DESIGN PROMOTION ACT. The purpose of this new Act was stipulated as the stimulation and promotion of the research and development of industrial designing. Accordingly, the packaging container and manufacturing technology would be removed from the list of businesses subject to the support of this Act. Second, for its increasing importance, the packaging design would be designated as a separate field of industrial design. Third, for the organs carrying out the research and promotion businesses for industrial designs donations would be allowed, not only from the Industrial Foundation Technology Development Fund under the INDUSTRIAL DEVELOPMENT ACT, but also from the Industrial Technology Foundation Establishment Fund under the ACT ON THE ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION. Fourth, the government should strive to

protect industrial design and, if necessary, it could request cooperation from the head of the administrative organ related to the business for the improvement of relevant systems and the rationalization of the management. Fifth, the former Institute for Industrial Design Packaging Development would be reorganized into the Korea Institute of Industrial Design Promotion for the efficient and systematic implementation of business for development stimulation and promotion of industrial designing. Business supporting industrial design development and business promoting regional industrial design would be added into the undertakings of the Korea Institute of Industrial Design Promotion.

(6) Evaluation

As the WTO system took root as the aftermath of Uruguay Round, the 1990s saw the start of unlimited worldwide competition and globalization. In order to overcome the difficulties and achieve continuous growth in the new arena of the global economy, it was inevitable for the Korean economy to accelerate the alteration of the structure of the industry, set the norms and standards in line with those of the international community as well as lower the bar for regulations to enhance the competitiveness of the country.

The government since the 1980s opened up its ordinary transaction but in case of capital transaction, it took a more gradual step despite the pressure from developed countries. Then starting from 1993 as banks were allowed of trade related finance as well as short term loan through branches overseas, 'Chaebol' took advantage of the situation and acquired a significant amount of loans from countries with low interest rate like Japan. Eventually in the mid-year of 1997 with the crisis of southeastern

Asian countries as well as the internal situation in Korea facing bankruptcy of gigantic insurance companies and the like, when Japanese banks began to retrieve their capital to balance the capital rate of the Bank for International Settlements, it triggered the financial crisis in Korea.

7) Laws governing financial sector including securities market

The system of real-name financial transaction was suddenly enforced with the adoption of the PRESIDENTIAL FINANCIAL AND ECONOMIC EMERGENCY ORDER ON REAL NAME FINANCIAL TRANSACTIONS AND GUARANTEE OF SECRECY on August 12, 1993. The Order took the form of presidential financial and economic emergency order which was an emergency measure because the government concluded that it would be difficult to carry out the system of real-name financial transaction, which was the basis for executing financial justice, by ordinary means. By the Order, all financial transactions of financial institutions were to use real names, the withdrawal of non-real-name was prohibited, converting to real-name account was encouraged, and penalty surcharge of 60 per cent maximum for those accounts not having converted was imposed.

(1) The BANKING ACT of 1950

a) Amendment of the BANKING ACT in 1991

The BANKING ACT was amended on December 31, 1991 to increase the autonomy of fund raising and management so as to adapt to changing financial environment and to regulate expected problems arising from the financial market. The points were as follows. First, the task to secure operational soundness of bank management would be provided by

consolidating the equity capital and maintaining proper liquidity, etc. in order to remove insecurity of financial market. Second, the maximum amount for loans and guarantees would be decreased for the same person. Third, a separate chapter to regulate domestic branch offices of foreign financial institutions would be added.

b) Amendment of the BANKING ACT in 1994

The BANKING ACT was amended on December 31, 1994 in order to strengthen the competitiveness of financial institutions by diversifying ownership structure and business management system. The main points were as follows. First, capital changes were excluded from having to obtain authorization from the Monetary Board Operating Committee except for the reduction of capital and the transfer of the reserve funds to the base capital. Second, instead of lowering the maximum stock ownership limit of financial institutions by the same person, exception would be allowed for any individual who carried or desired to carry exclusively on financing business and having authorization of the Superintendent of the Office of Bank Supervision.

(2) Amendment of the SECURITIES AND EXCHANGE ACT in 1991

The SECURITIES AND EXCHANGE ACT was amended on December 31, 1991 in order to enlarge the size of securities market, and strengthen the restrictions of insider transactions, to encourage fairness by enforcing public disclosure of corporation, to adopt the system of merger report, and to reform the securities system such as deposition of securities, *etc.* The main points were as follows. First, corporations were allowed to submit en bloc the registration statements of securities, for the amount

predetermined to be issued during a certain period of time by complementing the system of public disclosure of corporation. The Stock Exchange would make a request to disclose as to whether there was important information in case where there was a remarkable change of price or trading volume of securities issued by listed corporation. Second, the requirements for securities companies' capital under the Presidential Decree was prescribed in order to promote self-regulation and operational soundness of securities business. Third, in order to harmonize the protection of listed corporations' business management and the protection of investors, the Securities Depository Corporation could exercise such voting right, in cases where a shareholder depositing stock certificates failed to express his intention to exercise directly or not to exercise his voting right no later than five days prior to the date of the general meeting of shareholders.

(3) Enactment of the FUTURES TRADING ACT of 1995

As the economy became more globalized, the uncertainty of price fluctuation grew in the spot market increasing the interest of futures trade effectively managing the risk of price fluctuation. The government enacted the FUTURES TRADING ACT on December 29, 1995 in order to face the rising request collective regulation of future trading.

The points of the Act were as follows. First, the Act would apply to futures trading of commodity products, financial products, and indexation of prices *etc.* provided in the future market. Second, the Futures Exchange was to be a juristic person formed as a membership organization and to obtain a permission from the Minister of Finance and Economy. Third, existing certain financial institutions could engage in

futures trading business or futures investment fund business, however not simultaneously. Fourth, the Futures Trading Commission was to be established for the purposes of fairness in futures trading and the effective supervision of futures-related institutions.

(4) Evaluation

There was no big argument over the issue that the opening up of capital market was a desirable policy towards financial development of Korea. However the opening up of capital market progressed too rapidly without prudent preparation, and as the capital structure was formed on a short-term international capital flow base, short-term foreign exchange debt increased which was the main reason for 1997 financial crisis.

8) Laws governing private economic activity including competition law

(1) Legal Background to the Amendments to the MONOPOLY REGULATION AND FAIR TRADE ACT of 1980

While the establishment of the Act contributed to building of a fairer market system, its effectiveness in enforcement was put to question. Since the enforcement of the Act was to be carried out by the Minister of the Economic Planning Board whose the main task was to establish and adjust economic policy, the priority was placed on economic policies rather than competition policies. The Economic Planning Board was thus criticized for lacking in expertise and independence in enforcing the MONOPOLY REGULATION AND FAIR TRADE ACT. Therefore, the revisions focused on securing independence and expertise of the Fair Trade Office and enhancing effectiveness in the enforcement of the Act.

In short, the substance of the second amendment could fall into two distinct categories, improving in regulatory provisions and restructuring the organization of government authorities in charge of fair trade.

The Second amendment was made on January 1, 1990, sought the reorganization of the Fair Trade Office to secure and maintain expertise necessary for the enforcement of competition law and quasi-judiciary tasks. Previously, the Fair Trade Office conducted review and deliberation in competition matters in which the Minister of the Economic Planning Board was the highest decision-maker. The second revision enabled the Fair Trade Office to become an independent administrative body under the Economic Planning Board. Therefore, the Office was given the full power in the enforcement of competition law and was granted independence in carrying out such duties.

(2) Amendment of the MONOPOLY REGULATION AND FAIR
TRADE ACT in 1992

The Amendment was made on November 13, 1992, and were as follows.

First, the debt guarantees among affiliates belonging to large business groups were newly introduced to limit the amount of debt guarantees provided to domestic affiliates over credits extended by local financial institutions. An affiliate in question should not provide debt guarantees exceeding 200 per cent of its shareholders' equity and the companies whose debt guarantees exceeded 200 per cent at the time of the enforcement, were given three years of grace period to meet the standard.

Second, the scope of exceptions to debt guarantees was extended and 5 years of temporary exceptions were granted for the purpose of the enhancement of international competitiveness and others.

Third, the amendment eliminated the requirement on execution in concerted acts. As a result, the concerted acts which met the two conditions, the presence of agreement and its anti-competitive effects, would be subject to regulation. Therefore, the identification of the presence of agreement would enable the authorities to impose sanctions before such agreement was put to action.

Fourth, prohibited activities of business associations subject to punitive measures was extended in its scope and the revision allows the imposition of surcharges against unfair trade practices. Since business associations would engage in illegal activities upon the consensus of individual members, the amendment made it possible to issue punitive measures.

(3) Amendment of the MONOPOLY REGULATION AND FAIR TRADE ACT in 1994

The Amendment was made on December 22, 1994, and were as follows.

First, in order to consistently curb the concentration of economic power, the amendment tightened the ceiling on equity investment by an affiliate of a large business group to 25 per cent of net asset from the previous 40 per cent.

Second, the amendment introduced a strong incentive to improving financial status and ownership structure by granting exemptions from the

ceiling to companies meeting certain requirements.

Third, the ceiling on equity investment is temporarily exempted for private investment in SOC projects such as the construction of roads, railroads and ports that are legally owned by government in order to encourage the participation of private investment in public projects.

Fourth, cartels created by buyers were brought under the regulation of the Act.

Fifth, the revision abolished the provision requiring the mandatory notification of international contract signing and instead, introduced a voluntary subscription system for contract review, in which companies would submit their contract for review to the Korea Fair Trade Commission.

Sixth, to increase the effectiveness of law, the revision made adjustment to the criteria in the imposition of surcharges. The amendment made it possible to impose surcharge relative to the turnover of the given company and thus enabled heavy sanctions against serious violations of large business groups.

Seventh, the limits of the MONOPOLY REGULATION AND FAIR TRADE ACT application was scaled down. When the time gap between the date of violation and the present exceeded 5 years, such gap would make it difficult to obtain evidence documents and render the benefits of enforcement useless. Therefore, the case older than 5 years would be exempt from the imposition of sanctions and surcharges.

9) Laws on dispute settlement including courts, arbitration and mediation

(1) Organization of the Constitutional Court

Through the amendment to the Constitution in 1987, the Constitutional Court was separately established. The Constitution of the Sixth Republic adopted a new judicial review system, the Constitutional Court, to safeguard the Constitution and to protect the basic rights of citizens, through special constitutional adjudication procedures for the adjudication of constitutional issues. It was a positive development to have a separate constitutional court in terms of speciality. In particular, along with speciality, it reinforces democracy by contributing to the relief of various rights since the court would adjudicate on the constitutionality of laws more actively than the trial courts.⁶³⁾

With regard to matters in direct relation with the free market system, there were a small number of judgments rendered by the Constitutional Court. To begin with, the Court found that it was unconstitutional for the government authority to interfere arbitrarily in the market.⁶⁴⁾ In a case where the Minister of Finance ordered the dissolution of Kukje Group, one of large companies at the time, as de facto exercise of power, the Court stated that State's active intervention into management of a private business paralyzed the problem-solving capability of the business and its self-sustainability, and weakened its ability to respond to operation of the

63) Ki-Choon Song, A Critical Study on the History of the Korean Judicial System, Journal for the Study of the World Constitution, Vol. 12 No. 1 (2006), p. 182 [, , 12 1 (2006 6), p. 182].

64) 5-2 KCCR 87, 89 Hun-Ma 31, July 29, 1993 [Kukje Group Dissolution Case]

market economy. Accordingly, such intervention did not show respect for economic freedom and creativity of enterprises prescribed in paragraph 1 of Article 119 of the Constitution. Secondly, with respect to the local soju⁶⁵⁾ compulsory purchase system pursuant to the Liquor Tax Act, the Court accepted its unconstitutionality based on the following reasoning. The Court held that if monopoly regulation mandated in paragraph 2 of Article 119 of the Constitution was aimed at restoration of competition, it should be achieved through means allowing free and fair competition.⁶⁶⁾

However, the Court found that Article 26 of the Motion Pictures Act, which directly restricted business operator's freedom of business activities by requiring movie theaters to show Korean movies more than 40 per cent of annual screening days and to introduce reciprocal screening of Korean and foreign movies in areas with a population of 300,000 and more, did not violate the free market economy stipulated in the Constitution.⁶⁷⁾

(2) Enactment of the JUDICIAL CONCILIATION OF CIVIL DISPUTES ACT of 1990

Even though mediation has many advantages, its usage was rather at a low level since related provisions were scattered in different laws and the contents were insufficient.⁶⁸⁾ However, as the importance of mediation was alleged, the JUDICIAL CONCILIATION OF CIVIL DISPUTES ACT

65) Soju is a unique Korean alcoholic beverage made of fermented sweet potatoes.

66) 8-2 KCCR 680, 96 Hun-Ka 18, December 26, 1996 [Local Soju Compulsory Purchase System]

67) 7-2 KCCR 155, 94 Hun-Ma 125, July 21, 1995 [Unconstitutionality of Article 26 of Motion Pictures Act]

68) National Court Administration, History of the Courts, 1995, p. 1174 [, 1995 , p. 1174].

was enacted by Act No. 4202 on January 13, 1990. The Act extended the scope of civil mediation to the whole civil disputes regardless of the value of the subject-matter of the litigation which originally was confined to certain matters, such as small claims case and rented house and land case. Also, cases pending in the court of first instance would be referred to mediation by ruling when both parties concerned agreed.

Nevertheless, after two years of operation, mediation was not actively used as intended at the time of its enactment. As a result of requiring mutual agreement between the parties to refer a case to mediation, the number of such cases actually decreased, contrary to the original expectation. Subsequently, there were opinions that, in order to activate mediation, referral to mediation should also be allowed *ex officio* irrespective of the intention of the parties concerned. Hence, the Act was amended by Act No. 4505 on November 30, 1992. The amended Act provided that a court, if deemed necessary, could refer a case pending therein to a mediation *ex officio*, and could also mediate itself.

The Seoul Civil District Court appointed a mediation judge in complete charge of the mediation affairs for the first time among the courts, and the Supreme Court attempted to encourage it through the enactment of the 'Guideline on Stimulation of Civil Conciliation'. The Supreme Court adopted various systems to seek institutional improvement, such as professionals in the member of the mediation committee, member of the mediation committee in direct control of a court of a lawsuit, mediation judge. As a result, it is now evaluated that civil mediation has taken up an important position in civil lawsuits.⁶⁹⁾

69) Sung-Keun Lim, *Yesterday, Today and Tomorrow of the Judicial System*, Justice,

(3) Amendment of the PATENT ACT in 1990, 1993, 1995

In order to participate in the trend to unify the system of intellectual property internationally, and to additionally protect the rights and interests of inventors and right holders, the PATENT ACT was amended overall on January 13, 1990, and again partly amended on December 10, 1993. Nevertheless, the basic structure of the patent lawsuit system was similar to the previous one. That is, if a person upon whom the decision of the appellate trial or the decision of rejection were given, was dissatisfied with it, a final appeal could be brought in the Supreme Court only in case where it was brought by the reason that the decision was in contravention of laws and subordinate regulations.

Meanwhile, there were arguments suggesting that the adoption of the one instance system only allowing a judgment in the Supreme Court and the restriction of the scope of the trial to violation of laws and subordinate regulations were unconstitutional.⁷⁰⁾ Under such situation, the Supreme Court requested an adjudication on the constitutionality of Article 186 of the PATENT ACT on August 25, 1993. Even though the Constitutional Court held that the appellate trial under scrutiny was in violation of the constitutional right of access to courts, right to equality and division of powers, it declared nonconformity to the Constitution in order to minimize the impact and the confusion which could occur by declaring the appellate system that maintained for almost half a century

Vol. 92 (2006) p. 74 [, , , , 92 (2006 7), p. 74].

70) National Court Administration, History of the Courts, 1995, p. 1195 [, , 1995 , p. 1195].

since 1946 unconstitutional. Moreover, the National Assembly had introduced the Patent Court to replace the appellate trial, taking effect on March 1, 1998, through the amendment of the COURT ORGANIZATION ACT on July 27, 1994 and the amendment of the PATENT ACT on January 5, 1995.⁷¹⁾

Consequently, from March 1, 1998, the first-instance trial of patent was under the jurisdiction of the Patent Court at the position of a higher court following the amendment of the COURT ORGANIZATION ACT on July 27, 1994. The Supreme Court is now in final charge of the appellate trial of the Patent Court's judgment and the re-appellate trial of the Court's decision and order, forming a two-instance system. The establishment of the Patent Court could be regarded positively in terms of remedying rights through a specialized court.

3. The Nature of Legal Changes

1) Rule-based or Discretionary, Market-led or State-led

As the WTO system took place as the result of the Uruguay Round, the 1990s was the start of unlimited global competition. In order to overcome the difficulties and achieve continuous growth in the new arena of the global economy, it was inevitable for the Korean economy to accelerate the restructuring of the industry, set the norms and standards in line with those of the international community as well as lower the bar for regulations to enhance the competitiveness of the national economy. During the Seventh Five-Year Economic Development Plan

71) 7-2 KCCR 264, 92 Hun-Ka 11, 93 Hun-Ka 8-9-10, September 28, 1995 [Request for Unconstitutionality of Article 186 of Patent Act]

which started from 1993, the government proceeded with the measures required by the OECD, one of which was capital liberalization. Accordingly, the system of the real-name financial transaction was enforced. Also amendments were made to various Acts in order to increase the autonomy of financial institutions so as to adapt to changing financial environment. The issue of corporate governance was raised in the process of international market integration and financial liberalization. In order to comply with rapidly progressing economic changes, the COMMERCIAL ACT was amended in order to set practical and international environment for commercial transactions. In the 1990s, there were increasing demands requesting more opening of the Korean market. As a result, the rate of import liberalization increased steadily. The FOREIGN TRADE ACT adjusted the industrial injury remedy system according to the General Agreement on Tariffs and Trade (GATT), and the functions of the Korea Trade Commission were extended. Further, in the 1992 amendment, the trade license system was converted to a reporting system. Overall, during this time, the economic growth of Korea was based on the rules confirming to relevant international norms in favor of free market.

2) Was the resolution of economic and business disputes efficient?

(1) Changes in Number of Lawyers

(unit: persons)

1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
1,521	1,666	1,803	1,983	2,258	2,450	2,685	2,852	3,078	3,189

* source: Korean Bar Association

The number of successful applicants for the Korean bar examination exceeded 2,000 in 1991, and 3,000 in 1995. It more than doubled from 1,521 in 1987 to 3,189 in 1996.

(2) Process of Civil Mediation

	1991	1992	1993	1994	1995	1996
disposition rate (%)	94.9	93.7	85.9	93.9	95.0	92.7
conclusion rate (%)	35.1	44.8	47.7	34.9	34.5	35.1
rate of appeals to decisions instead of mediation (%)	3.7	4.9	17.5	21.7	24.8	22.7

* source: Judicial Yearbook 1992-1997

The disposition rate of civil mediation cases in this period was high, and the rate of conclusion was also quite high considering the figures. The percentage of appeals to the decisions instead of mediation were quite small in 1991 and 1992, and hence, most decisions were finalized without appeals. However, between 1993 and 1996, rate of appeals increased up to around 20 per cent.

(3) Number of Claims to the Korean Commercial Arbitration Board

(unit: claims)

	Arbitration	Good Offices	Total
1987	79	518	597
1988	54	574	628
1989	56	545	601
1990	36	470	506

4. Economic Assessment of the Legal System

	Arbitration	Good Offices	Total
1991	51	560	611
1992	71	554	625
1993	68	623	691
1994	72	621	693
1995	79	628	707
1996	109	585	694

* source: Korean Commercial Arbitration Board

The number of arbitration claims referred to the Korean Commercial Arbitration Board steadily decreased between 1987 and 1990, but it steadily increased between 1991 and 1996. It finally reached over 100 in 1996. The number of good offices claims stayed around 500 during the period.

4. Economic Assessment of the Legal System

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Gross National Product ⁷²⁾	1,382.0	1,864.0	2,300.0	2,635.0	3,076.0	3,293.0	3,614.0	4,223.0	5,155.0	5,553.0
Per Capita Gross National Income ⁷³⁾	3,321.0	4,435.0	5,418.0	6,147.0	7,105.0	7,527.0	8,177.0	9,459.0	11,432.0	12,197.0
Rate of Economic Growth ⁷⁴⁾	11.1	10.6	6.7	9.2	9.4	5.9	6.1	8.5	9.2	7.0

72) Nominal value, figures in billions of dollars

73) Nominal value, figures in dollars

74) Percentage based on real gross domestic product figures.

Part VI. Legal System of Economy for Globalization (1987-1996)

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
Balance on Current Account ⁷⁵⁾	10,088.4	14,505.4	5,344.2	-2,014.4	-8,417.4	-4,095.2	821.1	-4,024.2	-8,665.1	-23,120.2
Trade Balance ⁷⁶⁾	7,529.4	11,283.3	4,345.3	-2,461.3	-6,903.6	-1,907.0	2,150.1	-3,017.2	-4,364.6	-15,077.1
Export Volumes ⁷⁷⁾	47,280.9	60,696.4	60,377.2	65,015.7	71,870.1	76,631.5	82,235.9	96,013.2	125,088.0	129,715.1
Import Volumes ⁷⁸⁾	41,019.8	51,810.6	61,464.8	69,843.7	81,524.9	81,775.3	83,800.1	102,382.2	135,118.9	150,339.1
Trade-GNI Ratio	74.3	68.8	62.1	59.3	57.4	56.1	54.4	55.7	60.7	61.2
Composition of the Economy										
Agriculture	10.8	10.7	9.9	8.9	7.9	7.7	6.9	6.7	6.3	6.0
Manufacture, Mining	31.5	31.7	29.9	28.1	28.2	27.2	27.3	27.8	28.2	27.2
Services	47.8	47.5	49.1	49.5	49.4	51.0	51.4	51.7	51.8	52.8
Others	9.9	10.1	11.1	13.5	14.5	14.1	14.4	13.8	13.7	14.0
Unemployment	3.1	2.5	2.6	2.4	2.4	2.5	2.9	2.5	2.1	2
Foreign Direct Investment ⁷⁹⁾	354,736	1,063,327	1,283,757	1,090,279	802,635	1,395,996	894,505	1,044,274	1,316,505	1,947,888

* The following figures are based on the statistics obtained with the help of the Bank of Korea.

The gross national product increased from 1,382 billion dollars in 1987 to 5,553 billion dollars in 1996, and the per capita gross national income

75) Figures in millions of dollars

76) Figures in millions of dollars

77) Figures in millions of dollars

78) Figures in millions of dollars

79) Net declared value, figures in thousands of dollars

1. Economic Situations and Policy Needs for Legal Changes

recorded 3,321 dollars in 1987 and 12,197 dollars in 1996 showing a 267 per cent high increase. During this period, the Korean economy grew by the average growth rate of 8.7 per cent. The balance on current account recorded surplus between 1987 and 1989 but turned deficit between 1990 and 1996 except for 1993. The trade balance also recorded negative during the same period between 1990 and 1992 and between 1994 and 1996. The trade-GNI ratio dropped from 74.3 per cent in 1987 to 61.2 in 1996 maintaining average of 61 per cent. The agricultural composition of the economy gradually decreased to below 10 per cent, whereas manufacture and mining increased closed to 30 per cent. On the other hand, the unemployment rate remained low as 2 per cent and foreign direct investment remained around a billion dollars throughout the period.

Part VII. Legal System of Economy for the IMF Crisis (1997-onwards)

1. Economic Situations and Policy Needs for Legal Changes

Timeline

1998	formation of Kim Dae-Jung government
2003	formation of Roh Moo-hyun government
2006	300 billion dollars of export
2008	formation of Lee Myung-bak government

The characteristic that stood out in this era was that Korea overcame the financial crisis and promoted deeper economic integration.

In the early 1990s, the trade balance deficit piled up and the pressure to repay the foreign loans increased rapidly due to the influx of short-term foreign loan in the private sector brought about by opening up the foreign exchange market and the capital market. Korea faced an economic crisis and needed help from the International Monetary Fund. Korea's external assets amounted to 65.1 billion dollars which was nearly 8.2 times higher than the 7.9 billion dollars in 1981. However, foreign loans, which had decreased after its peak of 32.9 billion dollars in 1984 increased rapidly from 1995, reaching nearly 55.7 billion dollars by 1997. Thus, GNP-net debt ratio also fell from 37 per cent in the early 1980s to 2.0 per cent in the 1990, but rose rapidly to 12.7 per cent by 1997.

On November 21, 1997, Korea finally filed for a relief loan from the IMF, and on December 3, agreed to faithfully abide by the contents of the Korea Memorandum on the Economic Program in exchange for receiving foreign currency funds. International organizations, such as the IMF, the IBRD and the ADB, supported 35 billion dollars and countries, such as the U.S. and Japan, provided about 23.3 billion dollars in exchange for accepting requests of retrench and opening in finance and restructuring of finance and enterprises. In that process the government carried about the reorganization of the conglomerates. It is a fact that corporate governance and accounting greatly improved due to this action.

Since the IMF crisis, however, Korea has still been experiencing economic instability for ten years and experienced extreme social and economic polarization. In that perspective, the Kim Dae-Jung and Roh

Moo-Hyun governments are being criticized as the 'lost 10 years', at least in the economic sense.

2. The Areas of Law with Major Changes

1) Laws governing property rights including IP law

(1) The PATENT ACT of 1961

a) Amendment of the PATENT ACT in 1997

Examination system of patents was improved to speed up the procedure and to provide better protection to patent rights. In order to promote a more judicious procedure in patent objection examination cases, the number of examiners participating in the procedure was increased to three. Also, new provisions were introduced to allow electronic publication of patent notifications. The upper limits of fines for violation of patent rights were raised.

b) Amendment of the PATENT ACT in 1998

Patent application documents were made available via electronic network, thereby making it possible to apply and register patents online. Applicants were permitted to apply simultaneously for both patent and utility model registration. Korean Intellectual Property Office, under the provisions of the PATENT COOPERATION TREATY, and under an agreement with the PATENT COOPERATION TREATY Office, should act as an international examiner and researcher for international patent applications, providing its views on the novelty and usefulness of the invention to the PATENT COOPERATION TREATY Office. In addition,

international applications in Korean language were also made possible by the new provision.

First, Submission of documents by floppy disks and compact discs became possible. Second, Foreign inventions made public by methods other than publication was prohibited registration as patents, further extending protection of foreign inventions. Third, The concept of converted application was introduced to replace cumbersome process of multiple application of both patent and utility model.

(2) The UTILITY MODEL ACT of 1961

a) Amendment of the UTILITY MODEL ACT in 1997

Examination system of utility model was improved to speed up the procedure and to provide better protection to patent rights. In order to promote a more judicious procedure in patent objection examination cases, the number of examiners participating in the procedure was increased to three. Also, new provisions were introduced to allow electronic publication of utility model notifications. Moreover, in case of electronic notifications, official delivery was also to be made online. The upper limits of fines for violation of utility model rights were raised.

b) Amendment of the UTILITY MODEL ACT in 1998

For swift registration of utility models, examination process was limited to review of basic elements of utility. To minimize the side effects of such swift process, a certificate of utility issued by the Korean Intellectual Property Office was required in actual exercise of the utility model rights.

(3) Amendment of the INDUSTRIAL DESIGN ACT in 1997

For swift registration of industrial design which are trend-sensitive, examination process was limited to review of basic and format elements of design. Also duration of industrial design protection was extended from 10 to 15 years and the process of registration was simplified. The upper limits for industrial design protection violation fine was also raised.

(4) The COPYRIGHT ACT of 1957

a) Amendment of the COPYRIGHT ACT in 2000

Even after the wholesale amendment of the Act in mid-90's, the nature of copyright continued to evolve rapidly. The reason behind this fundamental change was in the coming of the information and the digital age. In particular, digital copying and transmission technology played a large role in this shift. As products of international dialogues since the 1990's, WIPO TREATY ON COPYRIGHTS and WIPO TREATY ON PERFORMANCE AND PHONOGRAM was concluded. To face such changing international environments, the Ministry of Culture and Tourism submitted an amendment proposal to the National Assembly in July 1999.

Following the rapid development of digital technology and the increasing spread of new copying instruments, new provisions were introduced to provide better protection in changing environment. First, Right of transmission was added as a right of the copyright holder. Second, Consent of the copyright holder was required in cases of reproduction by public copying machines. Third, To promote development of electronic libraries, many exemptions were made in cases such as

inter-library transmission of copyrighted materials. Fourth, The upper limits of fines and penal sentences were raised from either 3 years imprisonment or 30 million won to either 5 years' imprisonment or 50 million won.

b) Amendment of the COPYRIGHT ACT in 2006

The amendment of the COPYRIGHT ACT of December 28, 2006, was intended to straighten out the irregularities of the Act by frequent revisions since the introduction of the Act in 1957. Neighboring rights to copyright was also expanded in preparation of the accession to the WIPO TREATY ON PERFORMANCE AND PHONOGRAM. In addition, provisions to promote overseas penetration of Korean copyrighted materials were inserted, as a part of the government plan to endorse the development of culture industry.

2) Laws governing business governance including corporate law

(1) The COMMERCIAL ACT of 1962

a) Amendment of the COMMERCIAL ACT in 1998

Most changes made in the amendment of the 1962 COMMERCIAL ACT on December 28, 1998 were related to stock companies. The main issues concerning corporate governance were those to strengthen minority shareholders' right were lowering the proportion of stocks owned necessary to exercise the minority shareholders' right, accepting shareholders' right to make proposals, and adopting the system of concentrated vote in electing directors. Also, the main issues on directors were allowing small sized stock companies, of which the total of capital were less than 500

million won, to have 1 or 2 directors, requiring directors to be faithful, and imposing equal liability to the person who instructed directors to conduct certain authorities.

① Representative Suit by Shareholders : After the financial crisis, Korea amended the COMMERCIAL ACT so as to promote corporate transparency and relax the requirements for exercising the representative suits by shareholders. As the requirements for minority shareholders were relaxed, the use of representative suits increased.

According to the 1998 amendment, any shareholder holding no less than 1/100 of the total issued and outstanding shares could demand that the company file an action against directors to enforce their liability. Accordingly the number of stocks owned by the minority shareholders necessary for representative suits was lowered. Also the shareholders holding nonvoting shares would file representative suits. And even the shareholders with deposited stocks as well as the shareholders entered in the registrar of shareholders could file representative suits in specific cases.

If the company failed to file an action against directors to enforce their liability within 30 days after the demand by shareholders, the shareholders could immediately file such an action on behalf of the company. However, as an exception, if irreparable damage could occur to the company with the lapse of the period of 30 days, the shareholder could immediately file such an action.

the other hand, the purpose of requiring security on the part of shareholders is to control the abuse of representative suits by shareholders so as to protect directors from shareholders' unlawful suits, that is by

providing security for the directors' claim against damages from shareholders' unlawful suits. In case where shareholders' representative suit has been filed, the court may, upon the request of the company, order the applicant shareholders to furnish adequate security, if the defendant director presents the fact that the application was filed in bad faith.

If the shareholder who has filed the representative suit wins the case, he/she may demand the reimbursement by the company for the action cost and a reasonable amount of other expenses disbursed for the action. In such a case, the company which has paid the expenses for action has a right to claim indemnity against the directors or auditors. If the shareholder who has filed the suit loses the case, he is not liable for damages to the company, except for the malicious intent.

② System of Shareholder's Proposal : Adopting the system of shareholder's proposal means active participation in business management and intensified management audit by the minority shareholders. The system of shareholder's proposal was first introduced in the 1997 amendment of the SECURITIES AND EXCHANGE ACT and was later adopted by the 1998 amendment of the COMMERCIAL ACT⁸⁰⁾. According to the amendment, shareholders who hold no less than 3/100 of the total issued shares may propose an agenda item at a general shareholders' meeting to directors.

Prior to the 1998 amendment, the decision to convene general shareholders' meeting was left to the board of directors⁸¹⁾. Thus there was no opportunity for a shareholder to introduce a proposal at a general

80) Article 363-2

81) Article 362

shareholders' meeting, although every decision made in the general shareholders' meeting has an ultimate effect on its shareholders. By allowing the shareholders to have a right to make a proposal, there was a necessity to reduce the problems likely to arise from the fact that the board of directors had the exclusive right to make decisions on business management. In order to provide the general shareholders who were alienated from the management, with an opportunity to lead the decision making process, the COMMERCIAL ACT now maintains the shareholders' right to make a proposal.

③ Concentrated Voting : Concentrated voting is allowed when there is more than 2 directors to elect. In such a case, each shareholder has the same number of voting rights as the number of directors to be elected per each share he holds, and he may concentrate his voting rights to one or several directors to be elected.

The 1998 amendment to the COMMERCIAL ACT adopted concentrated voting except as otherwise prescribed by the articles of incorporation. Where a general meeting of a company is convened to elect two directors or more, shareholders who hold no less than 3/100 of the total issued shares other than nonvoting shares may request the election of directors by means of a concentrated vote in a written statement at least seven days prior to the date set for the meeting. In such a case, the chairman of the meeting should inform the shareholders of such a request, and the written request should be kept at the principal office for the inspection of the shareholders during the business hours until the general meeting is completed. Each shareholder should have voting rights per share of the same number as number of directors to be elected by

means of a concentrated vote for one or several candidates for directors. In such a case, the directors shall be elected in order of votes obtained.

b) Amendment of the COMMERCIAL ACT in 1999

Most changes in the amendment of 1999 were related to stock companies. The main issues concerning corporate governance were as follows: a board of directors may establish committees in the board of directors and establish an audit committee in lieu of auditors; regarding the composition of an audit committee, a specific proportion of outside directors are required to be elected in the committee. Also, provisions relating to the chairperson of general shareholders' meeting were newly inserted, voting rights were allowed to exercise in writing. Directors were allowed to take part in the adoption of a resolution by means of a communication system such as visual images and sounds, and restriction was put on perusal of minutes of the board of directors.

① System of Outside Director : Most significant amendment made in relation to the directors and the board of directors would be the introduction of outside directors and the establishment of committees in the board of directors. Corporate corruption could be audited and management transparency could be kept appointing outside directors independent from the principal shareholders or the representative director. The system of outside director did not exist in Korea prior to the financial crisis. Since then, the system was enforced to reform corporate governance. Although outside director is not expressly stipulated, by limiting number of inside directors to 1/3 of the total members of the audit committee⁸²⁾, the amendment indirectly requires that 2/3 of the total

82) Article 415-2 paragraph 2 proviso

members should be outside directors.

② System of Committees within the Board of Directors : According to the amendment, the board of directors may, under the conditions as prescribed in the articles of incorporation, establish committees within the board⁸³). The establishment of such committees is not mandatory for stock companies, and is voluntary under the articles of incorporation. The committee should be composed of not less than two directors in principle, but the audit committee should be composed of not less than three directors.

Since a committee within the board of directors is an organ subordinate to the board of directors, in principle, it has authorities to make resolutions only on matters delegated by the board of directors. However, the board of directors may not delegate to the committee for the matters in the following; proposal of matters subject to an approval of the general shareholders' meeting; appointment or dismissal of the representative director; establishment of committees and appointment or dismissal of their members; and any other matters as prescribed in the articles of incorporation. The committee should notify each of directors of the resolutions it has adopted. In this case, any of the directors may, upon receipt of the notification, request the convocation of a meeting of the board of directors, and the resolutions of the committee may, again, be subject to the decision of the board of directors.

③ Auditor and Audit Committee : Taking into account that the existing auditor system failed to work effectively on the corporate

83) Article 393-2 paragraph 1

environment and on the audit reality and in order to reflect worldwide trend of corporate governance, the amendment adopted the system of audit committee which has developed in the United States of America. The company may, under the conditions as prescribed by the articles of incorporation, establish an audit committee in lieu of auditors.

Although an audit committee is established within the board of directors, it should be composed of no less than three directors where as other committees within the board of directors are composed of no less than two directors.

c) Amendment of the COMMERCIAL ACT in 2001

The purpose for the 2001 amendment was to facilitate companies' restructuring of enterprises. Changes relevant to corporate governance were as follows: extending the means to notice convocation, extending the matters subject to the resolution of general shareholders' meeting, and inserting provisions to activate the system of board of directors.

Another significant amendment was regarding the rights and duties of shareholders filing for action. If the shareholder who has filed representative suit wins the case, he/she may demand the reimbursement by the company for the action cost and a reasonable amount of other expenses disbursed for the action. In such a case, the company which has paid the expenses for action should have a right to claim indemnity against the directors or auditors.

(2) The SECURITIES ACT of 1976

a) Amendment of the SECURITIES ACT in 1991

Due to the growth in size and the liberalization of the securities markets, amendment to the 1976 SECURITIES ACT was made in 1991 in order to enhance fairness in the securities markets by strengthening insider trade regulations and intensifying public disclosure of information of business corporations. The amendment also introduced merger report system, intensified protection of investors by simplifying the appraisal procedures of minority shareholders, and advanced securities systems such as securities deposit system, hence contributing to the development of securities markets.

The amendment also introduced a report system on mass holding and change of stock etc. This system was intended to prevent the dispossession of right of management by guaranteeing the transparency and fairness of securities markets through prompt reporting on the acquiring or changing stocks which exceeds specific ratio, or by preventing illegal stock purchasing for the purpose of hostile takeover. Accordingly, the amendment was made to require investors to report within 5 days when acquiring over 5 per cent of a specific corporation or 1 per cent change of stake is made henceforth.

b) Amendment of the SECURITIES ACT in 1997

Regulations to strengthen the independence of auditors' standings and business were newly inserted in the 1997 amendment. Most important issues were as follows. First, exceptions were made to preclude the influence of controlling shareholders in appointing auditors. Second,

full-time auditors were mandatorily required. Third, qualifications for full-time auditors were specified.

Although the independence of the auditor was legally fortified, the effectiveness of the system was criticized. The reason for the criticism was that the existing auditor system was not effective in regulating arbitrary decision-making of corporate CEOs or controlling shareholders, and that shareholding investors were poorly protected because auditors' fairness and objectiveness were not secured.

c) Amendment of the SECURITIES ACT in 1998

According to the 1998 amendment, in relation to representative suit by shareholders, the requirements to bring the representative suit was relaxed down to 1/10,000 or more of the total number of outstanding stocks issued by any stock-listed corporation or any KOSDAQ-listed corporation. Shareholders could also hold their stocks for over 6 months. The amendment extended the amount of legal cost further than that of the Commercial Act. The winning shareholder in the case of stock-listed or KOSDAQ-listed corporations may request the company concerned to pay the cost of the action and all the other costs resulting from such action.

d) Amendment of the SECURITIES ACT in 2000

According to the 2000 amendment the establishment of the audit committee became mandatory in that any securities company, that is KOSPI-listed corporation or KOSDAQ-listed corporation, exceeding 2,000 billion won of total amount of assets, should establish an audit committee. The requirements for an audit committee are ① not less than 2/3 of its members are required to be outside directors, ② not less than

one of its members is required to be accounting or financial specialists prescribed by the Presidential Decree, or ③ the representative of the audit committee of any securities company that is either a stock-listed corporation or a KOSDAQ-listed corporation is required to be an outside director.

e) Amendment of the SECURITIES ACT in 2001

In relation to the concentrated voting system, according to the 2001 amendment, in the event that a general meeting of shareholders is called for the purpose of selecting and appointing not less than two directors, any shareholder holding stocks equivalent to not less than 1/100 of the total number of issued stocks may apply to the relevant corporation for selecting and appointing such directors in a concentrated vote manner.⁸⁴⁾

In the event that any KOSPI-listed corporation or any KOSDAQ-listed corporation intends to preclude the concentrated voting system in the articles of incorporation or to change the articles of incorporation for such preclusion, any shareholder holding stocks in excess of 3/100 of the total number of stocks issued, with the exception of non-voting stocks, is now prohibited from exercising his voting right on the stocks held in excess.

3) Laws governing production factors including labor law

(1) Labor Laws of the Kim Dae-Jung Government between 1998 and 2002

As of December 3, 1997, the supervision of the International Monetary Fund [hereinafter IMF] over the national economy began. In response to

84) paragraph 1 of Article 191-18.

its financial support, the IMF demanded a series of drastic structural reforms across the whole economy, and particularly in the labor sector, improvement of flexibility in the labor market and enforcement of employment insurance system. As a way of stepping out of the economic crisis confronted, the Tripartite Commission was established on January 15, 1998, and concluded the 'SOCIAL AGREEMENT FOR OVERCOMING ECONOMIC CRISIS'. Enactment and amendment of labor relations laws followed on February 20, 1998, mainly for the early introduction of dismissal for managerial reasons and worker dispatch.

a) Amendment of the LABOR STANDARDS ACT and TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT in 1998

In case of the LABOR STANDARDS ACT, provisions concerning dismissal for managerial reasons were revised. The transfer, merger, or acquisition of the business carried out in order to prevent business from aggravation was deemed urgent managerial needs, a requisite to dismissal for managerial reasons. With regard to the possible methods for avoiding dismissal and the criteria for dismissal, an employer was required to give a notice 60 days prior to dismissal to the workers' representative. Moreover, if an employer was to dismiss more than the number of workers stipulated, report to the Minister of Labor was required, and the obligation of preferential re-employment effort was introduced. Further, by deleting the two year deferment element stipulated in the existing provisions prior to the amendment, the dismissal for managerial reasons was effected from the date of promulgation (February 20, 1998). In respect to the TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT, a part of duties related to trade union was transferred from the Minister of

Labor to the head of a local government, and notification period of unilateral termination of collective agreement was extended from three to six months.

b) Enactment of the ACT ON THE PROTECTION, ECT.
OF DISPATCHED WORKERS of 1998

The ACT ON THE PROTECTION, ECT. OF DISPATCHED WORKERS (Act No. 5512) was enacted on February 20, 1998. The Act legitimized dispatch of workers so that the rights and interests of dispatched workers were protected while enhancing the flexibility of corporate labor management. In addition, the WAGE CLAIM GUARANTEE ACT (Act No. 5513) was enacted to make payment of unpaid wages possible on behalf of an employer unable to pay wages due to bankruptcy. The ACT ON THE ESTABLISHMENT AND OPERATION OF PUBLIC OFFICIALS' COUNCILS (Act No. 5516) was enacted to improve the working environment, enhancement of work efficiency and grievance settlement of public officials.

c) Enactment of the ACT ON THE ESTABLISHMENT AND
OPERATION OF TEACHERS' UNION of 1999

In January 1999, the ACT ON THE ESTABLISHMENT AND OPERATION OF TEACHERS' UNION was enacted based on a mutual agreement led by labor, management and government representatives through the Korea Tripartite Commission. The Act was adopted as a part of labor relations law rather than educational law. As a result, it was possible for Korea to conform to international labor standards by guaranteeing the basic labor rights of teachers which had been abridged. In May, for the purpose of instituting the Tripartite Commission, initially founded in 1998, as a

permanent organization for policy consultation, the ACT ON THE ESTABLISHMENT AND OPERATION, ETC. OF TRIPARTITE COMMISSION (Act No. 5990) was enacted.

d) Amendment of the LABOR STANDARDS ACT in 1999, 2001

The LABOR STANDARDS ACT was amended on February 8, 1999 to reflect government policy on abolishing or easing various restrictions. The main contents were as follows. First, an employer wishing to dismiss a worker during a period of suspension of work for medical treatment of an occupational injury or disease, or during before and after childbirth and within thirty days immediately thereafter in case where a natural disaster, calamity or other unavoidable circumstances prevent the employer to carry on a business, had been required to obtain admission of the Minister of Labor. However, the requirement of admission was deleted. Secondly, an employer had been able to dismiss a worker immediately when the worker concerned, on purpose, caused a considerable hindrance to the business or inflicted any damage to property, subject to approval of the Minister of Labor, but the requirement of approval was deleted. Thirdly, when an employer and the workers' representative agreed on flexible work hour system, special case for calculation of work hours, special case for working and recess hours, etc. the contents of such written agreement were to be reported to the Minister of Labor, but such reporting requirement was abolished.

The amendment of the LABOR STANDARDS ACT (Act No. 6507) on August 14, 2001 was mainly centered around provisions regarding females and minors. It was effected to reasonably adjust the regulations in relation to overtime work, night work, holiday work and maternity

leave before and after childbirth so that change of jobs due to pregnancy and childbirth is prevented and employment of overall female workers is stimulated.

(2) Labor Laws of the Roh Government between 2003 and 2007

a) Enactment of the ACT ON FOREIGN WORKERS' EMPLOYMENT, ETC. of 2003

The first labor relations law which was enacted during the Roh government was the 'ACT ON FOREIGN WORKERS' EMPLOYMENT, ETC.' in August 2003. The purpose of the Act was to achieve the smooth supply and demand of manpower and the balanced development of the national economy by systematically introducing and managing foreign workers, as well as to prepare the mechanism in protecting their workers' rights, while still securing the employment opportunity of domestic workers.

Trend of Foreign Workers' Employment (Employment Permit)

(unit: persons)

		2004	2005	2006	2007
running total number of employed workers		7,095	67,568	146,767	291,333
total number of employed workers		7,095	60,473	79,199	144,566
General Employment Permit	running total	3,167	34,826	63,802	97,489
	subtotal	3,167	31,659	28,976	33,687
	manufacturing	3,124	31,115	28,182	30,181
	construction	0	84	42	740

		2004	2005	2006	2007
	agriculture & stock raising	43	419	700	2,298
	service	0	41	52	48
	fishery	0	0	0	420
Special Employment Permit	running total	3,928	32,742	82,965	193,844
	subtotal	3,928	28,814	50,223	110,879
	manufacturing	0	0	9,426	29,835
	construction	2,514	18,072	20,804	24,850
	agriculture & stock raising	0	0	559	2,141
	service	1,414	10,742	19,422	53,748
	fishery	0	0	12	305

* source: Ministry of Labor, Statistical Data

b) Amendment of the LABOR STANDARDS ACT in 2003, 2005, 2007

Amendment of the LABOR STANDARDS ACT in 2003

On September 15, 2003, an amendment to the LABOR STANDARDS ACT was carried into effect in order to shorten the limit of statutory working hours. The reduction to 40 hours per week, and eventually, the enhancement in working hours and leave system to meet the international standards, were aimed at promoting the reinforcement of corporate competitiveness by improving the quality of workers' lives. The contents of the principal amendments were as follows. First, the unit period of flexible work hours was extended from a certain period not exceeding 1 month

to 3 months in order to seek efficient use of work hours. Second, upon written agreement concluded between the employer and the workers' representative, the employer could grant workers leaves in lieu of additional wage payments for extended work, night work and holiday work so that employers and workers can have wider range of choice in regard to wage and leaves. Third, in order to run parallel with international guidelines, monthly paid leave was abolished and one day menstruation paid leave granted to female workers once a month was changed to an unpaid leave so as to alleviate the burden on employers. In addition, alterations in work hours were to be implemented in phases considering the different obligations and adjustment capability according to sectors and sizes.

Amendment of the LABOR STANDARDS ACT in 2005

Through the amendment carried out on March 31, 2005, the following factors were modified to the LABOR STANDARDS ACT. First, economic sanctions on employers for delayed payment of wages were strengthened and penal punishments reasonably improved to prevent wage delays and settle delayed payments promptly. Secondly, the minimum age for employment was adjusted upward to the point of completion of compulsory education in order to follow the standards of international demands and labor environments and to accommodate them to Korea's circumstances. Thirdly, matters pertaining to the maternity protection of female workers such as leaves before and after childbirth and child-care leaves were included in the descriptions of employment rules to further enhance the protection of female workers.

The LABOR STANDARDS ACT was additionally amended on May 31, 2005. Accordingly, pregnant women after childbirth as well as pregnant women who miscarried or had a stillbirth after 16 weeks of pregnancy upon request could be granted maternity leaves. The first 60 days within the leave should be paid. In case when the leave allowance before and after a childbirth was paid under the SEXUAL EQUALITY EMPLOYMENT ACT, however, the payment responsibility was exempted within the limit of relevant amount.

Amendment of the LABOR STANDARDS ACT in 2007

The amendment to the LABOR STANDARDS ACT of January 26, 2007 was effected as follows. First, penal punishment imposed on unfair dismissal was deleted and penal provision on violations of finalized remedy orders and enforcement levy for remedy orders by the Labor Relations Commission was newly established. Second, the prior notice period of dismissal for managerial reasons was shortened from 60 to 50 days. Third, in employing a worker for the same job as the dismissed worker was in charge of, within three years from the dismissal, the employer should preferentially re-employ the worker dismissed for managerial reasons.

The amendment in July, 2007 newly added Articles 44-2 and 44-3 stipulating the responsibility of the direct upper-tier contractor for wage payments in case of a construction project carried out through sub-contracts. The purpose of the amendment was to protect the rights of construction workers by improving the wage payment system originating

from subcontract relationship in the construction industry where delays in wage payments occurred frequently due to illegal subcontracts violating the FRAMEWORK ACT ON THE CONSTRUCTION INDUSTRY.

c) Enactment of the ACT ON THE ESTABLISHMENT AND OPERATION, ETC. OF PUBLIC OFFICIALS' TRADE UNIONS of 2005

The ACT ON THE ESTABLISHMENT AND OPERATION, ETC. OF PUBLIC OFFICIALS' TRADE UNIONS (Act No. 7380) was enacted on January 27, 2005, and effective on January 28, 2006. The Act regulates matters concerning the establishment and operation of public officials' trade union, collective bargaining, dispute resolution process, etc. in order to guarantee public officials' basic labor rights as prescribed in the Korean Constitution, consequently improving working conditions and social-economic status of public officials. On the same day, by amending the provision regarding retirement allowance stipulated in Article 34 of the LABOR STANDARDS ACT, the GUARANTEE OF WORKERS' RETIREMENT BENEFITS ACT was enacted so as to newly introduce a retirement pension system. The purpose of the Act is to contribute to the security of old-age life by expanding income sources through converting the then retirement system mainly operated based on one-time allowance to a retirement pension system in response to the aging society. In addition, the scope of application of the retirement pension system was to be extended so as to include workplaces in which four or less workers are ordinarily employed.⁸⁵⁾

85) The case of workplaces in which four or less workers are ordinarily employed should be effected between the years 2008 and 2010.

d) Amendment of the TRADE UNION AND LABOR RELATIONS
ADJUSTMENT ACT in 2006

As a way of advancing the labor relations, the TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT was amended on December 30, 2006. It provided the institutional framework for the development of labor relations by abolishing the ex officio arbitration system which had been denounced for overly restricting the right to strike, and by putting into force the system of 'minimum services to be maintained' from January 2008. Under the then ex officio arbitration system, industrial action was prohibited for fifteen days from the date when a labor dispute was referred to arbitration by the Labor Relations Commission and the dispute was settled by ex officio arbitration within the said period. As a result, it had come under strong criticisms from domestic and overseas labor organizations, such as the ILO, that it excessively restrained the right to strike, and hence, unconstitutional. The newly introduced system of 'minimum services to be maintained', in principle, allowed industrial actions in essential public services, but imposed certain level of obligations to be maintained for essential public services which, if suspended or discontinued, could remarkably endanger the lives, health, physical safety or daily life of the public.⁸⁶⁾

e) Passage of the Bills Protecting Irregular Workers in 2006

To provide the legal and institutional mechanism to protect irregular workers from discrimination and abuse, the ACT ON THE PROTECTION, ETC. OF FIXED-TERM AND PART-TIME WORKERS was

86) Ministry of Labor, Labor White Book, 2008, p. 212 [, , 2008, p. 212].

enacted, and the ACT ON THE PROTECTION, ETC. OF DISPATCHED WORKERS and the LABOR RELATIONS COMMISSION ACT were amended. They were finally approved by the National Assembly on November 30, 2006 after two years' strain. The bills prohibited improper discrimination against irregular workers (fixed-term workers, part-time workers, dispatched workers) and newly established process for correcting discrimination through the Labor Relations Commission. The jobs permitted for worker dispatch were listed positively, but they could be adjusted according to the Presidential Decree considering the expertise, skills or experiences they require as well as their nature, depending on actual circumstances. The length of dispatch period should not exceed two years, and in case the using employer continues to employ the dispatched worker in excess of two years, the employer is obliged to directly employ the dispatch worker concerned.

f) Enactment of the SOCIAL ENTERPRISE PROMOTION ACT of 2007

As Korea is experiencing a slowdown in economic growth and a shift in industrial structure, its capacity in creating new jobs declined, and hence, employment creation became a pressing matter. Aging, change in family structure and women's increased economic activity all led to a continuous rise of demand for social services, but supply of social services⁸⁷⁾ was markedly insufficient. Subsequently, for the purposes of providing social services to the disadvantaged community and of creating sustainable employment, the SOCIAL ENTERPRISE PROMOTION ACT was enacted on January 3, 2007.

87) According to Article 2 of the SOCIAL ENTERPRISE PROMOTION ACT, 'social services' refer to services in education, health, social welfare, environment and culture sectors, or other equivalent sectors prescribed by the Presidential Decree.

(3) Evaluation

The notable features of the amendments carried out during the 1990s can be summarized as follows. First, rigid labor relations laws were eased given the deregulation tendency of labor market. Second, laws concerning organization and operation of trade unions were restored for sufficiently protecting the basic labor rights. In relation to deregulation of labor market, provisions on dismissal for managerial reasons and flexible, selective and discretionary working hour system were supplemented. Moreover, with reference to establishing the order for securing the basic constitutional labor rights, the freedom of organization of trade union was substantialized, and at the same time, restriction and prohibition on industrial action were lightened. However, wage payment to full-time official of trade union which would go against international standards and general principles was identified as unfair labor practices. Industrial actions demanding wage payment during the period of industrial action were regulated. Further, in order to shift from antagonistic and exhaustive relationship to cooperative and productive relationship, legislations supplementing matters related to labor-management consultation council were put into effect.

Accordingly, it can be concluded that the amendments have incorporated, first, the alleviation of rigid regulations prescribing labor relations to correspond with flexible labor market brought about by change in circumstances of labor relations and advancement of industrialization, guarantee of organization and operation of trade unions in the direction suiting the order for securing the basic constitutional labor rights, correction of labor-management practices violating general

principles or standards of labor relations, and reinforcement of cooperative labor relations.

4) Laws governing market access including foreign investment

(1) Amendments of the FOREIGN TRADE ACT in 1999

The purpose of the amendment carried out in February 1999, regulations relating to foreign trade were revised in order to achieve promotion of import and export and expansion of trade through simplifying trade procedures. The approval by the Minister of Trade and Industry on import and export of designated goods was abolished to promote balance of trade. Authorization for establishing export and import associations was also deleted to promote autonomy of those associations.

(2) Amendments of the FOREIGN TRADE ACT in 2000

In the amendment of December 2000, as imports and exports through on-line trade sharply increased due to the development of information and telecommunication technologies, on-line trade through information and communications network was included in the scope of trade, along with the appointment of an electronic trade intermediary agency to support electronically. Moreover, problems in marking of origin were improved.

(3) Enactment of the ACT ON THE INVESTIGATION OF UNFAIR INTERNATIONAL TRADE PRACTICES AND REMEDY AGAINST INJURY TO INDUSTRY of 2001

In February 2001, unfair trade practices and procedures on industrial injury remedy incorporated in the FOREIGN TRADE ACT with other general provisions on promotion of trade were separately provided in the

ACT ON THE INVESTIGATION OF UNFAIR INTERNATIONAL TRADE PRACTICES AND REMEDY AGAINST INJURY TO INDUSTRY. The purpose of the Act was to familiarize the public with unfair trade practices and industrial injury remedy, to modify the procedures of remedy against domestic industrial injuries to meet Marrakesh Agreement Establishing the World Trade Organization to a greater extent. Further, in order to establish fair trading order and to contribute to the reinforcement of international competitiveness in an open economy, specialty and fairness in the composition of the Korea Trade Commission were strengthened. Impartiality and transparency in the system of industrial injury remedy were also toughened through clarifying the investigation procedures of unfair trade practices.

(4) Amendment of the FOREIGN TRADE ACT in 2003

In the amendment of September, 2003, the scope of trade was expanded to support the exports of services, and the measures to restrict import volume was introduced to remedy the injuries of domestic industries caused by increase in import of certain goods. Further, some problems emerged while operation of the current system were improved.

5) Laws governing industrial policy

(1) Abolishment of the INDUSTRIAL DEVELOPMENT ACT of 1986

The INDUSTRIAL DEVELOPMENT ACT was abolished along with the enactment of the INDUSTRIAL DEVELOPMENT ACT on February 8, 1999⁸⁸).

88) Although the translated English name of the Acts remains the same, change was made to the Korean name of the Acts.

(2) Enactment of the INDUSTRIAL DEVELOPMENT ACT of 1999

On February 8, 1999, the INDUSTRIAL DEVELOPMENT ACT was enacted to adjust the policy comprehensively for acceleration of the advancement of Korean industrial structure by strengthening the industrial competitiveness, by enhancing the efficiency of industrial organization and stimulating the restructuring of corporations according to the regulation reform agenda of the FRAMEWORK ACT ON ADMINISTRATIVE REGULATION to advance in achieving a developed industrial structure powered with competitive power of the 21st century. The essential parts were as follows. First, a legal ground for the formulation of policy would be provided to stimulate the creation of new potential industry in growth contributing substantially to the development of national economy. Second, inter-corporate cooperation would be promoted by formulating legal grounds to support technology on standardizing the components and the likes or business for the public development of trademarks in order to strengthen industrial competitiveness. Third, the establishment of specialized corporate restructuring associations to promote pursuing profit by selling the corporation in need of restructuring after taking in and normalizing it a registration system would be provided for such specialized associations to facilitate the restructuring of our corporations. Fourth, exception to the MONOPOLY REGULATION AND FAIR TRADE ACT on special corporations and the COMMERCIAL ACT on the scope of issuing corporate debentures should be allowed to facilitate the performance of such specialized associations.

(3) Amendment of the INDUSTRIAL PLACEMENT AND
FACTORY CONSTRUCTION ACT of 1990 in 1999

The INDUSTRIAL PLACEMENT AND FACTORY CONSTRUCTION ACT was amended on February 5, 1999 to simplify the administrative procedure, strengthen the industrial competitiveness by promoting foreign investment, and deregulate the policies on the industrial location to support enterprises. The main contents were as follows. First, Si/Do and foreign investment enterprises would be assisted to establish factories without a hitch. Second, convenience would be provided to those who would establish factories by handling the necessary authorization and permission procedures on obtaining approval of factory establishment, factory construction, and installation of manufacturing facilities, as a package. Third, convenience would be provided in granting the permission to the manufacturing business utilizing the existing factory building and installing manufacturing facilities and the like by requiring the approval to install the manufacturing facility. Fourth, the system requiring prior declaration in case of transferring the location of the factory from a restricted population zone should be abolished. When a verification on the transfer would be required to receive benefits like tax reduction based on the related statutes, convenience would be provided in accepting the fact of transfer declared as such. Fifth, As the construction of the apartment-type factories jointly used by multiple enterprises expanded, the amendment would make it possible for an efficient management by providing the standard and process on their establishment, leasing, and management.

(4) The ACT ON ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION of 1994

a) Amendment of The ACT ON ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION in 1997

The ACT ON ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION was amended to give the necessary support for activating electronic commercial transaction, to support a joint research system, and to strengthen the competitiveness of the industry through the implementation of technology credit system. The main contents were as follows. First, the Korea Industrial Information and Electronic Documents Interchange Committee would be established to research and deliberate on legislating, amending, and abolishing the standards on electronic documents to activate electronic commercial transaction. Second, an agency as the electronic commerce resource center would be established to give technical support, and the expense of the agency would be reimbursed by the government. Third, enterprises, universities, institutes geographically adjacent to one another or those occupying a building together desiring to establish a foundation for the interchange of facilities, information, and personnel to promote a joint development project, could be selected as collective research of technology complex and be given necessary support. Fourth, an enterprise could put up its technology as collateral and take out a loan from the industrial foundation fund under the INDUSTRIAL DEVELOPMENT ACT. Fifth, the name of the Industrial Technology Institute shall be changed to the Korean Industrial Technology Institute.

b) Amendment of The ACT ON ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION in 1999

The ACT ON ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION was amended on February 5, 1999 to reorganize the Industrial Technology Policy Center to the Korea Institute of Industrial Technology Evaluation and Planning.

(5) Evaluation

The reforms yielded many achievements. Most importantly, it solved the primary factor causing the weakening of corporations suffering in a financial difficulty. The average liability ratio of the manufacturing industry declined after the crisis, and towards the end of 2006, it fell beneath 100 percent. Simultaneously, from 2002 the average return on equity superseded the average interest rate on loans.

The key to this success was the change of attitude of the domestic participants which followed the implementation of systematic device. The increased rate of foreign management and ownership also played an important role. Foreign management and ownership meant a true separation of management body from plutocrats. On the other hand, there were expectations, and it did prove so, on implementation of a transparent and mature managerial system on corporations and financial institutions which foreign investors undertook. Even if foreigners owned the corporations without direct involvement in management, it allowed stronger discipline on the market than the past.

However on the other hand, there was a huge price to pay. First the high interest rate policy and immediate restructuring that followed incited

severe depression. In 1998, the Korean economy recorded -6.9 per cent growth rate. Because of such measures, from 1998 to 2000 the ratio of operating profits falling beneath the average interest rate on loans worsened than the period before the financial crisis. This proves that it increased the cost of domestic crisis management. Also, foreign investors could sell and buy domestic property in an abnormally low price.

6) Laws governing financial sector including securities market

The Korean government, in order to meet the agreement made with the International Monetary Fund, enacted the ACT ON THE ESTABLISHMENT, ETC. OF FINANCIAL SUPERVISORY ORGANIZATIONS on December 31, 1997 and established the Financial Supervisory Commission on April 1, 1998 under the jurisdiction of the Prime Minister to exercise financial supervision. Also the Office of Banking Supervision was transformed into special judicial person without capital on April 1, 1998 and was separated from the Bank of Korea to be under the supervision of the Financial Supervisory Commission. Separate financial supervisory institutions were unified into Financial Supervisory Service by 1999.

(1) The BANKING ACT of 1950

a) Amendment of the BANKING ACT in 1998

The BANKING ACT was amended on January 13, 1998 in order for the Financial Supervisory Commission to effectively exercise the supervisory function, since the commission was granted authorities to supervise finance except for matters related to the authorization of banking business under the ACT ON THE ESTABLISHMENT, ETC. OF FINANCIAL

SUPERVISORY ORGANIZATIONS. The main points were as follows. First, the authority to authorize banking business would be transferred from the Monetary Board Operating Committee to the Minister of Finance and Economy. Second, the system of authorization would be abolished for banks over opening and relocation, *etc.* of branches. The Financial Supervisory Commission would be granted to decide the standard and process necessary for their opening and relocation, *etc.* of branches. Third, the Minister of Finance and Economy would be responsible for determining the scope of banking operation.

b) Amendment of the BANKING ACT in 1999

The BANKING ACT was amended on February 5, 1999 after the so called 1998 financial crisis in order to promote soundness of financial institutions as negotiated with the International Monetary Fund by regulating the system of credit line management of financial institutions to level with the international standard, and to abolish or ease provisions related to the framework set out by the FRAMEWORK ACT ON ADMINISTRATIVE REGULATIONS. Main points were as follows. First, the definition of the term “equity capital” would be changed to mean the total amount of core capital and supplementary capital according to the standards set by the Bank for International Settlements. Second, the system to obtain approval by the Financial Supervisory Commission for changes made to the largest shareholder of financial institutions would be abolished. Third, the term “credits” would be defined as loans, payment guarantees and purchase of securities or other direct and indirect transactions involving credit risk in financial transactions.

(2) The SECURITIES AND EXCHANGE ACT of 1962

a) Amendment of the SECURITIES AND EXCHANGE ACT in 1997

The SECURITIES AND EXCHANGE ACT was amended on December 13, 1997 to revitalize the market function of securities market by reforming the system of issuance and circulation of securities and the system of corporate purchase and merge to meet the changing financial environment, to increase the objectivity of execution process of stock business, to strengthen the protection of minority shareholders and the independence of auditors in order to raise transparency of corporate business management.

The main points of the amendment were as follows. First, the systems to issue order to raise capital, and to list securities, the system to issue order to delist securities, *etc.* by the Minister of Finance and Economy to the securities companies would be abolished. Second, the scope of specially connected persons would be broadened for registrants of tender offer to add and make public disclosure in order to raise fairness of mergers and acquisitions. Third, the system of capital increase by public offering of listed corporation would be adopted in order to reform the system of issuance and circulation of securities. Fourth, the system of option to purchase stocks would be adopted for officers and employees of listed corporations, *etc.* to purchase stocks at a specially favorable price in accordance with the conditions as prescribed by the articles of association of the corporation.

b) Amendment of the SECURITIES AND EXCHANGE ACT in 1998

The Financial Supervisory Commission, the Securities Futures Commission and the Financial Supervisory Service were newly established as integrated supervisory institutions in order to fulfill the conditions for the relief loan provided by the International Monetary Fund after the 1997 financial crisis. Accordingly, amendment was made to the SECURITIES AND EXCHANGE ACT as follows. First, the Securities and Exchange Commission and the Securities Supervisory Board would be closed down by transferring its authorities to the Financial Supervisory Commission and the Financial Supervisory Service. Second, the Financial Supervisory Commission would be given authorities previously assumed by the Minister of Finance and Economy, to give foreign business license of securities companies and investment advisory companies, to grant engagement in side business for the Stock Exchange, the Securities Dealers Association and the Securities Transaction on Intermediation Market Operated by Association, to audit the Stock Exchange, and to authorize the amendment of the articles of association of the Securities Dealers Association. Third, the business to investigate unfair transactions, to review professional matters on the securities market, *etc* could be transferred from the Securities and Exchange Commission to the Securities Futures Commission. Fourth, matters related to the registration statements of securities, the tender offer statements, annual reports *etc.* would be put under the Ordinance of the Prime Minister.

c) Amendment of the SECURITIES AND EXCHANGE ACT in 1998

The biggest challenge of the Korean economy in 1998 was corporate restructuring. Accordingly, amendments were made to reform corporate

governance, to strengthen minority shareholders' rights as the need for autonomous mergers and acquisitions increased, to abolish the system of mandatory tender offer in order to raise transparency of corporate business management, and to support corporate restructuring.

Significant amendments to the SECURITIES AND EXCHANGE ACT on 24 February 1998 were to abolish the system of mandatory tender offer that in case where a person intending to make purchase not less than 25/100 of the total number of outstanding stocks had to make tender offer with respect to the stocks not less than number as prescribed by the Presidential Decree (at the time 50/100), and increasing the limit to acquire treasury stocks by listed corporations was increased from 10 per cent to 33 per cent of the total number of outstanding stocks in order to expand the protection of corporate business management.

(3) Evaluation

The government initiated the recovery process of collapsed financial system through the Financial Supervisory Commission which was established in May 1998 resulting in the closure of 91 financial institutions from over 410, including 5 banks, 16 merchant banks, 10 leasing companies, 4 insurance companies, and 4 stock companies. Also, corporate restructuring followed financial restructuring, which led to the liquidation of 55 companies including 20 affiliated companies of 5 biggest corporate groups by their principal transaction banks, and the large corporate groups were forced to conclude agreements to improve financial structure with principal transaction banks. As a result, the economic crises were assessed to recover, as the foreign exchange reserves which went down to 3.9 billion dollars at the beginning of the

financial crisis exceeded 50 billion dollars by 1999, and the exchange rate against the US Dollar dropping from 2000 Won down to 1200 Won.

7) Laws governing private economic activity including competition law

(1) The MONOPOLY REGULATION AND FAIR TRADE ACT of 1980

a) Amendment of the MONOPOLY REGULATION AND FAIR TRADE ACT in 1998

The Amendment was made on January 8, 1998, and the main revisions were as follows.

First, the regulation on total equity investment, which had been applied to affiliates under large business groups, was abolished. Under the regulation, an affiliate could not acquire or own shares of other companies, exceeding 25 per cent of its net asset.

Second, debt guarantee among affiliates from April 4, 1998. However, in order to minimize the side effects arising from a full-scale prohibition, an exception was to be made when the guarantee was provided for the purpose of improving international competitiveness.

b) Amendment of the MONOPOLY REGULATION AND FAIR TRADE ACT in February, 1999

The Amendment was made on February 2, 1999, and were as follows.

First, prior to the amendment, businesses subject to the MONOPOLY REGULATION AND FAIR TRADE ACT were confined to persons running a businesses included in the 12 top-categorized industries in accordance

with the Korea Standard Industry Code. However, with the amendment, all entrepreneurs would be subject to the Act regardless of industry.

Second, to enable companies to take advantage of a holdings company system and facilitate corporate structural reform, the Korea Fair Trade Commission partially permitted the establishment of holding company. Moreover, in order to prevent undue intra-group transaction between affiliates, which would hampers corporate restructuring, the amendment granted the Korea Fair Trade Commission with the right to demand from the head of financial institutions the information on financial transactions of concerned companies.

Third, the Korea Fair Trade Commission abolished the notification on annual listing of market-dominating enterprises and instead, introduced case-specific approaches in the evaluation of market dominance. In addition, the amendment provided a legal round for the application of *per se* illegality on hard core cartels and included additional items on the list of the types of unfair business practices.

Fourth, in the past, the defendants had to undergo formal objection process before filing administrative suit. However, the 7th amendment would allow the defendants to directly file the administrative suit in objecting to the deliberation made by the Korea Fair Trade Commission.

Fifth, the amendment clarified the clause on exception: first, when efficiency enhancing effects outweigh anti-competitive effects, second, when the liability of the merged company exceeds its capital and thus is considered insolvent. In addition, in order to ensure the efficacy of

corrective measures, compulsory enforcement charges were introduced instead of the existing surcharge system.

c) Amendment of the MONOPOLY REGULATION AND FAIR
TRADE ACT in December, 1999

The Amendment was made on December 28, 1999, and were as follows. First, since the elimination of the regulation on total equity investment in February 1998, equity investment between affiliates of large business conglomerates and internal share ownership rate have increased. As a result, to promote restructuring, the regulation on total equity investment was reintroduced.

Second, as imposition of sanctions after the investigation into undue intra-group transaction has its limit, large-scale internal trading, which exceeds certain amount, is required to be notified. Moreover, the ceiling of surcharges has been raised to within 5 per cent of total sales. Third, in order to promote private investment to social overhead capital or SOC, the extension of debt guarantee by private investment firm, taking part in SOC, would be exempt from the regulation in debt guarantee.

Fourth, when the total asset of already designated business group is reduced by less than 70 per cent of the average total asset of the top 30 business groups, the given business group were to be delisted.

d) Amendment of the MONOPOLY REGULATION AND FAIR
TRADE ACT in 2001

The Amendment was made on January 16, 2001, and were as follows. First, to eradicate undue intra-group transaction, the rights to demand the financial transaction information was necessary. Therefore, the deadline of

such rights, which was to terminate on February 4, 2001, was extended by 3 years.

Second, a holdings company established through spin-off would be granted a grace period in the compliance of the debt-to-equity ratio and other requirements of a holdings company. The amendment expanded the scope of the previously eased ownership ratio on listed affiliates. Third, in order to facilitate the monitoring of undue concerted behavior, cartel informants and “the person who cooperates with the Korea Fair Trade Commission's investigation by providing evidence” can benefit from the leniency program in terms of corrective measures and surcharges.

Fourth, in order to enhance efficiency in investigation, the Korea Fair Trade Commission raised the ceiling on administrative fines to individuals or companies rejecting or intervene the investigation.

Fifth, in distribution, resale price maintenance activities over the same product are under regulation. While the previous regulation monitored the resale price maintenance activities on products alone, the amendment would make the resale price maintenance activities on services subject to regulation.

(2) Amendment of the FAIR SUBCONTRACT TRANSACTIONS
ACT in 1999

In average circumstances, charges of a subcontract would be paid to the contractor, but the charges would be paid directly to the subcontractor in cases such as bankruptcy of the contractor. Prior to the amendment in February 5, 1999, the decision was left to be made by the orderer, and by paying directly to the subcontractor, liabilities between the contractor

and the subcontractor was discharged.

Nevertheless, this system of payment had a weakness in that in cases such as bankruptcy of the contractor, the subcontractor might not be paid for the works completed within its own liability, thus subcontractors were exposed to the danger of bankruptcy since the decision was left to the orderer. Therefore, although detrimental to the concept of freedom of private business, orderers were obligated to pay directly the dues to the subcontractor when requested to do so.

8) Laws on dispute settlement including courts, arbitration and mediation

(1) Trend of Judicial Precedent of the Constitutional Court

Judgments of unconstitutionality rendered by the Constitutional Court in cases directly related to the market economy were as follows. First, the Court found that prohibition of medical advertisements by the Medical Service Act was against the market economy order provided in the Constitution pursuing free and fair competition. It stated that the prohibition deprived the new medical practitioners of a chance to advertise and publicize the skills and techniques or methods of diagnosis and treatment, leading to a disadvantaged result in a competition with an existing practitioner.⁸⁹⁾ Secondly, it was found that 'publication of fact of violations' ordered by the Korea Fair Trade Commission to businesses in violation of the Monopoly Regulation and Fair Trade Act was not in violation of the freedom of conscience but the principle of prohibiting

⁸⁹⁾ 17-2 KCCR 189, 2003 Hun-Ka 3, October 27, 2005 [Restrictions on Medical Advertisements]

excess.⁹⁰⁾ The system was reorganized as 'publication of facts of receiving correction order'.

The Court, however, found the following constitutional. First, determining the rate of real estate brokerage fee and imposing administrative sanctions and penal punishments upon receiving excessive amount, that is, frontal regulation on the functions of price was not against the constitutional economic order.⁹¹⁾ Secondly, the Newspaper Notice from the Fair Trade Commission limiting the distribution of free issues of newspapers and free gifts to below 20 per cent was not against paragraph 1 of Article 119 of the Constitution.⁹²⁾ Thirdly, the Act abolishing the Interest Limitation Act enacted according to the MOU between the IMF after the financial crisis in 1997 was not an abandonment of State's obligation to protect the weak, in violation of the constitutional order aiming at welfare state and social economic market economy.⁹³⁾

(2) Conciliation of Trade Disputes under the FOREIGN TRADE ACT of 1986

Conciliation of Trade Disputes is a series of procedures where the Korean Commercial Arbitration Board⁹⁴⁾ composes a conciliation com-

90) 14-1 KCCR 49, 2001 Hun-Ba 43, January 31, 2002 [Unconstitutionality of Article 27 of the Monopoly Regulation and Fair Trade Act]

91) 14-1 KCCR 644, 2000 Hun-Ma 642, 2001 Hun-Ba 12, June 27, 2002 [Unconstitutionality of Article 15 the Real Estate Brokerage Act]

92) 14-2 KCCR 84, 2001 Hun-Ma 605, July 18, 2002 [Unfair Trade Practices and Abuse of Market Domination in Journalism]

93) 13 KCCR 100, 2000 Hun-Ba 7, January 18, 2001 [Unconstitutionality of Act Abolishing Interest Limitation Act]

94) The Korean Commercial Arbitration Board was established by the promulgation of the Arbitration Act on March 16, 1966. It is the only authorized institution of its kind

mittee to settle disputes when there are disputes on exports and imports or pre-shipment inspection of goods between traders in Korea or between traders in Korea and those in trading partners. This is based on Article 44 and 45 of the FOREIGN TRADE ACT, and the Enforcement Decree and the Management Regulation of the Foreign Trade Act provides the procedures. The proposal of conciliation does not have the effects of a judgment, and only holds effects as an agreement between the parties.

(3) Opening of the Patent Court

The Patent Court started as an organization with one Bureau, two Divisions and three full benches. Since its opening, it handled a total of 9,077 cases until December 31, 2007, and among them 2,509 cases were related to patents amounting to 28 per cent, 1,493 cases were related to utility model amounting to 16 per cent, and 1,041 were related to design amounting to 11 per cent.⁹⁵⁾

The establishment of the Patent Court resulted in the reinforcement of the patent rights in Korea. The Court, from the outset, attempted to conduct a differentiated management of cases according to their type, and a fair and rapid trial through oral examination and concentrated trial. Also, the system of technical examiner was settled to guarantee the speciality of the Court. Moreover, by providing specialized materials regarding the technical contents and the scope of industrial properties to general courts taking charge of the infringement litigation, the Court

in Korea, statutorily empowered to settle any kind of commercial dispute under the Act.
95) Ki-Moon Sung *et al.*, Review of the Ten-Year Operation of the Patent Court and Future Problems, Collected Papers in Commemoration of the Ten-Year Anniversary of the Patent Court, 2008, p. 15 [3 , 10 , 10 , 2008 , p. 15].

played an essential role in resolving disputes concerning industrial properties within the judiciary. Additionally, it contributed to the development of legal theories on intellectual property and provided the standard of judgment enabling unified and predictable interpretation of law as the judgements became important research materials in the academic world and in practice.⁹⁶⁾

However, there are also issues which the Court has to resolve. First, there should be plans to improve the internationalization and specialization of the Court. Among the cases conducted by the Court, 25 per cent were matters concerning private international law which involved foreigners, and materials, such as standards of judgment regarding advancement and standards of examination of a trademark, adopted by courts in the U.S., Europe and Japan are submitted constantly. Further, judgments of the Court are translated into foreign languages and used as research and litigation materials.⁹⁷⁾ Secondly, the judicial organs in charge of disputes of intellectual property are decentralized currently, but this causes problems, such as discrepancy between judgments, loss of time and costs, and an impediment in industrial development brought about by insufficient protection of intellectual property. Accordingly, in order to seek judicial economy and efficiency in dispute settlement, there should

96) Ki-Moon Sung *et al.*, Review of the Ten-Year Operation of the Patent Court and Future Problems, Collected Papers in Commemoration of the Ten-Year Anniversary of the Patent Court, 2008, pp. 11-13 [3 , 10 , 10 , 2008 , pp. 11-13].

97) Ki-Moon Sung *et al.*, Review of the Ten-Year Operation of the Patent Court and Future Problems, Collected Papers in Commemoration of the Ten-Year Anniversary of the Patent Court, 2008, pp. 16-17 [3 , 10 , 10 , 2008 , pp. 16-17].

exist centralized procedures. 98)

3. The Nature of Legal Changes

1) Rule-based or Discretionary, Market-led or State-led

Legal changes were made in order to simplify administrative procedures, to strengthen industrial competitiveness, and to deregulate restrictions. In order to meet the agreement made with the IMF after the financial crisis, the government initiated the recovery process of collapsed financial system. Corporate restructuring was also followed by the financial restructuring. After the financial crisis, legal changes were made in order to promote corporate transparency. The amendment carried out in February 1999 aimed at revising regulations relating to foreign trade in order to achieve promotion of import and export, and expanding trade through simplifying trade procedures. For this, the approval by the Minister of Trade and Industry on import and export of designated goods was abolished to promote balance of trade. Authorization for establishing export and import associations was also deleted to promote autonomy of those associations. The authorities of the Minister of Trade and Industry were to be executed based on the law, and hence, allowing a private and rule-led economy. Overall, during this period, the economic growth of Korea was based on the rules aimed at protecting private initiatives whose governance and transparency were also demanded and checked.

98) Ki-Moon Sung *et al.*, Review of the Ten-Year Operation of the Patent Court and Future Problems, Collected Papers in Commemoration of the Ten-Year Anniversary of the Patent Court, 2008, pp. 18-19 [3 , 10 , 10 , 2008 , pp. 18-19].

2) Was the resolution of economic and business disputes efficient?

(1) Changes in Number of Lawyers

(unit: persons)

1997	1998	1999	2000	2001	2002
3,364	3,521	3,887	4,228	4,618	5,032

* source: Korean Bar Association

The Presidential Commission on Judicial Reform established on May 7, 1999 prepared a reform plan for the training of legal professions. It advised the transfer of jurisdiction over the Korean bar examination to the Ministry of Justice, the enactment of the KOREAN BAR EXAMINATION ACT, and correlation between the bar examination and education in universities. Accordingly, the Korean Bar Examination Act was enacted on March 28, 2001. The main contents of the Act shown in the bow below.

Contents		Enforcement Date
number of persons selected	The Minister of Justice decides after listening to the opinions of the Korean Bar Examination Committee, the Supreme Court and the Korean Bar Association.	Jan. 1, 2002
qualification of examinee	those who took certain number of credits from law courses	Jan. 1, 2006
subjects for examination	1st Examination Constitutional Law, Civil Law, Criminal Law, Subjects prescribed by the Presidential Decree**	Jan. 1, 2004

Contents			Enforcement Date
	2nd Examination	Constitutional Law, Civil Law, Criminal Law, Commercial Law, Administrative Law, Civil Procedure Law, Criminal Procedure Law	Jan. 1, 2004
	3rd Examination	Interview	

* source: Ministry of Justice

** Subjects prescribed by the Presidential Decree: one subject among Criminal Policy, Philosophy of Law, International Law, Labor Law, International Transaction Law, Tax Law, Intellectual Property Law, Economic Law

The Act on the Establishment and Operation of Law Schools was enacted on July 27, 2007. The Bill for Examination Act for Attorneys is currently under the review of the Legislation and Judiciary Committee in the National Assembly. From March 2009, law schools will be in charge of training legal professions.

(2) Process of Civil Mediation

	1997	1998	1999	2000
disposition rate (%)	94.2	89.6	91.6	94.1
conclusion rate (%)	33.2	37.2	34.9	36.7
rate of appeals to decisions instead of mediation (%)	21.9	18.8	21.0	19.9

* source: Judicial Yearbook 1998-2001

The disposition rate of civil mediation cases in this period was quite high, and the rate of conclusion was also quite high considering the figures. The rate of appeals to the decisions instead of mediation was around 20 per cent between 1997 and 2000, which means that about 80 per cent of decisions instead of mediation were appealed.

(3) Number of Claims to the Korean Commercial Arbitration Board

(unit: claims)

	Arbitration	Mediation	Total
1997	133	564	697
1998	192	520	712
1999	150	349	499
2000	175	474	649
2001	197	446	643
2002	210	470	680
2003	211	451	662
2004	185	474	659
2005	213	496	709
2006	215	534	749
2007	320	552	872

* source: Korean Commercial Arbitration Board

The total number of arbitration claims referred to the Korean Commercial Arbitration Board increased steadily, although there were instances where the number decreased slightly during the period. The total number of mediation claims decreased by about 33 per cent in 1999, but again regained the upward trend.

(4) Changes in Number of Cases Filed, Disposed, Appealed in the Patent Court

The Patent Court was established on March 1, 1998. Since its opening, it handled a total of 9,077 cases until December 31, 2007. Among the cases before the Patent Court, 2,509 cases were related to patents amounting to 28 per cent, 1,493 cases were related to utility model amounting to 16 per cent, and 1,041 were related to design amounting to 11 per cent.⁹⁹⁾

Changes in Number of Cases

(unit: cases)

Year	Cases Filed	Cases Disposed	Cases Pending	Cases Appealed (change of rate)
1998	1,119	662	457	185 (37.8%)
1999	995	913	539	304 (43%)
2000	866	905	500	400 (52.9%)
2001	726	796	430	330 (50%)
Year	Cases Filed	Cases Disposed	Cases Pending	Cases Appealed (change of rate)
2002	843	802	471	309 (45.5%)
2003	749	758	462	290 (44.5%)

99) Ki-Moon Sung *et al.*, Review of the Ten-Year Operation of the Patent Court and Future Problems, Collected Papers in Commemoration of the Ten-Year Anniversary of the Patent Court, 2008, p. 15 [3 , 10 , 10 , 2008 , p. 15].

3. The Nature of Legal Changes

Year	Cases Filed	Cases Disposed	Cases Pending	Cases Appealed (change of rate)
2004	878	856	484	355 (51.1%)
2005	1,115	946	653	360 (47.8%)
2006	1,192	1,191	654	425 (42.1%)
2007	1,429	1,248	835	528 (51.5%)

* source: Patent Court¹⁰⁰⁾

The number of cases filed each year did not reach 1,000 cases between March 1998 and 2004, but 1,115 cases were filed in 2005. Since then, the number of cases filed increased every year, and it reached 1,429 cases in 2007. Among the cases disposed from 1998 to 2007, 7,428 cases (82 per cent) were rendered a judgment, and the rest were concluded by withdrawal, deemed withdrawal and rejection of claim. The annual rate of annulment of the patent tribunal's decisions was below or over 30 per cent each year, and the highest was 34.7 per cent in 1998 and lowest was 25.9 per cent in 2004.

100) See generally Review of the Ten-Year Operation of the Patent Court and Future Problems, Collected Papers in Commemoration of the Ten-Year Anniversary of the Patent Court, 2008, pp. 20-32.

Period of Disposition (1998-2007)

	within 6 months	6 months-1 year	1 year-2 years	over 2 years	total number of cases disposed
number of cases	4,849	3,463	707	58	9,077
% among total	53.4	38.2	7.8	0.6	

* source: Patent Court

Among the total number of cases disposed in the Patent Court between March 1998 and December 2007, 91.6 per cent of cases were disposed within 1 year from the filing stage, and only 7.8 per cent and 0.6 per cent of cases took '1-2 years' and 'over 2 years' respectively.

4. Economic Assessment of the Legal System

	1997	1998	1999	2000	2001	2002	2003	2004
Gross National Product ¹⁰¹⁾	5,136.0	3,404.0	4,400.0	5,096.0	4,811.0	5,475.0	6,080.0	6,810.0
Per Capita Gross National Income ¹⁰²⁾	11,176.0	7,355.0	9,438.0	10,841.0	10,160.0	11,499.0	12,720.0	14,162.0
Rate of Economic Growth ¹⁰³⁾	4.7	-6.9	9.5	8.5	3.8	7.0	3.1	4.6

101) Nominal value, figures in billions of dollars

102) Nominal value, figures in dollars

103) Percentage based on real gross domestic product figures.

4. Economic Assessment of the Legal System

	1997	1998	1999	2000	2001	2002	2003	2004
Balance on Current Account ¹⁰⁴⁾	-8,287.4	40,371.2	24,521.9	12,250.8	8,032.6	5,393.9	11,949.5	27,612.8
Trade Balance ¹⁰⁵⁾	-3,255.7	41,665.0	28,463.0	16,953.6	13,488.0	14,777.4	21,952.0	38,160.7
Export Volumes ¹⁰⁶⁾	136,164.2	132,313.1	143,685.5	172,267.5	150,439.1	162,470.5	193,817.4	253,844.7
Import Volumes ¹⁰⁷⁾	144,616.4	93,281.8	119,752.3	160,481.0	141,097.8	152,126.2	178,826.7	224,462.7
Trade-GNI Ratio	67.9	84.1	75.1	81.9	76.6	71.6	75.8	86.3
Composition of the Economy								
Agriculture	5.4	5.1	5.2	4.9	4.5	4.1	3.8	3.7
Manufacture, Mining	26.8	27.8	28.5	29.8	28.0	27.2	26.8	29.1
Services	53.4	54.2	54.5	54.4	56.3	57.5	57.2	55.5
Others	14.4	12.9	11.8	10.9	11.2	11.2	12.2	11.7
Unemployment	2.6	7	6.3	4.1	3.8	3.1	3.4	3.5
Foreign Direct Investment ¹⁰⁸⁾	6,971,138	8,858,025	15,544,618	15,256,009	11,286,297	9,092,517	6,470,503	12,792,006

* The following figures are based on the statistics obtained with the help of the Bank of Korea.

104) Figures in millions of dollars

105) Figures in millions of dollars

106) Figures in millions of dollars

107) Figures in millions of dollars

108) Net declared value, figures in thousands of dollars

The gross national product increased from 5,136 billion dollars in 1977 to 6,810 billion dollars in 2004. The per capita gross national income increased from 11,176 dollars in 1997 to 14,162 dollars in 2004, maintaining over 10,000 dollars except for 1998 and 1999. During this period, after recording minus economic growth rate in 1998, the economy grew by the average growth rate of 6 per cent. On the other hand, balance on current account recorded deficit in 1997 but soon turned surplus. The trade balance also turned surplus after the deficit year of 1997. The trade-GNI ratio remained average of 77.4 per cent. The agricultural composition of the economy decreased below 5 per cent, whereas manufacture and mining remained closed to 30 per cent. The unemployment rate reached high between 1998 and 1999 but maintained around 3 per cent for the remaining period. Foreign direct investment went up to over 15 billion dollars between 1999 and 2000, but dropped down to under 10 billion dollars, then regained to 12.8 billion dollars in 2004.

Part VIII. Legal System of Economy Towards North Korea

1. Legal System of Economy for Globalization (1987-1996)

1) Basic Agreements on Inter-Korean Relations

The fundamental structure of inter-korean relation was established with the introduction of AGREEMENT ON RECONCILIATION, NON-AGGRESSION AND EXCHANGES AND COOPERATION BETWEEN THE SOUTH AND THE NORTH in December 1991. In the agreement two koreas

agreed upon “national reconciliation, non-aggression, easing of tension, exchange and cooperation to promote national interest”. In the additional protocol attached to the agreement, the two Koreas agreed “To promote an intergrated and balanced development of the national economy and the welfare of the entire people, the two sides should engage in economic exchanges and cooperation, including the joint development of resources, the trade of goods as domestic commerce and joint ventures.” The agreement presented the ideal setting for development of inter-Korean relations. However, the agreement was alienated from the realities of inter-Korean relationship at the time, and the failure in gaining ratification of the national assembly rendered the agreement mostly defunct.

2) Domestic Legislations on Inter-Korean Relations

(1) Enactment of the INTER-KOREAN EXCHANGE AND COOPERATION ACT of 1990

The basic instrument in inter-Korean exchange and cooperation, the INTER-KOREAN EXCHANGE AND COOPERATION ACT was established on August 1st, 1990 before the accession of AGREEMENT ON RECONCILIATION, NON-AGGRESSION AND EXCHANGES AND COOPERATION BETWEEN THE SOUTH AND THE NORTH. The Act prohibits illegal contacts, trade and cooperation projects with North Koreans, however, at the same time, expecting a turn of tides in inter-Korean relations, it prescribes in general inter-Korean exchange and cooperation to a certain degree within a limited scope. INTER-KOREAN EXCHANGE AND COOPERATION ACT rests upon a principle where the two Koreas open up inter-Korean contact, entry, trade and cooperation; and based upon the principle, the Act regulates the procedural

aspects of the exchange and it also states its prevailing nature over related legislations. Moreover, it should be noted that inter-Korean relations, which was under the arbitrary political discretion of the government, was incorporated as a part of administrative procedure with a legal standing. The Act has some specific rules concerning trade (Articles 12, 15), cooperative projects (Articles 16, 18), settlement of accounts, transportation, communication and quarantine.

(2) Enactment of the INTER-KOREAN COOPERATION FUND ACT of 1990

The INTER-KOREAN COOPERATION FUND ACT was established in August 1st, 1990 to support the reciprocal exchange and cooperation between the two Koreas, and has features similar to that of other public fund legislations. The fund is to be consisted of Contributions from the government and others, long-term loans and by issuing bonds(Article 4). Inter-Korean cooperation fund is to be used for covering and financing the expenses for cooperation projects and travels between the South and the North(Article 8). The fund is to be managed and operated by the Minister of National Unification, and his/her actions were subject to deliberation by the Inter-Korean Exchange and Cooperation Promotion Council (Article 7).

2. Legal System of Economy for the IMF Crisis (1997-onwards)

1) Overview

The South Korean government, in an effort to regulate inter-Korean exchange and cooperation within manageable circumstances, introduced the

INTER-KOREAN EXCHANGE AND COOPERATION ACT and the INTER-KOREAN COOPERATION FUND ACT in August 1990. After the SOUTH-NORTH JOINT DECLARATION of June 15, 2000, inter Korean economic cooperation progressed on from trade to investment. To keep track of the changing circumstance, in December 2005, the ACT ON DEVELOPMENT OF INTER-KOREAN RELATIONS was introduced to provide procedural rules on giving inter-Korean agreements domestic statutory enforcement, thereby establishing legal • policy base for inter-Korean relations. In May 2007, the ACT ON PROVIDING SUPPORT TO GAESONG INDUSTRIAL COMPLEX was created, a further development to the trend. Along with the Acts, various rules, notifications and directives were issued to regulate various inter-Korean cooperation and exchange activities.

Although it was unable to achieve the status of binding law, in December 1991, the AGREEMENT ON RECONCILIATION, NON-AGGRESSION AND EXCHANGES AND COOPERATION BETWEEN THE SOUTH AND THE NORTH was the first of such agreements to be concluded between the authorities of the two Koreas. Moreover, in December 2000, the FOUR AGREEMENTS ON ECONOMIC CO-OPERATION was signed, and entered into force in August 2003. In addition, protocols to facilitate establishment of the Gaesong industrial complex and tourist destinations in the scenic Diamond Mountain area. In step with these development, North Korean authorities responded to the developments by introducing the GAESONG INDUSTRIAL COMPLEX ACT and the DIAMOND MOUNTAIN TOURIST AREA ACT and subsequent rules to supplement them in November 2002. Further develop-

ments were made in July 2005, as the North Korean government created the ACT ON NORTH-SOUTH ECONOMIC COOPERATION, in recognition of South Korean government and entrepreneurs as legal partners in business.

2) Inter-Korean Agreements

(1) The 6·15 SOUTH-NORTH JOINT DECLARATION of 2000

In June 2000, the leaders of the South and the North to promote mutual understanding and to realize peaceful unification, agreed upon 5 articles and declared the agreement. Article 4 of the joint declaration states that “The South and the North have agreed to promote balanced development of the national economy through cooperation and by stimulating cooperation and exchanges in civic, cultural, sports, public health, environmental and in other fields as well”.

(2) The 4 Inter-Korean Documents on Economic Cooperation

The so-called 4 Inter-Korean documents on economic cooperation were created to promote and protect investment of South Korean citizens in North Korea, in the First Inter-Korean Economic Cooperation Working-level Meeting held on December 16, 2000, and includes agreements on investment guarantee, avoidance of double taxation, procedure for settling business disputes and clearing accounts. The documents were considered as treaties and went through the scrutiny of ratification process in the national assembly. The North Korean Peoples' High Council also ratified the documents on July 24, 2003 and the ratified documents were exchanged on August 20, 2003, thereby validating the documents. Many protocols and agreements followed the documents. Various agreements on

communications, passage, quarantine, customs, dispute settlements and criminal procedure achieved treaty status upon ratification of the national assembly.

a) The AGREEMENT ON PREVENTION OF DOUBLE TAXATION
OF INCOME BETWEEN THE SOUTH AND THE NORTH

Since the South and the North has distinct systems of taxation, there is a possibility that the issue of double taxation could arise, and such problems could be detrimental to promoting investment to the North. According to the AGREEMENT ON PREVENTION OF DOUBLE TAXATION OF INCOME BETWEEN THE SOUTH AND THE NORTH, in case of enterprise profit, the rule is that if an enterprise of a party carries on business through a permanent establishment situated in the other party, the profits of the enterprise may be taxed in the other party. In this case, only the profits that were attributable to that permanent establishment in the other party may be taxed. In particular, where a resident of a party derives income that was or may be taxed in the other party, the first-mentioned party should exempt such income from taxation. However, an amount equal to the tax paid or payable in respect to interest, dividends and royalties in the other party should be allowed as a credit against the tax payable in the first-mentioned party.

b) The AGREEMENT ON CLEARING SETTLEMENT BETWEEN
THE SOUTH AND THE NORTH

Because there did not exist a clearing settlement between the banks of the South and the North, settlements usually went through the banks of a third-party state, thereby causing extra cost and delays. To mend the problem, the AGREEMENT ON CLEARING SETTLEMENT BETWEEN

THE SOUTH AND THE NORTH was concluded to enable enterprises to clear settlements without the third-party state banks.

The preamble declares inter-Korean trade as “internal transactions among the Korean people and not transactions between two separate nations”. The Agreement is applied to “the payment of traded goods as determined by mutual agreement between the South and the North and to the payment of services related to such traded goods thereof”, and only to goods produced in the South and the North. U.S. Dollar is the designated currency of settlement, but there exists a provision stating that other currencies may be used upon mutual agreement. Thanks to the Agreement, enterprises were able to collect the payment stably, without delay. Thus, the possibility of non-payment decreased with the implementation of the Agreement, and this in turn is expected to act as a boost to inter-Korean trade. Due to the technical nature of clearing settlement transaction, the Agreement lays down only the basic elements, and leaves the rest to be determined by the banks, along the line of conventional conducts of transaction.

c) The AGREEMENT ON INVESTMENT PROTECTION BETWEEN
THE SOUTH AND THE NORTH

The AGREEMENT ON INVESTMENT PROTECTION BETWEEN THE SOUTH AND THE NORTH protects interests of the investor, and it guarantees investor and investment asset Most-favoured Nation Treatment: MFN). The main point of the Agreement is that it states that either side should not nationalize, expropriate, or restrict the property rights of, or implement any measure having the same effect; if expropriation does take place, case, prompt, adequate and effective

compensation under due process is to be provided. Disputes between investors and the authority of either side ,in principle, should be reconciled by negotiation, but should it fail, the South-North Commercial Arbitration Committee is to step in. Through the establishment of the Agreement, uncertainty towards investment in the North was reduced, creating a more stable environment for investment.

d) The AGREEMENT ON PROCEDURES FOR RESOLUTION OF
COMMERCIAL DISPUTES BETWEEN THE SOUTH AND THE NORTH

The AGREEMENT ON PROCEDURES FOR RESOLUTION OF COMMERCIAL DISPUTES BETWEEN THE SOUTH AND THE NORTH lays out a principle that “commercial disputes arising in the course of economic exchanges and cooperation between the South and the North should be resolved by mutual consultation between the parties concerned. As a general rule, disputes that could not be resolved by mutual consultation should be resolved through arbitration”. The Agreement defines the jurisdiction of the Committee as “commercial disputes arising in the course of economic exchanges and cooperation between the South and the North that have been mutually agreed by the parties concerned in writing to be settled by submission to the Arbitration Committee” and “Disputes between one party(authority) and investors of the other party”. This provision provides that the jurisdiction of the Committee extends to disputes between private and non-private entity as well. The reasoning behind this development is that there is a possibility that disputes concerning concession agreements, expropriation, and interpretation and implementation of investment contracts could arise. The South-North Commercial Arbitration Committee was created by the Agreement to facilitate stability in inter-Korean economic cooperation.

(3) The DECLARATION ON THE ADVANCEMENT OF
SOUTH-NORTH KOREAN RELATIONS, PEACE AND
PROSPERITY of 2007

On October 4, 2007, the DECLARATION ON THE ADVANCEMENT OF SOUTH-NORTH KOREAN RELATIONS, PEACE AND PROSPERITY reconfirmed the principles laid out in the Joint Declaration of June 15, 2000, and declared further 8 articles. In Article 5, each side agreed to “facilitate, expand, and further develop inter-Korean economic cooperation projects on a continual basis for balanced economic development and co-prosperity on the Korean Peninsula in accordance with the principles of common interests, co-prosperity and mutual aid.” In particular, in the field of economic cooperation, creation of special peace and cooperation zone in the West Sea, embarkation on the second-stage development project Gaeseong Industrial Complex at an early date were agreed. Expansion of port facilities of Heaju, SOC projects in the North such as maintenance works on railways and highways, tours to Mt. Baekdu and open nonstop flight services between Seoul and Mt. Baekdu for this purpose, establishment cooperative complexes for shipbuilding in Anbyeon and Nampo and cooperative projects in various areas such as agriculture, health and medical services and environmental protection, improvements in procedural and policy to promote economic cooperation were also mentioned. It could be said that the Declaration provided a base where inter-Korean economic cooperation could upgrade itself.

3) Domestic Regulations

(1) Enactment of the ACT ON DEVELOPMENT OF THE SOUTH-NORTH RELATIONSHIP of 2005

The ACT ON DEVELOPMENT OF THE SOUTH-NORTH RELATIONSHIP was introduced in December 29, 2005 to provide the legal basis for inter-Korean dialogue, agreement, and cooperation. The Act clarified various rules on inter-Korean dialogue, appointment of delegation to the dialogues, accession and announcement of agreements and dispatch of officials to the North, thereby establishing legal basis for inter-Korean activities. The Act could be understood as the realization of Article 4 of the constitutional law, as it supplies various provisions on inter-Korean relations and conduct of inter-Korean dialogue.

In particular, concerning inter-Korean economic cooperation, the Act states that the government has obligations to work for balanced development of the national economy, thereby creating a pan-Korean economic sphere and promoting common economic interest.

(2) Enactment of the ACT ON PROVIDING SUPPORT TO GAESONG INDUSTRIAL COMPLEX of 2007

The ACT ON PROVIDING SUPPORT TO GAESONG INDUSTRIAL COMPLEX was introduced in May 25, 2007 to protect and support South Korean citizens investing and/or entering Gaesong industrial complex and to support the industrial complex. The Act's aim is to provide same level of protection to workers and to provide support for the enterprises. In particular, the Act specifies that the workers in the complex would receive same kind of insurance benefit and be under the

protection of the LABOR PROTECTION ACT. For the enterprises, it provides funds, loans; it also allows the Minister of National Unification to request needed support to various central and regional administrative organs.

There already exists a North Korean legislation, the GEASONG INDUSTRIAL COMPLEX ACT, currently in enforcement. However, on the South Korean labor-employer relationship and the support of the South Korean government, the ACT ON PROVIDING SUPPORT TO GAESONG INDUSTRIAL COMPLEX is to be applied, thus making the Complex a unique place where laws of the two Koreas co-exist.

3. Economic Assessment of the Legal System

Inflows & Outflows Between South-North Korea Capital Flows as of March 2008

(unit : million US dollars)

	'89-'99	'00	'01	'02	'03	'04	'05	'06	'07	'08.3	Total
In	1,466	152	176	272	289	258	340	520	765	208	4,446
Out	636	273	227	370	435	439	715	830	1,032	209	5,167
Sum	2,102	425	403	642	724	697	1,055	1,350	1,798	417	9,613

* source: Ministry of Unification¹⁰⁹⁾

The direct trade between North and South Korea began late in the 1980s. An annual average of the total trade between 1998 and 1999 was around 200 million dollars. The steady increase in the volume of trade between North and South Korea mostly takes place during the first ten years of the 2000s. It reached over 1,000 million dollars in 2005.

109) www.unikorea.go.kr

CONCLUSION: Law and Economy in Korea

1. Role of Law in Korean Economic Development

Economic growth is only possible with the close cooperation between businesses and the government. It is more certain in the increasing competitive environment of globalization. Korea is one of the successful economies to develop from poor state to more advanced so as to join the Organization for Economic Cooperation and Development (OECD). The economic development has been provided in the Constitutions of Korea. And the rule of law also provided in the Constitution has required the government to conduct economic policies on the basis of relevant rules. In this sense, Korea's economic policies and their implementations have ultimately had their legal basis in the Constitution. Various provisions concerning the economy were first established in the original Constitution of 1948, and then substantially revised through the second amendment of 1954, the fifth amendment of 1962 and the ninth amendment of 1987. The original Constitution of 1948, which was largely influenced by the Weimar Constitution of Germany, guaranteed the private property system, but at the same time enabled State to practice considerable regulation. Thus, the original Constitution intended to build an economic system based on revised capitalism with some socialist styled elements. However, the socialist-like economy system of the original Constitution was transformed into the liberalistic economy system by the second amendment of 1954.

The articles related to the economy now in force, which was the result of the ninth amendment of 1987, consist of a principle clause and

specific clauses to concretize the principle. The principle clause, which is found in the preamble, declares that State should afford equal opportunities to every person and elevate the quality of life for all citizens, representing the modification of traditional capitalism. In addition, Korea's economic order is based on free-market economy but permits regulation in order to prevent contradiction inherent in the system and to afford social welfare and justice. In short, the Constitution now in force prescribes the economic order to be a social market economy. Since a social market economy is based on the capitalism and free-market economy, the regulation for public necessities must have an independent legal ground.

It is rare for a liberal democratic country to create provisions governing the economy separately from provisions on fundamental rights in establishing its constitution. In this respect, the Constitution of Korea has a unique character of having nine articles related to the economy, in a whole independent chapter devoted to that purpose. However, there also exists critical views, asserting that those provisions may rather obstruct sound economic development. These views recently provoked an argument whether to abolish such provisions, so it is worthy of paying attention to whether and how these articles would be amended.

One of the best examples of economic policies is the five year economic development plans which began to be implemented during the third Republic in the early 1960s. These economic development plans were later found to be really effective power for Korean economic success. However, the interesting thing is that these economic development plans were themselves not based on a specific law. Rather, the individual

policies in the plans were on the basis of relevant laws in such areas as industrial policy and trade policy, etc, as shown in the list of the appendix. In this sense, law matters for economic development in Korea.

In this paper, ten areas of law related to economic development were discussed in accordance with the time-period from the independence in 1945 until the present. First, in the area of the laws governing the government it was found that the organization of the government has developed and changed coping with the economic and social developments in Korea. Second, in the area of IP law, it was found that the laws concerned were not concerned with the protection of foreign intellectual properties at least in the beginning, but that they became in conformity with international standards by pressures from other States as well as the necessity to protect Korean intellectual properties. Third, in the area of laws relating to business governance, it was found that there was little interest in it until Korea suffered the financial crisis in the middle of 1990s. However, the conditions put by the IMF required business or corporate governance in Korea equipped with relevant laws. Fourth, in the area of labor laws, it was found that the protection of labor rights was not satisfactory at least because industrial development was considered more preferable. However, as the dictatorship of the government was displaced by true democracy in the 1980s, the level of protection of labor rights became higher so that they were even criticized to intervene the decision-making of management. Fifth, in the area of trade laws, it was found that there were many laws enacted for promoting exports to earn foreign currencies. These laws were found to be a good basis of Korean economic development. Sixth, in the area of

the laws relating to industrial policy, it was found that specific laws were enacted to promote specific industries in the beginning, but that later there were more general laws adopted for general availability in Korea. Seventh, in the area of the laws governing financial sector, it was found that there were mainly two sub-areas of law relating to banking and securities. These laws were supposed to assist the industrial development by financing Korean businesses. Eighth, in the area of competition law, it was found that those laws were enacted only in the 1980s to secure fair trade as a small number of big businesses such as 'chae-bol' occupied a majority of the economic activities. It is the competition law that is regarded most important and influential for businesses now. Ninth, in the area of dispute settlement, it was found that while courts played a major role in settling business disputes in Korea, arbitration also was used for the same purpose. Tenth, in the area of the laws relating economic cooperation with North Korea, it was found that certain laws were adopted to make the trade and economic relationship between the two Koreas stable considering the unstable political and military status of the Korean peninsular.

The more important aspect of the role of law in Korean economic development may be whether the laws related to economy provided more discretion for the government. The direction of economic development, either for the market-based or State-based also matters, and it is quite influenced by the degree of the discretion given to the government. For many years in the beginning of economic development, i.e. during the first three 5 year economic development plans, there were found lots of discretion given to the government from establishing new industries,

conducting export and import and to being financed by banks. The government made the roads and equipped the environment for enterprises to do businesses. Korean businesses just had to follow the government and be protected under the government policies. However, it is to be noted that such discretion given to the government was based on specific rules of relevant laws.

Another point of the Korean economic success may be found in the longer years of power taken by President Park in the 1960s and 1970s. Although he is criticised for the dictatorship, economically he kept to concentrate the government policies into the economic growth and success. Thus, the various 5 year economic development plans could be implemented rather coherently. However, as the economy grew in size and the international economic environment changed for more free competition among enterprises without borders in the world, the role of the government had to change. Thus, since the assassination of President Park, the government began to change towards less discretion by implementing market-oriented policies. However, the ill-prepared government policy for internationalization of economy and the hasty opening of financial market made the Korean economy less sound. Thus, in 1997 Korea suffered a financial crisis and at last gave in to the demand of the IMF for more transparent economic policy of the government and more tightened corporate governance.

2. Lessons from the Korean Experiences

The economic success of Korea in relation to law should be a good lesson for other countries wishing to develop economically. The following

points may be pointed out from the Korean experiences. First, the economic goals to reach should be clearly defined in the law, preferably, the Constitution. And the following individual economic policies should then be based on separate rules of law. Considering that there was no such legal basis for the economic development plans in Korea, it might be better for such basic or framework law for the economic development to be enacted. Second, there should be a long-term perspective on the economic development which should be shared among the politicians and businesses and government officials. It certainly takes time for the economy to grow, and it would take more time for more industry sectors. In the beginning of the economic development, however, there tends to be more intervention or discretion of the government for businesses. In this respect, the discretion of the government, meaning power over businesses, could be abused and lead to corruption and concentration of benefits in selected enterprises. Thus, there should be a legal ground for checking the discretion of the government. And as the economic development takes time, the policies should also be implemented over many years, and thus the relevant laws should remain with some flexibility with ever changing environments. Third, as the economy develops, the discretion of the government may be reduced for more initiatives in the private sector. Nevertheless, the government should monitor the developments in the market. For example, as the discretion of the government lessens, corporate governance on the part of enterprises should be tightened. Fourth, the rules provided in the laws for economic policies should be clear for government officials and the businesses. In this sense, there should be legislating expertise in the government. And also there should be information sessions for businesses

to understand the exact rules provided in relevant laws. Fifth, as the global economic environment knows no borders, the relevant laws for certain economic policies should mind relevant rules of international law, as found in the WTO. Lastly, the policy changes should reflect the market and the ability of businesses, not the will of the government or politicians. Although liberalization of the economy looks good and successful, as found in developed countries, that is only possible and allowed in accordance with the reality.

APPENDIX: CHRONOLOGY OF ECONOMIC LAWS IN KOREA

(AS OF NOVEMBER 2008)

Year	Enactments	Amendments
1948	CONSTITUTION (Jul. 17)	1987 1980 1972 1969 1962 1960 (2times) 1954 1952
	TEMPORARY ACT ON LOCAL AUTONOMY (Nov. 17)	1947 (abolished)
1949	ACT ON LOCAL AUTONOMY (Jul. 4)	2008 2007 (3times) 2006 (5times) 2005 (4times) 2004 (2times) 2003 2002 2000 1999 (3times) 1995 (3times) 1994 (2times) 1991 (2times) 1990 1989 1988 1973 1960 1958 1956 (2times) 1955 1949
	COURT ORGANIZATION ACT (Sep. 26)	2007 (4times) 2006 (2times) 2005 (3times) 2004 2001 1999 (2times) 1998 1996 1995 (2times) 1994 1990 1988 1987 1981 1980 1976 1975 1973 1970 1969 1966 1963 (3times) 1962 (2times) 1961 1959 1957 1956 (2times) 1953
1950	BANKING ACT (May 5)	2008 (3times) 2007 2005 2002 2001 2000 (2times) 1999 (3times) 1998 (3times) 1997 (2times) 1994 1991 1982 1978 1977 1969 1966 1962
	BANK OF KOREA ACT (May 5)	2008 (2times) 2006 2003 2002 2001 2000 (2times) 1999 1997 1996 1993 1982 1977 1968 1963 1962
1953	LABOR DISPUTES ADJUSTMENT ACT (Mar. 3)	1996 (abolished) 1987 1986 1981 1980 1974 1973 1963 (3times)
	LABOR UNION ACT (Mar. 8)	1996 (abolished) 1987 1986 1981 1980 1974 1973 1963 1963
	LABOR RELATIONS COMMISSION ACT (Mar 8)	2007 (3times) 2006 2005 (3times) 1999 1997 (abolished and reenacted) 1996 1984 1981 1980 1973 1963 (3times)
	LABOR STANDARDS ACT (Oct. 10)	2008 (2times) 2007 (5times) 2006 (2times) 2005 (3times) 2003 2001 1999 1998 1997(amended, abolished and reenacted) 1996 1990 1989 1987 1986 1981 (2times) 1980 1974 1961
1957	COPYRIGHT ACT (Jan. 28)	2008 2006 (2times) 2004 2003 2000 1997 1995 1994 (2times) 1993 1991 1990 1989 1986

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Year	Enactments	Amendments
	TRADE ACT (Dec. 13)	1967 (abolished) 1966 1961
1960	CIVIL PROCEDURE LAW (Apr. 4)	2007 (2times) 2006 2005 (2times) 2002 1999 1998 1997 1995 (2times) 1994 (2times) 1993 1991 (2times) 1990 1963 1961
1961	EXPORT ASSOCIATION ACT (Sep. 9)	1986 (abolished)
	TEMPORARY ACT ON PROVIDING SUBSIDY TO PROMOTE EXPORTS (Sep. 18)	1967 (abolished)
	EMPLOYMENT SECURITY ACT (Dec. 6)	2008 2007 (2times) 2005 2004 1999 1998 1997 (3times) 1995 1994 1989 1982 1981 (2times) 1974 1973 1967 1963
	PATENT ATTORNEY ACT (Dec. 23)	2008 (2times) 2007 2006 2005 (2times) 2004 2002 2000 1999 (2times) 1997 1993 1976 1973
	INDUSTRIAL DESIGN PROTECTION ACT (Dec. 31)	2008 2007 (3times) 2006 2005 2004 2002 (2times) 2001 1999 1998 1997 (2times) 1995 (2times) 1993 (2times) 1990 1986 1982 1980 1976 1973 (2times)
	PATENT ACT (Dec. 31)	2008 2007 (4times) 2006 (2times) 2005 (2times) 2004 2002 (2times) 2001 (2times) 1999 1998 1997 1995 (2times) 1994 1993 (2times) 1990 1986 1982 1980 1976 1973 (2times) 1963
	MODEL UTILITY ACT (Dec. 31)	2008 2007 2006 2005 2004 2002 (2times) 2001 1998 1997 1995 (2times) 1993 (2times) 1990 1986 1982 1980 1976 1973 (2times) 1963
1962	SEAFARERS ACT (Jan 10)	2008 2007 (6times) 2006 2005 2002 2001 1999 (2times) 1997 (3times) 1995 1993 1990 1987 1984 1983 1981 1977 1975 1973 1966
	ACT ON CONCILIATION OF RENTED HOUSE AND RENTED LAND (Jan. 15)	1990 (abolished)
	SECURITIES AND EXCHANGE ACT (Jan. 15)	2008 (4times) 2007 (2times amended and abolished) 2005 (4times) 2004 2003 (2times) 2002 (2times) 2001 2000 1999 (2times) 1998 (5times) 1997 (2times) 1995 1994 1991 1987 1982 1976 1974 1973 1968 1964 1963 (2times)

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Year	Enactments	Amendments
	COMMERCIAL ACT (Jan. 20)	2007 (2times) 2001 (2times) 1999 (2times) 1998 1995 1994 1991 (2times) 1984 1962
	EXPORT PROMOTION ACT (Mar. 20)	1967 (abolished) 1966 1963
	EXPORT INSPECTION ACT (Oct. 4)	1993 (amended and abolished) 1973 1968
1963	INDUSTRIAL ACCIDENT COMPENSATION INSURANCE ACT (Nov. 5)	2008 2007 (4times) 2005 2004 2003 2001 1999 (3times) 1998 1997 (2times) 1994 1993 1989 1986 1983 1982 1981 (2times) 1977 1976 1973 (2times) 1970
1964	ACT ON CONSTRUCTION AND DEVELOPMENT OF INDUSTRIAL COMPLEXES FOR THE EXPORT INDUSTRY (Sep. 14)	1997 (abolished) 1976 1973 1966
1967	TRADE TRANSACTION ACT (Jan. 16)	1986 (abolished) 1975 1972 1970
	TEMPORARY MEASURES ON FACILITIES FOR THE TEXTILE INDUSTRY (Mar. 3)	1979 (abolished) 1975
	MACHINERY INDUSTRY PROMOTION ACT (Mar. 30)	1986 (abolished) 1982 1981 1971
	SHIPBUILDING INDUSTRY PROMOTION ACT (Mar. 30)	1986 (abolished) 1984 1982 1980 1969
1968	FURTHERANCE OF THE CAPITAL MARKET ACT (Nov. 22)	1997 1993 1987 1984 1979 1972
1969	ELECTRONIC INDUSTRY PROMOTION ACT (Jan. 28)	1986 (abolished) 1981
	SECURITIES INVESTMENT TRUST BUSINESS ACT (Aug. 4)	2003 (abolished) 2002 2001 2000 1999 (2times) 1998 (2times) 1997 1995 1993 1976 1975
1970	The IRON AND STEEL INDUSTRY SUPPORT ACT (Jan. 1)	1986 (abolished) 1979 1977
	PETROCHEMICAL INDUSTRY SUPPORT ACT (Jan. 1)	1986 (abolished) 1979
	ACT ON THE ESTABLISHMENT OF FREE EXPORT ZONES Jan. 1)	2008 (2times) 2007 (4times) 2006 (3times) 2005 2004 2002 (2times) 2001 2000 (2times) 1999 1998 (2times) 1997 (2times) 1996 1994 1993 1989 1983 1980 1977 1976 1975 1973 1972

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Year	Enactments	Amendments
	TEMPORARY ACT ON SPECIAL CASES CONCERNING TRADE UNIONS AND LABOR DISPUTE ADJUSTMENT OF FOREIGN-INVESTED ENTERPRISE (Jan. 1)	1986 (abolished) 1983 1981
	ACT ON SPECIAL CASES CONCERNING THE SETTLEMENT OF CIVIL DISPUTES BY SUMMARY PROCEEDINGS (Dec. 31)	1993 (abolished) 1990 1987 1985 1982 1973 1972
1971	NONFERROUS METALS REFINING INDUSTRY ACT (Jan. 22)	1986 (abolished) 1977
	ACT ON SPECIAL MEASURES FOR NATIONAL INTEGRITY (Dec. 27)	1981 (abolished)
1973	TRIAL OF SMALL CLAIMS ACT (Feb. 24)	2005 2002 2001 1996 1990 1980 1975
1975	INDUSTRIAL COMPLEX MANAGEMENT ACT (Dec. 31)	1990 (abolished) 1989 1977 1976
	PRICE STABILIZATION AND FAIR TRADE ACT (Dec. 31)	2008 2007 1999 1997 1995 1993 1980
1976	FRAMEWORK ACT ON VOCATIONAL TRAINING (Dec. 31)	1997 (abolished) 1997 (2times) 1993 1991 1986 1981 (2times) 1979
1977	INDUSTRIAL PLACEMENT ACT (Dec. 31)	1990 (abolished) 1987 1982
	INDUSTRIAL DESIGN PROMOTION ACT (Dec. 31)	2008 2006 2005 2001 1999 1996 1994 1993 1991
1978	INDUSTRIAL EQUIPMENT EXPORT PROMOTION ACT (Dec. 5)	1986 (abolished) 1983 1981
1979	TEXTILE INDUSTRY MODERNIZATION PROMOTION ACT (Dec. 28)	1986 (abolished)

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Year	Enactments	Amendments
1980	CONSUMER PROTECTION ACT (Jan. 4)	2008 (2times) 2006 2005 2004 2003 2001 1999 1997 1995 (2times) 1986
	LABOR-MANAGEMENT CONSULTATIVE COUNCIL ACT (Dec. 31)	1997 (abolished) 1996 1987 1981
	MONOPOLY REGULATION AND FAIR TRADE ACT (Dec. 31)	2008 2007 (6times) 2005 (4times) 2004 (2times) 2002 (2times) 2001 1999 (4times) 1998 (5times) 1997 (3times) 1996 1994 (2times) 1992 (2times) 1990 1986
1981	INDUSTRIAL SAFETY AND HEALTH ACT (Dec. 31)	2007 (6times) 2006 2005 (2times) 2002 2001 2000 (2times) 1999 1997 (2times) 1996 (2times) 1995 1994 1993 1990
1984	FAIR SUBCONTRACT TRANSACTIONS ACT (Dec. 31)	2008 2007 2006 2005 2004 (2times) 2003 2000 1999 (2times) 1998 1997 (2times) 1996 1995 (2times) 1992 1991 1990
1986	INDUSTRIAL DEVELOPMENT ACT (Jan. 8)	1999 (amended and abolished) 1996 1995 (2times) 1993 1991 1990 1989
	FOREIGN TRADE ACT (Dec. 31)	2008 2007 (2times) 2005 2003 2001 2000 (2times) 1999 (3times) 1998 1997 1996 1994 1993 (2times) 1992 1990 1989
	REGULATION OF STANDARDIZED CONTRACTS ACT (Dec. 31)	2008 2007 2006 2005 2004 2001 1997 1992
	MINIMUM WAGE ACT (Dec. 31)	2008 2007 (2times) 2005 (2times) 2000 1999 1997 1993
1987	ACT ON THE EQUAL EMPLOYMENT FOR BOTH SEXES (Dec. 4)	2007 (2times) 2005 (2times) 2001 1999 1995 1989
1989	ACT ON THE ENCOURAGEMENT OF TECHNICAL SKILLS (Apr. 1)	2005 2001 1999 1997 (2times) 1996 1991 (2times)
1990	INDUSTRIAL PLACEMENT AND FACTORY CONSTRUCTION ACT (Jan. 13)	2008 (4times) 2007 (16times) 2006 (3times) 2005 (5times) 2004 (4times) 2003 2002 (4times) 2001 (2times) 2000 (2times) 1999 1998 (2times) 1997 (2times) 1996 1995 (4times) 1994 (2times) 1993 (2times) 1991 (3times)

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Year	Enactments	Amendments
	JUDICIAL CONCILIATION OF CIVIL DISPUTES ACT (Jan. 13)	2002 2001 1998 1995 1992 1990
	INTER-KOREAN EXCHANGE AND COOPERATION ACT (Aug. 1)	2008 2007 2005 2000 1998 1997 1996 1994 1992 1990
	INTER-KOREAN COOPERATION FUND ACT (Aug. 1)	2008 2006 2002 1999 (2times) 1997 1996 1993 1990
1991	ACT ON THE PROMOTION OF OFFICE AUTOMATION FOR TRADE (Dec. 31)	2008 2007 (2times) 2005 1999 1997 (2times) 1996 1993
1993	FRAMEWORK ACT ON EMPLOYMENT POLICY (Dec. 27)	2007 (2times) 2005 2004 2003 2001 1998 1997 (2times)
	EMPLOYMENT INSURANCE ACT (Dec. 27)	2008 2007 (2times) 2006 (2times) 2005 (2times) 2003 2002 2001 2000 1999 1998 (2times) 1997 (3times) 1996 1994
1994	ACT ON ESTABLISHMENT OF INDUSTRIAL AND ENERGY TECHNOLOGY FOUNDATION (Dec. 22)	2008 2007 (2times) 2006 (3times) 2004 (2times) 2001 (2times) 2000 1999 (4times) 1998 1997 (2times) 1995
1995	FUTURES TRADING ACT (Dec. 29)	2008 (4times) 2007 (amended and abolished) 2005 (3times) 2004 2002 2000 1999 (2times) 1998
1996	ACT ON EMPLOYMENT OF IMPROVEMENT, ETC. FOR CONSTRUCTION WORKERS (Aug. 11)	2008 2007 2005 2004 2003 (2times)
1997	TRADE UNION AND LABOR RELATIONS ADJUSTMENT ACT (Mar. 13)	2008 2006 (2times) 2001 1998
	ACT ON INSTALLATION OF FINANCIAL SUPERVISORY ORGANS (Dec. 31)	2008 2007 2006 2005 (2times) 2003 2001 2000 1999 (2times)
1998	ACT ON THE PROTECTION, ECT. OF DISPATCHED WORKERS (Feb. 20)	2008 (2times) 2007 (2times) 2006
	WAGE CLAIM GUARANTEE ACT (Feb. 20)	2007 (4times) 2006 (2times) 2005 (2times) 2003 2000 1999

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Year	Enactments	Amendments
	The ACT ON THE ESTABLISHMENT AND OPERATION OF PUBLIC OFFICIALS' COUNCILS (Feb. 24)	2005 2000
1999	ACT ON THE ESTABLISHMENT AND OPERATION OF TEACHERS' UNION (Jan. 29)	2008 2006 2005 2001 (2times)
	INDUSTRIAL DEVELOPMENT ACT (Feb. 8)	2008 (2times) 2007 (2times) 2006 (3times) 2005 2004 (2times) 2002 2001 (3times) 2000 (3times) 1999
2001	ACT ON THE INVESTIGATION OF UNFAIR INTERNATIONAL TRADE PRACTICES AND REMEDY AGAINST INJURY TO INDUSTRY (Feb. 3)	2008 (2times) 2005 2004
2003	ACT ON FOREIGN WORKERS' EMPLOYMENT, ETC. (Aug. 16)	2008 2007 2005 (2times) 2003
2005	ACT ON THE ESTABLISHMENT AND OPERATION, ETC. OF PUBLIC OFFICIALS' TRADE UNIONS (Jan. 27)	2008
	GUARANTEE OF WORKERS' RETIREMENT BENEFITS ACT (Jan. 27)	2008 (2times) 2007 (2times) 2005
	ACT ON DEVELOPMENT OF THE SOUTH-NORTH RELATIONSHIP (Dec. 29)	
2006	ACT ON THE PROTECTION, ETC. OF FIXED-TERM AND PART-TIME WORKERS (Dec. 21)	2007
2007	SOCIAL ENTERPRISE PROMOTION ACT (Jan. 3)	2007
	ACT ON PROVIDING SUPPORT TO GAESONG INDUSTRIAL COMPLEX (May. 25)	