

# Temporary Regulatory Relief

A New Experiment in Regulatory Reform in Korea

June 2009

The Republic of Korea




## Foreword

On May 27, 2009, the Korean government released a list of 280 regulations, the application of (or part thereof) which will be suspended or delayed for two years. This initiative, termed the "**Temporary Regulatory Relief (TRR)**" program, aims at bolstering private sector investment by taking the regulatory burden off the shoulders of enterprises on a temporary basis.

Certainly, the TRR is Korea's own policy efforts to cope with unprecedented economic crisis in a global scale, being provided in tandem with sizable fiscal stimulus package. But it also paved a new way to further regulatory reform, in the sense that temporary deregulation could turn into permanent when relief periods are over. Although bearing some resemblance to the regulatory moratorium undertaken by the President Ronald Reagan's administration in the U.S., this program is distinct in that it applies to existing regulations, not to new regulations in the pipeline.





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In the midst of the global financial crisis, economic growth rates of OECD member countries in the first quarter of 2009 plummeted to -2.1% on average, the lowest level since 1960. The Korean government, along with a majority of OECD members, has actively undertaken a series of counter-measures to overcome the worldwide economic malaise. In essence, the TRR may well be considered as an add-on to the 28-trillion won fiscal stimulus package, aimed more directly at bolstering private sector investment. Furthermore, the TRR represents a radical departure from the business-as-usual approach toward regulatory reform, a novel way to meet the current economic challenges head on.

### **Limitations of Government Spending Programs**

During the first half of 2009, the Korean government has accelerated the pace of budgetary spending upon the strong request of President Lee Myung-Bak. Judging that the current budget would not be big enough to ensure economic recovery, from early on, the government began to prepare a supplementary budget of about 28 trillion won. These crisis measures have seemingly begun to take effect.

Realizing that the fiscal package alone would not be sufficient to boost private sector investment and consumption, however, the government has turned its eyes to reforming those regulations that look more egregious in times of extreme economic difficulties, given their presumed inhibiting effects on businesses, consumption and investment.

### **Limitations of Existing Tools of Regulatory Reform**

It is well known that the Korean government has made significant progress toward regulatory reform, as it is frequently recognized in OECD circles. It is also notable that President Lee has elevated regulatory reform to the top of the

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## Chapter 1

### Background

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national priority agenda. In the face of deep economic crisis, however, existing regulatory reform tools, including regulatory impact analysis (RIA), for example, have been found to be insufficient to stop the economy from sliding further.

Recognizing this shortcoming, the Korean government adopted a plan early in 2009 to subject the existing regulations to sunset review. However, the government has found this measure to be far from effective, as the results of the sunset review can take effect only when the deadlines come, which generally means 2 to 3 years from now.

### **TRR : A New Experiment in Regulatory Reform**

Against this background, the Prime Minister's office (PMO) and the Regulatory Reform Committee (RRC)<sup>1)</sup> have embarked upon a search for a breakthrough, and reached the conclusion that an extraordinary measure would be needed to make the enforcement of regulations more flexible and to turn the regular sunset review into a new mechanism more suitable to the current economic climate.

Given the difficulties of and political resistance to outright deregulation, the PMO decided to devise a new program to replace the aforementioned sunset review mechanism. The program would suspend or delay the application or enforcement of those regulations that appear most inappropriate especially in economically difficult times.

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1) The Regulatory Reform Committee (RRC) is a Presidential Commission with legal status and co-chaired by the Prime Minister and a civilian expert. The RRC is supported by the Office of Regulatory Reform within the PMO.

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## Chapter 2

### Definition of TRR and Its Distinctiveness

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#### What is the Temporary Regulatory Relief(TRR)?

The TRR refers to a new program for regulatory reform by which the government can suspend or ease the existing burdensome regulations temporarily until the current economic crisis is over. After the two-year relief period, the suspended or eased regulations will be restored, excluding regulations deemed to be suitable for permanent elimination.

As an extraordinary legal measure, the TRR involves two thorny legal issues: first, the duration of the measure; and second, the legal status of those regulations in question when the duration of the measure ends.

Regarding the first issue, the Korean government has decided to set the relief period at two years, as a standard, meaning that depending on the characteristics of a particular regulation, some would be suspended or have their application delayed for less than two years. The government has weighed the merits and demerits of doing so. If the relief period is too long, the TRR might be construed as a circumventive way to deregulation, whereas if it is too short, the program would not be able to produce intended effects, falling short of inducing economic recovery.

In regard to the second issue, the government has decided to apply the sunset review mechanism to those regulations temporarily suspended or delayed some time before their respective relief period would lapse. Through this mechanism, therefore, some regulations will have their legal force restored, and some will be reformed permanently.

Key differences between the TRR and other cases of regulatory reform are as follows.

#### TRR vs. Sunset Review

The TRR is similar to a sunset review in that it does not

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## Chapter 2

### Definition of the TRR and Its Distinctiveness

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remove or reduce the regulations permanently at the very time of authorization. While the sunset review suspends or eases affected regulations after the sunset period lapses, the TRR suspends or eases the regulations during the relief period.

In short, the TRR is a mirror image of the sunset review mechanism. Put differently, it is a different form of the sunset review turned upside down. While the sunset review generally applies prospectively, under the TRR, affected regulations would lose the whole or part of their legal force before the sunset review is undertaken to determine their fate.

### **Korea's TRR vs. U.S.'s Regulatory Relief Programs**

In 1981, the Reagan administration ordered the Regulatory Relief Programs<sup>2)</sup> to freeze for two months the issuance of most of the "midnight" regulations enacted by the former Carter administration.

It goes without saying that Korea's TRR has been inspired by the American experiment. However it differs from its U.S. counterpart in two respects. First, while the American regulatory relief measure applies to those new regulations in the pipeline that would otherwise come into effect, Korea's TRR program applies mainly to existing regulations. Second, unlike the U.S. regulatory relief programs, an essential part of Korea's TRR is composed of the sunset review.

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2) President Ronald Reagan established the Task Force on Regulatory Relief (TFRR), headed by Vice President Bush, to review the so-called "midnight" rules hastily pushed forward by the departing Carter administration, while emboldening the Office of Information and Regulatory Affairs (OIRA) to tighten the RIA review process under the newly issued Executive Order 12291. With this strengthened mechanism in hand, the TFRR killed or modified 79 major regulations out of a "hit list" of 119.



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## Chapter 3

### Criteria for TRR

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The set of criteria that the Korean government has used to select candidate regulations to be subjected to the TRR review process has been determined in regard to the following considerations:

#### 1. Criteria by Characteristics

The first group of criteria relates to the characteristics of regulations. The Korean government has attempted to select those regulations that would be immediately effective in boosting the stagnant economy, while arousing less, if no, political controversy nor acrimony among related interest groups, either public or private sectors.

##### Effectiveness

After all, the TRR program has been initiated by the urgent need to prevent the economy from sliding and stagnating. Thus, it is considered imperative that the TRR should have substantial and significant effects in terms of reinvigorating the already weakened economy.

##### Immediate Effects

The government has placed priority on suspending or postponing the regulations whose effects would be immediately visible and tangible. It considers that way would be conducive for dissipating the potential political controversy over the program, while maximizing the support for the program from its earliest stage.

##### Minimization of Adverse Effects

Although it is widely accepted that those regulations which generally place greater burden and cost on businesses belong to the category of environmental and consumer-protection

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# Chapter 3

## Criteria for TRR

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regulations, the government has been highly attentive not to include in the package those types of regulations that would possibly create strong adverse effects.

However, if there exist subjects of deregulation whose economic effect is greater than any presumed adverse effect, the Korean government has selected such examples as potential subjects of the TRR. That is why the criterion of subject selection is "minimization of adverse effects", rather than "elimination of the adverse effects." In addition, those regulations requiring a higher degree of legal stability and predictability than others have been excluded.

Criteria	Checklist
Effectiveness	Would the targeted regulation have a substantial and significant effect in reinvigorating the weakened economy?
Immediacy of Effect	Would the targeted regulation produce an immediate effect?
Minimization of Adverse Effect	What is the possibility that the targeted regulation would have adverse effects on the environment, health and safety of the people, among others?

### 2. Criteria by Objectives

The second group of criteria is related to the policy purposes of the TRR.

#### Eliminating Obstacles to Business Investment

The TRR has placed its first priority on eliminating and reducing obstacles to business investment in general, and to

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## Chapter 3

### Criteria for TRR

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starting a business in particular, with a view to creating jobs and protecting workers against the potential risk of massive layoffs.

#### **Alleviating Regulatory Burdens and Costs Related to Business Activities**

As long as the TRR represents an accelerated process toward regulatory reform, it is only natural that the main targets have been directed to reduce regulatory burdens and costs imposed by too idealistic, and thus extremely high regulatory goals, which tend to prove neither realistic nor justifiable, particularly in the midst of an economic downturn.

#### **Additional Support for Small and Medium Businesses and Low-income Individuals**

There is no doubt that it is small and medium businesses and low-income individuals that are most vulnerable to the economic crisis. The government has thus made a special effort to identify additional temporary deregulation measures that are particularly burdensome and costly to them.

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## Chapter 4

### Selection Process and Cases of TRR

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#### 1. Selection Process

According to the criteria for subject selection, in March 2009, Prime Minister Han Seung-soo announced the government's plan that it would prepare the TRR program by the end of June. Since then, the Office of Regulatory Reform in the PMO has been fully engaged in amassing and selecting candidate regulations subjected to the TRR review. In addition, "Task Force for the TRR," consisting of government officials in the PMO, relevant experts, and civil representatives of business organizations, has also been organized.

As have been proposed by business organization, ministries and agencies, and local governments, some 700 regulations have initially been selected as candidates for the TRR review. Among them, 280 regulations have been identified to be either suspended or delayed for two years under mutual agreement with each relevant department or local government having jurisdiction.

Based on criteria by objective, approximately 33%, 57%, and 10% of the total 280 regulations identified by the TRR program have been associated with "eliminating obstacles to business investment," "alleviating burdens and costs related to business activities," and the "additional support for small and medium businesses and low-income individuals," respectively.

Of the total, 215 regulations (77%) need to be amended by Presidential Decree, while 65 regulations (23%) should include revision of relevant laws. The relevant ministries have consented to have the targeted regulations requiring amendment by Presidential Decree deregulated as of July 1, 2009.

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## Chapter 4

Selection  
Process and  
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### 2. Representative Examples

Representative examples are as follows:

#### 2.1 Eliminating of Obstacles to Business Investment

##### Facility Sitting and Expansion

- The existing factories and plants located in a so-called 'preservation zone' will be allowed to construct additional facilities up to 40% (currently 20%) of their current building coverage without requiring a separate building permit.
- By abolishing the profit cap of 6% placed on the rate of return on investment, the government has determined to promote the participation of private investors in developing industrial complexes.
- The construction of tourist facilities (hotels and other related accommodation and convenience facilities) within industrial complexes will be simplified. This change is intended to make industrial complexes more attractive, especially to foreign investors, by increasing their amenities.

##### Foreign Direct Investment

- In line with the national campaign to bolster foreign direct investment, foreign investors will be allowed to enter into a contract to buy or lease land developed in connection with city development programs on less-constrained terms on a contract basis.
- Foreign schools in Korea will be allowed to admit Korean nationals as students up to 30% of the total enrollment for five years.

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## Chapter 4

### Selection Process and Cases of TRR

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#### **Lessening Burdens Involved in Business Establishment**

In order to start a business, firms have been required to pay certain charges imposed in part for regulatory purposes. Many of these regulatory charges will be eliminated or reduced for two years. Given the current fiscal constraints, payment of most of such charges will be permitted on an installment or deferral basis.

#### **2.2 Alleviating Regulatory Burdens and Costs Related to Business Activities**

- Hospitals have thus far been allowed only to operate restaurants and convenience stores for their staffs and patients' families. However, they are now able to provide room and board services and operate bookstores, too.
- A strengthened performance standard on air pollution that is to be enacted in 2010 have been predicted to require heavy investments in additional facilities. To alleviate the burden of firms facing particular financial difficulties, the government has decided to postpone the date of their enactment for one year.
- Employees and managers of restaurants, public baths, and small boarding facilities, as well as the self-employed, will be exempted for two years from mandatory education. In other cases, training will be replaced with other methods such as that received through the internet, for example.
- Various forms of administrative investigations such as factory inspections will be performed far less often; from twice a year on average to only once afterwards.



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## Chapter 4

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### 2.3 Additional Support for Small and Medium Businesses and Low-income Individuals

- The rental rate applied to leasing governmental properties for small businesses will be reduced from 5% to 3%. In addition, a further cut is being considered for those located outside metropolitan areas in and outside of Seoul.
- Small businesses will no longer be put under extreme distress as a result of being excluded from enjoying public utilities such as electricity, gas, and telecommunications services on account of failure to pay overdue fees on time.
- To acquire government certificates to be eligible for government funding assistance, research institutes established by small and medium-sized enterprises should employ at least five qualified scientists or technicians. This employment standard will be rationalized to three to allow them to benefit from a diverse array of assistance measures.
- As an additional stimulus measure, local small firms and venture businesses will enjoy corporate and income tax benefits in the form of exemption or reduction by 50% until 2011.
- The period of providing unemployment allowances for the worst-off people will be extended from 60 days to 90 days.
- College graduates who received a loan from banks for their tuition and living expenses but were six months in arrears on their debt payments have so far been registered as defaulter. Annually, more than 10,000 people will no longer be regarded as defaulter for a period of two years since their graduation.

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## Chapter 5

### Management of TRR

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#### 1. Amendment of Laws and Ordinances

As the TRR has been recommended as an urgent countermeasure to the current economic crisis, it is necessary for the government to promptly amend laws and ordinances stipulating the regulations that are subject to the TRR.

##### **Package Amendment of Enforcement Ordinances and Regulations**

Approximately 200 regulations will be amended under the TRR. If each relevant department within the government amends the enforcement ordinances and regulations under its own jurisdiction, inconsistencies may arise among the amended rules, and this may delay the completion of the amendments. Thus, it is desirable that the PMO amend the ordinances and regulations en masse by enacting the "Presidential Ordinance for the TRR". This would shorten the time needed to amend the ordinances from three months to one month.

##### **Enactment of the Special Act for the TRR**

Since there are regulations that cannot be temporarily suspended without an amendment of laws, the PMO is preparing to enact a Special Act for the TRR.

#### 2. Continuous Monitoring

According to the criteria for selecting subjects by regulatory characteristics as mentioned above, the TRR should not result in adverse effects associated with deregulation such as environmental contamination, health risks, inequity, and legal instability in the period before and after the deregulation. The government will keep monitoring any adverse effects associated with the TRR during the process of implementing deregulation. If necessary, the government will take appropriate measures.

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## Chapter 6

### Effects of TRR and Its Prospects

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#### 1. Economic Effects

Although the TRR is intended to revitalize the current stagnant economy, it is not a panacea for economic recovery. If the private sector does not demonstrate a willingness to establish and invest in businesses, the stagnant economy will not recover despite any efforts of the government.

The Korean government has sought to select particularly burdensome regulations that businesses have asked to reform as subjects of the TRR. Thus, the major target of the TRR has been to enlarge existing facilities and revitalize industrial complexes in order to attract business investment within a short period of time.

#### 2. A New Way to further Regulatory Reform

The TRR program has established a new method of regulatory reform by which the government can ease or repeal certain regulations for a predetermined period, while keeping the fundamental tenor of the regulation intact.

Firstly, the program has provided proponents and opponents of regulatory reform with an opportunity to empirically test the results of the easing and eliminating of specific regulations. That is, the TRR may resolve conflict between the proponents and opponents of a particular regulation through a temporary experimentation.

Secondly, the TRR has enabled proponents of deregulation to persuade opponents to accept deregulation. The PMO has found that even opponents of deregulation are willing to accept temporary easing and elimination of certain regulations. Those who had once agreed with the TRR have tended to accept the permanent reduction or elimination of regulations in the process of further discussion. As of June 2009, approximately 48%(135 cases) of 280 cases in total have been changed from temporary deregulation to

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## Chapter 6

### Effects of TRR and Its Prospects

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permanent deregulation. In this respect, one of the primary values of the TRR as a tool for regulatory reform has been proven. The Korean government will continue to develop the TRR as a new method for regulatory reform.

## Epilogue

Since the announcement of the TRR scheme, there has been little opposition from all quarters of society. Businesses have acclaimed the scheme and the press has generally taken a welcoming stance, while public interest groups such as environmental groups and consumer protection groups appear to have taken a 'wait and see' approach.

How significantly the TRR package will contribute to speeding up the process of economic recovery remains to be seen. What is evident, however, is that this initiative has been conducive to changing the attitudes of government ministries and agencies toward regulatory reform to a more favorable stance. Despite the unprecedented nature of the initiative in the history of regulatory reform, the public sector has generally been cooperative throughout the process. It is clear that a widespread sense of economic crisis has offered a window of opportunity for reform.

## **Temporary Regulatory Relief**

A New Experiment in Regulatory Reform in Korea