

# 2012 Modularization of Korea's Development Experience: Small and Medium Enterprises Legal System

2013





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2012 Modularization of Korea's Development Experience:  
**Small and Medium Enterprises Legal System**

## 2012 Modularization of Korea's Development Experience

### Small and Medium Enterprises Legal System

<b>Title</b>	Small and Medium Enterprises Legal System
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<b>Supported by</b>	Ministry of Strategy and Finance (MOSF), Republic of Korea

Government Publications Registration Number 11-7003625-000042-01

ISBN 979-11-5545-061-1 94320

ISBN 979-11-5545-032-1 [SET 42]

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Knowledge  
Sharing  
Program



Government Publications  
Registration Number

11-7003625-000042-01

Knowledge Sharing Program

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Legal System**



Ministry of Government Legislation

**KLRI** KOREA LEGISLATION  
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# Preface

The study of Korea's economic and social transformation offers a unique opportunity to better understand the factors that drive development. Within one generation, Korea has transformed itself from a poor agrarian society to a modern industrial nation, a feat never seen before. What makes Korea's experience so unique is that its rapid economic development was relatively broad-based, meaning that the fruits of Korea's rapid growth were shared by many. The challenge of course is unlocking the secrets behind Korea's rapid and broad-based development, which can offer invaluable insights and lessons and knowledge that can be shared with the rest of the international community.

Recognizing this, the Korean Ministry of Strategy and Finance (MOSF) and the Korea Development Institute (KDI) launched the Knowledge Sharing Program (KSP) in 2004 to share Korea's development experience and to assist its developing country partners. The body of work presented in this volume is part of a greater initiative launched in 2010 to systematically research and document Korea's development experience and to deliver standardized content as case studies. The goal of this undertaking is to offer a deeper and wider understanding of Korea's development experience with the hope that Korea's past can offer lessons for developing countries in search of sustainable and broad-based development. This is a continuation of a multi-year undertaking to study and document Korea's development experience, and it builds on the 40 case studies completed in 2011. Here, we present 41 new studies that explore various development-oriented themes such as industrialization, energy, human resource development, government administration, Information and Communication Technology (ICT), agricultural development, land development, and environment.

In presenting these new studies, I would like to take this opportunity to express my gratitude to all those involved in this great undertaking. It was through their hard work and commitment that made this possible. Foremost, I would like to thank the Ministry of Strategy and Finance for their encouragement and full support of this project. I especially would like to thank the KSP Executive Committee, composed of related ministries/departments, and the various Korean research institutes, for their involvement and the invaluable role they played in bringing this project together. I would also like to thank all the former public officials and senior practitioners for lending their time, keen insights and expertise in preparation of the case studies.

Indeed, the successful completion of the case studies was made possible by the dedication of the researchers from the public sector and academia involved in conducting the studies, which I believe will go a long way in advancing knowledge on not only Korea's own development but also development in general. Lastly, I would like to express my gratitude to Professor Joon-Kyung Kim and Professor Dong-Young Kim for his stewardship of this enterprise, and to the Development Research Team for their hard work and dedication in successfully managing and completing this project.

As always, the views and opinions expressed by the authors in the body of work presented here do not necessary represent those of the KDI School of Public Policy and Management.

**May 2013**

**Joohoon Kim**

**Acting President**

**KDI School of Public Policy and Management**

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## Summary

The development of the Small and Medium Enterprises ('SMEs') is vital in terms of elevating competitiveness through fostering individual entrepreneurs in the domestic economy. The SMEs, particularly in the labor-intensive or capital-intensive industries, can successfully grow under constant affiliation with dominant large corporations. From the perspective of the national economy, overall corporate activities can function to obtain the results of high value-added industry in the field of venture. In this regard, the role of the SMEs in the national economy should not be neglected relative to large enterprises. Nevertheless, less stable financial conditions and the unpredictability of business activities in long-term make the SMEs inferior to large companies.

On the other hand, the SMEs serve a central role especially in the business of supplying raw materials; contribute to developing local economies; and improve exporting in the developing countries. Many SMEs in the market can inspire would-be entrepreneurs. Thus, the SMEs may bring about industrial structure diversification and middle-class formation because of their critical functions in the economic, social and political stability. Such constructive attributes of the SMEs will lead to the sound development of the national economy.

The Korean government, recognizing these beneficial aspects of the SMEs, has made efforts to foster the SMEs since as early as the 1960s by the enactment of the SMEs Act, 'Framework Act.' The Act has unsatisfactorily pursued the balanced development of the SMEs and large companies not only because small size and less capital make the SMEs susceptible to rapidly changing external environment, such as exchange rate fluctuations but also because the SMEs have to compete with small number of large business conglomerates. In recent years, as a solution to these problems, the Korean government has launched the corporate partnership policy between large and small businesses for the sound development of the national economy.

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Consumers generally prefer goods and services provided by large corporations and want to provide capital for large corporations to engage in corporate activities. This is because large corporations are more trustworthy than the SMEs in that they have a relatively stable financial structure compared to SMEs. However, the SMEs are bold in applying new risky ideas to the business activities as well as switching the existing infrastructures to a new direction thanks to their flexible financial structures. Relatively small size of business enables the SMEs to move quickly into new field of business. Regardless of the size of capital, the SMEs can make a quick investment decision. In contrast, big companies are usually not easy to make a quick move to a new direction. It is also true that the large businesses' accumulated experiences through comprehensive managerial abilities make it possible to quickly adapt and aggressively invest into new business models. Obviously, the SMEs environment increasingly is getting worse.

The SME Act was enacted in the 1960s to nurture and develop the SMEs in order to help them overcome their inherent limitations. Since then, the government has developed economic and business surroundings of SMEs, and also recently promoted win-win cooperation with large companies. The SMEs and their related legislations of the country will be explored in retrospect in this paper. There are a number of methods to classify the SME-related laws: classified by the important change of national economic policies or big events, or sorted out in time order, or organized following transition of the economic environments. In this paper, several methodologies will be combined for the effective explanation.

In the late 1960s, the role of the SMEs was considered to be crucial, because the industrial policy of Korea focused on boosting exports. Although the SMEs related policies had been established and executed since the 1950s, Korea could not fully support the growth and expansion of the SMEs. Since the grant aids from the developed countries in the 1960s were interrupted, the Korean government had to put all the possible resources into setting up and implementing the so-called growth-based industrial policy in order to achieve economic independence.

In the 1970s, the government propelled the SMEs policies by enacting several SMEs related regulations: *Promotion of Alliance between Small and Medium Enterprises Act of 1975* and *Small and Medium Enterprises Promotion Act of 1978*. In the 1980s, Korea enacted *Support for Small and Medium Enterprise Establishment Act of 1986* to support the SMEs activities. In 1995, shortly after the Uruguay Round, regulatory reforms were required to strengthen the SMEs competitiveness, which resulted in the integration of a number of SME related Acts. However, the world economy did not help. The 1997 financial crisis forced the Korean government to legislate several laws considering classification and functional aspects to be acclimated to the unexpected changes in the economic environment:

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*Act on Special Measures for Development of Small and Micro Enterprises (1997), Act on Special Measures for the Promotion of Venture Businesses (1997), Act on Support for Woman-Owned Business (1999), Special Act on Support of Small and Medium Enterprises Manpower (2003), etc.*

The SMEs must be competitive through continuous renovation to outlive the rapidly changing environment. The SMEs should be willing to take risk with vision and confidence based on the creativity. To do this, sincere efforts from the SMEs are required, but external factors such as friendly business environment are much more needed. The SMEs Act has been amended to reflect the change of the government policies from protecting the SME industry into fostering autonomy and competition. In conclusion, to develop effective legal system on the SMEs, it is necessary to provide a national economic model at the Constitutional level, the fundamental laws of the country, as well as to improve legal surroundings in the level of individual Acts. To promote the economic policies in a country, the gap between large and small firms in various dimensions should be reduced in the long run. Once the policies on the SME development based on these observations are systematized, the basis of the regulation system of the SME policy in a country must be constructed.

2012 Modularization of Korea's Development Experience  
Small and Medium Enterprises Legal System

# Chapter 1

## Introduction of SMEs Legal System in the Republic of Korea

1. Change of Social and Economic Environment in the 1960s
2. Needs for Legislations to Support the SMEs

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# Introduction of SMEs Legal System in the Republic of Korea

## 1. Change of Social and Economic Environment in the 1960s

During the 1960s, there was substantial change in social, political and economic environment. Political chaos following the Korean War was getting stable after the 5.16 Military Coups. Economic environment was very poor. Most of domestic firms were manufacturing basic consumer goods. Government support for domestic firms was barely provided. No specific governmental sponsoring for the SMEs was made. Certainly, there was a government's move for the SMEs but it was temporary tool to facilitate the supply of basic goods and services after the Korean War rather than a comprehensive policy for the SMEs.

The government during the 1960s laid the groundwork for the comprehensive policy for SMEs. Particularly, SMEs related legislation was enacted and its related government division was instituted. The need for the SME policy resulted from discontinued foreign aid and the 5-year economic development plan focusing on the large-scale business. Discontinuation of foreign aid had the government to promote the SMEs for the independent economic development. Conflicts and disputes between large businesses and the SMEs raised the need for the government subsidy for the SMEs.

The policy for the SMEs was not well framed and effectively operated until the enactment of 'The Basic Law of the SMEs'. Because the industrial policy was intended to develop large scale businesses, the SMEs were in the competitively disadvantageous position. To reduce the gap between the large businesses and the SMEs, administrative and legislative efforts were rendered. Due to lack of specific operative tools, the administrative and legislative endeavor failed to bear fruits.



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The major legislations during the 1960s are: The National Parliament passed ‘The SMEs Banking Act,’ the first legislation for the SMEs, on July 1, 1961. The Act was to institute the SMEs bank to provide for financial sponsorship for the SMEs. ‘The SMEs Cooperative Act’ was passed on Dec. 27, 1961. The Act was intended to provide for the primer of cooperatives of the SMEs in order to achieve the balanced economy by improving the economic status of the SMEs. ‘The Act for Mediation Process for the SMEs Businesses’ was enacted on Dec. 27, 1961 to provide equal opportunity for the SMEs and preserve effective economic activities by safeguarding fair competition among the SMEs.

In a nutshell, the SMEs policies during the 1960s were driven into two directions: First, to lay the groundwork for the national economic development, the government should give industrial sector priority and establish a sponsorship plan to boost exporting industries. Second, the government constructed industrial complexes in local provinces, which concentrated on predetermined industry sector – textile, chemicals, mechanic engineering and so forth. Finally, the SMEs laws may appropriately support policies for business activities of the SMEs.

## 2. Needs for Legislations to Support the SMEs

### 2.1. Characteristics of the SMEs and Inherent Limits of their Growth

The SMEs are in disadvantageous position in the market mainly owing to their size. However, the SMEs are serving critical roles particularly in the developing countries such as supplier of raw materials or key inputs for the large firms in the upstream market. In addition, most of the middle class people are working at the SMEs so that an abundance of the SMEs can contribute to economic, social and political stability. The SMEs are not only worthy competitors against the large businesses, which claim dominant positions in many markets, but also innovators who inject energy into the entire economic society. Since the SMEs barely seek diversification due to their small size, they can strengthen their competitiveness in the main line of industry. In the long term, the SMEs provide the groundwork for healthy development of economic system founded upon capitalism.

The SMEs, because of lack of sufficient capital and their small business scale, can hardly establish long-term business strategies and are very susceptible to radical economic changes such as foreign exchange rates. Further, the SMEs are in a disadvantageous position compared to large businesses chiefly because of their lack of capital and an inferior position in business. The SMEs have difficulties in entering the market where a few large businesses are dominating. Thus, the SMEs often fail to enter the market where most of incumbents

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are large firms. Even if they enter the market successfully, most of the SMEs fail to survive in such monopolistic or oligopolistic markets because of various predatory attacks from the dominant incumbents.

It is absolutely necessary not to leave the SMEs without government support. Otherwise, it would devastate the domestic economy by not taking advantage of the merits of the SMEs. Particularly, the role of the SMEs is more important in the developing countries rather than in the developed, so government's intervention is indispensable. In order to develop the SMEs effectively: the government should: (1) set up a long-standing and sustainable plan for the enhancement of the SMEs competitiveness in the markets; (2) serve a middleman who is balancing the stakes of both the large firms and the SMEs; (3) craft effective implementation tools following legislations for the SMEs. Certainly, the legislation for the SME's should be adjusted to the changes of economic conditions by proper amendments in timely manner.

## 2.2. Needs for Cooperative Development of the SMEs and the Large Businesses

The economic development of a country requires the government's well-structured economic plan as well as vigorous business activities. These two factors for the successful economic development need to be well-balanced and it is the government that strikes the balancing point. The government should establish a long-term economic plan, which can be continuously and firmly executed regardless of the change of administration. On the other hand, as the short-term support, the government should provide not only remedies for difficulties the firms confront owing to an unexpected change in business environment but also support in various issues such as finance, taxation, and employment.

It has always been regarded very important to set up legislation and provide various support for the SMEs. The government should endeavor to establish the SMEs policy, which is well fitted for international trade conditions at the time and the stage of economic development. Support for the SMEs is critical from the perspectives of industrial policy and social policy. The SMEs development achieved by the government sponsoring policy is very meaningful in that it would lead to a healthy and sound industrial structure of a country. In this vein, the enactment of the 'Basic Act for the SMEs' in 1966 was a good start to pave the way to legislative development for the SMEs. Unfortunately, all the legislation before 1978, in which the 'Act for Promoting the SMEs' was enacted, was no more than providing simple taxation benefits for the SMEs. The modern features of the SMEs legislation did not appear until the National Parliament passed the 'Special Act for Establishing Efficient Management and Promoting Reorganization of the SMEs of 1978.' Nevertheless, the efforts

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made during the 1960s led to the groundwork for the development of the SMEs through the enactment of the ‘Basic Act for the SMEs’ in spite of the difficult domestic situation in various aspects during the 1960s.

It was implemented in the right direction to render a well-balanced growth for both large firms and the SMEs, which led to synergy effects. Nevertheless, the reality was very different from what was expected – the domestic market in Korea was dominated by large firms although the SMEs had done their best in the market. However, the SMEs were indispensable for the economic development. Some of them are members of the large business conglomerates but the others are still working independently. To accomplish healthy and sound economic development, activities of the large firms and of SMEs should be well-balanced.

In this context, it is very meaningful to note that the government made a legislative effort by enacting the Act for Promoting Cooperative Development of the Large Firms and the SMEs’ on June 4, 2006, in order to fix the significant gap in profitability and management environment between the large firms and the SMEs. But, it is needed to employ effective implementation tools and make continuous amendments to maintain cooperative development of both the large firms and the SMEs.

## **2.3. Issues of Single Unifying Legislation (Ups and Downs for Single Unifying Act)**

### **2.3.1. Ups for Single Unifying Act**

The purposes of a single unifying law are to describe the fundamental agenda and implement regulations which are fitted into certain situations according to the agenda. That is to say, a single unifying law may serve a pivotal role as a guiding light for the forthcoming problems related to the SMEs.

Drafting a single unifying law for the SMEs simply refers to consolidating all the related laws for the SMEs. The most important merit of consolidation is to maintain consistency when it comes to setting up and executing the related policies. First, legal consistency can be achieved in term of interpretation. Even a seemingly new problem can be fixed up without taking a new legislation into account. Second, the relative simplicity of statutory framework may encourage a layperson to comply with the law effectively.

### **2.3.2. Downs for Single Unifying Act**

A single unifying law may not be able to respond effectively to rapidly changing environment such as new industry, new social norms, etc. First, it is not easy to cope with

all the small detailed problems because a single unifying law has limitation in itemizing. Second, it may cause constitutional issue of those related regulations because a single unifying law may increase the need of related regulations. Third, the government division for the SMEs does not seem to have a sufficient capacity to set up all the related regulations and deal with all the related problems.

It is advised that the current LSN-based system is more appropriate than a single unifying law, considering legislative history and its related industrial development. The Basic Act for the SMEs depicts: (1) Scope of the SMEs, (2) Responsibilities and Obligations of the national government and municipal governments, (3) Responsibilities and Obligations of the SMEs, (4) Modernization of Management and Technology Improvement, (5) Securing Distribution Channels, (6) Establishment of Fair System, (7) Legal and Financial Support, (8) Financing and Taxation, (9) Promoting Globalization. In addition, other statutes for the SMEs are handling relatively more detailed subjects. In order to fix the above-mentioned problems of the current legislation for the SMEs – overuse of LSN and overlapping of contents – it would be appropriate to classify the current laws in the following ways: (1) General Provisions including definition, (2) Financing for the SMEs, (3) Securing Distribution Channels, (4) Support for the SMEs including restructuring and management innovation, (5) Governing Relationship between Large and Small Businesses including affiliation, subcontracts and distribution channels, (6) Support for Entrepreneurship, (7) Support for the Particular Industry for the SMEs. This seven group categorization is expected to contribute to simplify complex structure of the statutes for the SMEs and provide law keepers with convenience.

**Table 1-1 | Functional Approach of SME-related Acts**

	General	Financing	Distribution	Restructuring/ Management Innovation	Affiliation/ Subcontracts	Entrepreneurship	Balanced Development
1960	Framework Act on Small and Medium Enterprises (1966)	Industrial Bank of Korea(1961)/ SMEs Credit Guarantee Act (1967)	Small and Medium Enterprises Cooperative Act (1961)	Adjustment of Projects for Small and Medium Enterprises Act (1961)			
1970	Small and Medium Enterprises Promotion Act (1978)	Credit Guarantee Fund Act (1974)			Promotion of Alliance between Small and Medium Enterprises Act (1975)		

	General	Financing	Distribution	Restructuring/ Management Innovation	Affiliation/ Subcontracts	Entrepreneurship	Balanced Development
1980			Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products Act (1981)	Act on Special Measure for the Promotion of Managerial Stability and Structural Adjustment for Small and Medium Enterprises (1989)	Fair Transactions in Subcontracting Act (1984)	Support for Small and Medium Enterprise Establishment Act (1986)	
1990			Promotion of Small and Medium Enterprises and Encouragement of Purchase of Their Products Act (1994) (current 'Small and Medium Enterprises Promotion Act')	Act on Special Measures for Supporting the Structural Improvement and Managerial Stabilization of Small and Medium Enterprises (1995)		Act on Special Measures for Support to Small Enterprises and Small Commercial and Industrial Businessmen (1997)/Act on Special Measures for the Promotion of Venture Business (1997)/ Act on Support for Female-Owned Business (1999)	Balanced Regional Development and Support for Local Small and Medium Enterprises Act (1994)
2000				Special Act on Support for Human resources of Small and Medium Enterprises (2003)/Act on the Promotion of Technology Innovation of Small and Medium Enterprises (2001)/ Special Act on the Promotion of Business Conversion in Small and Medium Enterprises (2006)	Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises (2006)	Promotion of Disabled Persons' Enterprise Activities Act(2005)	Act on Special Measures for the Structural Improvement of Small and Medium Enterprises and Vitalization of Customary Markets (2002)/ Special Act on Fostering Traditional Markets and Shopping Centers (2004)



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## Chapter 2

### History of Legislative Support for the SMEs

1. Changes of the SMEs Policies in Constitutional Law
2. Legislative Intent behind the SMEs-related Laws

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# History of Legislative Support for the SMEs

## 1. Changes of the SMEs Policies in Constitutional Law

### 1.1. Introduction

It is required to provide for the fundamental principles for each economic model and its related corporate policies in Constitutional law in addition to specifying regulatory schemes in each related statute.

Article 10, Article 34 and Chapter 9 ‘Economy’ in the Constitution of Korea promulgate the economic principles governing the domestic economy. Among them, Article 10, 34, 119 and 123 state the fundamental economic principles in Korea. The majority of people view Korean economy as a type of social market economy, under which the rights to proprietary assets are protected but can be restricted by the government in order to safeguard the social justice.

While Article 119 of the Constitution prescribes that the economic freedom and creativity of each individual and corporation shall be protected, the Constitution prior to the revision in 1980 addressed only ‘individual,’ not ‘corporation.’ The Constitution prescribed that the government shall preserve the balanced economy through income redistribution; and may intervene the private economy for the purpose of preventing abuse of market dominance and achieving the democratization of the economy. Especially, Article 123 Section 3 urges the government to protect and promote the SMEs so as to maintain a balanced economy between the large and small businesses, and Article 123 Section 5 also addresses that the government shall help the SMEs to attain self-growth, independent activity and development.

The Constitutional provisions related to the SMEs were adopted for the first time in the 5<sup>th</sup> Revision in 1962. Article 115 of the Constitution addressed that the government should promote cooperatives which consist of the SMEs and maintain the political neutrality of



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cooperatives. The revision in 1962 became the foundation for the enactment of the Basic Act for the SMEs in 1966, which was the first statute reflecting the Constitutional principles for the SMEs.

The 8<sup>th</sup> Revision of the Constitution created Article 124 Section 2, stating that the government shall be obliged to protect and promote businesses of the SMEs. It demonstrates that the Constitution expressly endorsed the objectives of the Basic Law for the SMEs, ‘contribution to the balanced development of the domestic economy by promoting growth and development of the SMEs, reforming structures, and strengthening international competitiveness of the SMEs.’

## 1.2. Changes of Economic Principles in Constitutional Law

The Constitution was enacted on July 17, 1948 (hereinafter, ‘Constitution #1’). Chapter 6 of the Constitution #1 addressed the economic principles, which stated that the economic freedom may be restrained in order to safeguard social justice and promote the balanced economy. Further, Chapter 6 of the Constitution #1 addressed natural powers owned by the government (Article 85) such as governmental control on state-owned companies and on international trades (Article 87), and the nationalization and control of privately owned companies. The economic principles in the Constitution #1 were mainly about strong government intervention in the economy.

The Second Revision on November 29, 1954 brought considerable changes into the economic principles in the Constitution. The strong government intervention granted in the Constitution #1 was needed to some extent because of two distinctive historic backdrops – the Japanese Colonial Period and the Korean War. It was necessary for the government to aggressively intervene the economy in order to achieve equal share of economic profits. The Second Revision took a step further towards free economy by repealing Articles on the nationalization and by amending Articles regarding the government control on international trades because aggressive government intervention in the economy might have a bad impact on the economic development such as demotivating the entrepreneurship.

The Fifth Revision of the Constitution (‘Constitution #6’) had set up the economic principles that are close to those of the present Constitution. Article 116 of the Constitution #6 allowed the government to limit the individual’s economic freedom and creativity as far as such limitation is needed to achieve social justice and the balanced development of the economy. In other words, the Constitution of Korea has adopted basically the free market economy with ingredient of the social market economy.

The Eighth Revision of the Constitution (‘Constitution #7’) on October 27, 1980 began to restrain the strong government intervention in the economy, which had been granted before

the Revision. The Eighth Revision created new articles regulating monopoly and oligopoly markets; protecting and aiding the SMEs; sponsoring consumer protection and the like. The Eighth Revision was executed to meet the needs of the economy during the 1970s. It was necessary to fix the problems stemming from the monopoly or oligopoly market structures; to satisfy the need to enhance consumers' welfare; to realize the limitation of the government's subsidies. Particularly, the Eighth Revision can be interpreted as an effort to embrace spirits of the Framework Act on Small and Medium Enterprises of 1966 by imposing a duty to protect and aid the SMEs on the government.

The Ninth Revision of the Constitution has become the present Constitution of Korea. The constitutional intent to protect the SMEs was reinforced again in the Ninth Revision. However, protection of the SMEs in the context of the Ninth Revision is regarded as a way to accomplish the economic democracy rather than strong government intervention in the economy.

**Table 2-1 | Transformation of Provisions of SMEs in Constitutional Law**

	Contents
Fifth Revision (1962)	Article 115 The government shall foster a cooperative bases on the self-help of farmers, fishermen, and small businesses, and ensure its political neutrality.
Seventh Revision (1972)	Article 120 ① The government shall establish a plan based on the self-help of farmers and fishermen for the development of the farming and fishing community, and pursue the balanced development of the local community. ② The government shall foster self-help organizations of farmers, fishermen, and small businesses.
Eighth Revision (1980)	Article 124 ① The government shall establish a plan based on the self-help of the farmers and fishermen for the development of the farming and fishing community, and pursue the balanced development of local community. ② The government shall foster self-help organizations of farmers, fishermen, and small businesses. ③ The government shall foster cooperative based on the self-help of farmers, fishermen, and small businesses, and ensure its political neutrality.

	Contents
Ninth Revision (1987)	<p>Article 123</p> <p>① The government shall establish comprehensive development of the agricultural and fishing community by fostering agriculture and fishery protection.</p> <p>② The government has a duty to foster the local economy for the balanced development.</p> <p>③ The government shall foster SMEs.</p> <p>④ The government shall protect the interests of farmers and fishermen by stabilizing the price through the control of the equilibrium between demand and supply and by improving distribution structure of agricultural and marine products.</p> <p>⑤ The government shall foster self-help organizations of farmers, fishermen, and small businesses, and ensure their independent activities and development.</p>

## 2. Legislative Intent behind the SMEs-related Laws

The purpose of the SMEs-related laws is “regulating the economic activities in order to arrange the entire domestic economy in a reasonable way.” ‘Monopoly Regulation and Fair Trade Act’ is regulating unfettered business activities by “preventing abuse of market dominance and excessive market concentration; and restraining unfair concerted action and unfair trades” (Art. 1). In contrast, the SMEs-related laws are regarded as administrative laws, which support for growth of the SMEs in the large conglomerate-oriented economy. Therefore, the SMEs-related laws have been transformed according to the change of the macroeconomic policies and the SMEs support policies.

Various ways of classifying the SMEs-related laws have been employed. The laws used to be classified based on the changes of important government economic policies, the time-line or policy perspectives according to changing economic circumstances. The criteria of classification taken in this part are the historic events influencing on the economic development. Those historic events include critical government economic policies or legislation, and changes in the international economic environment.

### 2.1. The SMEs-related Laws according to the Launch of the 5 Year Economic Development Plan (1960s)

The 5-Year Economic Development Plan (hereinafter ‘Economic Plan’) began in 1962 and was scheduled to be completed by 1986. During the economic plan period, Korea could achieve a rapid industrial development thanks to the government’s extensive support, economic benefits from the Vietnam War, and inexpensive quality labor power. However,

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the rapid industrial development also caused undesirable side effects - inequality of the wealth had been deepened; dependence on foreign capital and technology had increased; and economic gap between large businesses and the SMEs had been widened.

The government had made various efforts in order to solve these social and economic problems during the 1960s. In terms of the SMEs, financial support was a main tool to proliferate the SMEs in the economy. Particularly, during the 1960s, two critical laws for the SMEs – the Industrial Bank of Korea Act and the Basic Law for the SMEs; and the first term of the Economic Plan was completed and the second term was almost ended. The GDP during this period reached KRW 243,100 million - 2,130,200 million and the GNI had KRW 244,900 million - 2,155,300 million.

### **2.1.1. Industrial Bank of Korea Act (1961)**

#### **a. Legislative Background**

The SMEs in the beginning of the 1960s accounted for the entire domestic economy. Hence, the industrial policy focused mainly on the growth of the SMEs. Nevertheless, the SMEs did not show remarkable potential for the future development in terms of management and technology because the government implemented the belt-tightening policy owing to market inflation during the Korean War, which resulted in lack of capital for the SMEs. These circumstances ignited the discussion of the SMEs support policy.

To boost the growth of the SMEs, the government set up a policy on limiting the ceiling of the loan for the SMEs and let banks support needed capital for the SMEs in 6 industrial sectors. This was the first financial policy for the SMEs. The financial policy for the SMEs took effect in 1952 and was reinforced in 1957. The financial policy was widely used but had limitations due to lack of well-structured comprehensive SMEs policies and insufficient capital. As a result, the financial policy worked well only temporarily. Recognizing these problems, the government began to consider the need of banks which would assume full charge of the SMEs.

#### **b. Legislative History and Summary Contents**

President Lee in his 1956 inauguration speech promised to support the growth of the SMEs as a basic economic policy in his administration. Thereafter, ‘Guidelines for the Growth of the SMEs’ was issued.

The reasons for the enactment and major revisions of Industrial Bank of Korea are shown in <Table 2-2>.

**Table 2-2 | Amendments of Industrial Bank of Korea**

	Reasons for enactment and revisions
Enactment (1961. 7. 1, No.641)	<ul style="list-style-type: none"> <li>• To establish powerful financial supporting mechanisms for SMEs</li> <li>• To enhance the economic activity of SMEs</li> </ul>
Second revision (1964. 12. 31, No.1682)	<ul style="list-style-type: none"> <li>• To adjust the scope of small business</li> <li>• To allow the Bank to issue SME financing bond</li> </ul>
Third Revision (1968. 3. 7, No.1988)	<ul style="list-style-type: none"> <li>• To supplement the function of Industrial Bank of Korea for effective financing to SMEs</li> </ul>
Fifth revision (1975. 12. 22, No. 2797)	<ul style="list-style-type: none"> <li>• To increase the amount of legal capital of Industrial Bank of Korea for active financial support</li> </ul>
Sixth revision (1979. 12. 28, No. 3195)	<ul style="list-style-type: none"> <li>• To increase the amount of legal capital of Industrial Bank of Korea for active financial support</li> </ul>
Seventh revision (1980. 12. 31, No.3299)	<ul style="list-style-type: none"> <li>• To increase the amount of legal capital of Industrial Bank of Korea from 93 million in US dollar to 279 million in US dollar for active financial support</li> </ul>
Eighth revision (1991. 12. 31, No.4467)	<ul style="list-style-type: none"> <li>• To foster the competitiveness of Industrial Bank of Korea in accordance with liberalization in the international economy</li> </ul>
Tenth revision (1997. 8. 28, No. 5373)	<ul style="list-style-type: none"> <li>• To maintain regulations due to Exclusion of Industrial Bank from government-funded institutions</li> <li>• To improve managerial autonomy by raising the amount of legal capital and issue limit of bond</li> </ul>
Fourteenth revision (2003. 12. 11, No.6993)	<ul style="list-style-type: none"> <li>• Deregulation of asset management of Industrial Bank responding to harsh competition in SME financing</li> </ul>
Fifteenth revision (2005. 12. 14, No.7717)	<ul style="list-style-type: none"> <li>• To establish a penalty provision for wrongful use of the title of Industrial Bank</li> </ul>
Seventeenth revision (2009. 2. 6, No.9460)	<ul style="list-style-type: none"> <li>• To increase the amount of legal capital of Industrial Bank (9.3 billion US Dollar) after sub-prime mortgage crisis</li> </ul>
Eighteenth revision (2010. 3. 12, No.10065)	<ul style="list-style-type: none"> <li>• Rewrite the statutory jargons in plain Korean</li> </ul>

### **2.1.2. Small and Medium Enterprise Cooperatives Act of 1961**

This Act was enacted to strengthen the SMEs bargaining power. Cooperatives were intended to gather voices of individual SME and serve as a channel to influence on the government economic policies.

**Table 2-3 | Amendments of Small and Medium Enterprise Cooperatives Act**

	<b>Reasons for enactment and revisions</b>
Enactment (1961. 12. 27, No.884)	<ul style="list-style-type: none"><li>• To support establishing a cooperative business organization for activities of the SMEs</li></ul>
Second revision (1973. 1. 15, No.2438)	<ul style="list-style-type: none"><li>• To redesign this Act responding to the changing economic environment</li></ul>
Third revision (1976. 12. 31, No.2997)	<ul style="list-style-type: none"><li>• To strengthen the organization of the cooperative</li></ul>
Fourth revision (1978. 12. 5, No.3129)	<ul style="list-style-type: none"><li>• To expand the business district of a cooperative</li><li>• To add loan services to work of a cooperative</li></ul>
Fifth revision (1982. 12. 31, No.3654)	<ul style="list-style-type: none"><li>• To install Small Business Deduction Fund to support the collaborative work, prevention of bankruptcy, and smooth severance payment of a cooperative</li></ul>
Eighth revision (1993. 12. 27, No.4624)	<ul style="list-style-type: none"><li>• To expand the scope of the cooperative joint venture</li><li>• To improve the efficiency of supporting SMEs by strengthening the capabilities of Korea Federation of Small &amp; Medium Business</li></ul>
Fifteenth revision (2002. 3. 30, No.6684)	<ul style="list-style-type: none"><li>• To strengthen the political neutrality of SME cooperatives</li><li>• To describe the disqualifications of SME cooperative officers</li></ul>
Twenty second revision (2006. 9. 27, No.8000)	<ul style="list-style-type: none"><li>• To introduce the deduction system to provide another chance to run business for the small business and small business owners</li></ul>
Twenty third revision (2007. 1. 3, No.8195)	<ul style="list-style-type: none"><li>• To ease withdrawal requirements from SME cooperatives</li><li>• To clarify range of inspection by the authority administrator in the case of mergers</li></ul>
Twenty Fourth revision (2007. 4. 11, No.8363)	<ul style="list-style-type: none"><li>• Rewrite the statutory jargons in plain Korean</li></ul>
Twenty ninth revision (2009. 12. 30, No.9893)	<ul style="list-style-type: none"><li>• To give the authority of price inspection and adjustment function of subcontract payment to SME cooperative</li></ul>
Thirty revision (2010. 6. 8, No. 10355)	<ul style="list-style-type: none"><li>• To support SMEs in temporary financial difficulties even though they are not running business over 1 year</li></ul>
Thirty first (2011. 7. 25, No.10953)	<ul style="list-style-type: none"><li>• To support SMEs to secure an outstanding workforce</li></ul>

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### **2.1.3. Adjustment of Projects for Framework of Small and Medium Enterprises of 1961**

This Act was aiming at assigning specific industrial sectors to the SMEs and protecting the SMEs from competition with large firms in order to give SMEs business opportunities. The Act had not been applied until the SME's Committee's decision in 1974 prohibited large firms from manufacturing the retread tires. However, the Act was repealed in 1995, when the Act on the Protection of the Business Sphere of Small and Medium Enterprises and Promotion of their Cooperation was enacted. It was replaced later by the Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small Medium Enterprises in 2006 and the Special Act on the Promotion of Business Conversion in Small and Medium Enterprises in 2006. The Act on the Promotion of Collaborative between Large Enterprises and Small Medium Enterprises of 2006 basically called for fair trade and protection of the SMEs from the large firms' excessive competitive advantages and the abuse of their bargaining power.

### **2.1.4. Framework Act on Small and Medium Enterprises of 1966**

#### **a. Legislative Background**

Despite the governmental efforts, the SMEs did not seem to benefit much. The prior two laws – the Industrial Bank of Korea Act and the Small and Medium Enterprise Cooperative Act – were under criticism in that the legislative aid were given only to the electrical communication industry.

Therefore, it was needed to set up the basic principles on economic policies for the SMEs in order to effectively aid the growth of the SMEs. Consequently, the Framework Act on Small and Medium Enterprises was passed in 1966. The Act will be discussed in detail later in this Chapter.

### **2.1.5. Small and Medium Enterprises Credit Guarantee Act of 1967**

This Act was replaced with the Credit Guarantee Fund Act in 1974, which set up the Credit Guarantee Fund to provide for credit guarantee, comprehensive maintenance of credit data and their related insurance services.

## **2.2. Building Vertical Structures of the SMEs and Legislating for the Protection of the SMEs (1970s – 1980s)**

During the 1970s, the government's industrial policy was mainly on the heavy chemical industry drive. It was needed to build a vertical relationship effectively between the large

firms and the SMEs. Moreover, it was in the 1970s that the government began to take into account policy tools in order to reducing the gaps in various aspects between the large firms and the SMEs.

During the 1980s, the world economy – high oil price, high interest rate and high US dollar value – did not help the heavy chemical industry drive. So, the policy on the heavy chemical drive was set back and the policy on the balanced industrial development was getting support. Two laws were enacted during this period – the Fair Transactions in Subcontracting Act of 1984 and the Support for Small and Medium Enterprise Establishment Act of 1986.

### 2.2.1. Credit Guarantee Fund Act of 1974

#### a. Legislative Background

Even though the importance of the SMEs in the economy was recognized, the SMEs could not be developed because of the lack of sufficient capital. The SMEs engaged in the risky industry were excluded by the capital market. Even very competitive and promising SMEs could not obtain enough capital to advance their businesses.

Therefore, the government should set forth policies to make capital flow into the very competitive SMEs in the risk industry. The Credit Guarantee Fund Act was enacted to meet the needs of capital for the SMEs. The Act, inter alia, made it possible for the SMEs with insufficient collaterals or the SMEs satisfying the requirements of the Act to secure capital.

#### b. History of Revision

**Table 2-4 |** Revisions of the Credit Guarantee Fund Act of 1974

	Reasons for enactment and revisions
Enactment (1974. 12. 21, No.2695)	<ul style="list-style-type: none"> <li>• To modify a credit guaranty system</li> <li>• To establish Trust Guarantee Funds by integrating dispersed funds in financial institutions in order to guarantee debts of SMEs</li> </ul>
First revision (1979. 12. 28, No.3190)	<ul style="list-style-type: none"> <li>• To mitigate debt burden to facilitate the use of a credit guarantee system</li> </ul>
Second revision (1984. 8. 7, No.3748)	<ul style="list-style-type: none"> <li>• To lengthen the term of investment to the Fund in order to extend the credit guarantee to SMEs that lack security capacity</li> </ul>
Third revision (1990. 12. 31, No.4287)	<ul style="list-style-type: none"> <li>• To lengthen the term of investment to the Fund to extend the credit guarantee to SMEs that lack security capacity</li> </ul>
Fifth revision (1995. 8. 4, No.4953)	<ul style="list-style-type: none"> <li>• To lengthen the term of investment to the Fund to extend the credit guarantee to SMEs that lack security capacity</li> <li>• To extend total credit guarantee limit</li> </ul>



	Reasons for enactment and revisions
Eleventh revision (2000. 12. 30, No.6324)	<ul style="list-style-type: none"> <li>• To remove the time limit on the investment of financial institutions to provide stable credit guarantee</li> <li>• To improve the management of Trust Guarantee Funds Committee</li> </ul>
Seventeenth revision (2009. 2. 6, Nno.9458)	<ul style="list-style-type: none"> <li>• To support SMEs to finance in capital markets by making the system of a company (specialized in securitization) permanent after financial crisis</li> </ul>
Twenty first revision (2011. 5. 19, No.10689)	<ul style="list-style-type: none"> <li>• Rewrite the statutory jargons in plain Korean</li> </ul>

## 2.2.2. Promotion of Alliance between Framework Act on Small and Medium Enterprises

### a. Legislative Background

The need for an effective vertical relationship between large firms and the SMEs had already been raised during the 1960s. It was also expected that effective vertical structure in each industry would be built without hindrances, but it didn't work out as expected.

The government began to intervene again to establish a vertical relationship between large firms and the SMEs. The Promotion of Alliance between Framework Act on Small and Medium Enterprises was passed in 1975 to achieve an operational vertical structure in each industry. Thereafter, the Act was repealed by the Act on the Protection of the Business Sphere of Small and Medium Enterprises and Promotion of their Cooperation of 1995, which was replaced in 2006 with the Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small Medium Enterprises of 2006 and Special Act on the Promotion of Business Conversion in Small and Medium Enterprises.

## 2.2.3. Small and Medium Enterprises Promotion Act

### a. Legislative Background

A vertical structure sponsored by the Promotion of Alliance between Framework Act on Small and Medium Enterprises was not successful because of the resistance of large firms. The government passed the 'Small and Medium Enterprises Promotion Act' and set up 'Small and Medium Enterprises Corporation.' as an alternative effort. This Act was repealed by the Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products Act in 1981.

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## **b. Summary of Contents**

The Framework Act on Small and Medium Enterprises, *inter alia*, built the Small and Medium Enterprises Corporation. The Corporation served as a control tower to sponsor the SMEs in terms of capital, to assist in starting businesses, and to provide related information, etc.

### **2.2.4. The Facilitation of Purchase of Small and Medium Enterprise- Manufactured Products Act**

#### **a. Legislative Background**

After the 1970s, the economic development of Korea was accelerated thanks to the successful industrial policy driven by the government. However, in spite of continuous support for the SMEs, the results were not very satisfactory. The government, faced with harsh attack on the SMEs policies, took a balanced approach to the industrial plans and policies.

The government set forth '10-year Plan for the SMEs Growth' in 1981 and the Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products Act was passed. The Small and Medium Enterprise Act of 1966 had already recommended SME-manufactured products but it was not sustainable and was no more than recommendation. In contrast, the Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products Act reinforced it. Thereafter, the Small and Medium Promotion Act and the Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products Act were consolidated and eventually replaced with the Act on Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products and Support for Development of their Markets.

### **2.2.5. Fair Transactions in Subcontracting Act**

#### **a. Legislative Background**

The Fair Transactions in Subcontracting Act was enacted in order to achieve the unbiased economy by regulating the unequal bargaining power between general contractors and subcontractors. Usually, general contractors are large firms while subcontractors are the SMEs. According to the Act, the government can intervene whenever the general contractors' abuse their bargaining power.

#### **b. History of Revisions and the Summary of Contents**

This Act has been revised 24 times. The contents of each revision will be discussed below.

**Table 2-5 | Amendments of Fair Transactions in Subcontracting Act**

	<b>Reasons for enactment and revisions</b>
Enactment (1984. 12. 31, No.3779)	<ul style="list-style-type: none"><li>• To contribute to the sound development of the national economy by establishing order in subcontract transactions so that the principal contractor and subcontractor may complement each other and develop on equal terms</li></ul>
Third revision (1992. 12. 8, No.4514)	<ul style="list-style-type: none"><li>• To impose penalty interest on principal contractor for the late payment on the subcontract</li></ul>
Fourth revision (1995. 1. 5, No.4860)	<ul style="list-style-type: none"><li>• To establish fair subcontract transactions by adjusting the scope of principal contractor</li><li>• To extend the scope of subcontract transactions to the new industry including software development and engineering activity</li></ul>
Sixth revision (1996. 12. 30, No.5234)	<ul style="list-style-type: none"><li>• To establish a payment guarantee system for the subcontract of construction work</li><li>• To impose fine on violation</li></ul>
Eleventh revision (1999. 2. 5, No.5816)	<ul style="list-style-type: none"><li>• To supplement payment and a settlement system for subcontract transactions due to great importance of settlement bill and insolvency</li></ul>
Sixteenth revision (2005. 3. 31, No.7448)	<ul style="list-style-type: none"><li>• To improve subcontract transactions in the field of service-sectors including advertisements and the distribution of goods</li></ul>
Eighteenth revision (2007. 7. 19, No.8539)	<ul style="list-style-type: none"><li>• To diversify settlement methods due to the importance of business purchase credit card and revolving charge account as an alternative to a promissory note</li></ul>
Twentieth revision (2008. 3. 28, No.9085)	<ul style="list-style-type: none"><li>• To facilitate the adjustment of subcontract price due to price fluctuation after signing a contract</li></ul>
Twenty first revision (2010. 1. 25, No.9971)	<ul style="list-style-type: none"><li>• To introduce a presumptive subcontract system due to prevalent subcontract customs without a written contract paper</li></ul>

## **2.2.6. Support for Small and Medium Enterprise Establishment Act**

### **a. Legislative Background**

Various tools had been employed to aid the SMEs but the benefits therefrom had been given only to the existing SMEs. The startups were often excluded from the governmental subsidies. Therefore, in order to provide aid for the startups, the Support for Small and Medium Enterprise Establishment Act was enacted.

### **b. History of Revision and Summary of Contents**

The Act has been revised almost every year. The detailed contents of each revision will be as follows:

**Table 2-6 | Amendments of Support for Small and Medium Enterprise Establishment Act**

	<b>Reasons for enactment and revisions</b>
Enactment (1986. 5. 12, No.3831)	<ul style="list-style-type: none"> <li>• To contribute to establishing a solid industrial structure through the sound development of small and medium enterprises by facilitating the setting-up of small and medium businesses and developing a firm basis for their growth</li> </ul>
Sixth revision (1992. 12. 8, No.4525)	<ul style="list-style-type: none"> <li>• To simplify the required procedure for establishment by allowing a small and medium enterprise consulting company to provide establishment services</li> </ul>
Ninth revision (1995. 1. 5, No.4899)	<ul style="list-style-type: none"> <li>• To unify SME-related laws into Support for Small and Medium Enterprise Establishment Act</li> <li>• To prepare grounds for the establishment of Business Incubating Center</li> </ul>
Twenty second revision (2000. 1. 21, No.6194)	<ul style="list-style-type: none"> <li>• To introduce a limited liability system for Small and Medium Enterprise Establishment Association that established to invest in SME entrepreneurship and to distribute profits of SME companies</li> </ul>
Twenty fifth revision (2002. 3. 25, No.6675)	<ul style="list-style-type: none"> <li>• To prohibit SME Establishment Association and SME Establishment Investment Company to invest their capital in irrelevant business sectors</li> <li>• To set a mandatory fixed rate of investment for SME Establishment Association and SME Establishment Investment Company</li> </ul>
Thirtieth revision (2004. 12. 31, No.7287)	<ul style="list-style-type: none"> <li>• To simplify the procedure for entrepreneurship</li> <li>• To introduce a disclosure system in investing activities of venture capital firms</li> </ul>
Fortieth revision (2006. 12. 26, No.8086)	<ul style="list-style-type: none"> <li>• To introduce legal grounds for entrepreneurship education for fostering SME entrepreneurship</li> <li>• To support overseas investment by SMEs</li> </ul>
Fifty eighth revision (2009. 12. 30, No.9889)	<ul style="list-style-type: none"> <li>• To support SME Establishment Investment Company that invests in innovative entrepreneurs after the financial crisis</li> <li>• To support overseas investment by SMEs</li> </ul>
Sixty third revision (2011. 4. 4, No.10533)	<ul style="list-style-type: none"> <li>• To support restaurant entrepreneurship except hotel, pub in order to increase the competitiveness of service business sector</li> <li>• To establish Youth Entrepreneurship Foundation to support youth entrepreneurship</li> </ul>

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## 2.3. Reexamination of Legislation related to the SMEs Restructuring according to Change of International Trade Environment (late 1980s – mid 1990s)

Rapidly changing international trade environment such as increasing pressure from trading partner countries and the trend of free trade compelled the government to raise concern about the competitiveness of the SMEs. To make more SMEs sustain under the changing economic environment, the government has driven the SMEs from lower value added industries or labor intensive industries to high value added industries or technology intensive industries.

The main theme of the 1990s policy was to make the market to be ‘self-regulation and competition’ rather than ‘protection and aid,’ which had been sought after during the 1970s and 1980s. Such a change in policy direction resulted in opening the domestic market to foreign competitors. Accordingly, strong foreign competitors started wiping out the domestic market and many SMEs helplessly shut their businesses. Again, the SMEs asked the government for assistance.

### 2.3.1. Act on Special Measure for the Promotion of Managerial Stability and Structural Adjustment for Small and Medium Enterprises

#### a. Legislative Background

Although Korea was enjoying the economic boom, opening the market had made the SMEs confronting intense competition with foreign firms. Many of the SMEs were considering the need for restructuring so that they could survive in the competition. The government, responding to the need for restructuring, set forth the Act on Special Measure for the Promotion of Managerial Stability in 1989.

#### b. History of Revision and Summary of Contents

Prior to enacting the Act, certain industries such as the construction industry and the coal mining industry were under restructuring. Nevertheless, the government concluded that the comprehensive legislation was needed rather than the restructuring plan for certain industry sectors. Thus, the National Parliament passed the Act on Special Measure for the Promotion of Managerial Stability.

## 2.3.2. Balanced Regional Development and Support for Local Framework Act on Small and Medium Enterprises

### a. Legislative Background

The Balanced Regional Development and Support for Local Framework Act on Small and Medium Enterprises aimed at pursuing the balanced development by enhancing economic support for the local economy and providing aid for the SMEs located in the local economy. The economic development in local area by aiding the SMEs therein was expected to bring in more people and invigorate the local economy.

### b. History of Revision and Summary of Contents

The Act imposed the duty for advancing the local economy not only on the central government but also on the local government and the Administrator of the Small and Medium Business Administration. The summary of contents of each revision of the Act is as follows:

**Table 2-7 |** Amendments of Balanced Regional Development and Support Local Framework Act on Small and Medium Enterprises

	Reasons for enactment and revisions
Enactment (1994. 1. 7, No.4722)	<ul style="list-style-type: none"> <li>• To contribute to the reasonable utilization, development and preservation of the nation territory, by realizing regional development potentialities and inducing voluntary participation of the private sector in regional development projects so that they may be effectively carried out</li> <li>• To achieve the balanced development of the national territory by actively supporting small and medium enterprises in local areas so that they may revitalize the local economy, and thereby, induce people to settle down in local areas</li> </ul>
Fifth revision (1999. 2. 5, No.5799)	<ul style="list-style-type: none"> <li>• Deregulation in the area of community development</li> </ul>
Ninth revision (2002. 1. 26, No.6641)	<ul style="list-style-type: none"> <li>• To support the development of Culture and Tourism business</li> </ul>
Eighteenth revision (2005. 11. 8, No.7695)	<ul style="list-style-type: none"> <li>• To support tourism business under Tourism Promotion Act</li> <li>• To support a regional comprehensive development district</li> <li>• To relocate government agencies</li> </ul>
Forty fourth revision (2011. 5. 30, No.10762)	<ul style="list-style-type: none"> <li>• Rewrite the statutory jargons in plain Korean</li> </ul>

### 2.3.3. Promotion of Small and Medium Enterprises and Encouragement of Purchase of their Products Act

#### a. Legislative Background

Most of economic aid was given to large business conglomerates due to the industrial policy. The SMEs, not fully benefitted from the government aid, could not but be in a disadvantageous position against the international competitiveness. Particularly, the Uruguay Round in 1993 accelerated the economic globalization. Concerns over the SMEs under the harsh economic environment were deepened. The Act was enacted to help the SMEs under harsh competition to secure distribution channels and sufficient demands for their goods and services.

#### b. History of Revision and Summary of Contents

As soon as the Uruguay Round was signed up, the Act was passed. The summary of contents of each revision of the Act is provided below.

**Table 2-8 |** Amendments of Promotion of Small and Medium Enterprises and Encouragement of Purchase of Their Products Act

	Reasons for enactment and revisions
Enactment (1994. 12. 22, No.4825)	<ul style="list-style-type: none"> <li>To strengthen the competitiveness of small and medium enterprises through their structural advancement, and expand the business sphere for small and medium enterprises, thereby contributing to the balanced development of the national economy</li> </ul>
First revision (1995. 11. 22, No.4979)	<ul style="list-style-type: none"> <li>Integration of SME Promotion Fund, Entrepreneurship Promotion Fund, Local SME Promotion Fund, and Agricultural and Fishing Community Support Fund for effective fund management</li> </ul>
Third revision (1996. 12. 12, No.5186)	<ul style="list-style-type: none"> <li>To financially support the technical consultant service for SMEs</li> </ul>
Fourth revision (1997. 12. 13, No.5445)	<ul style="list-style-type: none"> <li>To expand the issue limit of Small and Medium Business Promotion Bond</li> <li>To introduce a quality certification system for SME products</li> </ul>
Fifteenth revision (2000. 12. 23, No.6285)	<ul style="list-style-type: none"> <li>To adjust the scope of public institutions that should purchase SME products to strengthen the competitiveness of small and medium enterprises and promote distribution channels</li> </ul>
Twenty fourth revision (2004. 3. 22, No.7208)	<ul style="list-style-type: none"> <li>Small and Medium Business Administration may certify a procurement system for SME products for effectiveness of SMEs</li> <li>Regulation on subcontract transactions</li> </ul>

	Reasons for enactment and revisions
Thirty first revision (2007. 1. 26, No.8287)	<ul style="list-style-type: none"> <li>• To improve the competitiveness of SMEs responding to the globalization in Trade and Environment</li> <li>• To pool professionals and competitive SMEs for collaborative business</li> </ul>
Forty fourth revision (2009. 12. 30, No.9888)	<ul style="list-style-type: none"> <li>• To expand the issue limit of Small and Medium Business Promotion Bond</li> <li>• To financially support SME business activities</li> </ul>

### **2.3.4. Act on the Protection of the Business Sphere of Small and Medium Enterprises and Promotion of Their Cooperation (1995)**

The Act on the Protection of the Business Sphere of Small and Medium Enterprises and Promotion of their Cooperation of 1995 repealed the Act on Business Adjustment of Small and Medium Enterprises established in 1961. On March 3, 2006, The Act of the Protection of the Business Sphere of Small and Medium Enterprises and Promotion of their Cooperation of 1995 was replaced with Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises and the Special Act on the Promotion of Business Conversion in Small and Medium Enterprises.

### **2.3.5. Act on Special Measure for Supporting the Structural Improvement and Managerial Stabilization of Small and Medium Enterprise**

#### **a. Legislative Background**

This Act was to provide aid for the SMEs confronted with harsh global competition which was accelerated after the Uruguay Round in 1993. The government thought that it was necessary for the SMEs to restructure in order to fit in the rapidly changing economic environment.

#### **b. History of Revision and Summary of Content**

The Act was repealed by the Act on Special Measure for the Structural Improvement of Small and Medium Enterprises and Vitalization of Customary Market. According to the Act, the government may intervene in the SMEs' business decisions on business practices, mergers, joint ventures etc. Each of the local government shall set forth the SMEs restructuring plan each year and may call for support from the central government. The Administrator of the Small and Medium Business Administration, according to the Act, may determine the development plan zone and further provide a budget needed for it. The local government in such a development plan zone may set up a needed supporting program. By providing tax benefits, the government shall also encourage the SMEs to join the Fund for Small and Medium Enterprises in order to use the fund for the members.



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## 2.4. Strengthening Innovation Capacity of SMEs and Balanced Development of Intersectoral after Financial Crisis (Late 1990' – Early 2000')

The financial crisis that occurred in 1997, caused the proliferation of a wide range of corporate and financial sector bankruptcies and unemployment, resulting in the crisis of the national economy. Thus, the government tried to give support for incubating venture establishment by the unemployed who were forced out of work because of bankruptcy and restructuring of the SMEs. Before May in 1998, the government adopted tightening monetary and fiscal policies, but changed to loosening policies due to interest rate cuts and fiscal deficit. This is to minimize the risk of long-term stagnation in the future.

After the financial crisis, the structural reform has been propelled in the fields of corporate, financial, labor, and public sectors. There is no exception even for SMEs when it comes to dealing with insolvent companies. But, through enhancing the role of institutional investors and fostering credit guarantee, policies to ensure the stable management of SMEs were also carried out. After experiencing the financial crisis, policies to promote a sound financial system and improve the financial safety net were also propelled.

During this period, the gross domestic product (GDP) of the Republic of Korea amounted to 4,609,526 billion – 7,205,390 billion won, and gross national income (GNI) amounted to 4,586,363 billion – 7,209,963 billion won.

### 2.4.1. Act on Special Measures for Support to Small Enterprises and Small Commercial and Industrial Businessmen (1997)

#### a. Legislative Background

After the financial crisis, the government tried to give support for improving the business environment of poor management, and encouraging the business transition of less competitive small business owners. For this purpose, the government established 'Small Business and Entrepreneurship Promotion Fund' and small business owners' accounts. The resources of the Fund consist of the contribution of the government and lottery revenues. They financed small business owners, and supported the transition of small business, shopping malls, and traditional markets.

This Act set up the small business promotion fund account in 'Small Business and Entrepreneurship Promotion Fund' to support the growth of small businesses. The resources of the fund account consisted of the government contribution and lottery proceeds allocated according to the 'lottery and lottery fund'. The small business promotion fund account was used to finance small business, restructure and transform overcrowded sector's business,

and support shopping malls and traditional markets based on ‘Special Act on Fostering Traditional Markets and Shopping Centers’.

### **b. History of Revision**

The small business owners and corporations may establish a small business association. The Association provides business information on small business investment and entrepreneurship. The reasons for the enactment and major revisions of the Act on Special Measures for Support to Small Enterprises and Small Commercial and Industrial Businessmen are as follows:

**Table 2-9 |** Amendments of the Act on Special Measures for Support to Small Enterprises and Small Commercial and Industrial Businessmen

	Reasons for enactment and revisions
Enactment (1997. 4. 10, No. 5331)	<ul style="list-style-type: none"> <li>• establishment for preventing bankruptcies of small business</li> <li>• Deregulation of small business activities</li> <li>• Setup insurance accounts preventing bankruptcies of small business</li> <li>• Formulation of the range of small business and supporting tax benefits and promotion of small business</li> </ul>
Third revision (2000. 12. 29, No. 6314)	<ul style="list-style-type: none"> <li>• Adjusting the range of small business to give substantial support for small business</li> <li>• Supporting Small Commercial Businessmen</li> </ul>
Sixth revision (2003. 7. 29, No. 6950)	<ul style="list-style-type: none"> <li>• Improvement of Negotiable Instruments Insurance System</li> <li>• Introduction of Institutional Arrangements for SME’s Credit Risk Management</li> </ul>
Eighth revision (2005. 12. 23, No. 7743)	<ul style="list-style-type: none"> <li>• Supporting small business by increasing standards for exemptions from various charges</li> <li>• Establishment of Small Business Agency to perform a systematic and ongoing support for small business</li> </ul>
Fourteenth revision (2008. 3. 28, No.9015)	<ul style="list-style-type: none"> <li>• Preparing Presidential Decree on special care for new plant construction area or equivalent area of the workplace for small business</li> </ul>
Sixteenth revision (2009. 12. 30, No.9890)	<ul style="list-style-type: none"> <li>• Preparing provisions in order to avoid the confusion between tasks of small business founder and those of administrative agencies</li> </ul>
Eighteenth revision (2011. 5. 24, No.10710)	<ul style="list-style-type: none"> <li>• Improving legal terms for better understanding</li> </ul>
Nineteenth revision (2012. 1. 17, No.11174)	<ul style="list-style-type: none"> <li>• To set up the Small Business and Entrepreneurship Promotion Fund and establish Small Business Association to support small business owners</li> </ul>

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## **2.4.2. Act on Special Measures for the Promotion of Venture Businesses (1997)**

### **a. Legislative Background**

Venture craze in Silicon Valley of the United States in 1990s spread out all over the world. Due to the active venture firms, the development of high value-added technology changed the industrial structure. Especially, technological innovation in the field of information and communication led to the economic growth. Keeping pace with the rapidly changing world, the Korean government recognized the necessity to support the establishment of venture capital and the conversion of existing firms into venture companies. For this purpose, an institutional-based system was required to improve the maintenance of personnel, information, facilities, and technology that could enhance competitiveness of the venture company.

In 1991, through the revision of the “Science and Technology Promotion Act”, the government strengthened the supporting system to improve basic policies on the promotion of science and technology, and comprehensive planning. Also, in 1994, “Invention Promotion Act” (Act No. 4757) was enacted to improve the technological competitiveness of the industry by encouraging and facilitating fast commercialization of invention right by small business. Special measures to foster the capital goods industry for the globalization of the Korean economy was released in 1995. In 1996, an independent Small and Medium Business Administration was newly designed to foster technology-intensive SMEs policies. In August of 1997, under the provisions of Article 2 of the “Small Business of the Framework Act”, “the Act on Special Measures for the Promotion of Venture Business” was enacted to foster venture businesses.

### **b. History of Revision**

The reasons for the enactment and major revisions of the “Act on Special Measures for the Promotion of Venture Business” are as follows:

**Table 2-10 | Amendments of the Act on Special Measures for the Promotion of Venture Business**

	<b>Reasons for enactment and revisions</b>
Enactment (1997. 8. 28, No.5381)	<ul style="list-style-type: none"> <li>• To support the establishment of new ventures and the conversion of existing SME venture companies because there was a limitation on achieving sustainable economic development only by conglomerates activities.</li> <li>• Deregulation on venture companies in order to supply effectively and to facilitate the restructuring of ventures</li> </ul>
Fourth revision (1998. 12. 30, No.5607)	<ul style="list-style-type: none"> <li>• To foster investment funds to support continuous economic growth and to facilitate the reorganization in the technology-intensive and knowledge-intensive field</li> </ul>
Eighth revision (2000. 1. 21, No.6195)	<ul style="list-style-type: none"> <li>• To establish Dasan Venture Company to support the development of ventures</li> <li>• To build up high-density regions of venture companies through collectivization and cooperation of ventures by designating Venture Business Promotion District</li> </ul>
Ninth revision (2000. 2. 3, No.6416)	<ul style="list-style-type: none"> <li>• To design a new registration system for a private investment group that invests on ventures</li> <li>• To protect the property of investors in a private investment group by preventing unfair or illegal activities</li> <li>• To simplify the procedure of a stock option so that ventures quickly acquire high quality personnel</li> </ul>
Fourteenth revision (2002. 8. 26, No.6723)	<ul style="list-style-type: none"> <li>• To reform the criteria for designation as ventures to comply with the original properties of the ventures</li> <li>• To prepare grounds to control ventures in case of their illegal or improper activities</li> <li>• To introduce stock exchange to facilitate strategic alliance between venture companies to promote their competitiveness</li> <li>• To simplify procedures for merger between venture companies</li> </ul>
Eighteenth revision (2004. 1. 20, No.7091)	<ul style="list-style-type: none"> <li>• To expand the scope of a venture company that can exchange stocks to promote investment on ventures and to facilitate restructuring of ventures</li> <li>• To replace the approval of the general shareholders' meeting with the approval of the Board of Directors if the number of shares issued does not exceed 50/100 of the total number of shares in the case of stock exchange</li> <li>• To simplify the procedures of mergers or transfer of business between a venture company and another type of company</li> </ul>

	Reasons for enactment and revisions
Nineteenth revision (2004. 12. 31, No.7288)	<ul style="list-style-type: none"> <li>• To establish SME investment partnership to promote the development of venture capital markets and to supply long-term stable investment</li> <li>• To introduce a registration system and expand Korea Venture Investment Partnership to promote development and follow-up management of venture capital</li> <li>• To facilitate cancellation of designation of 'Venture Business Promotion District'</li> </ul>
Twenty second revision (2005. 7. 29, No.7633)	<ul style="list-style-type: none"> <li>• To lower the minimum capital of a venture company from 20 to 5 million won to facilitate the entry of venture firms and start-up activity</li> <li>• To establish a special company to promote investment on ventures for the development and the growth of SMEs and ventures</li> <li>• To support the founder of Incubation Center by allowing the registration of the plant</li> </ul>
Twenty third revision (2006. 3. 3, No.7868)	<ul style="list-style-type: none"> <li>• To change the authority from the Small and Medium Business Administration to private institutions for market-friendly policy</li> <li>• To include the assurance or loan from private financial institutions into criteria for designating venture</li> <li>• To improve the venture designation system by reviewing past operations</li> </ul>
Twenty sixth revision (2007. 1. 26, No.8284)	<ul style="list-style-type: none"> <li>• To establish a professional company to help entrepreneurs with a new technology to take advantage of human and material resources for their business</li> <li>• To establish 'Integrated New Technology Start-up District' in universities and research institutes</li> <li>• To mitigate entrepreneurship requirements for university instructors and researchers</li> <li>• To ease restrictions on investment for overseas expansion of small business</li> </ul>
Thirty first revision (2007. 8. 3, No.8602)	<ul style="list-style-type: none"> <li>• To extend the effective period of this Act(10 years more) to improve the competitiveness of ventures</li> <li>• To foster restructuring procedures by allowing short-form merger and small-scale merger</li> </ul>
Thirty eight revision (2009. 1. 30, No.9367)	<ul style="list-style-type: none"> <li>• To introduce short-form transfer of business for fast transfer</li> <li>• To allow research institutions in Daedeok Research Development District to establish a company specializing in technology</li> </ul>

	Reasons for enactment and revisions
Forty second revision (2010. 1. 27, No.9984)	<ul style="list-style-type: none"> <li>• Improvement of a venture company recognition system</li> <li>• To expand the scope of the company specializing in technology venture</li> <li>• To simplify the approval process of founding factory by ventures in 'Integrated New Technology Start-up District'</li> <li>• To provide an opportunity to participate as a general partner for some investors such as foreign investment institutions</li> <li>• To allow executive member if Korea Venture Investment Partnership is established for the purpose of investment on SMEs and ventures</li> </ul>

### 2.4.3. Act on Support for Female-owned Businesses (1999)

#### a. Legislative Background

As women's economic activities were rapidly growing in the 1990s, the number of women entrepreneurship also increased around the end of the 1990s. The number of companies that had women CEO was 932,626 at the end of 1998. Women-leading companies accounted for 33.5% of the total companies, and 37.4% of the total employees. Also, the total number of companies decreased compared to that of the previous year, but the number of the companies that had women CEO increased about 0.8% (8,000). However, women entrepreneurs were in a disadvantageous position due to discriminatory practices. It was required that substantial support should be provided to women entrepreneurs in order to improve gender equality in the economic sector. Thus, the government actively supported business activities of women entrepreneurs and entrepreneurship.

In 1994, 『Balanced Regional Development and Support for Local Small and Medium Enterprises Act』 was enacted. The consolidation movement to functional SME laws led to the creation of 『Act on the Protection of the Business Sphere of Small and Medium Enterprises and Promotion of their Cooperation』 and 『Promotion of Small and Medium Enterprises and Encouragement of Purchase of Their Products Act』. In 1995, 『Act on Special Measures for Supporting the Structural Improvement and Managerial Stabilization of Small and Medium Enterprises』 was enacted. In 1996, Small and Medium Business Administration was independently established for the purpose of performing the SME policy. In 1997, 『Act on Special Measures for Support to Small Enterprises and Small Commercial and Industrial Businessmen』 was enacted, and in 1998 Special Commission for Small and Medium Business was established. Finally, 『Act on Support for Female-Owned Businesses』 was enacted in 1999. It was under the influence of the agenda adopted by the Summit for Small Credit in 1997.

## b. Legislative History and Major Contents

The main contents of the 「Act on Support for Female-Owned Businesses」 are as follows.

① National and local governments should support women’s entrepreneurship and provide comprehensive support for the activities of women entrepreneurs. ② If public institutions enforce unreasonable or discriminatory practices against women entrepreneurs, women entrepreneurs may request its correction. ③ The government shall establish and propel an annual basic plan to promote the activities of women entrepreneurs. ④ The government shall establish Women’s Entrepreneurial Activity Promotion Committee. ⑤ The government shall conduct a survey to understand the activities of women entrepreneurship biennially. ⑥ Favorable terms and conditions of financing to women entrepreneur should be established. ⑦ The government supports the establishment of Korea Federation of Women Entrepreneurs and Women’s Corporate Support Center with a view to encouraging women entrepreneurs.

The reasons for the enactment and major revisions of the 「Act on Support for Female-Owned Businesses」 are as follows:

**Table 2-11 |** Amendments of Act on Support Female-owned Business

	Reasons for enactment and revisions
Enactment (1999. 2. 5, No.5818)	<ul style="list-style-type: none"> <li>To contribute to the development of the national economy by enhancing women’s economic activities through promoting gender equality in the field of economy and supporting the activities of women entrepreneurs and women’s entrepreneurship</li> </ul>
Third revision (2005. 5. 31, No.7557)	<ul style="list-style-type: none"> <li>To enhance women’s economic activities by expanding the scope of women entrepreneurs</li> </ul>
Seventh revision (2009. 5. 21, No.9684)	<ul style="list-style-type: none"> <li>Reorganize Women’s Entrepreneurial Activity Committee to Promoting Balanced Growth Committee for effective enforcement</li> <li>To set the minimum percentage of products made by women entrepreneurs when public institutions purchase SME products</li> </ul>
Ninth revision (2009. 12. 30, No.9892)	<ul style="list-style-type: none"> <li>To promote rulemaking in plain Korean</li> </ul>

### 2.4.4. Act on the Promotion of Technology Innovation of Small and Medium Enterprises (2001)

#### a. Legislative Background

Technological innovation by small business activities in the field of telecommunication led to the growth of the world economy with venture craze in 1990s. Due to the liberal

policy in the world market, all companies were faced with intense technological competition. However, the competitiveness of the SMEs in Korea was not enhanced in spite of incessant policy supporting the SMEs. As a result, the SMEs that failed to transform to a high technological firm became so-called ‘marginal firms’. It was required to restructure the SMEs adhering to traditional production methods into high technology ventures by upgrading quality of information, technology, and knowledge of the SMEs.

### b. History of Revision

The reasons for the enactment and major revisions of the 『Act on the promotion of Technology Innovation of Small and Medium Enterprises』 are as follows:

**Table 2-12 |** Amendments of Act on the Promotion of Technology Innovation of Small and Medium Enterprises

	Reasons for enactment and revisions
Enactment (2001. 5. 24, No.6482)	<ul style="list-style-type: none"> <li>• To foster technological innovative SMEs through the support of tax, public finance, and credit guarantee</li> </ul>
Second revision (2005. 12. 23, No.7753)	<ul style="list-style-type: none"> <li>• To establish a plan to promote the SME cycle of technological innovation</li> <li>• To provide substantial support for the development of the technological innovation by the SMEs</li> <li>• To establish Technology and Information Promotion Agency for the SMEs to build an effective supporting system for the SMEs</li> </ul>
Sixth revision (2007. 8. 3, No.8604)	<ul style="list-style-type: none"> <li>• To foster management innovation of the SMEs and to intensify international technological cooperation for the purpose of improving the competitiveness of the SMEs</li> <li>• To provide grounds for supporting project for business-university collaboration</li> </ul>
Eighth revision (2009. 1. 30, No.9378)	<ul style="list-style-type: none"> <li>• To create the Small Business Innovation Support Group to aid the activities of the SMEs</li> <li>• To authorize the Head of Small and Medium Business Administration to advise the government and public institutions to provide the SMEs with a certain percentage of research and development budget</li> <li>• To impose disciplinary sanctions, such as confiscation of financial aids, on technological innovation project participants committing wrongful conduct</li> </ul>
Eleventh revision (2011. 4. 14, No.10597)	<ul style="list-style-type: none"> <li>• To provide the rulemaking in plain Korean</li> </ul>



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### **2.4.5. Act on Special Measures for the Structural Improvement of Small and Medium Enterprises and Vitalization of Customary Markets (2002)**

#### **a. Legislative Background**

After the financial crisis in 1997, the gap between large and small firms in profitability, wages, and innovation capabilities had been widened. Also, the polarization in the industry had been worsened in parallel with the polarization of local business and distribution industry. Thus, it was required to ensure a stable management, facilitate the improvement of the SME management structure, and enhance the environment of the local business through vitalizing traditional markets.

#### **b. Legislative History**

A special commission for the SMEs, the Presidential Commission, was created in 1998, and it had been active until 2008. In 1999, Small Commercial Promotion Agency was created under the Small and Medium Business Administration to foster restructuring and stable management of the SMEs under the Act on Special Measures for Support to Small Enterprises and Small Commercial and Industrial Businessmen.

During the 2000s, a corporate purchasing loan system was operated in order to solve a chronic financial shortage of the SMEs. In November of 2000 and June of 2001, the Congress drafted two bills: revision of the ‘Act on Special Measures for Structural Improvement and Management Stabilization of Small and Medium Enterprises’ and a new bill named ‘Act on Special Measures for Vitalization of Customary Markets’. Two bills were merged into ‘Act on Special Measures for the Structural Improvement of Small and Medium Enterprises and Vitalization of Customary Markets’ in 2002. However, this Act was, in turn, replaced with ‘Special Act on Fostering Traditional Markets and Shopping Centers’.

### **2.5. Trend of Functional Legislation of SME-related Laws (After 2000s)**

Since 2000s, the main legislative policy for the SMEs had been intended to put a new growth engine for global competitiveness and job creation. Policies to support the supply of SME’s workforce and to protect the commercial area of traditional markets were the good examples. Also, the government had tried to lay the groundwork for promoting collaboration between large enterprises and small-medium enterprises to level up the national competitiveness.

During this period, the gross domestic product (GDP) of the Republic of Korea amounted to 7,671,137 billion – 12,371,282 billion won, and gross national income (GNI) amounted to 7,677,714 billion – 12,405,039 billion won.

### 2.5.1. Special Act on Support for Human Resources of Small and Medium Enterprises (2003)

#### a. Legislative Background

Although the unemployment rate of young people increased during the 2000s, the SMEs still had difficulties in employing qualified people. The reason was that the gap between the expected wage and the real wage existed in the SME labor market. As a result, the SMEs that failed to hire domestic workers were alternatively employing foreign laborers. Thus, it was necessary to take a special measure to relieve the SMEs of the shortage of labor force. Finally, the Special Act on Support for Human Resources of Small and Medium Enterprises was enacted in 2003.

#### b. History of Revision

The reasons for the enactment and major revisions of the 「Special Act on Support for Human Resources of Small and Medium Enterprises」 are as follows:

**Table 2-13 |** Amendments of the Special Act on Support for Human Resources of Small and Medium Enterprises

	Reasons for enactment and revisions
Enactment (2003. 9. 29, No.6975)	<ul style="list-style-type: none"> <li>• To establish a comprehensive and systematic support policy for the SMEs to relieve the shortage of labor force</li> </ul>
Third revision (2006. 3. 3, No.7867)	<ul style="list-style-type: none"> <li>• To support housing for the SME employees</li> <li>• To ease the eligibility of getting National Housing Supply from ten year work career to five year work career</li> </ul>
Seventh revision (2007. 8. 3, No.8605)	<ul style="list-style-type: none"> <li>• To improve the ground plan to support labor force effectively for the SME support officials</li> <li>• To expand the inflow of workforce into the SMEs by providing benefits to long-term employees</li> <li>• To establish an organization to support personnel for the SMEs</li> </ul>
Twelfth revision (2010. 4. 5, No.10234)	<ul style="list-style-type: none"> <li>• To allow professors and researchers to take a leave in order to work for the SMEs for a designated period</li> </ul>
Sixteenth revision (2011. 4. 4, No.10532)	<ul style="list-style-type: none"> <li>• To introduce the SME Certification Scheme to get good workforce personnel</li> <li>• To promote the rulemaking in plain Korean</li> </ul>

## 2.5.2. Special Act on Fostering Traditional Markets and Shopping Centers (2004)

### a. Legislative Background

In the 2000s, there was a big trouble in the distribution industry. The polarization in the industry was worsened with the polarization of the local business and the distribution industry. As a result, it was required to improve the balanced and continuous development of the national economy by modernizing the traditional markets and refueling local business.

When the polarization in the distribution industry was worsened, the government prepared the Special Act on Fostering the Traditional Markets in October of 2004. Also, the government issued ‘Special Policy for Fostering the Traditional Markets’ in December of 2004, and announced ‘Measure for the Support of Individual Proprietor’. In 2006, the ‘Special Act on Fostering Traditional Markets and Shopping Centers’ was enacted as a law with sunset clause, and it will be expired at the end of 2012.

### b. History of Revision

The reasons for the enactment and major revisions of the 『Special Act on Fostering Traditional Markets and Shopping Centers』 are as follows:

**Table 2-14 |** Amendments of the Special Act on Fostering Traditional Markets and Shopping Centers

	Reasons for enactment and revisions
Enactment (2004. 10. 22, No.7235)	<ul style="list-style-type: none"> <li>• To improve business environments and facilities of the traditional markets to foster small and medium distribution industry</li> <li>• To protect petty dealers by promoting traditional markets through the modernization of commercial transactions and managerial strategies</li> <li>• To contribute to the development of the national economy by achieving the balanced development and vitalization of local business</li> </ul>
Second revision (2006. 4. 28, No.7945)	<ul style="list-style-type: none"> <li>• To supplement and improve the supporting system for the SMEs through the modernization of commercial transactions and commercial facilities</li> <li>• The national and local governments should try to propel special plans for vitalization of markets and shopping centers</li> </ul>
Sixth revision (2007. 12. 27, No.8803)	<ul style="list-style-type: none"> <li>• To support the policy on the market maintenance</li> </ul>

	Reasons for enactment and revisions
Eleventh revision (2008. 12. 19, No.9159)	<ul style="list-style-type: none"> <li>• To improve a market maintenance plan by mitigating the requirements of the plan</li> <li>• To grant National Merchants Association to appoint an agent who has the authority on judicial or non-judicial actions</li> </ul>
Fourteenth revision (2009. 12. 30, No.9887)	<ul style="list-style-type: none"> <li>• To install a commercial district management organization to propel the development of local business</li> </ul>
Seventeenth revision (2010. 6. 8, No.10356)	<ul style="list-style-type: none"> <li>• To promote rulemaking in plain Korean</li> </ul>
Eighteenth revision (2011. 3. 30, No.10503)	<ul style="list-style-type: none"> <li>• To improve facilities of traditional markets and support educational programs for the disabled, the elderly, and pregnant women, etc., to easily and conveniently access the markets</li> </ul>
Twenty first revision (2012. 1. 17, No.11177) (Effective on 2013. 1. 1)	<ul style="list-style-type: none"> <li>• To install small commerce promotion account by revising the Act on Special Measures for Support to Small Enterprises and Small Commercial and Industrial Businessmen for the support of managerial stability and restructuring of the SMEs</li> </ul>

### 2.5.3. Promotion of Disabled Persons' Enterprise Activities Act (2005)

#### a. Legislative History

The purpose of 『Promotion of Disabled Persons' Enterprise Activities Act』 is to foster entrepreneurship and promote business activities of the disabled. Under this Act, the Head of the Small and Medium Business Administration shall establish and propel the basic policy to promote activities of the disabled persons' enterprises through the deliberations of the Council for the Promotion of Disability Corporate Activity at the beginning of each year. Also, the Head shall survey and publish status of activities of the disabled persons' enterprises biennially.

#### b. History of Revision

The revision in March of 2008 forced the government to prepare the grounds to support a budget to establish a guarantee system for the disabled entrepreneurs. Also, public institutions should provide favorable terms when purchasing products of the disabled entrepreneur.

In the revision of April of 2010, the central and local government should promote the business activities of disabled entrepreneurs by providing the total services for financing, information, technology, labor, and distribution. Prior to the 8th amendment in 2010, the central and local government had just provided an equal opportunity to the disabled entrepreneurs. However, the amendment in 2010 required the government to grant more opportunities in favor of the disabled entrepreneurs.

The reasons for the enactment and major revisions of the 『Promotion of Disabled Persons’ Enterprise Activities Act』 are as follows:

**Table 2-15 | Amendments of Promotion of Disabled Persons’ Enterprise Activities Act**

	Reasons for enactment and revisions
Enactment (2005. 7. 29, No.7632)	<ul style="list-style-type: none"> <li>• To contribute to the development of the national economy by promoting activities of the disabled entrepreneurs</li> <li>• To prepare the definition of the disabled entrepreneurs</li> </ul>
Fourth revision (2008. 3. 28, No.9012)	<ul style="list-style-type: none"> <li>• To support a budget to establish a guarantee system for the disabled entrepreneurship</li> <li>• To purchase products from the disabled entrepreneurs on favorable terms and conditions</li> <li>• To grant Head of Small and Medium Business Administration the authority to force public institutions to purchase products from the disabled entrepreneurs</li> </ul>
Sixth revision (2009. 12. 30, No.9891)	<ul style="list-style-type: none"> <li>• To promote the rulemaking in plain Korean</li> </ul>
Eighth revision (2010. 4. 5, No.10233)	<ul style="list-style-type: none"> <li>• To promote business activities of the disabled entrepreneurs by providing the total services for financing, information, technology, labor, and distribution</li> <li>• To grant more favorable opportunities to the disabled entrepreneurs</li> </ul>

## 2.5.4. Special Act on the Promotion of Business Conversion in Small and Medium Enterprises (2006)

### a. Legislative Background

As the globalization of business activities had accelerated, the SMEs were faced with difficult business surroundings such as competing with cheap foreign products. Production efficiency was not highly competitive because the majority of the SMEs were engaged in the labor-intensive production sectors. It was true for the SMEs in the traditional business activity to face with worse environments because the SMEs lacked the ability to develop the elements of information, skills, and knowledge as well as to enhance the competitiveness of enterprises. Thus, it was necessary for the SMES with potential competitiveness to strengthen the partnership with large companies. Also, restructuring or the transformation of the SMEs was required to have competitiveness.

In the 2000s, as the gap between large and small businesses was getting wider, the government continually promoted financing, technology, and labor supply for the SMEs.

‘Corporate Purchasing Loans System’ was created in 2000, and the ‘Act on the Promotion of Technology Innovation of Small and Medium Enterprises’ was enacted in 2001. ‘The Special Act on Support for Human Resources of Small and Medium Enterprises’ was enacted in 2003. Nevertheless, most of the SMEs had failed to restore their competitiveness. The government’s ongoing efforts to enhance the competitiveness of the SMEs resulted in the enactment of ‘Special Act on the Promotion of Business Conversion in Small and Medium Enterprises’ and ‘Act on the Promotion of Collaborative Cooperation between Large and Small-Small-Medium Enterprises’.

**b. History of Revision**

The reasons for the enactment and major revisions of the 『Special Act on the Promotion of Business Conversion in Small and Medium Enterprises』 are as follows:

**Table 2-16 |** Amendments of Special Act on the Promotion of Business Conversion in Small and Medium Enterprises

	Reasons for enactment and revisions
Enactment (2006. 3. 3, No.7866)	<ul style="list-style-type: none"> <li>• To sponsor the business transformation of the SMEs that suffer difficulties due to changes in the economic environment, which will enhance the competitiveness of the SMEs and upgrade the industrial structure</li> </ul>
Sixth revision (2008. 12. 26, No.9181)	<ul style="list-style-type: none"> <li>• To expand the scope of business conversion and to repeal former regulation</li> <li>• To rewrite rules in plain Korean</li> </ul>

**2.5.5. Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises**

**a. Legislative Background**

In the 1990s, the competitiveness gap between large and small businesses expanded despite the government policies after the financial crisis. In order to solve these problems, since the 2000s, the relationship between large and small businesses had to be switched from competition to a win-win relationship because just getting support would not enable the SMEs to compete with large companies.

**b. Legislative History and Major Contents**

This Act substitutes for 『Protection of SME Business Sector and Promotion of Collaborative Cooperation between Large and Small Business Act』 in March of 2006. In 2012, the tenth revision clarified the legal basis of the National Commission for Corporate Partnership that was a private organization.

The purposes of the 『Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises』 are as follows:

**Table 2-17 |** The Purpose of Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises

Measure	Direct Purpose	Ultimate Purpose
To establish a relationship of mutual cooperation between large and small-medium enterprises	1. Improve competitiveness of large and small-medium enterprises 2. Reduce the Polarization between large and small-medium enterprises	Achieving continued growth of the national economy
	Establish a corporate partnership between large and small-medium enterprises	

The purpose of regulations is an important criterion for deciding the so-called ‘marginal cases (Grenzfall),’ which is not clear whether they are illegal or not. In general, the direct purpose and the ultimate purpose are harmonized with each other. If not, the ultimate purpose has a high priority over the direct one. But, we should consider that this Act and other laws are mutually harmonious.

『Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises』 applies to the relationship between large and small-medium enterprises. It also applies to the relationship between small businesses, and between ‘commission enterprises’ and ‘commissioned enterprise’.

According to the 『Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises』, the Minister of Knowledge Economy shall develop a master plan to facilitate win-win cooperation between conglomerates and small and medium enterprises after consulting with the heads of relevant central administration agencies every three years. The government may develop and implement policies to distribute a contract model in which commission enterprises support commissioned enterprises to attain their common and agreed goals including the cost-cutting, etc. And the results are shared by both commissioned and commission enterprises.

The reasons for the enactment and major revisions of the 『Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises』 are as follows:

**Table 2-18 | Amendments of Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises**

	<b>Reasons for enactment and revisions</b>
Enactment (2006. 3. 3, No.7864)	<ul style="list-style-type: none"> <li>• Repeal the 'Act on the Protection of the Business Sphere of Small and Medium Enterprises and Promotion of Their Cooperation' and enact a law that requires win-win cooperation</li> </ul>
Second amendment (2007. 5. 17, No.8454)	<ul style="list-style-type: none"> <li>• Correct unfair transaction practices between commissioned enterprises and commission enterprises</li> <li>• Establish a consultative council of commissioned enterprises by commission enterprise, by region and by business type in order to maintain an equal relationship of transactions with the commission enterprises and to facilitate the exchange of technical information and the joint development of technologies, etc.</li> </ul>
Fifth amendment (2009. 1. 7, No. 9331)	<ul style="list-style-type: none"> <li>• Develop a plan to support small and medium enterprises and prepare the performance records of the plan every year and submit them to the Minister of Knowledge Economy</li> </ul>
Seventh amendment (2010. 1. 27, No.9978)	<ul style="list-style-type: none"> <li>• Guarantee the autonomy in win-win cooperation between conglomerates and small and medium enterprises</li> <li>• Facilitate win-win cooperation which contributes to the mutual interests of conglomerates and small and medium enterprises</li> <li>• Enhance the public sector's leading role in cooperation between public institutions and small and medium enterprises</li> <li>• Rewrite the statutory jargons in plain Korean</li> </ul>
Ninth amendment (2010. 12. 7, No.10399)	<ul style="list-style-type: none"> <li>• Protect the SME's technology and ensure their stable use</li> <li>• Improve the effectiveness of business mediation system between conglomerates and small and medium enterprises by including chain-stores operating by conglomerates</li> </ul>
Tenth amendment (2012. 1. 17, No.11173)	<ul style="list-style-type: none"> <li>• Provide a legal basis of National Commission for Corporate Partnership</li> <li>• Grant the authority to National Commission for Corporate Partnership to select categories that are appropriate for the SMEs</li> <li>• The SMEs may apply to the Administrator of Small and Medium Business Administration for the matters of SME business adjustment dispute</li> </ul>



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**c. Relationship between Fair Transactions in Subcontracting Act and Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises**

Article 1 of Fair Transactions in Subcontracting Act prescribes that the purpose of the Act is to contribute to the sound development of the national economy by establishing order in subcontract transactions so that the principal contractor and the subcontractor may complement each other and keep a balance on equal terms. Thus, Fair Transactions in Subcontracting Act is intended to suppress abusive wielding of bargaining power from large businesses. Finally, it regulates unfair transactions in subcontracting practices.

However, Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises has weak regulation power, because this Act pursues win-win cooperation. Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises replaces Fair Transactions in Subcontracting Act, because this Act applies only at the time of ‘manufacturing’.



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## Chapter 3

### Breakdown of the Framework Act on Small and Medium Enterprises

1. Legislative Background and Intent
2. Backgrounds of and Reasons for Revision
3. Breakdown of the Present SMEs Act

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# Breakdown of the Framework Act on Small and Medium Enterprises

## 1. Legislative Background and Intent

The Framework Act on Small and Medium Enterprises of 1966 ('SMEs Act of 1966' or 'Act') provides the basic principles of economic policies for the SMEs. Prior to the Act, the government policies for the SMEs had been no more than administrative orders, not legislations.

Since the late 1960s, the Korea's economic status has substantially changed. The size of economy was significantly increased and the gap between the large firms and the SMEs was considerably widened. Especially, the halt of foreign subsidies led to the need for well-framed and well-structured economic policies for the SMEs to accomplish the economic independence.

Recognizing those economic environments, the National Parliament passed the SMEs Act in 1966, which was expected to build a ground law. The key contents of the SMEs Act are listed below:

**Table 3-1 |** Key Contents of the SMEs Act of 1966

- 
- 1) Defining the SMEs.
  - 2) Requiring the government to file the SME policies in writing for the Congressional budget allocation.
  - 3) Requiring the government to establish the needed policies for a firm hiring more than five full-time employees.
  - 4) Requiring the government to establish the needed policies to facilitate mergers and acquisitions; and joint ventures.
  - 5) Setting up criteria for funds for the SMEs and requiring the related financial institutions to supervise it.
  - 6) Requiring the Committee for the SMEs Policies to be supervised by the President.
-

The SMEs Act consists of 28 Articles. The main contents of the SMEs Act with respect to how to aid the SMEs begin in Article 5. Those articles can be summarized as follows:

**Table 3-2 |** Articles of the SMEs Act for the Purpose of Aiding the SMEs

Aiding Policies	Modernization of the SMEs	Article 5 Support for Starting Businesses and Promotion of Entrepreneurship
		Article 6 Rationalization of Management and Technology Enhancement
		Article 9 Restructuring of Businesses
		Article 10 Fair Competition and Collaborative Growth
		Article 14 Globalization
		Article 25 Authorization of Expert Institutes
	Managerial Stabilization	Article 7 Securing Distribution Channels
		Article 15 Aid for the SMEs Employment
		Article 18 Legislative and Financial Support
	Protection against Disadvantages of the SMEs in Competition	Article 19 Financing and Taxation
		Article 8 Collaboration among the SMEs
		Article 11 Protecting Business Sectors for the SMEs
		Article 12 Exemption
	Support according to the Subjects	Article 13 Organizing of the SMEs
		Article 16 Policies for the Small Businesses
		Article 17 Aids for Growth of the SMEs in local Provinces
	Providing Favorable Terms for the SMEs	Article 22 Ombudsman for the SMEs.
		Article 23 Filing Comments or Opinions
		Article 24 Administrative Support
Article 27 Filing Requirement for the SMEs		

Source: Sei Jong Kim/Yoon Bo Lee/Jong Wook Lee/Byung Sun Cho/Hoon Paik/Hee Chul Jung, A Study on the Improvement Program Basic-Law of Small & Midium Business in Environment Change, The Korea Small Business Institute, 2008, p.36 (amend)

## 2. Backgrounds of and Reasons for Revision

In the 1960s, the SMEs Act was legislated to provide for the SMEs policy directions and principles in order to achieve the balanced economy by raising productivity and the employment rate of the SMEs. The SMEs Act was expected to serve as a ground law for the SMEs policies.

In the 1970s, the SMEs were considered as the socially disadvantaged because the industrial policy had been made excluding the SMEs. The focal point of the industrial policy during the 1970s was the scale of the economy so that the large firms could not but be sponsored in a biased manner. Such a consequence gave an impetus to aiding the SMEs.

In the 1980s, thanks to the policy change from the growth-oriented to the balanced economy, the economic policy pursued to support for the start-ups and secure fair transactions in subcontracts between large firms and the SMEs.

In the 1990s, in order to respond to the globalization after the Uruguay Round, the economic policy for the SMEs was to promote restructuring the SMEs and to encourage self-regulation and competition. The SMEs policy has put emphasis on strengthening the SMEs capacity for innovation and global competitiveness since 2000.

The SMEs Act has been revised to respond to the change of economic climates as briefly addressed above. The SMEs Act has been revised 11 times. The contents of each revision are briefly summarized below.

**Table 3-3 | Revisions of the SMEs Act**

Revision	Background of Revision	Revision of Other Related Statutes
First amendment (1976. 12. 31, No.2996)	Redefining the SMEs in respond to the changing economic environment such as the wholesale pricing index, the size of firms, and debt –asset ratio of firms.	
Second amendment (1978. 12. 5, No.3125)	Redefining the SMEs subject to the SMEs Act in respond to the economic environment.	
Third amendment (1982. 12. 31, No.3650)	Redefining the SMEs and strengthening the entire policies to support the SMEs.	
Fourth amendment (1993. 3. 6, No.4541)		Integrate the Ministry of Commerce-Industry and the Ministry of Power and Energy into the Ministry of Commerce, Industry and Energy due to the revision of the Government Code

Revision	Background of Revision	Revision of Other Related Statutes
Fifth amendment (1995. 1. 5, No.4897)	Redesigning the SMEs Act as responses to the domestic and international economic climate changes in order to effectively execute SMEs policies.	
Sixth amendment (1997. 12. 13, No.5454)		Change the Ministry of Trade and Industry into the Ministry of Commerce, Industry and Energy
Seventh amendment (1998. 2. 28, No.5529)		Establish Presidential Commission on Small and Medium Enterprises
Eighth amendment (2007. 4. 11, No.8360)	Rewrite the statutory jargons in plain Korean.	
Tenth amendment (2008. 12. 26, No.9184)	Creating the statutory basis enabling the government survey on business difficulties and complaints of the SMEs; and establishing the Ombudsman system to survey business burdens on the SMEs for the purpose of deregulation.	
Eleventh amendment (2011. 7. 25, No.10952)	Strengthening the economic policies for the SMEs such as including social companies in the definition of the SMEs subject to the SMEs Act; specifying the government's duties to aid the SMEs; requiring the government to set up the specific policy for the SMEs and submit the evaluation report to the National Parliament; and protecting the whistleblower submitting comments or opinions to improve the SMEs.	

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### 3. Breakdown of the Present SMEs Act

The SMEs Act is providing statutory tools to practice the constitutional spirits for the protection of the SMEs. Further, the SMEs Act is a comprehensive and fundamental statute for economic policies for the SMEs.

Article 2 of the SMEs Act defines the SMEs. The SMEs, according to the SMEs Act, are firms which satisfy the requirements prescribed by the Act, such as the number of full-time employees, the size of capital, the volume of sales, and the separation between ownership and management.

The SMEs, compared to the large businesses, are very susceptible to external economic or market factors. The governmental support or subsidy is able to help overcome their business disadvantages. In this respect, well-framed legal support is very important in that it enables the government to give aid to the SMEs.

The First and Second Revisions of the SMEs Act chiefly dealt with the definition of the SMEs. It was one of the most crucial topics in order to draw a clear line on who should be under the statutory protection. Owing to the economic or market climate changes, the definition of the SMEs should be redesigned. The Third and Fifth Revisions, in spite of the dissimilarity of contents of revision, were intended to respond effectively and flexibly to the external economic or market climate changes. Simply speaking, the frequent revisions were due to the changing external economic environment.

Even if all the revisions of the SMEs Act were made to respond to the changing economic environment, the Tenth and Eleventh Revisions were different from the other revisions. The theme of those revisions was ‘self-regulation and competition,’ not ‘protection and promotion of growth.’ The economic globalization compelled such a change in the policy direction. Opening market under the flag of free trade does not make it possible to stick to the protectionism any more.



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## Chapter 4

### Implications and Legislation Module

1. Implications
2. Establishing Legislation Model according to Each Economic Environment

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# Implications and Legislation Module

## 1. Implications

In general, people prefer large corporations not only as participants in corporate activities but also as consumers, because large corporations have a relatively stable financial structure and ongoing business activities, and the public have a good impression on their products. However, when it comes to applying and developing new ideas in the business, the SMEs are in a more advantageous position than large corporations. That is because it is not easy for large corporations to convert existing production infrastructure.

The SMEs are willing to take the risks of going into new business if given a chance. The SMEs can quickly invest in new areas due to their compact capital size. However, large corporations have to overcome their shortcomings. Of course, they are recently making a quick and advantageous investment decision based on the comprehensive management abilities accumulated for a long period of time. As a result, the business circumstances of the SMEs are getting worse.

In order to support to overcome the inherent limitations of the SMEs, the government enacted Framework Act on Small and Medium Enterprises and has supported the development of Small and Medium Enterprises. Also, the legislative activities are being made recently toward fostering win-win cooperation between large corporations and small and medium enterprises in conglomerate-oriented business surroundings. The business activities of conglomerates alone may not develop national the economy soundly.

Below are several ways to look at a case-by-case basis for the establishment of an appropriate legislative model in each economic environment.

## 2. Establishing Legislation Model according to Each Economic Environment

### 2.1. Establishment of Framework Act

#### 2.1.1. Definition

There are various ways to enact ‘framework act’. The first type is that the framework act contains definitions of major terms, basic principles and policies, standards of applying regulations, like 「Framework Act on Education」 etc. The second type is that it represents the basic legal ‘Norms’ of a country, like 「Framework Act on the Federal Republic of Germany」.

#### 2.1.2. Types and Characteristics

##### a. Type

The type of the framework act is classified by its nature and effect. This kind of classification is not absolute, but sometimes appears in a mixed type. Basically, the framework act can be categorized in an ideal type, a policy type, a measure type, and a reform type. The Framework Act on Small and Medium Enterprises falls into ‘policy type’.

Table 4-1 | Type of Characteristics

Type	Contents	Examples
Ideal type	<ul style="list-style-type: none"><li>- Decide a basic policy, a system, principles, and philosophy</li><li>- Suggest those to people</li></ul>	<ul style="list-style-type: none"><li>- 「Framework Act on Tourism」</li><li>- 「Framework Act on Education」</li></ul>
Policy type	<ul style="list-style-type: none"><li>- Suggest a national policy, the purpose of each system, and demand the government to pursue those things</li></ul>	<ul style="list-style-type: none"><li>- 「Framework Act on Agriculture」</li><li>- 「Framework Act on Small and Medium Enterprises」</li><li>- 「Framework Act on Science and Technology」</li></ul>
Measure type	<ul style="list-style-type: none"><li>- Legislate basic administrative measures</li><li>- Characteristics of pursuing welfare improvement, damage prevention, maintenance of social order, etc.</li></ul>	<ul style="list-style-type: none"><li>- 「Framework Act on the Management of Disasters and Safety」</li><li>- 「Framework Act on Low Birth Rate in an Aging Society」</li><li>- 「Framework Act on the Regulation of Land Use」</li></ul>

Type	Contents	Examples
Reform type	- To use legislation tools to pursue a specific reform established as a major objective of government administration	- 「Framework Act on Railroad Industry Development」 - 「Framework Act on Administrative Regulations」

Source: Park, Young-Do, A Study of Model Legislation, Korea Legislation Research Institute, 2006, pp19-20

Also, ‘the framework act’ can be divided into two types according to the scope of framework act’s effect.

**Table 4-2 |** Types of the Framework Act’s Effect

Type	Major contents	Note
First type	- Legislation of separate act to pursue the basic idea and plan, responsibilities of the government, standards of applying policy that prescribed in framework act	「Framework Act on Employment Policy」, 「Framework Act on Management of the Government Invested Institution」, 「Framework Act on Small and Medium Enterprises」, etc.
Second type	- Entitled as ‘framework act’, and suggest the basic idea and plan that is going to regulate - Prescribe specific contents without separate acts that actualized the basic plan	「Framework Act on Civil Defense」, 「Framework Act on the Management of Disasters and Safety」 etc.

Source: Ibid., pp345-346

### **b. Characteristics**

Characteristics of the framework act may be divided into regulations and legal norms. The former covers ① diversity or abstractness of contents, ② lots of programmatic or instructive regulations, ③ few regulations directly related to rights and duties of the people, ④ strong color of organizational act, ⑤ indirect trial norms, ⑥ instructions for legal interpretation. The latter prescribes the direction of principle in the basic idea and policy, an enforcement policy, responsibilities, etc. The Framework Act on Small and Medium Enterprises falls into this category.

**Table 4-3 | Legal System of Framework Act**

	Major contents	Note
Ch. 1 Principles	Article 1 (Purpose)	
	Article 2 (Basic Idea)	Cardinal direction, basic principle
	Article 3 (Definition)	
	Article 4 (Relationship with Other Acts)	Range of application
	Article 5 (Responsibilities of Government, etc.)	
Ch. 2 Basic Plan and Enforcement	Article 6 (Basic Plan)	
	Article 7 (Enforcement Plan)	
	Article 8 (Commission)	
Ch. 3 Policies		Specific contents of Policies
Ch. 4 Supplement	Article 00 (Report to Congress)	Annual report
	Article 00 (Delegation of Authority)	
Ch. 5 Penalty		

Source: Ibid., pp348-349



## 2.2. Legal System

### 2.2.1. Proposal 1 : Framework Act on Small and Medium Enterprises + Functional Approach by Individual Acts

This means the legislation of 「Framework Act on Small and Medium Enterprises」 plus the functional approach by enacting specialized separate acts. Specifically, it has two types of legislation: the introduction of the overall regulation related to the SMEs and the introduction of a major part related to the SMEs.

**a. Introduction of Overall Regulation Related to SMEs**

**Table 4-4 | Conception**

Act		Major contents
Framework Act on Small and Medium Enterprises		<ul style="list-style-type: none"> <li>• Scope of small and medium business</li> <li>• Duty of the government and local government</li> <li>• Duty of small and medium businesses</li> <li>• Distribution</li> <li>• Cooperation between small and medium business</li> <li>• Fostering fair competition and win-win growth</li> <li>• Establishment of a mutual aid system</li> <li>• Support human resources</li> <li>• Legislation and government financing</li> <li>• Financing and tax</li> </ul>
Individual Act		<ul style="list-style-type: none"> <li>• Support the establishment of business</li> <li>• Support human resources</li> <li>• Support financing</li> <li>• Support the distribution</li> <li>• Management innovation</li> <li>• Fair competition</li> <li>• Support vulnerable social groups</li> </ul>



**Table 4-5 | Examples of Specific Acts**

standard	acts
① Support the Establishment of Business	<ul style="list-style-type: none"> <li>- Support for Small and Medium Enterprise Establishment Act</li> <li>- Act on Special Measures for the Promotion of Venture Business</li> </ul>
② Support Human Resources	<ul style="list-style-type: none"> <li>- Special Act on Support Human Resources of Small and Medium Enterprises</li> </ul>
③ Support Financing	<ul style="list-style-type: none"> <li>- Industrial Bank of Korea Act</li> </ul>
④ Support the Distribution	<ul style="list-style-type: none"> <li>- Act on Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products and Support for Development of their Markets</li> </ul>
⑤ Management Innovation	<ul style="list-style-type: none"> <li>- Act on the Promotion of Technology Innovation of Small and Medium Enterprises</li> <li>- Special Act on the Promotion of Business Conversion in Small and Medium Enterprises</li> <li>- Small and Medium Enterprises Promotion Act</li> </ul>

standard	acts
⑥ Fair Competition	<ul style="list-style-type: none"> <li>- Small and Medium Enterprise Cooperatives Act</li> <li>- Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises</li> </ul>
⑦ Support Vulnerable Social Groups	<ul style="list-style-type: none"> <li>- Act on Special Measures for Development of Small and Micro Enterprises</li> <li>- Act on Support for Female-owned Businesses</li> <li>- Promotion of Disabled Person's Enterprise Activities Act</li> </ul>

### b. Introduction of the Overall Regulation related to the SMEs

Table 4-6 | Conception

Act		Major Contents
Framework Act on Small and Medium Enterprises		<ul style="list-style-type: none"> <li>• Scope of small and medium business</li> <li>• Duty of the government and local government</li> <li>• Duty of small and medium business</li> <li>• Distribution</li> <li>• Cooperation between small and medium business</li> <li>• Fostering fair competition and win-win growth</li> <li>• Establishment of mutual aid system</li> <li>• Support human resources</li> <li>• Legislation and government financing</li> <li>• Financing and tax</li> </ul>
Individual Act		<ul style="list-style-type: none"> <li>• Small and Medium Enterprises Financing</li> <li>• Fostering Small and Medium Enterprises</li> <li>• Establishment and management of the SME self-help organizations</li> <li>• Fair transaction and win-win cooperation between large corporation and the SMEs</li> </ul>

**Table 4-7 | Examples of Specific Acts**

standard	Act	Major Contents
① SME Financing	Industrial Bank of Korea Act	- To establish a government-run bank to support credit offering to the SMEs
	Credit Guarantee Fund Act	- To establish Korea Credit Guarantee Fund to supplement SMEs' credit - Korea has three credit supporting agencies for the SMEs: Korea Credit Guarantee Fund, Korea Technology Finance Corporation, Regional Credit Guarantee Foundation
② Fostering SME	Small and Medium Enterprises Promotion Act	- To establish Small and Medium Business Corporation to support the SME policies and Fund to support its enforcement
	Support for Small and Medium Enterprise Establishment Act	- Simplify the SME establishment process - Small and Medium Enterprise Establishment Investment Company - Small and Medium Enterprise Establishment Investment Association
	Act on Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products and Support for Development of their Markets	- Promotion of Purchasing the SME Products by the government institutions - Privileged purchase of the SME technological products - Support distribution channel for the SME product
③ Establishment of SME Self-help Organization	Small and Medium Enterprise Cooperatives Act	- To establish the SME self-help organization
④ Fair Transactions and Win-win Cooperation between Large Corporations and SMEs	Fair Transactions in Subcontracting Act	- To regulate transactions between large corporations and the SMEs



## 2.2.2. Proposal 2 : Framework Act on Small and Medium Enterprises + Individual Act by Specific Economic Environment

Table 4-8 | Conception

Act		Major Contents
Framework Act on Small and Medium Enterprises	▶	<ul style="list-style-type: none"> <li>• Scope of small and medium business</li> <li>• Duty of the Government and the local government</li> <li>• Duty of small and medium businesses</li> <li>• Distribution</li> <li>• Cooperation between small and medium business</li> <li>• Fostering fair competition and win-win growth</li> <li>• Establishment of mutual aid system</li> <li>• Support human resources</li> <li>• Legislation and government financing</li> <li>• Financing and tax</li> </ul>
Individual Act	▶	<ul style="list-style-type: none"> <li>• Introductory Period</li> <li>• Growth and Development Period</li> <li>• Stability Period</li> </ul>



**Table 4-9 | Examples of Specific Acts**

Standard	Act
① Introductory Period	<ul style="list-style-type: none"> <li>- Small and Medium Enterprise Cooperatives Act</li> <li>- Support for Small and Medium Enterprise Establishment Act</li> <li>- Balanced Regional Development and Support for Local Small and Medium Enterprises Act</li> </ul>
② Development Period	<ul style="list-style-type: none"> <li>- Balanced Regional Development and Support for Local Small and Medium Enterprises Act</li> <li>- Act on Special Measures for the Promotion of Venture Businesses</li> <li>- Act on Special Measures for Supporting Small Business</li> <li>- Act on Support for Female-owned Businesses</li> <li>- Act on Regional Credit Guarantee Foundation</li> </ul>
③ Stable Period	<ul style="list-style-type: none"> <li>- Special Act on Support for Human Resources of Small and Medium Enterprises</li> <li>- Special Act on Traditional Markets</li> <li>- Promotion of Disabled Persons' Enterprise Activities Act</li> <li>- Special Act on the Promotion of Business Conversion in Small and Medium Enterprises</li> <li>- Act on the Promotion of Collaborative Cooperation between Large Enterprises and Small-Medium Enterprises</li> <li>- Act on Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products and Support for Development of Their Markets</li> </ul>

### **2.2.3. Proposal 3 : SMBD Jurisdiction Regulations + Other SME Supporting Regulations**

Small and Medium Business Administration (SMBD) has been established for systematic and effective support to improve competitiveness of the SMEs. The SMBD is empowered to make rules related to the SMEs.

**Table 4-10 | Conception**

Act		Major Contents
SMBD Jurisdiction Regulations		<ul style="list-style-type: none"> <li>• Framework Act on Small and Medium Enterprises</li> <li>• Small and Medium Enterprises Promotion Act</li> <li>• Small and Medium Enterprise Cooperatives Act</li> <li>• Special Act on Promotion of Traditional Markets and Shopping Mall</li> <li>• Act on Special Measures for the Promotion of Venture Businesses</li> <li>• Support For Small and Medium Enterprise Establishment Act</li> <li>• Act on Special Measures for Development of Small and Micro Enterprises</li> <li>• Act on Support for Female-Owned Businesses</li> <li>• Act on Regional Credit Guarantee Foundation</li> <li>• Special Act on Support for Human Resources of Small and Medium Enterprises</li> <li>• Act on the Promotion of Technology Innovation of Small and Medium Enterprises</li> <li>• Promotion of Disabled Persons' Enterprise Activities Act</li> <li>• Special Act on the Promotion of Business Conversion in Small and Medium Enterprises</li> <li>• Act on Facilitation of Purchase of Small and Medium Enterprise-Manufactured Products and Support for Development of Their Markets</li> </ul>
Other SME Supporting Regulations		<ul style="list-style-type: none"> <li>• Support Technology</li> <li>• Support Tax Benefit</li> <li>• Support Financing</li> <li>• Support Human Resources</li> <li>• Special Restrictions on Contract</li> <li>• Etc.</li> </ul>

**Table 4-11 | Examples of Specific Acts**

Standard	Act	Major Contents
① Support Technology	- Industrial Technology Innovation Promotion Act	- Support Human Resources for SMEs
	- Industrial Unite Promotion Act	- Support Industrial Unite Business of the SMEs
② Support Tax Benefit	- Restitution of Development Gains Act	- Impose Development Expenses and its Exemption
	- Customs Act	- Tax Exemption on Specific Goods
	- Corporate Tax Act	- Exclusion of Entertainment Allowance from Deductible Expenses
	- Income Tax Act	- Retroactive Deduction of Deficiencies
	- Restriction of Special Taxation Act	- Investment Tax Amount Deduction to the SMEs
		- Special Treatment in Taxation on Supporting the SMEs Information Policy
		- Reduction and Exemption of Tax Amount on Venture SME
- Reduction and Exemption of Tax Amount on the SMEs		
- Enforcement Decree of the State Property Act	- Fee Rate	
③ Support Financing	- Technology Transfer and Business Promotion Act	- Financing Support for Business
	- Trade Insurance Act	- Give Preference to the SMEs
	- Credit Guarantee Fund Act	- Preferential Guarantee
④ Support Human Resources	- Framework Act on Employment Policy	- Support Human Resources on the SMEs
	- Act on Employee Education and Development	
	- Restriction of Special Taxation Act	- Exemption of Income Tax for Youth who work for the SMEs - Special Exemption on Taxation on the SMEs that Maintain Employment

Standard	Act	Major Contents
⑤ Special Restriction on Contract	- Act on Contract to which the Government is a Party	- Scope of Government Procurement Agreement in International Bidding
	- Presidential Decree on Contract to which the Government is a Party	<ul style="list-style-type: none"> <li>- Entitlement in a Public Competitive Bidding</li> <li>- Restrictive Competitive Bidding</li> <li>- Appointed Competitive Bidding</li> <li>- Private Contract</li> </ul>
⑥ Others	- Monopoly Regulation and Fair Trade Act	- Restrictions on Corporate Combination

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## [1] Interview with Kim, SY (Legal Consultant for Kyonggi-do, Former Government Official at Ministry of Government Legislation (MOLEG))

### 1. Characteristics of the SMEs Legislations

- a. The SMEs legislations are purposed to make the SMEs flourish and to sponsor the SMEs.
- b. The Need for the SMEs – The SMEs serve the economic backbone in terms of the number of firms and the employment rate (The SMEs consist of 99% of the firms and 86.8% of the employed).
- c. While the large businesses are reducing the number of the employed, the SMEs are increasing the number of the employed. The gap in profitability between the large businesses and the SMEs are getting wide.
- d. The SMEs policy will contribute to protecting and stabilizing the middle class by increasing the employment rate, rendering income redistribution and invigorating consumption and investment.

### 2. Perspective of the MOLEG regarding the SMEs Policy. The MOLEG:

- a. Has no distinctive perspective.
- b. Reviews unconstitutionality of the proposed legislations; Drafts in plain Korean; Emphasizes deregulation.

### 3. Function and Role of ‘The Basic Act for the SMEs’

- a. Establishing the basic direction of the SMEs policy by integrating various SMEs policies that had been executed before.
- b. Defining subjects and objectives of the SMEs policy; Restructuring of the SMEs; correcting unreasonable business disadvantages; providing the details of administrative department for the SMEs.

### 4. Implication of the SMEs Legislations of Korea

- a. Based on the Basic SMEs Act, individual legislation for the specific needs followed.
- b. The previous legislations were directly subsidizing the SMEs (for example, promotion of procurement contract with the SMEs Association without open bidding, Assignment of industrial sectors for the SMEs) but the recent legislations are purposed to create the SMEs-friendly environment for efficient business



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activities (for example, assisting the SMEs to secure distribution channels, mediation process for the SMEs businesses).

## [2] Interview with Cho, Byeong Sun (law professor, Soongsil university))

### 1. Overview of the SMEs Policy

- a. The Problems and Challenges Faced by the SMEs: Shortage of labor, Financial problems, Economic Fluctuations, Lack of Adaptability
- b. The most ideal way to fix those problems is for the SMEs to solve by themselves via the function of the market-so called “invisible hand.”
- c. However, there should be government intervention to fix the problems, i.e. the SMEs policy
  - i) Where the SMEs are not able to fix the problems by themselves
  - ii) Where the market failure exists
  - iii) Where the special considerations are necessary from the national economic perspective

### 2. Three Categories of the SMEs Policy

- a. Protection Policy (Schutzpolitik) aimed to sponsor and foster the SMEs by protecting the SME’s business areas and their activities from the penetration of large firms
  - i) E.g., Designation of Industry for the SMEs, Mediation in SMEs
- b. Adaptation Policy (Anpassungspolitik) that helps the SMEs adapt effectively to the changes of the business environment (so-called structural policy)
- c. Compensation Policy (Ordnung politik) that creates the fair competitive condition by addressing the competitive disadvantages

### 3. Targets, Methods and Government Bodies

- a. Targets
  - i) Micro enterprises, small businesses, medium-sized businesses under the size criteria
  - ii) Venture enterprises, technology companies, local SMEs, female entrepreneurs, start-ups under the subject criteria

- b. Policy Methods : Finance, Taxation, Providing information and training, organizing
- c. Government Bodies to establish and execute the SMEs policies
  - i) In a centralized country, the central government is the main government body in promoting policies, while the local government performs the supportive roles
  - ii) In a well decentralized country, municipal and regional governments play a crucial role
- d. In Korea, the local government system was well established, each municipal and local government attempts and deploys various SMEs policy (e.g., Gyeonggi-do)

### [3] Interview with Chang, Kyosik (Law professor, Konkuk University)

#### 1. Current Status of the SMEs Legislations

- a. Since 1980 8th amendment of constitutions established the protection for SMEs, the protection and promotion of SMEs should be included among the basic responsibilities of the government
- b. Article 123(3) provides that the state shall protect and foster small and medium enterprises and to pursue this goal provided by the constitution, the government was very active, which led to more than 20 legislations for the SMEs including Framework Act on the SMEs(1966)
- c. Legislations for the SMEs include the following: Framework Act on the SMEs(1966), SME Cooperatives Act (1961), SME Promotion Act (2009), Act on Facilitation of Purchase of SME-Manufactured Products and Support for Development of Their Markets (2009), Act on the promotion of Technology Innovation of SME (2001), Special Act on Support for Human Resources of SME(2003), Act on the Promotion of Collaborative Cooperation between Large Enterprises and SME (2005), Support for SME Establishment Act (2007), Special Act on the Promotion of Business Conversion in SME(2006), Balanced Regional Development and Support for Local SME Act (1994), Act on Special Measures for Development of Small and Micro Enterprises (1997), Act on Support for Woman-Owned Businesses (1999), and Promotion of Physically Challenged Persons' Enterprise Activities Act (2005)

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## **2. Goals of the SMEs Policy**

- a. Deregulation for entrepreneurships and supporting for benchmarking successful businesses and reducing youth unemployment through job creation
- b. Enhancing the competitiveness of the SMEs, thereby contributing to the economic growth
- c. Improving a tax system and a financial system and addressing the difficulties faced by the SMEs
- d. Achieving “shared growth” by supporting and promoting small business owners and traditional markets
- e. Furthermore, to tackle the population decline in rural or undeveloped areas, the government should support and foster the local SMEs, thus resulting in job creation in the long term
- f. Additionally, through international cooperation between the SMEs in each jurisdiction such as information sharing, joint research, the promotion of mutual cooperation can be expected

## **3. Proposals on Framework Act on SMEs in terms of International Cooperation of the SMEs Legislation**

- a. The current framework Act on the SMEs is insufficient in providing the direction of the SMEs related laws and the overview of the legislations
- b. In modulating the SMEs legislations, there should be legislative considerations of the systemic problems which the Framework act includes

## **4. Implication of the SMEs Legislations of Korea and Proposals**

- a. In the new legislation process for the SMEs in our target countries, the vertical and horizontal review and the analysis of the new SMEs legislations should be conducted, considering the present legal system in each jurisdiction
- b. To accomplish the above mentioned goals, Bureau in charge of the SMEs should be investigated ahead and the systemization of the Framework Act and the SMEs related laws should be achieved

### **5. Proposing the Basic Direction to the Target Countries**

- a. The contents prescribed by the SMEs related laws should help to achieve the goals effectively
- b. The structure of the laws should be simple so that it is easy and clear to understand them
- c. The SMEs related laws should depict funding for the specific policy, tax revenue preferential policies, local bond issuance, and expert consulting in various ways
- d. Since the globalized market will provide a new business opportunity to the SMEs in each country, the SMEs policy should strengthen the competitiveness of SMEs in the global market



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ISBN 979-11-5545-061-1

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