Legal and Regulatory Issues on the Regulatory Sandbox Regime in Korea

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I. Regulatory Sandbox Regime in Korea: Focused on Recent Regal Reforms
1. Introduction

- Concept and Meaning
  - Testing Grounds for new business models that are not protected by current regulation, or supervised by regulatory institutions.
  - A Framework set up by a regulator that allows FinTech startups and other innovators to conduct live experiments in a controlled environment under a regulator's supervision.
  - A mechanism for developing regulation that keeps up with the fast pace of innovation.

- History
  - British FCA published a report as part of Project Innovate at the end of 2015.
  - The project was implemented in mid-2016.

- Expansion of Application to All Industries
  - The concept of Regulatory Sandbox can be widely applied to non-financial sectors as well as financial one.
  - Recently Korea made legislative tasks for introducing regulatory sandboxes into nation.

- Enactment and Revision of the Act
1. Introduction

Enactment and Revision of the Act

- "Special Act on Promotion and Promotion of Industrial Fusion"

- "Special Act on the Development of Regulatory Freedom Special Zones and Regional Specialization"

- "Special Act on Support of Financial Innovation"

- "Framework Act on Administrative Regulations'
2. Main Components of Regulatory Reform Based on Regulatory Sandbox

- Key elements of regulatory sandbox-based regulatory reform, etc
  - Temporary approvals
  - Regulatory exception for empirical evidence
  - Application of flexibility of regulations

- The Vacuum of Laws and Regulations and the Innovation of Regulations

- Introducing a comprehensive negative regulatory system (a set of three types of regulatory innovation)
  - Rapid verification of regulations
  - Temporary approvals
  - Regulatory exception for empirical evidence
3. Status of introducing a regulation sandbox system

- Status of international introduction of regulatory sandbox
  - Common characteristics of regulatory sandboxes of each country
    - New business models or technologies for review; reviews have specific objectives and ranges; limited impact on the product environment exists; subject to strict review by regulatory agencies before the product is released.

- Legislation on the introduction of regulatory sandboxes (4+1 Acts)
  - Recently five Acts related to regulatory innovation have been enacted or reformed in Korea
    - 1. "Basic Administrative Regulations Act",
    - 2 "Special Act on Support for Financial Innovation,“
    - 3 "Industrial Convergence Promotion Act",
    - 4 "Information Communication Promotion and Convergence Act",
    - 5 "Regulatory Specific Act on Regulatory Freedom Zones and Regional Specific Development Zones"
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## Comparison of Regulatory Sandbox Provisions: (4+1 Acts)

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<tr>
<th>구분요소</th>
<th>규제자유특구 및 지역특화발전특구법 (규제자유특구)</th>
<th>ICT융합법</th>
<th>산업융합촉진법</th>
<th>금융혁신지원특별법</th>
<th>행정규제기본법</th>
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<td>‘우선허용-사후규제’원칙</td>
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<td>규정 없음</td>
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<td>대상지역</td>
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<td>전국</td>
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### 규제혁신 3종 세트

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<tr>
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<th>적용</th>
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<td>회신기간 (30일)</td>
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<td>임시허가</td>
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<td>유효기간 (2+2년)</td>
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<td>실증특례</td>
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<tr>
<td>유효기간 (2년+α)</td>
<td>적용</td>
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- **규제자유특구는 2년 + 혁신특구 지정기간 범위 내 1회 연장**
- 금융혁신지원특별법의 경우 시범인가 및 규제특례 부여하고 지정대리인제도에 따른 업무위탁을 통하여 실증
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: (4+1 Acts)

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<td>위원회 위원장</td>
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<td>장관</td>
<td>금융위원회 위원장</td>
<td>미적용</td>
<td>미적용</td>
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<td>허가 절차</td>
<td>시·도지사 특구계획 수립·신청 ↓ 중기부장관 ↓ 관계기관장 협의 ↓ 혁신특구위원회 ↓ 중기부장관 특례 부여 (실증특례 또는 임시허가)</td>
<td>사업자 신청 ↓ 과기부장관 ↓ 관계기관장 협의 ↓ 신기술서비스 심의위원회 심의 ↓ 과기부장관 특례 부여 (실증특례 또는 임시허가)</td>
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## 4. Regulatory Innovation 4+1 Acts

<table>
<thead>
<tr>
<th>Name of Act</th>
<th>Regulatory Authority</th>
<th>Contents</th>
<th>Note</th>
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<tbody>
<tr>
<td>Special Act on Financial Innovation Support</td>
<td>Financial Services Commission</td>
<td>Special cases of financial regulation are applied when designating innovative financial services (FinTech)</td>
<td>Enacted in December 2018</td>
</tr>
<tr>
<td>Industrial Fusion Promotion Act</td>
<td>Ministry of Trade, Industry and Energy</td>
<td>Regulation quick check, special regulation for realisation, introduction of temporary licensing system (industrial convergence sector)</td>
<td>Reformed in October 2018</td>
</tr>
<tr>
<td>Information and Communication Promotion and Convergence Activation Act</td>
<td>Ministry of Science and Technology</td>
<td>Special regulations are introduced to enable testing of new ICT convergence technologies and services</td>
<td>Reformed in October 2018</td>
</tr>
<tr>
<td>Regulatory Freedom Special Zone and Regional Specialization Development Act</td>
<td>Ministry of Small and Medium Business</td>
<td>Support commercialization of new technologies, etc., without the need for local regulations</td>
<td>Reformed in October 2018</td>
</tr>
<tr>
<td>Framework Act on Administrative Regulations</td>
<td>Office for Government Policy Coordination</td>
<td>Stipulating new services and product priority and post-regulatory principles using new technology</td>
<td>The National Assembly’s Political Affairs Committee passed the bill in December 2018</td>
</tr>
</tbody>
</table>
II. Legal and Regulatory Issues on Regulatory Sandbox Regime of Korea
1. Issues related to the set of three types of regulatory innovation

- **Issues related to prompt identification of regulations**

  - If there is no response within the period when the head of a central government agency needs to check the regulations, it is deemed that the work concerned is appropriate and that permission is not required.
    - Is it necessary to proactively express if opposed?
  - Possessing an infringement of the rights of the administrative body as granted by the Government Organization Act, etc. You may also consider having a grace period or a repeat request procedure.
  - As the data supplement period increases, the actual audit period may be shortened.
    - The expiration date for each step is not specified, which may cause delays and conflicts of verification results.
1. Issues related to the set of three types of regulatory innovation

- Cancellation of a temporary authorization
  - The regulations related to cancellation need to be clarified, such as adding a quick notification procedure

- Application of the regulatory exception
  - Effect of designation of regulatory free special zone
  - The effect of designating innovative financial services
  - Need to consider the intent of the exclusive service period (2 years) - specific issues of individual laws

- Issues related to regulatory exception for empirical evidence
  - In case safety is proved through the deliberation of the Special Committee on Innovation, the Minister of Small and Medium-sized Ventures immediately recommends to the head of the relevant administrative agency to readjust the statutes that provide the basis for the relevant approval,
    - "Immediate" needs to be defined as a clear period

- Reform of Laws and Regulations
  - The laws related to regulation sandboxes stipulate the enactment and revision of relevant laws within a certain period of time.
Process of Three Types of Regulatory Innovation (Principle)

Rapid Verification of Regulations
→ Within 30 Days

Empirically Proved Safety

Regulated

Not Regulated

Regulatory exception for empirical evidence (2yr+α)

Mandatory enactment of statutes

Temporary Approvals (2yr+2yr)

Mandatory Legal Reform

Acquiring Authorization after enactment of statutes

Market Launch
Process of Three Types of Regulatory Innovation (Financial Services)

- **Rapid Verification of Regulations**: Within 30 Days
  - Regulated
    - Empirically Proved Safety
  - Not Regulated
    - Regulatory Exception (No Application of Regulations)

- **Regulatory Exception for empirical evidence (2yr+α)**
  - Mandatory enactment of statutes
  - Acquiring Authorization after enactment of statutes (Exclusive management rights for Maximum 2yrs)

- **Market Launch**
2. Problems with Operation of Regulatory Sandbox

- The applicant may select the subject department of the regulated sandbox, but it is not possible to file a duplicate application for the procedure.
- If a regulatory agency for a service or product is duplicated or unclear, consulting is required to enable the company to select the optimal regulatory sandbox procedure.
- Unclear whether guidelines for detailed operations, lack of criteria, criteria by regulatory agencies, etc.
3. Issues Related to Safety Assessment

- Insufficient safety-proven scientific verification methods such as permission to rely on companies to prove their safety
- Introduction of post-safety assessment system
- Care needs to be taken to ensure that safety assessment criteria do not act as excessive regulations
- Exclusion of hazard-rich industries
4. Issues related to compensations

- Issues related to the compensation system
- Key points of discussion regarding non-faulting compensation
- Obligations for liability insurance and compensation plan for non-insurance of liability insurance
- Punitive damage compensation system
5. Punishment and penalty issues

- Even though small and new businesses that are not legally qualified under the existing law are designated as targets for innovation projects, it is problematic that they are subject to a higher level of punishment than existing companies.

- Preparing the standard amount of penalty for each violation of the law and preparing the basis for weights and monitoring

- According to section 32 of the Financial Innovation Support Act, those who are not public servants as members of the Innovation Finance Review Board and employees of the Financial Supervisory Service (FSS) shall be regarded as civil servants when applying the penalties under the "crime" or other laws
6. Consumer Protection and Compensation Issues

- **Regulations for Domestic Law**
  - Article 87 paragraph 11 of the Regional Special District Act stipulates the burden of proof to the business operators for human or physical damage, and paragraph 12 of the same section forces them to sign up for or prepare a separate measure to ensure liability for damages pursuant to paragraph 11.
  - Article 10 paragraph 11 of the Industrial Fusion Promotion Act defines and removes the responsibility for the negligence of the temporary authorization holder in connection with compensation for human or physical damage caused by products and services.

- **Consumer Protection Overseas Cases**
  - UK
  - Australia
  - Singapore
  - Japan
7. Dispute Resolutions

- The licensee shall designate the person responsible for the dispute settlement and publish the contact information (such as the Internet) (§131)
- When a dispute settlement application is received from a user, the licensee is required to notify the outcome within 30 days (§135).
If the privacy regulations are eased on the condition of non-identifiable measures, the basic rights of the people - personal information self-determination and privacy - could be violated.

Conflicts on big data utilization and privacy should be resolved in order to activate big data.
If feasibility is proven, tax support and reduction of the levy are possible.

In order to reduce the actual tax and levy, it is necessary to revise the "Special Tax Restriction Act" and the law on the basis of each levy. This may raise a question of equity, but it is necessary to refer to similar legislation that already exists.

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10. Exclusive management rights

- Exclusive management rights under the "Special Act on Support for Financial Innovation"
III. Legal and Regulatory Issues on SASFI of Korea
Designation Procedure of Innovative Financial Services

1. Application for Designation by Business
2. Review of Innovativeness of the Services
3. Designation of Innovative Financial Service
4. Conducting Tests within a Limited Environment
5. Monitoring and Assessment during Testing
6. Helps Proven Services Stay on the Market

Helps Proven Services Stay on the Market
Main contents of SASFI

- General Rules
  - Objectives and Definitions, Relationships with other law and regulations

- Designation of Innovative Financial Services
  - Application, Review of Application, Hearing and review period, Designation of Innovative Financial Services, Announcement of Designations, Prohibition on fake advertisement

- Special Cases for Regulatory Exceptions
  - Business Scope of Innovative Financial Services, Special cases for Regulatory Exceptions

- Obligations of Innovative Financial Operators & Supervision
  - Obligations of Innovative Financial Operators, Consumer Protections and Risk Management, Notice of Risks and Unsafety, Compensations, Dispute Resolutions and Arbitrations, Business Delegation by Designated Agent, Monitoring and Supervising, Rapid Verification on Regulations

- Expiration and cancellation of mandatory designation period of innovation financial service operators
  - Termination and Extension of Designation Period, Special Cases for Regulatory Exceptions and Legal Reform, Exclusive Operation of Business, Cancelation of Designation, Mergers and etc., Self Withdrawal, Stay and Alteration, Support on Innovative Financial Services

- Punitive Measures
  - penalties and Dural Sanctions, Fines, Treatment as an Government Officers (Regarding Penalties), Exemptions, Enactment Degrees, Delegation of Authorizations and etc.
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Application of the regulatory exception(§§16-17)

- Businesses shall be authorized to operate innovative financial services within the specified scope without applications of related regulations within the specified period.

The Effect of Designation
The legislation is intended to require the designation of a person (designated agent) who can handle the affairs of a financial institution on consignment within the scope necessary for the pilot operation of an innovative financial service.

Currently, the designated agent system is operated in accordance with the Regulations on the Business Delegation of Financial Institutions (the Notice to the Financial Services Commission), which states that, in principle, the essential work of financial institutions is prohibited, but that a third party designated by the Financial Services Commission for the introduction of innovative financial services (the designated agent) can be entrusted within the scope of the required by the financial institutions within a two-year period.
IV. Conclusion: Implications and Proposals
Necessity and method of cooperation between central and local governments/investors/industries

Publishing Guidebook with Regulatory Sandbox

Establishing a regulatory improvement roadmap (in parallel with regulatory sandbox operation)

Building Infrastructure for Sandbox Activation

Post-Pilot Actions
Thank you!