Legal Basis Of The Budget In Korea

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In most countries, the budget and budget administration rest on a legal groundwork consisting of constitutional and statutory provisions. In Britain, there is the Exchequer and Audit Departments Act of 1866, as amended in 1921, which governs not only the functions and organizations of the Exchequer and Audit Department but also the financial mechanism of the British government(1). The United States has the Budget and Accounting Act which was enacted in June 1921 after "ten years of continuous effort to persuade the Congress"(2). There are also the Government Corporation Control Act of 1945 which tightened up budgetary control of public enterprise, and the Budget and Accounting Procedures Act of 1950 which strengthened, among other things, the authority of the Bureau of the Budget in budget classification and formalized the Bureau's role in the improvement of government accounting systems.

The budget system in Korea is governed by four important documents; the Constitution, which makes a few significant general provisions; the Budget and Accounting Law, which lays down in great detail budgetary procedures of ordinary government agencies; the Budget and Accounting Law for Government Invested Corporations, which is something similar to the Government Corporation Control Act of 1945 in the United States. We shall examine these in detail.

A. The Constitution

In the Constitution of 1948 the chief provisions governing national finance were found in Article 90 to 95, which read as follows:

Article 90: The items to be taxed and rates of all taxes shall be determined by law.

Article 91: The Executive shall, at the beginning of each regular session, submit to the National Assembly a budget including all the revenues and expenditures for a fiscal year.

In case any expenditure is necessary for a period of more than a year, the Government may ask the consent of the National Assembly.

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of Audit shall be determined by law.

By the constitutional amendments of 1960 which led to a change in the pattern of government from a "presidential system" to a "parliamentary system," Article 94 was amended to read as follows:

The National Assembly shall enact the annual budget prior to the beginning of the fiscal year.

In case the National Assembly fails to enact the budget by the date mentioned under the preceding paragraph, the Executive may, at the same rate as authorized for the previous fiscal year, disburse any of the following expenditures, within the limit of the revenue, until the National Assembly enacts the budget.

(1) Salaries for civil servants and basic expenditures for the day-to-day administration.

(2) Maintenance costs for the agencies and institutions established by law and expenditures authorized by law.

(3) Expenditures for continuous projects approved in the budget for the previous year.

In the case of the preceding paragraph when the general election of the members of the House of Representatives has taken place, the Executives shall submit a new budget to the National Assembly. The National Assembly shall pass the budget within two months from the date of first convocation of the House of Representatives. In such case the period mentioned under the second paragraph of Article 39 shall be ten days.

The new provision of Article 94 was modelled on Article 111 of the Federal Republic of Germany. Professor Tae Yun Hahn, ardent adm-

(3) Article III of the Basic Law of the Federal Republic of Germany reads as follows:

If, by the end of a fiscal year, the budget for the following year has not been established by law, the Federal Government shall, until such a law comes into force, be empowered to effect such payments as are necessary:

a) to maintain existing institutions established by law to carry out measures adopted by law;

b) to meet legal obligations of the Federation;
Minister concerned, the Chairman of the Economic Planning Board and the Finance Minister. It is also required that each enterprise, at the beginning of each quarter, transmit quarterly reports for the previous quarter showing performance, income and expense of the enterprise to the ministers mentioned above(16).

One of the motives in the enactment of this Law was to control these forms of public enterprise from the viewpoint of long-range planning, and to adjust policies of public enterprise to the course of national economy. This is very important in such a country as Korea, where public enterprise has a essential role to play in the developmental process.

There are some who deplore that the Budget and Accounting Law for Government Invested Corporation put an end to Korean “experience with autonomous public corporations”(17). As Dimock well points out, “the fundamental problems arising out of the operation of government corporations” is how to bring managerial independence and public accountability into a working accord, so that neither efficiency nor necessary controls will be neglected"(18). This Law is nothing more than a measure to introduce necessary controls into the sphere of public enterprise in Korea. We certainly would not consider this Law as an expression of “conservatism”(19).

It is well known that government control over public enterprise has recently been tightened up in many countries(20). The Government Corporation Control Act of 1945 in the United States and Part III of the Financial Administration Act of 1951 in Canada(21) are expressions of this trend. Herbert Morrison presents a motive behind this movement with the following remark:

We felt, however, that the pre-war ministerial powers over the public industrial undertakings were insufficient if the Boards were to be made properly accountable and if they were to conform to the Government’s economic and social policy(22).

(16) Articles 12 and 13
(19) In speaking of the Government Corporation Control Act, Burkhead concluded: “At the end of World War II. there were renewed efforts of limit government intervention in the private sector of the economy. The Government Corporation Control Act was an expression of this conservatism.” (Burkhead, op. cit., p.411).