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 Exechequer and Audit Departments Act of 1866, as amended in 1921, which governs not only the functions and organizations of the Exechequer 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 improtant 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 Enterprise; 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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(1) Sir Herbert Brittain, *The British Budgetary System*, London: George Allen and Unwin, 1959, pp. 15, 247

(2) John D. Millett, *Government and Public Administration*, New York: McGraw-Hill, 1959, p. 347

to a certain amount as a continuing expenditure fund, for a previously fixed number of years.

The National Assembly shall neither increase the sum of any item of expenditure, nor establish new items of expenditure without consent of the Government.

Article 92: The raising of national loans and the contracting of other liabilities to the charge of the National Treasury, except those that are provided in the budget, shall require the consent of the National Assembly.

Article 93: In order to supply deficiencies, which are unavoidable, in the budget, and to meet requirements unprovided for in the budget, contingency funds shall be provided with the consent of the National Assembly.

The Government shall obtain subsequent approval of the National Assembly for all payments from the contingency funds.

Article 94: The National Assembly shall enact the annual budget prior to the beginning of the fiscal year. In case the budget cannot, due to unavoidable circumstances, be enacted in time, the National Assembly shall adopt a provisional budget for a period not extending beyond the first month of the fiscal year, and the regular budget shall be enacted within the same period.

Article 95: Final Accounts of the expenditures and revenues of the State shall be audited annually by the Board of Audit and submitted by the Executive to the National Assembly, together with the statement of audit, during the fiscal year immediately following the period covered.

The organization and competency of the Board of Audit shall be determined by law.

By the consitutional 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[3]. Professor Tae Yun Hahn, ardent adm-

(3) Article lll 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 Gervernment 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).

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(16) Articles 12 and 13

(17) This point is made by Prof. Pritchett on the Government Corporation Control Act. (C. Herman Pritchett, "The Government Corporation Control Act of 1945," *American Political Science Review*, June, 1946, p. 509)

(18) Marshall E. Dimock, "Government Corporations: A Focus of Policy and Administration II," *American Political Science Review*, December 1949, p. 1145.

(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).

(20) See Edward G. Lewis, "Parliamentary Control of Nationalized Industry in France," *American Political Science Review*, September, 1957, p. 670. Also Elden L. Johnson, "The Accountability of the British Nationalized Industries," *American Political Science Review*, June, 1954, p. 367.

(21) Lloyd D. Musolf, *Public Ownership and Accountability: Canadian Experience*, Cambridge: Harvard University Press, 1959, p. 40

(22) Herbert Morrison, *Government and Parliament: A Survey From the Inside*, London: Oxford University Press, 1954, p. 251.