Immediate Implementation of Economic Regulations: Subsidiary Legislation vs Legislation by Press Release

Chen, Jianlin

Abstract

The advent of the regulatory state has co-opted law as the primary instrument to effect regulatory control over the intertwining complexities of modern socio-economic activities. Yet amidst the ever rapidly changing circumstances that the regulatory state has to confront, the typical time-consuming process in which laws are formulated and enacted presents a Achilles' heel vis-à-vis the function of law as economic regulations. Beyond exigency situations where urgent regulatory responses are required, the pertinent concern is the circumvention maneuvers that exploit the time lag between the initial announcement of the pending legal change and final enactment/amendment of the law.

The recent implementation of property cooling tax measures in Singapore provides an illustrative case study to examine the measures that the government may employ to avoid any time-lag in the effective implementation on new economic regulations.

The first mechanism is subsidiary legislation - rules and regulations promulgated by a senior official of the executive branch (e.g., a Minister) under the authority of a statue. Through the bypass of the public and cumbersome legislative process, the government can maintain secrecy during the formulation of the subsidiary legislations and eliminate any window of circumvention opportunities by making the subsidiary legislation of immediate effect upon promulgation.

The second mechanism, legislation by press release, is used when the new taxes require amendment to the parent legislation itself. The process involves an announcement (or press release) by the government notifying the public that an existing law will be amended and that the amendment, upon legislature approval, will be retrospectively made effective from the

announcement date. Notwithstanding the announcement's lack of any formal legal effect, the coining of "legislation" rather accurately reflects the practical effect of the announcement since private entities will more likely than not conduct their activities on the basis of the amended law immediately upon the announcement date.

This Article utilizes this episode of economic regulation to examine the legal and normative considerations of these two mechanisms. Legally, this Article argues that both mechanisms conforms to the current framework of existing law that typically permits delegated legislative powers and retrospective civil legislations.

Normatively, this Article argues that in the current political landscape of Singapore which is dominated by a single political party, both mechanisms are practically indistinguishable in terms of legal certainty and checks and balances, notwithstanding the theoretically greater uncertainty associated with legislation by press release and more limited legislature supervision for subsidiary legislation. However, the increased possibility of a more competitive political arena – and the consequential more divided parliament – necessitate greater legal constraints on the subsidiary legislation mechanism and greater political/public awareness of the legislation by press release mechanism.