

Summary of “GOVERNANCE INNOVATION: Redesigning Law and Architecture for Society 5.0”

1. Background

The structures of the current society have been dramatically changing as a result of the arrival of AI, big data, IoT and other advanced technologies integrating the real world (physical space) and the digital world (cyberspace). In particular, in the “with-coronavirus” era or post-coronavirus era, this trend is expected to further accelerate. This report aims to [i] present the need for redesigning governance models in the entire society and [ii] show directions for redesigning these models. This initiative is made for achieving “Society 5.0,” a policy for building a human-centered society which achieves both sustainable economic development and solutions to social challenges by taking advantage of a system in which such cyberspace and physical space are integrated in a sophisticated manner.

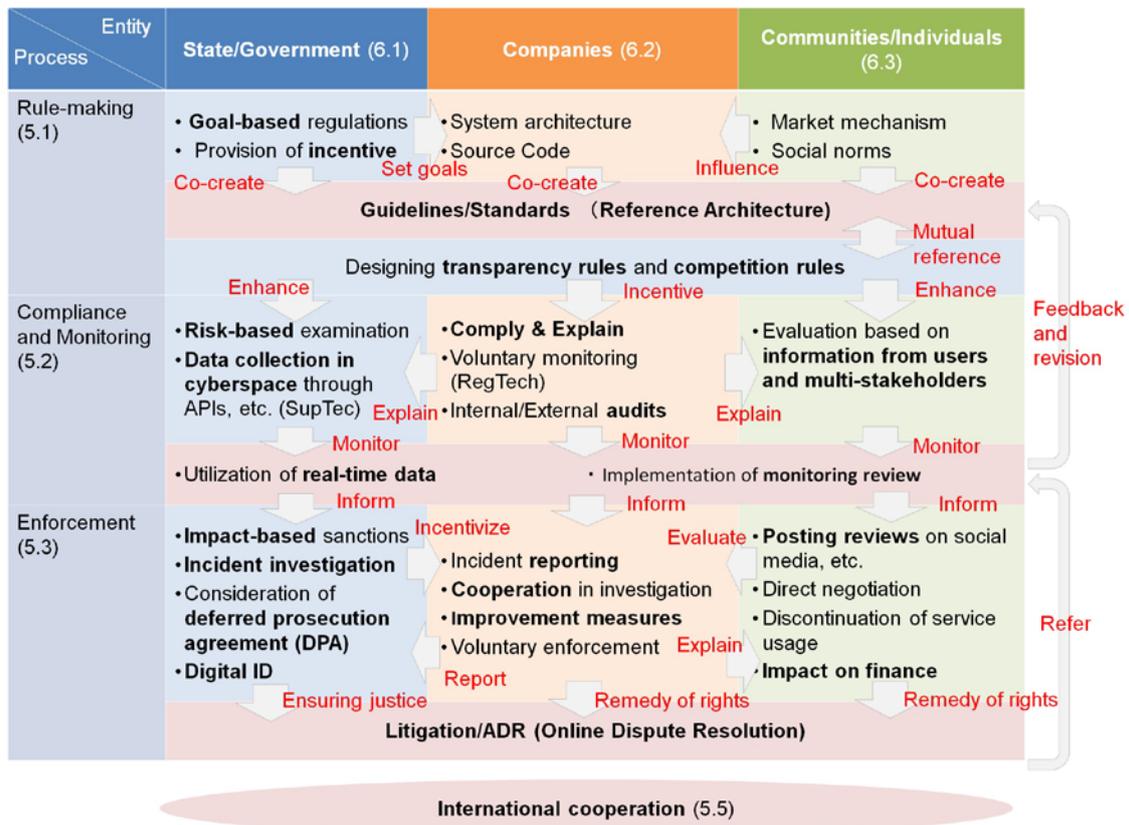
In such an era where our society is facing dramatic changes derived from digitalization, the conventional governance models placing laws and regulations at the core face difficulties in keeping up with the speed of innovation. Accordingly, such governance models have been causing problems where laws cannot control new risks which may be brought about by innovations on the one hand, while hindering development of innovations on the other hand. This problem awareness was supported by the G20 member countries at the G20 Osaka Summit meeting in June 2019. Additionally, the G20 Ministerial Meeting on Trade and Digital Economy declared under the title “Governance Innovation” that member countries will “strive for innovation-friendly policies and look to remove barriers to innovation accordingly.”

Aiming to show theoretical viewpoints on how to redesign our governance model, the Study Group on New Governance Models in Society 5.0, a body consisting of experts in a wide variety of fields, including law, economics, technologies, businesses and audit, published the report.

2. Summary of the report

<Overview of the new governance model>

* Numbers in parentheses indicate the corresponding sections of this report.



Major messages conveyed in the report are that Japan should break away from the conventional governance models in which the government plays a leading role, from designing to supervising to enforcing rules, and that instead companies and communities/individuals should also take the lead in designing, monitoring and enforcing rules. Specifically, the report presents new governance models as below.

<General perspective>

- ① In each process of governance, i.e., (i) rule-making, (ii) monitoring and (iii) enforcement, **ensure active involvement of the businesses that design and implement cyber-physical architectures as well as the communities and individuals that use them.**

< Rule-making >

- ② Shift from rule-based regulations that specify detailed duties of conduct to **goal-based regulations** that specify values to be achieved at the end, in order to overcome the problem of laws not being able to accommodate the speed and complexity of society. (5.1.1)
- ③ **Establish non-binding guidelines and standards that businesses can refer to when designing or coding architecture**, so that they can achieve the goals set by laws written in natural language through the use of a programming language in cyberspace. These guidelines and standards will be established by engaging a **wide range of stakeholders**. (5.1.2)
- ④ **Continuously evaluate the effects and impacts** of laws, regulations and guidelines/standards, and **arrange opportunities for frequent reviews**. In the review process, conduct an evidence-based impact assessment by referring to data collected during monitoring and claims of parties involved in the enforcement phase. (5.1.3)
- ⑤ As the information required for governance is concentrated in the private sector (information asymmetry), **design an incentive mechanism** to promote self-regulation by businesses **so that businesses will utilize the information they have in their governance**. (5.1.4)
- ⑥ **Oblige or incentivize information disclosure (transparency rules)** so that discipline by market and social norms will work effectively. In addition, **establish and enforce competition rules in a way appropriate for the digital era** to ensure competitive pressure from the demand side. (5.1.5)
- ⑦ **Analyze and design the architecture necessary for governance based on insights of experts**, to determine the extent of discipline by laws and regulations, the scope covered by self-imposed rules, and types of information to be disclosed and to whom. (5.1.6)

< Compliance and Monitoring >

- ⑧ **Encourage businesses to take innovative approaches to achieving goals provided by laws (compliance), and focus on accountability for their activities (comply and explain)**. Further, in order to maintain public trust, **utilize various forms of assurance depending on the risk**, such as self-check, peer review, internal audit, agreed procedures, third-party review and external audit. (5.2.1)
- ⑨ **Consider technologies and mechanisms** that enable each stakeholder, such as businesses, the government and individuals, **to access real-time data and conduct efficient and effective monitoring**. (5.2.2)
- ⑩ **Conduct “monitoring and reviews” by stakeholders on a regular basis**, in order to evaluate the results of monitoring among stakeholders which will lead to revision of rules and improvement of systems. (5.2.3)

<Enforcement>

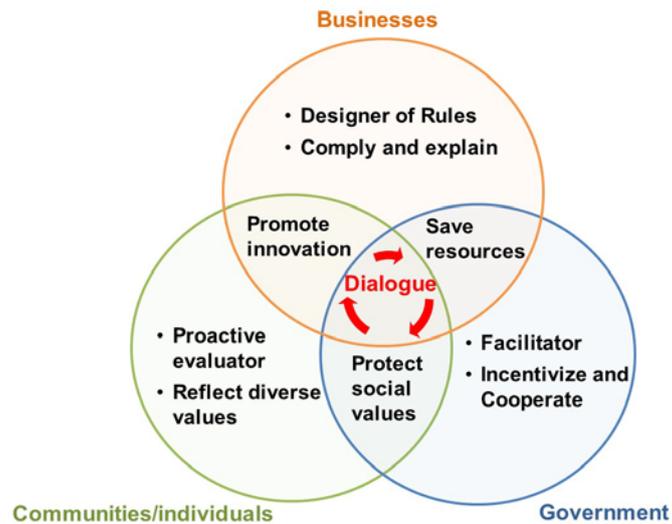
- ⑪ The government will **enforce laws in accordance with the social impacts of corporate conduct.** (5.3.1)
- ⑫ If an incident occurs as a result of a judgment made by an AI whose behavior is difficult to predict, **provide an incentive for businesses to actively cooperate in the investigation of the incident, instead of holding a specific individual liable.** (5.3.2)
- ⑬ **Utilize de facto enforcement by the private sector**, such as businesses, self-regulatory groups and external audit firms, **while ensuring the appropriateness of such enforcement.** (5.3.3)
- ⑭ **Proceed with online processing of litigation and ADRs (ODR: Online Dispute Resolution)** to quickly and effectively resolve disputes that arise between businesses, individuals and the government. (5.3.4)
- ⑮ To ensure enforcement against conduct in cyberspace, **establish a common ID infrastructure for individuals/bodies corporate.** (5.3.5)

<International Cooperation>

- ⑯ Since digital technologies and businesses easily transcend national boundaries, from the perspective of achieving an equal footing for businesses in Japan and overseas, promote the **establishment of rules for extraterritorial application, enforcement based on international cooperation, standardization of rules and ensuring of interoperability.** (5.4)

Under this governance model, the roles of the government, businesses, communities and individuals are expected to change in the following ways.

- The **government** will serve as a facilitator of multi-stakeholder rulemaking, rather than the sole provider of rules. For monitoring and enforcement, the government will design incentives for businesses, communities and individuals to proactively take part in those governance processes.
- **Businesses** will become active designers of rules through self-regulations and architecture, rather than passive followers of given regulations. They are expected to play a leading role in ensuring trust in new technologies or business models by explaining their rules and architecture externally.
- **Communities and individuals** can play active roles in dispatching their values and evaluations to society rather than being left with insufficient information as weak entities. These activities can be empowered by appropriate design and enforcement of disclosure rules and competition rules.



It is necessary to push forward with specific regulatory and institutional reforms in accordance with the framework of the new governance models presented in this report. Discussions have already started towards digital regulatory reform in the areas of mobility, fintech/finance and construction. Also, it would be possible to provide a cross-sectoral framework in areas such as privacy, cybersecurity, AI quality assessment, and ID infrastructure. In addition, since “Governance Innovation” is a global issue, it is important for stakeholders from Japanese industries, the public sector and academia to actively take part in global research and policymaking in international organizations, as well as to strengthen inter-governmental collaboration.