

The New Regulatory and Supervisory Architecture of Japan's Financial Markets

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I. MOTIVE FOR THE REFORM OF THE FINANCIAL REGULATORY AGENCIES¹

1. *Background*

Although signs of the collapse of the MOF (Ministry of Finance, *Ôkurashô*, since 2001 *Zaimushô*)² could be observed prior to this, one of the important incidents that increased the attack on the MOF's rule was the *Jûsen* Scandal in 1995. In this incident, the MOF decided to contribute 685 billion Yen to the solution for the bad debts incurred by those companies founded by financial institutions for the estate finance, but in reality used as a bypass to extend high-risk loans.

1 Literature: <<http://politics.j.u-tokyo.ac.jp/lab/edu/seminar/study/1st-semi/seifu/sakigake/06-2.htm>> (document on the political party *Shintô Sakigake*, filed in Prof. *Kabashima*, Univ. of Tokyo Law School's homepage); M. KONDÔ ET AL., *Shôken torihiki-hô nyûmon* (An Introduction to the Securities Law) (2nd ed. 1999) (relatively frequently updated, co-authored by young corporate law scholars but one of the authoritative books despite the title "introduction"); M. SAKATA, *Shôken Torihiki-tô Kanshi I'inkai* [On the Securities and Exchange Surveillance Commission] (1993), a general instructional book with documents by bureaucrats of the MOF.

2 As a rule, abbreviations for administrative organizations are attached with the full official English name and the full official Japanese name (in italics) when it appears for the first time in this article. Please note that other cases, such as the names of laws, are not necessarily accompanied with the official English names; some of these are translated by the author of this article and are thus unofficial.

The critics deemed the concentration of powers as a cause for the MOF's unaccountably arbitrary administration, including budget making, taxation, management of national property in general, and the regulation of financial institutions. Opposing political parties strongly required the last function – financial regulation – to be separated from the MOF and to be reorganized in the external bureau of the Cabinet Office (*Naikakufu*, known as *Sôrifu* until 2001). The plan for the reorganization of the financial regulatory agency was scheduled simultaneously with the general reform of the financial system (known as the Japanese “Big Bang”).

2. Chronological Development

The development from 1998 – 1992 if the establishment of the SESC (Securities and Exchange Surveillance Commission, *Shôken Torihiki-tô Kanshi I'inkai*) is included – until 2001 is very complex. This is partly explained by the necessity to simultaneously attend to hardships due to the bad loans problem caused by financial institutions.

Originally, most of the securities administration was under the control of the Ministry of Finance and the Securities Bureau (*Shôkenkyoku*)³ of the MOF. In 1992, the SESC was established inside the MOF.⁴ Though the SESC is functionally located as a branch of the MOF (1992-98) or the old and the new FSA⁵ (1998-2000, 2000 to now), the SESC has conducted its mission independently.

The direct cause for the foundation of the SESC was the common understanding that the securities scandals in 1992 were largely attributable to unofficial administrative guidance (*gyôsei shidô*) by the MOF. As a first step toward depriving the MOF of its omnipotent power, this relatively small office governing the supervision of market rules compliance was established.

In 1997, the Law for the Establishment of the old FSA⁶ was enacted by the initiative of the coalition government. On October 6, 1998, the old FSA was established as an external bureau of the Cabinet Office (*Sôrifu*). Since the mission of the old FSA⁷ did not cover legislative and other regulatory activities (*kikaku rippô*), such functions were left to the MOF.⁸ The SESC was transferred to the old FSA. However, this old FSA

3 Derived from the Financial Bureau (*Rizaiikyoku*) in 1964.

4 *Ôkurashô setchi-hô* [Law for the Establishment of the MOF], Law No. 144/1949 Chap. 2 sec. 7-22.

5 Because the English abbreviation for *Kin'yû Kantokuchô* (1998-2000) and *Kin'yûchô* (2000 to date) is the same, this article distinguishes the former as “the old FSA” and the latter as “the new FSA” or just “the FSA”.

6 *Kin'yû kantokuchô setchi-hô*, Law No. 101/1997.

7 Its mission was twofold: first, to regulate financial industries including banking, securities, and insurance for the protection of depositors, investors, and insurance contractors; and second, to guarantee fairness in securities transactions.

8 The new bureau named Financial System Planning Bureau (*Kin'yû Kikakukyoku*) was responsible for this.

itself was destined to have a short life, lasting only until the end of 2000.⁹ This was in line with the overall restructuring plan of the Japanese bureaucracy in 2001, which will be briefly discussed in the next chapter.

To make things more complicated, in December 1998, just two months after the establishment of the old FSA, the FRC (Financial Restructuring Commission, *Kin'yû Saisei I'inkai*) was established¹⁰ and the old FSA (and also the SESC) was relocated under the FRC. This was assumably because the establishment of the FRC was so urgent as a response to the bank crisis problem that the government could not wait for the overall restructuring plan of 2001.

The current FSA started on January 6, 2001, the date of the fresh start of the entire bureaucracy. On the same day, the FSA merged with the FRC, its upper agency.¹¹ Since then, the FSA has been located directly as an external bureau of the Cabinet Office.

Precisely speaking, the Japanese name for the FSA was changed from *Kin'yû Kantokuchô* (Financial Supervisory Agency) to *Kin'yûchô* (Financial Service Agency) in July 2000 (not January 2001), prior to the extinction of the FRC. Simultaneously with the name change, the FSA assumed the remaining regulatory function from the MOF, which is why the middle "S" of the FSA now stands for "service" rather than "supervisory." The old FSA had two bureaus (inspection and supervisory) plus the SESC, while the new FSA has three bureaus (inspection, supervisory, and planning and coordination) plus the SESC. The reason for such an acceleration (*maedaoshi*) of six months prior to the overall restructuring of 2001 is assumably because the agencies were badly in need of time to accommodate themselves to the change.

In the next chapter, after briefly examining the restructuring of 2001, the details for the new financial regulatory agencies will be introduced.

9 The leading party had already agreed in January 1998 that the old FSA should be transformed into the new (current) FSA by the accomplishment of the overall reform of the administrative agencies in 2001. T. SAKAI (ed.), *Ôkurashô Kin'yû Kikakukyoku/Kin'yu Kantokuchô: kin'yû seido hôan kisô kara kin'yû kensa kantoku kokuhatsu no subete* [The MOF Financial Planning Bureau/The Old FSA: Financial System, Legislation, Inspection, Supervision and Accusation] (1998) 67.

10 To cope with the repeated failings of financial institutions since 1997, the Law for the Emergency Treatment Toward the Reconstruction of the Financial Function (*Kinyû kinô no saisei no tame no kinkyû sochi ni kansuru hôritsu*, or in an abbreviated form '*Kinyû saisei-hô*', Law No. 132/1998), which was enacted in 1998, describes the procedure for the public management of institutions in crisis. The same law required the establishment of the FRC to execute the settlement of problematic institutions.

11 The FRC's planning and drafting work concerning the control of financial crises and the resolution system for the failed financial institutions was succeeded by the FSA's Planning and Coordination Bureau. The administration of the specific resolution of failed financial institutions was succeeded by the FSA's Supervisory Bureau.

II. FUNCTIONAL ANALYSIS OF THE NEW SYSTEM¹²

1. *An Overview*¹³

Only two ministries (Foreign Affairs and Justice) and one agency¹⁴ (Defense) managed to keep their names and bodies without substantial change (Ministry of Agriculture, Forestry and Fisheries kept its name but its structure was modified). On January 6, 2001, all others changed both their names and their substance.¹⁵ The number of minis-

12 Literature:

Generally on the Restructuring of the Ministries: CHUÔ SHÔCHÔ KAIAKAKU KENKYÛ-KAI, *Chuô shôchô saihen gaidobukku – shinkyû ryôbiki* [The Old and New Ministries in Detail with a Note for Relationships] (2000) (hereinafter: CHUÔ SHÔCHÔ); TÔYÔ KEIZAI SHINPÔ-SHA, *Chuô kanchô no mitorizu* [An Overview of the Central Government Office] (2001), private commentary of the new system; *Shin-Fuchôshô gaidobukku* [A Guide for New Offices, Ministries, and Agencies] (2000), official chart with brief notes; http://www.kantei.go.jp/foreign/central_government/index.html > brief explanation in English on the Prime Minister's homepage.

For the old FSA (1998-2000): KIN'YÛ KANTOKUCHÔ, *Kin'yû Kantokuchô no ichinen* [Year 1999 of the FSA] (Oct. 1999); KIN'YÛ KANTOKUCHÔ, *Kin'yû Kantokuchô no ichinen* [Year 2000 of the FSA] (June 2000); <http://www.fsa.go.jp/p_fsa/index.html> available by using a linkage function of the new FSA; T. SAKAI (ed.), *Ôkurashô Kin'yû Kikakukyoku/ Kin'yu Kantokuchô: kin'yû seido hôan kisô kara kin'yû kensa kantoku kokuhatsu no subete* [The MOF Financial Planning Bureau/The old FSA: Financial system, legislation, inspection, supervision and accusation] (1998), edited by a former official of the MOF and used for the education of bankers.

For the new FSA (2001-): <<http://www.fsa.go.jp>>.

For the FRC: <<http://www.fsa.go.jp/frc/omdex.html>> available by using a linkage function of the new FSA.

For the SESC: M. SAKATA, *Shôken Torihiki-tô Kanshi I'inkai* [on the SESC] (1993), a semi-official guidebook for the new SESC; SHÔKEN TORIHIKI-TÔ KENKYÛ-KAI, *Shôken Torishiki-tô Kanshi I'inkai no katsudô jyôkyô* [The Activities of the Year of the SESC] 1993-2000 (annually); <<http://www.fsa.go.jp/frc/omdex.html>> available by using a linkage function of the new FSA.

For the MOF (after 2001): T. KAWAKITA, *Zaimushô de nani ga kawaru ka* [What's New with the New MOF] (2000); <<http://www.mof.go.jp>>.

For the METI (MITI until 2001): <<http://www.meti.go.jp>>.

13 The *Chuô shôchô-tô kaikaku kihon-hô* [The Fundamental Act Concerning the Reform of Central Ministries and Agencies and Others], Law No. 103/1998, describes the central idea and other fundamental matters behind the enhancement of the function of the Cabinet, the restructuring of national administrative agencies, and decreasing the size and seeking the efficiency of the administrative system, business, and affairs.

14 In this context, agencies are those that have a minister of state (*kokumu daijin*) as the top officer in their hierarchy. Most agencies have either a commissioner or a specially delegated minister (*tokumei tantô daijin*) at the top.

15 See generally CHUÔ SHÔCHÔ, *supra* note 12, 388-394. The statutory bases (seventeen laws pertaining to the reform of the central ministries) were enacted on July 8, 1999.

tries and agencies (those which have an equivalent organizational rank as the ministry) decreased from twenty-one to twelve.

Japan's civil service is enduring its most thorough reform since the Americans occupied the country, including vanishing ministries, merging with each other, or at the very least getting new names. The result, say officials, will be smaller government, stronger political leadership and a bureaucracy ready to serve, not rule. In practice, however, not all of these changes are likely to work exactly according to plan. Japan's rigid hiring practices have made the recruitment of staff from outside the civil service...difficult. So almost all the important posts have been filled by the usual career bureaucrats...¹⁶

Ministries and agencies related to financial regulation were no exception to the first half of the paragraph quoted above: the MOF was also chopped up and its regulatory functions were scattered around elsewhere within the FSA (including the SESC) and the new MOF.

However, the second half does not necessarily apply; as was discussed in the previous chapter, the MOF had its own reasons for the change. Accordingly, the dismemberment of the MOF was, as is seen below, a substantial one. The newly organized agency, the FSA, strongly necessitates professional staffs (namely, staff members who are knowledgeable of advanced financial transactions) both in rule making and supervision. The combination of the increasing complexity and volume of financial transactions and the decreasing manpower and authority of the regulatory office may render a serious disorder in the national economy due to under-regulation.

16 Japan's New Bureaucracy, Economist Japan, Jan. 6, 2001.

2. *The New FSA (Kin'yûchô¹⁷, including the SESC)*

a) *In General¹⁸*

The FSA is directed by the minister for financial services (*Kin'yu Tantô Daijin*), the senior vice minister (*Fuku daijin*), and a commissioner (*Chôkan*), and it has three bureaus. The Planning & Coordination (P & C) Bureau is in charge of the planning and drafting of the financial system: the affairs related to the financial accounting standards, public accountants, deposit insurance, and domestic financial affairs with the Bank of Japan. The Supervisory Bureau and the Inspection Bureau collaborate in the supervision of private financial institutions. The latter deals with specific cases, while the former focuses on inspection rule making and the evaluation of inspection procedures and results.

As of January 2001, the FSA had a total of 766 staff members, of which 203 worked for P & C, 319 for Inspection, 131 for Supervision, and 112 for the SESC. It is fair to judge this number insufficient, given that the FSA should regulate securities,¹⁹ banking²⁰ and insurance.²¹

17 The constitution of this agency is *Kinyûchô setchi-hô* [Law for the Establishment of the Financial Service Agency], Law No. 130/1998 (last modified in May 31, 2000), which is accompanied by the related ministerial order (*Kin'yûchô soshiki-rei* Ministerial Order [*Seirei*] No. 392/1998) and the regulation (*Kin'yûchô soshiki kisoku*, Cabinet Order [*Sôrifurei*] No. 81/1998).

18 An organization chart is available at <http://www.fsa.go.jp/info/infoe.html>. Many laws and regulations necessitated the modification of terms, such as from *Ôkurashô-rei* [Ministerial Ordinance by *Ôkurashô*] to *Sôrifu- or Naikakufu-rei* [Cabinet Office order]. As the FSA is organizationally under the Cabinet Office, the authority to issue a ministerial order is derived from the Cabinet Office. This was done on an article-by-article basis in the FSA section of the Procedural Law for Laws Related to the Reform of Central Ministries, Agencies and Others [*Chuô shôchô-tô kaikaku kankei-hô shikô-hô*], Law No. 160/1999.

19 The U.S. SEC (the Washington office and local offices) has around 3,000 staff members.

20 The U.S. federal (FRB, OCC, FDIC, OTS) and state agencies have nearly 10,000 staff members just for inspection. The U.S. CFTC, which governs derivative products, has over 500 staff members.

21 For those statistics, see T. SAKAI (ed.), *supra* note 9.

b) *Planning & Coordination Bureau***Chart 1: Planning and Coordination Bureau (*Sômu Kikakukyoku*)**

Name of the Division	Mission of the Bureau: Overall coordination of the agency; planning and drafting for the financial system
1. General Coordination (<i>Sômu-ka</i>)*	General adjustment; general management; personnel management; services; affairs concerning the Diet; information system maintenance, etc.
2. Communication and Policy (<i>Seisaku-ka</i> **	Basic and comprehensive policy making; adjustment of taxation system; performance evaluation; publication; disclosure; correspondence with the Local Finance Bureaus (<i>Zaimukyoku</i>)
3. International Affairs (<i>Kokusai-ka</i>)	Sponsoring international conferences; participating in workshops by international institutions
4. Planning and Legal (<i>Kikaku-ka</i> ***	Planning and drafting of the financial system; sponsoring the drafting for basic and/or common matters; judging internally the constitutionality of law; dealing with administrative litigation
5. Financial Market (<i>Shijô-ka</i>)	Planning and drafting of financial markets, especially the securities market
Director for Corporate Accounting and Disclosure (<i>Kigyô Kaiji Sanji-kan</i>)	Establishing financial accounting standards and auditing standards; planning and drafting of the disclosure on the securities transactions and the rules for public accountants
6. Credit System (<i>Shin'yô-ka</i> ****	Planning and drafting for banking, insurance, and others

Chart 1 based on <<http://www.fsa.go.jp/info/info/sosiki13.html>> and <<http://www.fsa.go.jp/info/info/eibunmei.html>>

* Office of Management and Budget (*Kanri-shitsu*) and Financial Intelligence Office (*Tokutei Kin'yû Jôhô-shitsu*, to combat money laundering) are attached.

** Training and Professional Development Office (*Kaihatsu Kenkyû-shitsu*, a special purpose school for the training of financial regulatory administration) is attached.

*** Research Office (*Chôsa-shitsu*) is attached.

**** Credit System Stabilization Office (*Shinyô Kikô-shitsu*, planning and drafting the deposit insurance system) is attached.

This is the last bureau that emerged from the MOF's Financial Planning Bureau (*Kin'yû Kikakukyoku*) in 2000. The bureau, directed by the director-general of the Planning and Coordination Bureau (*Sômu Kikakukyoku-chô*), the deputy director-general of the Planning and Coordination Bureau (*Shingi-kan*), and the deputy commissioner for International Affairs (*Sanji-kan*), consists of six divisions working primarily on rule making.

c) *The Inspection Bureau (Kensakyoku) and the Supervisory Bureau (Kantokukyoku)*(1) *The Inspection Bureau***Chart 2: Inspection Bureau (Kensakyoku)**

Name of the Division	Mission of the Bureau: Inspection of private financial institutions and others
1. Inspection Coordination (<i>Sômu-ka</i>)*	General supervision of this bureau; preparing the method and the schedule for inspection; conducting the inspection; establishing standards for the financial inspection
2. Evaluation (<i>Shinsa-ka</i>)	Evaluation of inspection reports; notice of the result of the inspection
Inspection Administrator (<i>Kensa Kanri-kan</i>)	Conducting a critical financial inspection

Chart 2 based on <<http://www.fsa.go.jp/info/info/sosiki13.html>> and

<<http://www.fsa.go.jp/info/info/eibunmei.html>>

* Market Risk Inspection Office (*Shijô Risuku Kensa-shitsu*: an office with an emphasis on the financial inspection of the market risk) is attached.

The Inspection Bureau and the Supervisory Bureau, together with the SESC, are basically descended from the old FSA. The Inspection Bureau is directed by the director-general of the Inspection Bureau (*Kensakyoku-chô*).

The activities of these bureaus under the old and the new FSA are really impressive because of the enormous problematic debts (classified as “risk management loans”). The total amount from all banks is reported to be around 30-*chô* Yen, equivalent to 300 billion Euro (when 1 Euro represents 100 Yen) incurred by financial institutions during the bubble economy. Other industries, such as securities and insurance and small financial institutions such as credit unions (*shinyô kumiai*) or *shinkin* banks (*shinyô kinko*), are no less problematic for the same reason.

The FSA, with the introduction of a “pay-off” rule (the limitation of the covered amount by the depository insurance for individual depositors) in view, is struggling for the bank’s final writing off of bad debts from the balance sheet. However, the banking industry itself is not exactly eager about this operation for various reasons. Unless and until the banking industry establishes a healthy and competitive financial structure, these bureaus will be continuously kept under the extraordinary pressure they are presently experiencing.

(2) *Supervisory Bureau***Chart 3: Supervisory Bureau (*Kantokukyoku*)**

Name of the Division	Mission of the Bureau: Supervision of private financial organizations and others
1. Supervisory Coordination (<i>Sômu-ka</i>)*	General adjustment work for this bureau; management of the policy making of supervisory affairs
2. Banks Division I (<i>Ginkô Dai'ichi-ka</i>)	Supervision of city banks (<i>togin</i>), long-term banks (<i>chôgin</i>), trust banks (<i>shintaku ginkô</i>), and foreign banks
3. Banks Division II (<i>Ginkô Dai'ni-ka</i> **)	Supervision of local banks (<i>chigin</i>) and secondary local banks
4. Insurance Business (<i>Hoken-ka</i> ***)	Supervision of insurance companies
5. Securities Business (<i>Shôken-ka</i>)	Supervision of securities firms and investment trusts

Chart 3 based on <<http://www.fsa.go.jp/info/info/sosiki13.html>> and <<http://www.fsa.go.jp/info/info/eibunmei.html>>

* Cooperative Financial Institutions Office (*Kyôdô Soshiki Kin'yû-shitsu*) and Financial Crisis Relation Office (*Kin'yû Kiki Taiô-shitsu*) are attached.

** Non-Bank Finance Companies Office (*Kin'yû Kaisha-shitsu*) is attached.

*** Examination Office (*Hoken Shinsa-shitsu*) is attached.

The Supervisory Bureau is directed by the director-general of the Supervisory Bureau (*Kantokukyoku-chô*) and the deputy director-general of the Supervisory Bureau (*Sanjikan*).

d) *Securities and Exchange Surveillance Commission*
(*Shôken Torihiki-tô Kanshi I'inkai*)

Chart 4: Securities and Exchange Surveillance Commission
(*Shôken Torihiki-tô Kanshi I'inkai*)

Name of the Division	Mission of the Commission: Inspection and supervision of securities transactions; investigation of conduct against rules and regulations (<i>hansoku jiken</i>)
1. Coordination and Inspection (<i>Sômu Kensa</i>)	Inspection and supervision of securities transactions
2. Investigation (<i>Tokubetsu Chôsa</i>)	Investigation of conduct against rules and regulations

Chart 4 based on <<http://www.fsa.go.jp/info/info/sosiki13.html>> and <<http://www.fsa.go.jp/info/info/eibunmei.html>>

* Securities and Exchange Inspection Office (*Shôken Torihiki Kensakan-shitsu*)

The SESC was appended to the FSA in 2000 on the occasion of the transfer of the remaining financial regulatory power of the MOF to the FSA. The SESC is directed by the chairperson (*I'inchô*), commissioners (*I'in*), the secretary-general of the Executive Bureau (*Jimukyoku-chô*), and the deputy secretary-general of the Executive Bureau (*Jimukyoku Jichô*).

Although the SESC is commonly referred to as a Japanese version of the U.S. Securities and Exchange Commission (SEC), its size and power are modest. It is fair to take the SESC as an equivalent of the SEC's Division of Enforcement and a part of the Division of Market Regulation. Other divisions' equivalents, especially those of Corporation Finance and Investment Management, remained in the MOF (though the responsible department was changed from the Securities Bureau (*Shôkenkyoku*) into the Department of Financial Planning (*Kin'yu Kikakukyoku*) and in 2001 transferred to the FSA (*Sômu Kikakukyoku*). The specific activities of the SESC (especially investigation and accusations of illegal acts, inspection results of the investment firms and others, and recommendations) are published in its annual report.²²

The SESC and the three divisions above comprise the regular body of the current FSA. The councils or other ministries related below are not part of the FSA, but contribute to or collaborate with the FSA.

e) *Advisory Councils (Shingi-kai)*²³

In contrast to the above divisions or the commission under the FSA, the advisory councils serve the administration by submitting opinions at the request of the administration. The members of these councils consist of representatives of related industries and groups, media, academics, and so on. Although their opinion does not have a compulsory power, it is mandatory for the administration to consult the council when the related law requires it (which commonly happens on the occasion of important policy or law making). The discussions and related information at the councils are partially disclosed on the Internet homepages of the related ministry or agency.²⁴ This is a useful source for those interested in legislative trends.

As of May 24, 2001, the councils attached to the FSA were as follows²⁵: Council for General Finance (*Kin'yû Shingi-kai*, a comprehensive body involving many subcommittees that work on specific issues); Council for Financial Accounting Standards (*Kigyô Kaikei Shingi-kai*); Council for Auto Insurance (*Jidôsha Songai Baishô Seki'nin Hoken*

22 SHÔKEN TORIHIKI-TÔ KENKYÛ-KAI, *Shôken Torishiki-tô Kanshi I'inkai no katsudô jyôkyô* [The Activities of the Year of the SESC].

23 Statutory authority is derived from *Kokka gyôsei soshiki-hô* [The Law on National Administrative Organizations], Law No. 120/1948, Art. 8.

24 For the councils of the FSA, see <<http://www.fsa.go.jp/singi/singi.html>> (Japanese only on May 24, 2001).

25 As listed on the FSA's homepage; please note that English names have been rendered by the author of this article and are unofficial.

Shingi-kai); and Council for the Status of Public Accountants (*Kōnin Kaikeishi Shinsaikai*). All of these are successors of the MOF or the old FSA. In addition to these councils, less formal workshops (commonly named *kenkyū-kai*) are convened based on necessity.

3. *The MOF since 2001 (Zaimushō²⁶)*

A direct question presents itself from the topic of this article: Is the new MOF concerned with financial regulations?²⁷ As a rule, the answer would be “no”, but there are some exceptions to this.

First, local branch offices (*Zaimukyoku²⁸*) can inspect and supervise financial institutions of their areas as delegates of the FSA. Also, they accept financial statements and other disclosure documents from the companies of their area. These functions are delegated by the FSA according to law²⁹ and related ministerial ordinances.³⁰ This is indeed a large human resource: although the number of regular staff members with the FSA was 766 as of the end of 2000, the number of staff members of local branch offices and under the authority of the FSA was more than 1,300.

Second, the Minister’s Secretariat (*Daijin Kanbō*) holds the power of planning and drafting matters concerning fiscal crisis management and supervision of the Deposit Insurance Corporation. This power is limited to the area of settlement of fallen financial institutions and of the stabilization of the financial system.³¹

Third, the Government Financial Institutions Division (*Seisaku Kinyū-ka*) has been located inside the MOF. Currently it is one of the divisions under the Minister’s Secre-

26 The former name, *Ōkurashō*, was replaced with the new name, *Zaimushō*, both of which literally mean “the Ministry for the Finance,” though the latter sounds closer to “Ministry of Treasury.” The constitution of this ministry is *Zaimushō setchi-hō* [Law for the Establishment of the MOF] Law No. 95/1999.

27 The new MOF includes budget, tax, foreign exchange, and national property-related affairs, but financial regulatory matters were as a rule transferred to the FSA. For the general policy of the new MOF, see <<http://www.mof.go.jp/english/others/sta001.htm>> (6 January 2001. A statement of what was then the Ministry of Finance).

28 There are eleven branches for each geographical sector, such as *Okinawa* or *Kantō* (which is the most important because it includes Tokyo), that work as representatives of the MOF. Their mission is to execute policies at the local level. See <<http://www.mof.go.jp/zaimu/zaimu.htm>>.

29 E.g., *Shōken torihiki-hō* [Securities Law], Law No. 25/1948, Art. 194-6, para. 4.

30 The use of local branch offices is for the better and more efficient use of the current office. In order to avoid confusion in the ordering system, the FSA Commissioner directly commands the local offices within the scope of the delegation. However, the MOF shall inevitably be informed of the internal information of the FSA. T. SAKAI (ed.), *supra* note 9, at 67, 95, 159.

31 The list of the rules and regulations by the MOF in this regard is available at <<http://www.mof.go.jp/jouhou/kinki/kinki.htm>>. The statutory authority is Art. 4 Nr. 55 of the *Zaimushō setchi-hō* (see *supra* note 26).

tariat. Government financial institutions³² are treated differently from private institutions because they are highly related to the budgetary steps and thus must keep in touch with the Budget Bureau of the MOF.

4. *The METI*³³ (*Ministry of Economy, Trade and Industry, Keizai Sangyôshô*)

It may be a deviation to mention this ministry in the context of financial regulatory agencies, but the METI is noteworthy for its legislative performance related to financial activities. The METI (MITI until 2001) appears to be in good shape because its motto (“Promote and encourage the economy”³⁴) is timely. As can be seen in its Eleven Commandments on its English homepage,³⁵ this ministry has a good reason to make economy-related laws, rules, and regulations, and indeed it does.³⁶

5. *The MOJ* (*Ministry of Justice, Hô mushô*³⁷)

It is possible that the MOJ, which has legislative jurisdiction over the Commercial Code and the Civil Code, would participate in corporate finance-related legislation.³⁸

32 These can be divided into several categories: special purpose banks, such as the Central Bank for Commercial and Industrial Cooperatives (*Shôkô Kumiai Chuô Kinko*); banks for small and medium-sized companies, such as the Small Business Finance Corporation (*chûshô kigyô kinyû kôko*); and so on.

33 Until 2001 MITI (Ministry of International Trade and Industry, *Tsûshô sangyô-shô*). The constitution of this ministry is *Keizai sangyôshô setchi-hô* [Law for the Establishment of the METI], Law No. 99/1999.

34 The MITI’s policy had long been contrary to the current trend. After World War II, the MITI supplied the limited resources primarily to fundamental industries such as the steel industry, blocked the entry of foreign industries, and expanded its power by administrative guidance and licensing authority. None of these strategies is adequate today, but their underlying goal – the promotion of socio-economy – is still valid.

35 <<http://www.meti.go.jp/english/other/METIintroduction/c10130dj.html>>.

The Japanese homepage is not this straightforward, though.

36 Passed bills, bill texts, and tracking bills by the METI are available at

<<http://www.meti.go.jp/intro/law/index.html>> (Japanese).

For the FSA, see <<http://www.fsa.go.jp/houan/houan.html>>. For the MOF, see

<<http://www.mof.go.jp/houan/151/houan.htm>> (for the 151st session). The bills submitted to recent sessions are available on the homepage of the House of Representatives, available at <http://www.shugiin.go.jp/itdb_main.nsf/html/index_gian.htm>. Generally, administrative information on the Internet is available at <<http://www.e-gov.go.jp>> offered by the Ministries of Public Management, Home Affairs, Posts and Telecommunications (*Sô mushô*).

37 The constitution of this ministry is *Hô mushô setchi-hô* [Law for the Establishment of the MOJ] Law No. 93/1999.

38 For the MOJ’s recent legislative activities in the area of commercial law see H. AOKI, Revisions of Corporate Law: ZJapanR No. 11 (2001) 97.

III. INDUSTRIES UNDER THE TRANSITION³⁹

1. *In General*

The reform of the financial administration was to be implemented in tandem with the reform of the financial structure itself (commonly called the “Financial Big Bang in Japan”), which started in 1996. (Relatively detailed official explanations for backgrounds, targets, the deadline, and past achievements are available on the Internet in English.⁴⁰) Therefore, it makes sense to review the changes in administration from the view of renovated industries: banking, securities, and insurance. The entry barriers in between were gradually lifted, as were the internal impediments, with this basic common principle in operation: the more spontaneity of the market, the less administrative interference. However, the increased competition through deregulation and the use of electronic communication tools, and the consequential fall of some institutions, might necessitate responsive measures, so the Securities Deposit Compensation Fund was enhanced and the separation of asset management was more strictly required than before.

2. *Banking*

The banking industry had been under the supervision of the Banking Bureau of the MOF. As was explained elsewhere in this article, such authority was transferred to the old FSA and the FRC in 1998, and then to the new FSA and the Financial Crisis Solution Committee (*Kin'yû Kiki Taiô Kaigi*) of the Cabinet Office.

Banks have now been authorized to directly sell securities investment trusts (*tôshi shintaku*) since 1998, and – after taking measures against abuses – they have also been allowed to sell insurance since 2001. The remaining restrictions on business scope for securities, trust, and insurance subsidiaries were removed, and restrictions over ordinary banks concerning long-term finance were abolished. Meanwhile, entry into the banking business is now open to non-financial companies with a banking subsidiary by way of a holding company, a step which was legitimated by the amendment of the Antitrust Law⁴¹ in 1997.

39 Literature: TÔYÔ KEIZAI SHINPÔ-SHA (ed.), *Chuô kanchô no mitorizu* [An Overview of the Central Government Office] (2001) 160-165, 180-181, private commentary on the new system; SÔMUCHÔ GYÔSEI KANSATSUKYOKU (ed.), *Kinyû gyôsei wo kangaeru* [Thinking on the Financial Administrative Regulation] (1998), a report by the Cabinet Office as a reference for the reform of the financial regulatory regime.

40 Particularly Chapter III, The Outline of the Plan, Section (2) Principal Measures: Specific Items and Their Contents, is very informative. See <http://www.fsa.go.jp/p_mof/english/big-bang/ebb32.htm>.

41 *Shiteki dokusen no kinshi oyobi kôsei torihiki no kakuho ni kansuru hôritsu*, Law No. 54/1947.

3. *Securities*

The above situation is largely in common with the securities industry. Precisely speaking, since 2000 the securities industry has been under the supervision of the SESC for market transactions, and under the FSA for licensing, registration, planning and drafting⁴² and supervision.

As was true with its model in the U.K., measures taken for reform in this industry were impressive. First, brokerage commissions for stock trading were liberalized (previously it had been charged according to the official scale). Second, in 1998 entry to the securities business was permitted by way of registration in lieu of licensing. This drastically increased the entry of competitive entities. Third, financial vehicles, measures, or tools such as securities derivatives or asset management accounts were deregulated.

To develop a better market, off-exchange trading for listed securities was admitted, and the liquidity of the OTC stocks was heightened by the amelioration of the market system. The disclosure methods were also modified. For instance, consolidated statements are increasingly being required, and the disclosure methods were ameliorated, particularly through the requirement of market-based information.

4. *Insurance*

The insurance industry, which was also once under the MOF, is now under the jurisdiction of the FSA. Since April 1996, the insurance industry (life and non-life sectors were strictly divided) has been permitted to engage in both sectors, provided that the entry in the other sector is performed by the subsidiary. Later the agenda for the deregulation was very clearly and specifically outlined at the insurance conference between the Japanese and the U.S. governments.⁴³

As is true with other financial industries, insurance necessitates the rescue system for the insurers of failed companies. The organizations for insurers' protection (*Hoken keiyakusha hogo kikô*) were established in December 1998, for life and non-life companies respectively.

42 With an exception concerning the solution for a financial crisis governed by the MOF and the Minister's Secretariat *Daijin Kanbô Shinyô Kikô-ka* [Financial System Stabilization Division].

43 See *Nichibei hoken kyôgi, gôji no pointo* [The Essence of the U.S.-Japan Insurance Consultation]: Nikkei Times (evening) p. 2 (December 16, 1996). Among other items, this substantially lifted the prohibition of the sales of life insurance-related products by casualty insurance companies or vice versa, and liberalized the insurance premium rate. The U.S. industry is interested in the so-called third-sector, which covers insurance policies that include accident, cancer, and hospitalization, with which U.S. firms are competitive. See Japan U.S. Reach Basic Agreement on Insurance Deregulation, 1996 Deutsche Presse-Agentur Dec. 14, 1996.

ZUSAMMENFASSUNG

Die regulatorische Architektur des japanischen Finanzmarktes ist in den letzten Jahren konsequent und umfassend neu strukturiert worden. Der Beitrag gibt zunächst einen kurzen Überblick über Anlaß und Ziele sowie den chronologischen Ablauf der Reform. Es schließt sich eine funktionale Analyse des neuen Systems mit seinen wichtigsten Institutionen an. Ausführlich wird die neue Regulierungs- und Aufsichtsbehörde (Kinyûchô) mit ihrem Aufbau, Aufgaben, Rechtsgrundlagen und angegliederten Institutionen vorgestellt. Die Verfasserin geht sodann kurz auf das „neue“ Finanzministerium, das Wirtschafts- und das Justizministerium ein. Abschließend wirft sie einen knappen Blick auf die einzelnen Sparten der Finanzindustrie und deren Zuordnung zu den Aufsichtsinstitutionen.

(die Red.)