The International Capital Markets Review

Fifth Edition

Editor
Jeffrey Golden

Law Business Research

The International Capital Markets Review

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Fifth Edition

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EDITOR'S PREFACE TO THE FIFTH EDITION

A review of the Editor's Prefaces from prior editions (which the publishers have kindly included in this volume) of *The International Capital Markets Review* will reveal a common thread: what I referred to last time around as 'a somewhat nervous look-back over the shoulder' both at the global financial crisis (GFC) and the impact that it has had on the professional opportunities and workload of international capital markets lawyers.

That should hardly be surprising. Seven years on from the collapse of Lehman Brothers in September 2008 and nearly four years since the first edition of this review appeared, a great deal of ink has been spilt, so to speak, in recording the lessons of the GFC, much of it reflecting an attempt to focus on what brought the crisis about: risk-taking by bankers, blind spots and lack of understanding on the part of regulators, rating agencies asleep at the wheel and wrong economic incentives from policymakers and management.

Lots of answers with hindsight. (But as Queen Elizabeth II profoundly asked, after having been briefed by a group of academics about the causes of the GFC when opening a building at the London School of Economics in 2008, if it was all so obvious how come everyone missed it?)

Again, none of that should be surprising. But what is certainly interesting, if not surprising, is that with all the finger-pointing – bankers, regulators, rating agencies and policymakers – law firms and lawyers in them have emerged relatively unscathed. There has been no shortage of lawsuits, enforcement actions, penalty fines, and most recently criminal prosecutions for financial market misconduct. However, it has been non-lawyers, and not their counsel, who have found themselves in the hot-seat.

Still, that begs, rather than answers, the question, 'What was, or should have been, the role of the lawyer in mitigating the risk of a financial market meltdown?' Was sufficient resort to outside counsel made by financial institutions in the run-up to the GFC? Would greater utilisation of independent counsel have made a difference? What public responsibility, if any, do international capital markets lawyers have to ensure not just that underlying transactions are legal as a matter of positive law but that the financial marketplace is benefited, and financial market stability not threatened, by them? Until now, these are questions that seem to travel mostly beneath the radars of the financial market commentators who have been reflecting on the GFC.

Let us put to one side for a moment the increasing specialism in our area of law and the special challenges that follow from it – I will return to this. Let us leave aside too the fact that the technical skills that may position an international capital markets (ICM) lawyer so as to be able to structure a transaction and render the required legal opinions on enforceability or tax consequence may not qualify that lawyer to assess the business merits of the transaction, give deep knowledge of the customers who sign up to them or provide the necessary context to assess the macro-finance impact of large-scale development of a particular financial product or service. In either case, two questions remain: Can ICM lawyers do a better job to mitigate financial market systemic risk? And, if a more expansive role for the lawyer is to be expected to achieve this, will clients be prepared to pay for it?

It is interesting, is it not, that in what could be argued to have been their earlier 'glory years', financial institutions did rely heavily on outside counsel to keep on the legal straight and narrow. However, there is much evidence to suggest that there was much greater reliance on in-house teams in 2008 following the considerable build-out of these in the preceding decade. Cost-cutting became the 'buzz word'.

Did that institutional ring-fence, however, heighten the risk of seeing everything through too narrow an institutional prism? Gillian Tett, in her excellent new book *The Silo Effect*,[1] reminds us of the major risk of insular groupthink in an age of increased specialisation.

Seeking outside and independent advice on such matters had been seen as a kind of insurance against that. Of course, that insurance was never thought to be cheap. But was it cheap in fact, at least when compared with the penalties, fines and other conduct costs many financial institutions have paid since the GFC? And did the financial institutions in any way connect the cutbacks in legal spend on independent counsel with the GFC? Here's the paradox: the more that lawsuits and enforcement actions have followed in the wake of the GFC, the greater the pressures seem to have been to reduce the budget for independent legal advice in connection with ongoing transactional work. And those pressures continue.

Still, to change our clients' thinking about legal cost-cutting, ICM lawyers must do two things: first, they must avoid giving the impression themselves of being victims of the silo effect. And for many ICM lawyers in modern practice there is similarly the risk both of the silo of their law firm and the silo of their jurisdiction. Failure to share the expertise of lawyers in different law firms and from different jurisdictions can be catastrophic. In this regard, *The International Capital Markets Review* aims to be what Ms Tett would call a 'silo buster'.

And second, important as it may be to demonstrate value added by being aware of the widest possible range of relevant issues and global market practice, it is important too to get there in as cost-efficient a manner as possible. As has just been noted, this is a time when clients have never been more cost-conscious. Since it first appeared, this publication has sought to reduce the costs of staying current in a rapidly changing,

[1] G Tett, *The Silo Effect* (Little, Brown 2015).

multi-jurisdictional and expansive area of practice by bringing a wide range of relevant experience within a single volume and constantly updating its content.

As I write this preface, my morning newspaper reports, in addition to bond funds experiencing record inflows, that US$50 billion of global market deals were announced this week, adding to US$300 billion of M&A activity in a record August and more than US$3 trillion since January – keeping things on track for record levels seen only before the GFC. This is all good news for international capital markets lawyers. Plenty of opportunity.

Still, plenty of risk too, especially for any lawyer living in a silo and looking down instead of around. This is not a time to follow the ostrich and its habit of putting its head down when it senses risk in the air.[2] For today's ICM lawyer, the risk comes from a complicated and ever-changing landscape, and not least the plethora of new regulatory developments and regulations reported in the pages that follow. You constantly need to look about you.

So, heads up, bust out of that silo, get your copy of this new edition of *The International Capital Markets Review* at the ready and share in the expertise that follows. Fingers crossed, may the record year continue, and I wish our readers more than their fair share of it!

In the meantime, I tip my hat once again to the impressive and growing group of experts who have taken on the challenge of this book. This year we welcome five new jurisdictions: Bulgaria, India, Kazakhstan, Mexico and Nigeria. I want to thank all our authors sincerely for their contributions and for allowing me the continuing privilege of serving as their editor.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
November 2015

[2] Pliny the Elder had led us to believe that the ostrich buries its head in sand to avoid danger, but we now know the behaviour of the ostrich is more a matter of 'duck and cover'.

EDITOR'S PREFACE TO THE FOURTH EDITION

It is good of the publishers to include in this volume the Editor's Preface to each of the previous editions of *The International Capital Markets Review*. Reading through these is like an archaeological dig.

The first begins with a somewhat nervous look-back over the shoulder at the then-recent financial crisis. An expression in that preface of admiration for the 'resilience' of the markets sounded at the time more a hope and expectation than a certainty or done deal.

In the second, further signs that a 'big freeze' on capital market transactional work was 'thawing' were noted; however, the challenge of new and voluminous regulation, as much as the potential for deal flow, made this publication of particular relevance when that edition appeared.

By the time the third preface was written, the major global financial institutions were hiring again, but we were still looking for hard evidence or 'confirmation' that an uptick in deal flow lay ahead and that the extra staffing was in anticipation of opportunity rather than more simply a reaction to a compliance burden.

Now, as I put pen to this Editor's Preface to the fourth edition of the work, we have just witnessed the successful launch of the world's largest-ever stock flotation. Alibaba shares soared 39 per cent on the first day of trading and, after the bankers exercised a greenshoe option, raised US$25 billion. Meanwhile, *The Times* reports a buoyant London braced for a 'listing stampede'. Hong Kong is rivalling New York for the greatest number of cross-border deals. The *Financial Times* also reminds us that in fact, measured by deal value, year-to-date listings in New York have raised twice as much as in London and Hong Kong combined – the fastest pace since 2000. A corner turned? Hopefully, we are seeing real opportunity, at least for the informed ICM lawyer. As in the past, this book seeks to keep at the ready for just such an ICM lawyer relevant analysis as a means for staying on top of an ever-expanding flow of necessary information.

New capital market regulation increases exponentially, and often purports to have extraterritorial reach. More than half of the Dodd-Frank rulemakings have now been finalised but nearly a quarter of the rulemaking requirements are still yet to be proposed. This past year has also been a busy period for regulatory reform at the European level and in other key jurisdictions covered in this volume. Notably as well, courts around the world have been building up a significant jurisprudence in disputes involving complex products and other capital market structures. We have almost certainly seen more ISDA contract cases since this book first appeared than in all the years that preceded that first edition put together.

Not surprisingly then, this volume keeps getting 'fatter'. Soon the publishers will have to provide wheels for the book! What started as coverage of 19 relevant jurisdictions, now surveys 33 – five of which (Colombia, Kuwait, Norway, Peru and Portugal) are included for the first time.

There has, however, certainly been no dilution in the quality of contributions. Someone clever once said that you are only as good as the company that you keep, on which basis the reader can feel very good indeed when turning to the lawyers and law firms that share their collective experience in the pages that follow. It remains a privilege and an honour to serve these contributors as their editor.

I am confident that the latest surveys that follow will prove useful to our practitioner readers, and I will not be surprised if a few legal archaeologists among those get to excavating beyond the prefaces and examine the strata of the jurisdictional landscapes of earlier editions as they aim to equip themselves for their professional journeys ahead. Who knows? One of you may even be an Indiana Jones, who, armed with the information herein, may be tempted to grab that bullwhip and fedora and undertake a particularly ground-breaking transactional adventure or two. Indeed, it may even be that those adventures form part of the ICM story when it gets told in future editions of *The International Capital Markets Review*!

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
November 2014

EDITOR'S PREFACE TO THE THIRD EDITION

As I write the preface to this third edition of *The International Capital Markets Review*, my morning newspaper reports that one of the major global banks, having shrunk its workforce by more than 40,000 employees over the past two years, will now embark on a hiring spree to add at least 3,000 additional compliance officers.

It would be nice if the creation of these new jobs evidenced new confidence that capital markets activity is on the rise in a way that will justify more hands on deck. In other words, capital markets lawyers will have something to celebrate if this bolstering of the ranks was thought necessary to ensure that requisite regulatory approvals and transactional paperwork would be in place for a projected expansion in deal flow.

And, indeed, my morning newspaper also reports a new transaction of some significance, namely, Twitter's filing for a multi-billion dollar international public offering, accompanied by a tweet, of course – but with a true sign-of-the-times disclosure: 'This Tweet does not constitute an offer of any securities for sale'!

Yes, confirmation of an uptick in deal flow – especially 'big deals' flow – would be nice. In the preface to the last edition of this work, I speculated that there were 'signs that any 'big freeze' on post-crisis capital markets transactional work may be thawing'. All the better if the current newspaper reports provide continued and further support for that inference. After all, when our first edition appeared a little over two years ago, the newspapers were saying terrible things about the capital markets.

What is more likely, however, is that this increased staffing aims to cope with regulatory complexity that will now impact the financial markets regardless of any growth and perhaps may even have been designed to slow down the business being done there. That complexity, but also just the scale of recently promulgated new regulation and the practitioner's resulting challenge in 'keeping up' have all encouraged this new third edition. The 8,843 pages of Dodd-Frank rule-making that I reported in my preface to the last edition have now grown to more than 14,000 pages at this time of writing – and approximately 60 per cent of the job remains unfinished. Other key jurisdictions have been catching up. Plus the rules are purposive and aim to change the way things have been done. If compliance and even ethics in the capital markets were ever instinctual, rather than matters to be taught and studied, that is probably a thing of the past.

The thickness of this volume has grown as well because of the increased number of pages and coverage in it. Nine new contributors (Finland, Indonesia, Italy, the Netherlands, the Philippines, Spain, Switzerland, Tanzania and the UAE) and an overview of EU Directives have been added. Banks are lending less to corporates, which in turn are having to issue more to meet liquidity needs. Moreover, with the low interest rate environment of quantitative easing, central banks are encouraging risk-taking rather than hoarding. For investors, risk-free assets have become very expensive. So we see a growing willingness to get off the traditional highway in search of yield. Investment banks are, as a result, often taking their clients (and their clients' regular outside counsel) to difficult, or at least less well-known, geographies.

Having a pool of country experts and jurisdictional surveys that facilitate comparative law analysis can be very helpful in this instance. That is exactly what this volume aims to provide: a 'virtual' legal network and global road map to help the reader navigate varying, and increasingly difficult, terrain to arrive at right places.

There has been much relevant change in the legal landscape surveyed in the pages that follow. However, what has not changed is our criteria for authors. The invitation to contribute continues to go to 'first in class' capital market specialists from leading law firms. I shall be glad if, as a result, the biographical notes and contact details of the contributing firms prove a useful resource as well.

The International Capital Markets Review is not a novel. Impressed I might be, but I would certainly also be surprised by anyone picking up and reading this volume from cover to cover. What I expect instead, and what is certainly the publisher's intention, is that this work will prove a valuable resource on your shelf. And I hope that you will have plenty of opportunities to take it off the shelf and lots of excuses to draw on the comparative jurisdictional wisdom it offers.

Let me again express my sincere gratitude to our authors for their commitment to the task and their contributions. It remains a privilege to serve as their editor and a source of great pride to keep their company in the pages of this book.

Jeffrey Golden
P.R.I.M.E. Finance Foundation
The Hague
October 2013

EDITOR'S PREFACE TO THE SECOND EDITION

It was my thought that we should also include in this second edition of *The International Capital Markets Review* my preface to the first edition. Written less than a year ago, it captures relevant background and sets out the rationale for this volume in the series. The contemporary importance of the global capital marketplace (and indeed you must again admire its resilience), the staggering volume of trading and the complexity of the products offered in it, and the increased scrutiny being given to such activity by the courts all continue. And, of course, so does the role of the individual – the difference that an informed practitioner can make in the mix, and the risk that follows from not staying up to date.

However, I was delighted, following the interest generated by our first edition, by the publisher's decision to bring out a second edition so quickly and to expand it. There were several reasons for this. The picture on the regulatory front is much clearer for practitioners than it was a year ago – but no less daunting. According to one recent commentary, in the United States alone, rule-making under the Dodd-Frank report has seen 848 pages of statutory text (which we had before us when the first edition appeared) expand to 8,843 pages of regulation, with only 30 per cent of the required regulation thus far achieved. Incomplete though the picture may look, the timing seems right to take a gulp of what we have got rather than wait for what may be a very long time and perhaps then only to choke on what may be more than any one person can swallow in one go! Regulatory debate and reform in Europe and affecting other key financial centres has been similarly dramatic. Moreover, these are no longer matters of interest to local law practitioners only. Indeed, the extraterritorial reach of the new financial rules in the United States has risen to a global level of attention and has been the stuff of newspaper headlines at the time of writing.

There are also signs that any 'big freeze' on post-crisis capital markets transactional work may be thawing. In the debt markets, the search for yield continues. Equities are seen as a potential form of protection in the face of growing concerns about inflation. Participants are coming off the sidelines. Parties can be found to be taking risks. They are not oblivious to risk. They are taking risks grudgingly. But they are taking them. And derivatives (also covered in this volume) are seen as a relevant tool for managing that risk.

Most importantly, it is a big world, and international capital markets work hugs a bigger chunk of it than do most practice areas. By expanding our coverage in this second edition to include six new jurisdictions, we also, by virtue of three of them, complete our coverage of the important BRIC countries with the addition of reporting from Brazil, Russia and China. Three other important pieces to the international capital markets puzzle – Belgium, the Czech Republic and New Zealand – also fall into place.

The picture now on offer in these pages is therefore more complete. None of the 24 jurisdictions now surveyed has a monopoly on market innovation, the risks associated with it or the attempts to regulate it. In light of this, international practitioners benefit from this access to a comparative view of relevant law and practice. Providing that benefit – offering sophisticated business-focused analysis of key legal issues in the most significant jurisdictions – remains the inspiration for this volume.

As part of the wider regulatory debate, there have been calls to curtail risk-taking and even innovation itself. This wishful thinking seems to miss the point that, if they are not human rights, risk-taking and innovation are hardwired into human nature. More logical would be to keep up, think laterally from the collective experience of others, learn from the attention given to key issues by the courts (and from our mistakes) and 'cherry-pick' best practices wherever these can be identified and demonstrated to be effective.

Once again, I want to thank sincerely and congratulate our authors. They have been selected to contribute to this work based on their professional standing and peer approvals. Their willingness to share with us the benefits of their knowledge and experience is a true professional courtesy. Of course, it is an honour and a privilege to continue to serve as their editor in compiling this edition.

Jeffrey Golden
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London
November 2012

EDITOR'S PREFACE TO THE FIRST EDITION

Since the recent financial markets crisis (or crises, depending on your point of view), international capital markets (ICM) law and practice are no longer the esoteric topics that arguably they once were.

It used to be that there was no greater 'show-stopper' to a cocktail party or dinner conversation than to announce oneself to be an ICM lawyer. Nowadays, however, it is not unusual for such conversations to focus – at the initiation of others and in an animated way – on matters such as derivatives or sovereign debt. Indeed, even taxi drivers seem to have a strong view on the way the global capital markets function (or at least on the compensation of investment bankers). ICM lawyers, as a result, can stand tall in more social settings. Their views are thought to be particularly relevant, and so we should not be surprised if they are suddenly seen as the centre of attention – 'holding court', so to speak. This edition is designed to help ICM lawyers speak authoritatively on such occasions.

In part, the interest in what ICM lawyers have to say stems from the fact that the amounts represented by current ICM activities are staggering. The volume of outstanding over-the-counter derivatives contracts alone was last reported by the Bank for International Settlements (BIS) as exceeding US$700 trillion. Add to this the fact that the BIS reported combined notional outstandings of more than US$180 trillion for derivative financial instruments (futures and options) traded on organised exchanges. Crisis or crises notwithstanding, ICM transactions continue apace: one has to admire the resilience. At the time of writing, it is reported that the 'IPO machine is set to roar back into life', with 11 flotations due in the United States in the space of a single week. As Gandhi said: 'Capital in some form or another will always be needed.'

The current interest in the subject also stems from the fact that our newspapers are full of the stuff too. No longer confined to the back pages of pink-sheet issues, stories from the ICM vie for our attention on the front pages of our most widely read editions. Much attention of late has been given to regulation, and much of the coverage in the pages of this book will also report on relevant regulation and regulatory developments; but regulation is merely 'preventive medicine'. To continue the analogy, the courts are our 'hospitals'. Accordingly, we have also asked our contributors to comment on any lessons to be learned from the courts in their home jurisdictions. Have the judges got it right? Judges who understand finance can, by fleshing out laws and regulations and applying them to facts perhaps unforeseen, help in the battle to mitigate systemic risk. Judges who do not understand finance – given the increase in financial regulation, the amounts involved, and the considerable reliance on standard contracts and terms (and the need therefore for a uniform reading of these) – may themselves be a source of systemic risk.

ICM lawyers are receiving greater attention because there is no denying that many capital market products that are being offered are complex, and some would argue that the trend is towards increasing complexity. These changing financing practices, combined with technological, regulatory and political changes, account for the considerable challenge that the ICM lawyer faces.

ICM activity by definition shows little respect for national or jurisdictional boundaries. The complete ICM lawyer needs familiarity with comparative law and practice. It would not be surprising if many ICM practitioners felt a measure of insecurity given the pace of change; things are complex and the rules of the game are changing fast – and the transactions can be highly technical. This volume aims to assuage that concern by gathering in one place the insights of leading practitioners on relevant capital market developments in the jurisdictions in which they practise.

The book's scope on capital markets takes in debt and equity, derivatives, high-yield products, structured finance, repackaging and securitisation. There is a particular focus on international capital markets, with coverage of topics of particular relevance to those carrying out cross-border transactions and practising in global financial markets.

Of course, ICM transactions, technical though they may be, do not take place in a purely mechanical fashion – a human element is involved: someone makes the decision to structure and market the product and someone makes the decision to invest. The thought leadership and experience of individuals makes a difference; this is why we selected the leading practitioners from the jurisdictions surveyed in this volume and gave them this platform to share their insights. The collective experience and reputation of our authors is the hallmark of this work.

The International Capital Markets Review is a guide to current practice in the international capital markets in the most significant jurisdictions worldwide, and it attempts to put relevant law and practice into context. It is designed to help practitioners navigate the complexities of foreign or transnational capital markets matters. With all the pressure – both professional and social – to be up to date and knowledgeable about context and to get things right, we think that there is a space to be filled for an analytical review of the key issues faced by ICM lawyers in each of the important capital market jurisdictions, capturing recent developments but putting them in the context of the jurisdiction's legal and regulatory structure and selecting the most important matters for comment. This volume, to which leading capital markets practitioners around the world have made valuable contributions, seeks to fill that space.

We hope that lawyers in private practice, in-house counsel and academics will all find it helpful, and I would be remiss if I did not sincerely thank our talented group of authors for their dedicated efforts and excellent work in compiling this edition.

Jeffrey Golden
London School of Economics and Political Science
London
November 2011

Chapter 15

JAPAN

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I INTRODUCTION

i Structure of financial laws and regulations in Japan

The Financial Instruments and Exchange Act (FIEA)[2] and the Cabinet Order and Cabinet Office Ordinances thereunder are the most basic and important direct regulations on capital markets in Japan. The FIEA regulates the financial instruments business and financial transactions, including securities offerings and distributions for the purpose of maintaining the fairness of capital markets, protecting investors and developing the economy. In Japan, there are no overarching laws that regulate all financial institutions, which means that each type of institution is regulated separately; for example, banks are regulated by the Banking Act,[3] securities firms are regulated by the FIEA and insurance companies are regulated by the Insurance Business Act.[4] The FIEA is still important, however, from the standpoint of these financial institutions because it applies, *mutatis mutandis*, to relevant acts and regulations and, as a result, other financial institutions are actually regulated by the principles of the FIEA in many respects, such as when conducting securities and derivatives transactions.

Additionally, there are several other laws and regulations that specifically govern certain types of financial transactions including derivatives transactions, securitisations, structured products, investment funds, trusts and partnerships, including the Commodity

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[2] Act No. 25 of 1948, as amended.

[3] Act No. 59 of 1981, as amended.

[4] Act No. 105 of 1995, as amended.

Derivatives Act,[5] the Act on Investment Trusts and Investment Corporations,[6] the Limited Partnership Act for Investment,[7] the Act on Securitisation of Assets,[8] the Trust Act[9] and the Companies Act.[10]

ii Roles of regulatory and supervisory agencies and of the central bank in the Japanese capital markets

The Financial Services Agency (FSA) is responsible for, *inter alia*, ensuring the stability of the Japanese financial system, protecting investors and carrying out surveillance over securities transactions. The FSA delegates powers relating to securities registration to local finance bureaus (LFBs), and powers relating to daily market surveillance, inspections of financial instruments firms, inspections of disclosure documents and related activities to the Securities and Exchange Surveillance Commission (SESC).

The commodity derivatives business is regulated by either the Ministry of Economy, Trade and Industry (METI) or the Ministry of Agriculture, Forestry and Fisheries (or both), depending on the type of underlying commodity.

The Bank of Japan (BOJ), which is Japan's central bank, is independent of the Japanese government, including the FSA, similar to many other central banks in other jurisdictions. Its mission mainly focuses on the implementation of monetary policy, treasury and government securities-related operations.

Additionally, there are several self-regulatory organisations (SROs) whose membership consists of financial institutions. Among them, the Japan Securities Dealers Association (JSDA) is the most representative and important organisation in the Japanese capital markets. The JSDA promotes sound business development and protects investors by ensuring that securities transactions by its members are conducted fairly and smoothly.

There is also an electronic system called 'Compliance WAN', which can be accessed by the SESC, LFBs, securities companies, SROs (including the JSDA) and stock exchanges. This system enables the SESC and LFBs to utilise transaction data sent, for example, from securities companies for the purpose of market surveillance.

iii Financial dispute resolution in Japan

Several options exist for resolving financial disputes in Japan: judiciary proceedings in court, arbitration procedures at an arbitral tribunal and alternative dispute resolution (Financial ADR) procedures.

Usually, a party to a financial transaction is able to sue the counterparty in court, and once a court procedure is chosen, the parties will be entitled to a decision by a district court and two instances of appeal to the High Court and the Supreme Court.

[5] Act No. 239 of 1950, as amended.

[6] Act No. 198 of 1951, as amended.

[7] Act No. 90 of 1998, as amended.

[8] Act No. 105 of 1998, as amended.

[9] Act No. 108 of 2006, as amended.

[10] Act No. 86 of 2005, as amended.

Alternatively, a party may elect arbitral institutions including the Japan Commercial Arbitration Association or the International Chamber of Commerce (ICC) for arbitral awards that are deemed to be final and binding by the courts. Japan is a member of both the ICSID Convention and the New York Convention, and Japan's Arbitration Act[11] is based on the UNCITRAL Model Law.

In addition to court and arbitral procedures, an investor may seek settlement of a financial dispute by choosing the Financial ADR procedures, a simplified and expeditious resolution system.

iv Scope of jurisdiction

In general, it is believed that Japanese laws and regulations do not apply to activities by foreign companies outside Japan as the scope of jurisdiction should be limited to Japanese territory. With respect to cross-border cases, however, there is no provision that specifies the extent of the application of financial laws and regulations, and the scope of the powers of regulatory authorities is still open to interpretation. Even so, it is almost certain that Japanese laws and regulations apply when a foreign company solicits an investor who resides in Japan, even from outside Japan (see Section II.v, *infra*).

In practice, the FSA maintains close contact with the regulators of foreign countries on a daily basis. Financial institutions should pay careful attention to the relevant overseas regulations and to Japanese regulations as well.

II THE YEAR IN REVIEW

i Developments affecting debt and equity offerings

Framework for legislation or regulation on debt and equity offerings

In order to make a debt or equity offering (whether primary or secondary), a securities registration statement (SRS), mainly consisting of information about the securities being offered and about the issuer, must be filed with the director-general of the LFB, unless such offering constitutes a 'private placement' that is exempt from disclosure obligations (private placement exemption). Two major private placement exemptions are the small-number exemption (which may be available when solicitations are made to no more than 49 investors in Japan) and the professional investors exemption (which may be available when solicitations are made only to qualified institutional investors (QIIs) or specified investors defined in the FIEA). Detailed conditions for each exemption differ depending on the type of security being offered.

Once a company has filed the SRS with the LFB as described above, it becomes subject to ongoing disclosure obligations and must file annual securities reports, semi-annual or quarterly reports, and extraordinary reports with the LFB, as all listed companies in Japan must do.

[11] Act No. 138 of 2003, as amended.

Recent developments in regulations

Equity crowdfunding

In order to provide risk money to new growth companies, the FIEA was revised in May 2015 to significantly relax regulations on financial instruments business operators (FIOs) that handle public offerings, secondary distributions or private placements of unlisted and certain other securities through investment crowdfunding. A business related to investment crowdfunding (electronic small amount subscription business) is eligible to operate under the relaxed regulations if the total issue amount of securities is less than ¥100 million and the subscription amount is less than ¥500,000 per person. This has enabled venture companies to collect money from a large number of individual investors investing small amounts of money.

Further, minimum capital requirements have been reduced to ¥10 million for FIOs dealing with electronic small amount subscriptions for Type I securities, and to ¥5 million for FIOs dealing with electronic small amount subscriptions for Type II securities. Moreover, FIOs conducting an electronic small amount subscription business are allowed to engage in other businesses (e.g., incubation business), in addition to the financial instruments business. Solicitation for investments in unlisted shares, which was generally prohibited under the former self-regulatory regime of the JSDA, is now permitted as long as it is performed by an electronic small amount subscription business through the internet.

Concurrent with relaxing the regulations, the FIEA also introduced new rules applicable to electronic small amount subscription business in order to protect investors. For instance, FIOs are required to perform 'due diligence' on issuers and provide information about such due diligence as appropriate through the internet.

Public offering or secondary distribution on the internet

As of May 2015, issuers are able to publish information about issue price, distribution price and similar information on the internet as a supplement to the SRS after the filing of the SRS. Once such information is published on the internet, the issuer should obtain confirmation from the subscribers or transferees that they have acquired critical information, such as price, interest or amount to be paid, by making a phone call or sending a facsimile or email addressed to the subscribers or transferees.

Promoting new listings on the market

One obligation that has been considered burdensome for newly listed companies is the requirement to file internal control reports audited by a certified public accountant. To address this issue, the FIEA was revised in May 2015 to allow companies to choose not to file their internal control report for a period of three years after listing, taking into account that newly listed companies have already been subjected to strict examination by the stock exchange in connection with the listing. This choice will, however, not be available to listed companies with capital amounts of ¥10 million or more.

Disclosure documents

In order to reduce the disclosure burden on issuers and to facilitate and strengthen the functioning of capital markets, the METI has in its April 2015 'Report on the Study Group concerning Promoting Dialogue between Companies and Investors for

Sustainable Growth', while paying due attention to the importance of the disclosure, proposed measures that will ease the preparation of several mandatory disclosures (the SRS under the FIEA, the Business Report and financial statements under the Companies Act, and the summary of financial results of TSE rules) as well as the preparation of certain voluntary disclosures by rationalising the contents and items required to be disclosed. To address the proposals raised in the report, the METI's working group on disclosure of corporate information is discussing the reform of the mandatory and voluntary disclosure system.

Insider trading

The FSA relaxed insider-trading regulations in September 2015 to allow trades that are carried out based on a plan or contract that had been determined or agreed on before the parties to the trade acquired the inside information. This amendment permits certain types of non-problematic trading and allows, for example, directors or officers to sell shares obtained through their stock options regardless of the time at which they acquired knowledge of sensitive information.

New trading system for unlisted start-up shares

In May 2015, the FSA and the JSDA created a new trading system for unlisted start-up shares called the 'Shareholders' Community System' in order to encourage investors to invest in venture businesses. The JSDA plans to begin operating this new trading system shortly. Currently, the JSDA provides the 'Green Sheet Market' for unlisted shares, but the number of registered companies remains small because of the JSDA's strict disclosure requirements and insider-trading restrictions which are similar to those applicable to listed companies. The JSDA has decided to abolish the Green Sheet Market and to create a new trading system for unlisted shares. The new market will facilitate the trade of unlisted shares among a limited number of investors called an 'investment group' consisting of directors or employees, shareholders, business partners or consumers of the issuing company. Disclosure requirements and insider-trading regulations under the new system will largely be relaxed and shares will be permitted to be traded only among the 'investment group' regulated by the rules of the JSDA.

Curtailing settlement risks

At present, the JSDA is actively advancing efforts for shortening the Japanese government bonds (JGBs) settlement cycle and the stock trading settlement cycle in order to facilitate and strengthen the functioning of the capital markets.

Financial benchmarks

In May 2015, an amendment to the FIEA became effective and a new regulatory framework for organisations that set financial benchmarks such as the Tokyo Interbank Offered Rate (TIBOR) (financial benchmark administrators) was introduced. Under the amended FIEA, the FSA may designate financial benchmark administrators that are required to establish and observe operational rules regarding their system of governance, the quality of the benchmarks, the quality of the methodology and accountability, which are in line with the International Organization of Securities Commissions' (IOSCO) principles for financial benchmarks. Financial benchmark administrators are subject to supervision by the FSA (not by the SESC), including on-site inspection. Each reference bank or financial institution that submits rate data is subject to and monitored for compliance with the code of conduct agreed upon with the financial benchmark administrator. Manipulative activities by the FIOs or registered financial institutions (RFIs) are sanctioned. The FSA has designated the JBA TIBOR Administration (JBATA) as a financial benchmark administrator. The JBATA engages in the calculation, publication and administration of JBA TIBOR which is a 'virtual' rate rather than 'actual' rate, and further is currently considering the introduction of new financial indices (TIBOR+) that are expected to be based on 'actual' transactions in view of the principles of the IOSCO.

ii Developments affecting derivatives, securitisations and other structured products

The FIEA is the most basic and fundamental instrument of regulation applicable across the spectrum of derivatives, securitisations and other structured products. In addition, there are other laws governing derivatives, securitisations and other structured products such as the Act on Investment Trusts and Investment Corporations, the Limited Partnership Act for Investment, the Act on Securitisation of Assets, the Trust Act and the Companies Act. Other related laws and regulations may apply depending on the type of the product.

In 2006, the FIEA underwent radical amendment (it was formerly the Securities and Exchange Act), as did the Commodity Derivatives Act in 2011 (formerly the Commodity Exchange Act). The main purpose of these amendments was to provide more complete protection for investors and to improve and enhance the convenience of participating in the Japanese market. While these amendments introduced strict and rigid regulations for investor protection, there are exceptions for rules and regulations that are applicable to financial instruments businesses targeting only professional investors, QIIs or commodity derivatives professionals. In other words, the rules and regulations applicable to the financial instruments business can differ depending on the type of investor. The FSA has also promoted a considerable number of further amendments to the FIEA in recent years in order to implement agreements reached at the G20 summits, which aim to strengthen the global financial system by fortifying prudential oversight, improving risk management, promoting transparency and continuously reinforcing international cooperation.

Derivatives

In light of the statements made by leaders at the G20 summits calling for improvements in the over-the-counter (OTC) derivatives markets, there have been several legislative and regulatory developments intended to implement policies that reflect such improvements.

First, a Japanese version of an electronic trading platform was introduced on 1 September 2015. FIOs and RFIs are required to use an electronic trading platform when engaging in OTC interest rate swap transactions denominated in Japanese yen in order to enhance the immediate disclosure of information about the derivatives trade. More specifically, trades that meet the following criteria are subject to this regulation:

a trades clearable through the Japan Securities Clearing Corporation (JSCC);

b trades that are not packaged trades;

c trades with a six-month yen LIBOR floating rate;
d trades with a fixed notional throughout the maturity agreed by counterparties;
e trades with an effective date of T+2 from the trade date;
f trades with a swap tenor of five, seven or ten years;
g trades for which, with respect to interest rate payment and roll date, the 'business day' is specified as Tokyo and London;
h trades for which the business-day convention is specified as 'modified following' and
i trades for which, with respect to the fixed leg, the payment frequency is six months and the day-count fraction is Actual/365 (Fixed) and, with respect to the floating leg, the payment frequency is six months and the day-count convention is Actual/360.

However, FIOs and RFIs may be exempt from the mandatory use of an electronic trading platform if:
a the transaction is booked in the trust account;
b the transaction is between the affiliates;
c one or both of the parties is not an FIO, RFI or other certain designated financial institution; or
d the average outstanding notional amount of one or both of the parties is less than ¥6 trillion.

Concurrent with this regulation, a licensing system, minimum capital requirements, record-keeping rules and other regulations apply to the operators of electronic trading platforms.

Second, on 3 July 2014, the FSA proposed draft amendments to the Cabinet Office Ordinance of the FIEA to implement BCBS-IOSCO's margin requirements for non-centrally cleared derivatives. Under this proposal, there were variation margin (VM) obligations and initial margin (IM) obligations, which would basically apply to all non-centrally cleared derivatives with some exceptions. However, responding to BCBS-IOSCO's revision of the document stated above, the FSA has withdrawn this proposal and announced that it will reconsider the margin regulations and schedule.

Apart from the foregoing, the CDA and the Electricity Business Act[12] were revised to approve electricity futures and to allow electricity futures to be traded on commodity futures exchanges in Japan. This revision is scheduled to be implemented in 2016 and the METI's council is discussing the practical framework for electricity futures listings. In connection with this, it is expected that the METI will also amend the CDA by March 2017 by revising the restrictions on the solicitation for commodity trading, including electricity futures and the exemptions therefrom.

[12] Act No. 170 of 1964, as amended.

Investment funds

In order to facilitate transactions using investment trusts or investment corporations including J-REITs, the regulations on investment trusts and investment corporations were amended in December 2014.

With respect to investment corporations, first, an investment corporation is permitted under the amended regulations to repurchase its equity or undertake financing by way of a rights offering or certain other transactions. This revision provides investment corporations with more options for financing or raising capital. Second, investment corporations are now allowed to use a special purpose company to hold overseas real estate when local regulations prohibit an investment corporation from directly holding such real estate. Third, in order to improve J-REIT governance, an investment corporation is required to obtain prior approval from the board of the investment corporation when making substantial acquisitions of property from any interested person (e.g., a sponsor company).

With respect to investment trusts, the asset manager is required to deliver a 'summary of an investment performance report' to all investors on a regular basis, as current investment reports are often expansive and complicated. At the same time, the merger process for small-scale investment trusts will be simplified in order to improve their operational efficiency.

With respect to the introduction of the Japanese Stewardship Code, see Section II.v, *infra*.

Sales of partnership rights

In response to problematic incidents involving FIOs engaged in Type II financial instruments business (i.e., 'Type II FIOs' including vendors of partnership rights), the FIEA was revised to strengthen regulations applicable to Type II FIOs in May 2015. Under the revised regulations, Type II FIOs are prohibited from soliciting investments in partnership rights while knowing that money to be invested will in fact be used for a different purpose (it is already prohibited for Type II FIOs to solicit investment in partnership rights if the partnership agreements do not stipulate segregation of funds). Furthermore, Type II FIOs are required to have a domestic office with a domestic representative and are encouraged to join a self-regulatory organisation.

In addition, the FSA is concerned about general partners who rely on the 'QII business exemption' under Article 63 of the FIEA. Under the current regulation, if a general partner relies on the QII business exemption, up to 49 non-QII investors may invest in the partnership under the relaxed rules so long as at least one QII joins the partnership as a limited partner. Given that general partners sometimes use this exemption to solicit non-QIIs without providing adequate information, the FIEA will be amended by June 2016 to limit:

a the category of QII limited partners who are eligible for the QII business exemption to investors that own invested assets of more than ¥500 million; and

b the category of non-QII limited partners to investors that are corporations having assets or capital amount of more than ¥50 million, governments, local authorities, or those closely connected with the general partner, although there will be certain exceptions for venture capital funds.

Furthermore, a general partner will not be able to rely on the QII business exemption when another exiting fund managed by the same general partner plans to become the only QII with respect to the new fund. Additionally, the FSA will have the power to conduct inspections, give orders or impose administrative sanctions, and the amended FIEA will disqualify a general partner who has received an order to discontinue its business or who has been subject to criminal sanctions in the past, as well as a general partner who is a foreign individual or corporation not having any representative in Japan. The regulations applicable to solicitation of non-QII will also be strengthened by introducing new regulations regarding suitability, explanatory documents to be delivered prior to the conclusion of a contract, fiduciary duties, restrictions on advertisement, segregation of investors' funds and delivery of investment reports.

iii Relevant tax and insolvency law

Tax law

In general, all corporations in Japan are subject to treatment as taxable entities. Foreign corporations are liable to pay certain types of corporate tax and income tax on domestic-sourced income, which varies depending on whether the foreign corporation has a permanent establishment in Japan. Non-corporate forms that are sometimes used as a vehicle for financial transactions, such as general partnerships, limited liability partnerships or trusts, are, in principle, fiscally transparent for Japanese tax purposes. However, in a tax dispute over whether a limited partnership established under the laws of the state of Delaware (Delaware LP) is a corporation for Japanese taxation purposes, the Supreme Court ruled on 17 July 2015 that a Delaware LP constitutes a corporation under Japanese tax law. This ruling is expected to have an effect on tax return practice and the use of foreign limited partnerships because it was fairly common that tax returns were filed assuming that the foreign limited partnership did not fall in the category of corporations for Japanese taxation purposes.

Apart from the above, certain reforms on domestic taxation that may affect investors have recently been implemented.

First, the combined national and local effective corporate tax rate will be reduced to 32.11 per cent from the current 34.62 per cent for taxable years beginning on or after 1 April 2015. A further rate cut is planned for 2016, which would result in a combined effective tax rate of 31.33 per cent. The government is planning to lower the combined effective tax rate to below 30 per cent over several years. The reduction in the corporate tax rate is intended to strengthen Japan's attractiveness as a location and enhance the competitiveness of Japanese companies.

Second, a Japanese version of an individual saving account (ISA) system called 'NISA' was introduced in 2014, whereby investments of up to ¥1 million per year are tax-free if the investment has been made through an ISA. An investor can hold an ISA as a tax-exempt account for a maximum of five years falling within the period from 2014 to 2023. This system is steadily promoting greater participation in the stock market by individual investors and has attracted the interest of retail investors. In order to further develop this system, the government will increase the maximum amount of the tax-free investment of NISA to ¥1.2 million in 2016.

Insolvency law

There have been no material amendments to the insolvency laws[13] or the Companies Act.

iv Role of the exchanges, central counterparties and rating agencies

In principle, the FIEA regulates financial instruments exchanges, financial instruments clearing organisations (central counterparties, or CCPs) and rating agencies. The CDA regulates the commodity exchanges.

Japan Exchange Group, Inc (JPX) is the largest company operating financial instruments exchange markets to provide market users with venues for cash equity trading through its subsidiary, Tokyo Stock Exchange Inc. (TSE), and for derivatives trading through Osaka Exchange, Inc (OSE). TSE also offers companies an alternative listing framework to meet the needs of professional and other investors, which are Mothers, JASDAQ, TOKYO PRO Market and the TOKYO PRO-BOND Market. In addition to providing market infrastructure, JPX also provides clearing and settlement services through a central counterparty, JSCC, and conducts trading oversight to maintain the integrity of the markets. JPX has not yet, however, commenced commodity trading operations because the Tokyo Commodity Exchange Inc (TOCOM) has not decided to become a subsidiary of JPX, and is still considering alternative survival strategies amid Japan's shrinking commodities market.

Exchanges

On 30 April 2015, TSE established a new market for funds that invest in infrastructure and related facilities, including energy-based power generation facilities (e.g., solar plants), public infrastructure and other infrastructure (e.g., airports, roads and ports). Rules on the infrastructure market are based on the framework provided for the REIT market. Infrastructure investment funds are expected to pull in capital from private investors to finance building infrastructure.

During 2014, TSE discussed with securities companies extending its equity market trading hours, but TSE decided not to extend trading hours because many securities companies were against the extension due to the increase in cost.

Central counterparties

Since November 2012, FIOs and RFIs have been required to clear certain types of OTC derivatives transactions via the mandatory use of central clearing under the FIEA.

Under the current FIEA, the types of OTC derivatives transactions that are subject to mandatory clearing are credit derivatives swaps (CDS) on Markit iTraxx Japan referencing the credit of no more than 50 Japanese corporations, and 'plain vanilla' yen-denominated interest rate swaps (IRS) referencing three-month or six-month JPY LIBOR or Euro JPY TIBOR, which are eligible for clearing services provided by a

[13] Which include the Bankruptcy Act (Act No. 75 of 2004, as amended), the Civil Rehabilitation Act (Act No. 225 of 1999, as amended), the Corporate Reorganisation Act (Act No. 154 of 2002, as amended), and the Act Concerning the Special Provisions for the Reorganisation of Financial Institutions (Act No. 95 of 1996, as amended).

Japanese CCP (i.e., JSCC). Certain transactions, however, such as transactions with a party that is not an FIO or RFI, transactions that are booked in the trust account or transactions between affiliates may be exempt from the mandatory use of the CCP.

With respect to client clearing, CDS or IRS transactions with a party that is not a clearing participant of the CCP may be exempt from mandatory clearing; however, IRS transactions are subject to mandatory clearing (through client-clearing services) when one or both parties are FIOs or RFIs that are registered with the FSA. Such registration is required when the average outstanding notional amount of OTC derivatives is ¥1 trillion (from 1 December 2015, ¥300 billion) or more. Furthermore, starting on 1 December 2016, IRS transactions that are booked in a trust account will become subject to mandatory clearing when the trust account's average outstanding notional amount is ¥300 billion or more, notwithstanding the exemption described above, in which transactions are booked in the trust account.

JSCC and its parent company, JPX, expect that many other market participants will become members of the clearing framework at JSCC in the near future, and JSCC has expressed its intention to expand its range of services. For example, it is providing clearing services for listed derivatives and FX transactions traded on the OSE in addition to the clearing services offered for equities transactions traded on the TSE. Furthermore, with a view towards enhancing the convenience of the market, JSCC extended its clearing services to IRS transactions denominated in US dollars and euros on 24 September 2015.

With respect to commodity derivative transactions, Japan Commodity Clearing House Co Ltd (JCCH), which provides clearing services for the transactions traded at the TOCOM or the Osaka Dojima Commodity Exchange, extended its clearing services to OTC commodity derivative transactions starting on 16 May 2014.

Transaction information and trade repositories

Since November 2012, certain financial institutions, CCPs and trade repositories have been required to report OTC derivatives transaction information to the FSA under the FIEA. More specifically:

a FIOs and RFIs are required to store transaction information and report this information to the FSA on or before the third business day of the following week, unless the transaction was cleared by a Japanese or foreign CCP (registered in Japan) or the information has been provided to the 'trade repositories' within three business days.

b Japanese and foreign CCPs (registered in Japan) must record transaction information and report this information to the FSA within three business days.

c Trade repositories must record transaction information provided by FIOs or RFIs and report this information to the FSA within one business day.

The FSA uses such data to publish information on the number of transactions and total amounts. The DTCC Data Repository Japan has provided trade depository services in Japan as a 'Foreign Trade Repository' under the FIEA since March 2013.

v Other strategic considerations

The FIEA, which imposes restrictions on the solicitation of certain securities transactions (including offerings, purchases, and sales of securities, but excluding securities lending and repo transactions) directed at residents in Japan, applies regardless of whether the solicitation is domestic or from overseas. This means that direct solicitation for securities transactions is permitted without satisfying licensing requirements only when it is directed at QIIs such as banks, FIOs and insurance companies. All other direct solicitations for securities transactions directed at residents in Japan are strictly prohibited by the FIEA and require agency or intermediary services by a licensed FIO. Similar but different standards apply to the solicitation for derivatives transactions from overseas (which are also controlled by the FIEA). In any event, careful legal due diligence is highly recommended before entering into securities transactions with residents in Japan.

Money-lending activities from overseas to residents in Japan are restricted mainly under the Money Lending Business Act[14] and the Usury Act.[15] Briefly stated, direct lending from overseas to residents in Japan is prohibited except if a foreign bank uses a branch in Japan that is licensed as the foreign bank's branch under the Banking Act. It is noteworthy that this restriction does not apply when the borrowing is made in the form of a bond issuance.

It is particularly noteworthy that the government is seeking to promote the internationalisation of capital markets by introducing measures designed to meet global standards. As an example, the amendment to the Companies Act implemented in May 2015 to improve corporate governance in principle requires a listed company to have one or more outside directors and regulates the relationship between a parent company and its subsidiary more strictly. Also, TSE amended its listing rules in order to formulate Japan's Corporate Governance Code, which was finalised by the FSA's council and entered into force in June 2015. Further, the government introduced the Japanese Stewardship Code (which closely follows the voluntary 'comply-or-explain' regime of the UK Stewardship Code) in February 2014 in order to guide institutional investors in their stewardship responsibilities to promote medium or long-term sustainable returns to their clients. Nearly 200 institutional investors (such as trust banks, insurance companies, investment management companies, pension funds, etc.) have adopted the Japanese Stewardship Code and Japanese institutional investors which are often described as 'silent investors' are expected to take an active stance in constructive dialogue with companies and in the exercise of voting rights. In addition, the government continues to discuss measures that will allow foreign investors to access financial statements online and that will enhance foreign investors ability to attend shareholders' meetings. The government believes that these amendments will encourage investments in the capital and stock market of Japan.

Furthermore, the FSA is moving towards allowing banks or financial holding companies to establish or acquire subsidiaries engaged in the e-commerce, mobile payments and other IT businesses beyond traditional financial services (see Section III, *infra*).

[14] Act No. 32 of 1983, as amended.

[15] Act No. 195 of 1954, as amended.

On the other hand, some regulations have been tightened. First, the Act on Prevention of Transfer of Criminal Proceeds,[16] which is the main statute for anti-money laundering, will be amended by November 2016 to require certain business operators to make an assessment of whether a transaction is suspicious and could involve an illegal transfer of money. When making such assessment, a business operator must follow procedures to be specified by the governmental authority. Second, the FSA amended the 'Guidelines for Personal Information Protection in the Financial Industries' and the 'Practical Guidelines for the Security Policies regarding the Personal Information Protection in the Financial Industries' in July 2015. Under this amendment, business operators are required to verify the process by which a third party has acquired personal information when the business operator is to receive any personal information from that third party. Also, if a business operator outsources the management of personal information, the business operator is required to supervise the outsourcing contractor. Third, in April 2015, the FSA amended the comprehensive guidelines for financial institutions in order to enhance the cybersecurity management systems of financial institutions and to strengthen security measures for online financial services. In July 2015, the FSA published the 'Policy of Approach to Strengthen the Cybersecurity in the Financial Industries' in order to share common awareness regarding cybersecurity with financial institutions, aiming to encourage financial institutions to strengthen cybersecurity.

Furthermore, several basic laws (especially the Civil Code) are being reviewed for future amendment, and such amendments are likely to affect the capital markets in Japan. Incidentally, the consumption tax increased to 8 per cent in April 2014, and is scheduled to further increase to 10 per cent in April 2017. While the consumption tax is not directly applicable to financial transactions, the increase in the consumption tax may have broader implications for the Japanese economy, including the financial markets.

III OUTLOOK AND CONCLUSIONS

It is reported that the Financial System Council of the FSA is considering amendments to the Banking Act to cover Fin-Tech related activities as ancillary business of a bank or the business of a bank's affiliate. Although Fin-Tech is globally discussed as the new frontier for application of internet technologies to the financial sector, it should be noted that in Japan Fin-Tech is discussed in the context of allowing existing banks to participate in the IT business such as owning an IT company, operating a cybermall and providing settlement services in cyberspace, but not in the context of encouraging new small enterprises to enter into the banking business like the UK's challenger banks which aim to provide online services without physical presence (see Section II.v, *supra*). The reason for this is probably that Japan has a large number of small financial institutions (i.e., regional banks and credit banks) and Japanese regulators consider the smooth consolidation of such small institutions a priority over creating new opportunities for

[16] Act No. 22 of 2007, as amended.

entrepreneurs in the banking business. Nevertheless, the Fin-Tech will bring many changes to current regulations in the financial sector, including capital markets funding.

It is also noteworthy that the FSA, TSE and JPX have pushed companies to adopt Japan's Corporate Governance Code (see Section II.v, *supra*) and that improvement of corporate governance is one of the major challenges that all Japanese companies are facing. In order to enhance corporate governance, the Financial System Council is also discussing conflicts of interest between a bank holding company and its subsidiaries.

The government continues to implement economic reforms and there is no doubt that Japanese capital markets regulations are shifting to the new post-Lehman stage. At the same time, Japan has to cope with the slowdown of the Asian and global economy.

Appendix 1

ABOUT THE AUTHORS

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Akihiro Wani has almost 30 years' experience in the capital markets arena and is widely renowned as an expert in the banking sector. He has acted for major financial institutions on financial regulations and cutting-edge derivatives transactions, advised on the establishment of head and branch offices of financial institutions, and acted on various matters involving cross-border financial trading, securities, insurance and general corporate transactions. Mr Wani is a professor at Sophia University Law School, a counsel for the International Swaps and Derivatives Association in Japan, and a financial expert at the P.R.I.M.E. Finance Foundation.

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Reiko Omachi specialises in financial transactions involving banks, securities and insurance as well as structured finance, derivatives and general corporate transactions, and she has also advised on laws and regulations imposed upon banks and securities firms. From 2003 to 2006, she was seconded to the Civil Affairs Bureau of the Ministry of Justice of Japan and handled the amendment of Japan's private international law. Ms Omachi graduated from the University of Tokyo in 1996 and qualified in 2000.

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