The Banking Regulation Review

Sixth Edition

Editor
Jan Putnis

Law Business Research

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EDITOR'S PREFACE

While the pace of new rulemaking affecting banking groups has slowed somewhat in Europe and the United States in the past year, the debate about the future of global banking rages on, not least because implementation of the vast body of rules made since the financial crisis continues. If anything, the debate has become a more complex one, with a number of new fronts opening. Implementing complex new rules is, of course, generally more difficult than making them, and in many areas of activity rules that took shape some time ago are only now exhibiting their shortcomings and unintended consequences.

Questions about 'too big to fail' remain, but with gradually increasing realism among regulators, some governments and banks ask themselves about how this issue might best be managed in the long term. There is now greater recognition that painstaking recovery and resolution planning was not just an urgent post-crisis task but must remain a critical feature of banking supervision in perpetuity. Indeed, the list of points on which regulators should improve cross-border coordination on recovery and resolution matters remains formidably long. There is also a risk that while 'too big to fail' was the most well known and eye-catching phrase to emerge from the financial crisis, any attempt by governments to force or catalyse the break-up of large banking groups would risk neglecting the importance of the 'too inter-connected to fail' problem, which is, of course, far less a function of the size of banks.

The past year has seen further large fines for banks from conduct regulators, most notably in the context of the spot FX markets. Many bank prudential regulators are, sensibly, thinking more seriously now about the implications of these fines (and associated litigation) for the prudential supervision of the banks affected and, potentially, for financial stability itself. The 'conduct agenda', as it is now frequently called, has moved on in other ways in some countries, including increasing discussion among regulators about competition (antitrust) aspects of wholesale as well as retail financial markets. This will begin to create new and, in many cases, unwelcome challenges for large banks.

Return on equity continues to be a significant challenge in the banking sector, with signs of increasing shareholder pressure on some banks. This may add a further dimension to structural reform in addition to the existing regulatory one. In some cases, particularly where activist investors are concerned, all involved would do well to remember that shareholder activism lay behind some of the more disastrous mergers and acquisitions in the banking sector before the financial crisis. While it can be expected that regulators in most important financial jurisdictions will be more vigilant in assessing the viability of major transactions in the sector now than they were before the crisis, boards of directors of banks will also need to avoid the temptation to give in to short termism in the face of poor shareholder returns. This is arguably particularly the case in an environment where market restructuring and new technology present long-term opportunities for some banks as well as threats.

Governance of banking groups continues to be high on the agendas of many regulators around the world. Directors of banks in the UK, many other European countries and the US rightly focus increasingly on whether they are discharging their regulatory obligations properly when taking significant decisions, and whether their knowledge (and their ability to oversee) the businesses for which they are responsible is sufficient. A cynical bystander would, however, continue to say that in a global bank with tens of thousands of employees worldwide, good governance structures will only ever play a limited role in reducing the risk of a calamity on, for example, a trading desk, and that good luck (or bad luck) is more likely to determine success or failure in global compliance. That is surely too cynical a view in light of the significant strides that many banks have made to improve their governance and oversight in recent years. However, it remains a view with some validity in relation to emerging threats that are not yet generally well understood. These include many cyber-related risks, not just the possibility of the use of banks' IT systems by criminals but also the threat to financial stability posed by vulnerabilities (and in some cases unreliability) in systems used to settle payments and securities transactions. Bank governance in the context of the use of banks for criminal purposes, including tax evasion, has continued to have a very high profile over the past year.

Important developments in prudential regulation in the past year include further advances in the EU towards implementation of the Recovery and Resolution Directive and the Financial Stability Board's proposals on Total Loss-Absorbing Capacity (TLAC). TLAC looks set to continue to dominate debates on capital structure and funding in the banking sector this year, particularly on the difficult question of where and how TLAC should be 'positioned' within groups of companies in order to facilitate their chosen resolution strategy.

This sixth edition of *The Banking Regulation Review* contains submissions provided by authors in 48 countries and territories in March and April 2015, as well as the customary chapters on International Initiatives and the European Union. It is a great privilege to share space in this book with such a distinguished and interesting group of banking and regulatory lawyers from around the world, and I would like to thank them all again for their participation (and those authors who have joined the book for the first time this year).

My thanks also to Shani Bans, Nick Barette and Gideon Roberton at Law Business Research Ltd for their further unusual levels of patience and skill in compiling this edition and for continuing to encourage the participation of the authors.

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Jan Putnis
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Chapter 25

JAPAN

Hirohito Akagami and Wataru Ishii[1]

I INTRODUCTION

As the world's third-largest economy, Japan has a well-developed banking industry of approximately 200 banks. There are currently four 'mega' banking groups: Mizuho, Sumitomo Mitsui, Mitsubishi UFJ and Resona. Approximately half of these 200 banks are 'local banks', which provide more locally based banking services (principally in one or more specific prefectures).[2] There are also approximately 60 overseas bank branches.

Japan Post Bank Co, Ltd, which was formerly part of the government's postal division, is wholly-owned by the government. In December 2014, it was announced that the company plans to go public in the second half of 2015. This public listing will occur concurrently with the listing of its parent company and a subsidiary of the parent company that is conducting life insurance business.

II THE REGULATORY REGIME APPLICABLE TO BANKS

i The Banking Act and the Financial Instruments and Exchange Act (FIEA)

The principal source of regulation for banks engaging in business in Japan is the Banking Act,[3] to which all banks are subject. This regulates their corporate governance, banking business and capital adequacy as well as their principal shareholders and subsidiaries. The Banking Act also regulates holding companies that have banks as subsidiaries (bank holding companies).

1 Hirohito Akagami is a partner and Wataru Ishii is an associate at Anderson Mōri & Tomotsune.

2 In 2014, some business integrations between local banks through the establishment of holding companies were announced.

3 Act No. 59 of 1981.

It is important to note that the Japanese regulatory framework regulates commercial banking activities and investment banking activities separately. The Banking Act is, in principle, applicable only to the former activities of banks (i.e., acceptance of deposits, provision of loans and transfer of funds: the 'core banking business'). A large number of banks also engage in investment banking activities, which generally include securities and derivatives-related businesses. These activities are subject to separate restrictions discussed in Section II.iii, *infra*, and these banks are concurrently regulated under the FIEA[4] for this purpose. Some banks also have affiliate securities companies engaging in investment banking business, and these companies are also regulated by the FIEA.

ii Regulators

The principal regulator of the banking industry is the Financial Services Agency of Japan (FSA), whose authority to supervise banks in Japan is delegated by the Prime Minister. The Commissioner of the FSA also delegates a part of his or her authority to the directors of local finance bureaux in relation to local banks and the supervision of investment banking activities. The on-site and off-site inspection of investment banking activities is performed by the Securities and Exchange Surveillance Commission. The Bank of Japan (BoJ) also has supervisory authority over banks, based primarily on its contractual agreements and transactions with them.

The regulator's powers as prescribed in the Banking Act include receipt of various reports, the ability to carry out on-site inspections (where a bank must, in practice, disclose any and all information it holds to the regulator) and the power to make orders of business improvement and suspension.

iii Entry into banking industries

Two organisational structures are available to overseas banks for establishing a core banking business in Japan. One scheme consists of the establishment of a joint-stock company with limited liability in Japan as a subsidiary or affiliate in accordance with the Companies Act of Japan.[5] This subsidiary or affiliate must obtain a banking licence from the Prime Minister of Japan, pursuant to the Banking Act (a 'local entity bank'). The alternative consists of the establishment of branches of the foreign bank within Japan, and obtaining a 'foreign bank branch' banking licence. For the foreign bank branch scheme, the opening of subsequent branches (which are also known as sub-branches) is also subject to prior approval from the FSA.[6] The grant of the necessary licences and approvals is at the discretion of the relevant authority in each instance.

To engage in investment banking activities, such as securities and derivatives business, the bank must also be registered with the competent local finance bureau, pursuant to the FIEA.[7] Registered banks are generally permitted to operate a wider range of derivatives and securities businesses, such as brokerage of government bonds and sales

4 Act No. 25 of 1948.

5 Act No. 86 of 2005.

6 Article 47-3 of the Banking Act.

7 Article 33-2 of the FIEA.

of unit trusts or non-discretionary investment advisory services; however, for historical reasons, banks are generally prohibited from engaging in certain categories of securities business, including brokerage and underwriting of corporate stocks and corporate bonds, and discretionary investment management services.[8] To conduct such activities, banks must establish a subsidiary or affiliate that is a separate legal entity, and register it pursuant to the FIEA as a financial instruments business operator.

iv Cross-border activities by overseas banks not having a branch

Overseas banks may not, in principle, enter into any part of the core banking business or investment banking business in Japan or with persons in Japan without establishing a branch and obtaining a banking licence as a foreign bank branch. Even where an overseas bank has a licensed foreign bank branch in Japan, it is generally understood that the other, unlicensed overseas branches of the bank are prohibited from engaging in transactions, or with persons, in Japan.

In connection with this, another regulatory framework called the 'foreign bank agency business' was implemented in December 2008, under which both overseas banks without a licensed foreign bank branch and the unlicensed branches of an overseas bank may conduct a core banking business with persons in Japan through either a local entity bank,[9] or through a foreign bank branch of the bank acting as an agent or intermediary. Both of these options require the local entity bank or foreign bank branch to obtain separate approval from the FSA.[10]

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

Most banks have a close relationship with the regulators. We understand that the officials of the supervisory division of the FSA and local finance bureaux are each assigned to monitoring specific banks.

The regulators tend to focus their attention principally on appropriate management of banking businesses, maintenance of sufficient financial conditions including satisfaction of capital adequacy requirements, protection of customers, and the maintenance of robust internal control systems to ensure that the bank is always in compliance with the applicable laws.[11] It is fairly common that a bank will consult with regulators in advance on occasions when it expects to receive particular attention from the regulators; for instance, if it launches a new business that is not covered clearly by existing legislation, or an issue has arisen that may affect the bank's financial condition.

8 Article 33 of the FIEA.

9 In principle, within the same group.

10 Chapter 7-2 of the Banking Act.

11 In September 2013, the FSA announced its new monitoring policy to enhance its supervisory oversight function by further integrating its on-site inspection and off-site supervision into a continuous and seamless monitoring process. This new monitoring policy may lead to significant changes in the relationship between banks and the FSA.

ii Management of banks

Under the Banking Act, a local entity bank must have a board of directors and accounting auditors, as well as a board of corporate auditors or a subcommittee of the board of directors (comprising an audit committee, remuneration committee and appointment committee), pursuant to the Companies Act.[12] Directors and executive officers engaging in the ordinary business of a local entity bank must have the knowledge and experience to be able to manage and control the bank appropriately, fairly and efficiently, and must have 'sufficient social credibility' (the Banking Act requires a bank to appoint directors who are trusted within society; however, what precisely is meant by this criterion is ambiguous).[13] For local entity banks that have a board of corporate auditors, the representative director shall take command of the establishment and maintenance of the internal compliance framework, make risk management a primary concern, establish a sufficient internal control framework to properly disclose the bank's corporate information to the public and ensure that appropriate internal audits are performed.[14] The board of directors must proactively oversee the representative directors, establish and review business management plans in line with the bank's business objectives, establish a clear risk management policy by taking these objectives into consideration, and ensure appropriate performance and review of internal audits.[15]

For foreign bank branches, although there is no required specific corporate governance structure such as that for local entity banks, the branch manager must also have the knowledge and experience to manage and control the branch appropriately, fairly and efficiently, and must also have sufficient social credibility (as referred to above). In addition, officers with sufficient knowledge and experience must be appointed to manage the branch, and the proper authority to do so must be delegated to those officers by the overseas head office. Of course, the head office is likely to want to oversee the management of the branch, and it is permissible for it to offer supervision and guidance. Therefore, it may be advisable to introduce appropriate systems for such oversight and approvals; for example, that any problematic issues occurring within the branch should immediately be reported to the head office as well as to the regulatory authority.

In addition, however, it must be kept in mind that oversight by the overseas branch or holding company must not undermine the governance framework, and the management responsibility for such, which must be established within the local entity bank or foreign bank branch to manage its business properly as a licensed financial institution. Administrative action (in the form of an order to suspend a part of the business and an order to improve of the business) taken against a local entity bank subsidiary of a US-based bank group illustrates the FSA's position on how each financial institution within the same group should be managed. An FSA press release dated 27 January 2006 regarding its action states that the US parent appointed a person who

12 Article 4-2 of the Banking Act.

13 Article 7-2 of the Banking Act.

14 III-1-2-1 (1) of 'Comprehensive Guidelines for Supervision of Major Banks, etc.' of the FSA (FSA Supervisory Guidelines).

15 III-1-2-1 (2) of the FSA Supervisory Guidelines.

had no directorship of the local entity bank but was given the title of 'Representative in Japan', and gave that person the primary management and control of the businesses of the local entity bank. This thereby undermined the authority and responsibility of each director of the local entity bank (despite the fact that such authority and responsibility is required under Japanese corporation law and the Banking Act). The FSA ordered the creation and development of 'independent' governance and internal control systems, and the establishment of a clear system of responsibility within the local entity bank, predicated upon a fundamental re-evaluation of the present state of managerial involvement and monitoring of the bank by the US parent.

There is no express provision under the Banking Act that directly restricts the amount, form and manner of remuneration paid to the management or employees of banks or their affiliates. However, the regulators have been placing greater emphasis on ensuring appropriate remuneration in light of the need to avoid excessive risk-taking and to conform with the consensus of the Financial Stability Board. More specifically, as part of general prudential regulations, banks are expected to have an independent committee or other type of organisation to sufficiently monitor the remuneration of management and employees; ensure financial sufficiency, appropriate risk control, consistency between incentive bonuses and actual performance (i.e., the level of incentive bonuses should substantially decrease in the event of the bank's poor financial performance) and contribution to long-term profits in determining remuneration structures; and disclose important matters regarding remuneration.[16]

iii Regulatory capital and liquidity

The framework for regulating local entity banks' capital adequacy under the Banking Act has been amended in line with the implementation of Basel II. By March 2008, the regulatory framework of Basel II was fully introduced into Japanese banking laws through amendments of the FSA administrative notice[17] including, *inter alia*, the internal ratings based approach and the advanced measurement approach. Following Basel II's introduction, Basel III is also being introduced into Japanese banking laws.

The status of the capital adequacy of banks, including the risk-adjusted capital ratio, must be reported and disclosed on a semi-annual basis.[18] If a bank's capital ratio falls short of the minimum requirement, the FSA may require the bank to prepare and implement a capital reform plan. In extreme cases, it may reduce the bank's assets, restrict the increase of its assets, prohibit the acceptance of deposits or take any other measures it deems necessary.[19]

Effective from April 2014, foreign bank branches, in principle, are required to maintain assets (in the form designated by a Cabinet Order) equal to or more than

16 III-2-3-5 of the FSA Supervisory Guidelines.

17 FSA Administrative Notice No. 19 of 2006 and Administrative Notice No. 20 of 2006.

18 Article 19 of the Banking Act.

19 Article 26, paragraph 2 of the Banking Act.

¥2 billion at all times in Japan, which is equal to the required minimum capital amount of the local entity banks.[20]

It should be noted that on occasion, a large transaction with any one bank may be restricted due to the 'large lending limit regulation'. Pursuant to this regulation, aggregate exposure of a local entity bank to a single person (including that person's group companies) by means of extending loans, purchasing debt instruments or equity investments shall not exceed, in principle, 25 per cent of the amount of non-consolidated regulatory capital (with certain adjustments) of the local entity bank.[21]

The Banking Act does not contain an express provision that directly regulates banks' liquidity or any quantitative standards of liquidity, but the FSA Supervisory Guidelines provide some guidance on this point from a regulatory monitoring perspective. These guidelines require a bank, *inter alia*, to establish an internal framework to appropriately control liquidity risk (e.g., by separating the treasury division from the liquidity risk control division); maintain control methods as well as internal reporting procedures regarding the bank's liquidity that are subject to the approval of the board of directors; and monitor the status of its liquidity and be prepared for emergency circumstances.[22] The Inspection Manual for Deposit-taking Institutions, which has been prepared by the FSA for use by their inspectors, also includes detailed checklists for banks' self-regulation as part of the framework for managing liquidity risk. These requirements apply not only to local entity banks but also to foreign bank branches. For the latter, however, it is understood that there will be broad variations as what constitutes acceptable levels of, and procedures for, liquidity risk management given that the business of foreign bank branches varies greatly.

iv Recovery and resolution

The Deposit Insurance Act[23] provides certain measures in cases where serious problems arise in the maintenance of the stability of the financial systems in Japan or in regions where a bank operates its business. Such measures include capital injection, full deposit protection and temporary nationalisation. These measures may be initiated subject to deliberation by the Financial System Management Council.[24]

Capital injection is designed to allow a bank with positive net worth to increase the amount of its capital by way of having its shares subscribed to by the Deposit Insurance Corporation of Japan. Full deposit protection is designed for banks with negative net worth, or that suspend or may suspend the repayment of deposits. Temporary nationalisation is intended for banks with negative net worth that suspend or may suspend the repayment of deposits.

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20 Article 47-2 of the Banking Act. Certain transitional measures are set out in supplementary provisions of the Ordinance for Enforcement of the Banking Act.

21 Article 13 of the Banking Act.

22 III-2-3-4 of the FSA Supervisory Guidelines.

23 Act No. 34 of 1971.

24 Article 102 of the Deposit Insurance Act.

In addition, since March 2014, other measures have also been provided by the Deposit Insurance Act in the event of significant turmoil in financial systems, including the following: special oversight, capital injection, providing liquidity and debt guarantee for banks with positive net worth; and special oversight and financial assistance for banks with negative net worth, or that suspend or may suspend the repayment of deposits. These measures may also be initiated subject to a deliberation by the Financial System Management Council.[25]

The provisions for 'bail-in' were also implemented from March 2014, which stipulate that, in the cases mentioned above, the Prime Minister will decide the treatment of certain types of subordinated bonds, subordinated loans and preferred shares issued by banks with negative net worth, or that suspend or may suspend the repayment of deposits.

IV CONDUCT OF BUSINESS

The Banking Act obliges banks to carry on their business in compliance with various regulations, including:

a a prohibition on abuse of a dominant bargaining position;
b management of a conflict of interests;
c provision of an explanation of the risks associated with their products and other information to customers; and
d appropriate handling of personal information.

However, Japanese banking laws do not provide such comprehensive and strict banking confidentiality frameworks as those adopted in some jurisdictions. Questions of how and to what extent banks should protect and use their customers' information have been governed by general confidentiality laws and contractual arrangements between banks and their customers (including implicit agreements), the contents of which have been clarified and developed by court decisions made upon individual lawsuits alleging misconduct on the part of the relevant bank and by discussion within the banking industry.

The handling of customer information of individual clients is mainly governed by a general law applicable to all industries, entitled the Personal Information Protection Act of Japan (PIPA),[26] although general principles thereof have been brought into the Banking Act. Under the PIPA, personal information may not, in general, be disclosed to third parties without the relevant individual's consent or without providing that individual with the right to prohibit the disclosure (an 'opt-out' system).[27]

How banks should treat information held on corporate clients is discussed in the Study Group Report on Desirable Sharing of Corporate Customer Information between Banking and Securities Businesses published by the Japanese Bankers Association on 15 April 2008. This suggests that such information may be disclosed when the explicit or implicit consent of the customer has been obtained; the information is public information; or the disclosure may be deemed legitimate, taking its necessity into account (leading

25 Article 126-2 of the Deposit Insurance Act.
26 Act No. 57 of 2003.
27 Article 23 of the PIPA.

to the conclusion that a rather wider range of disclosure to other companies within the same group for the purpose of, for instance, marketing activities, is permissible without the client's consent).

It should, however, be pointed out that banks may disclose the confidential information of both individual and corporate clients to Japanese governmental authorities without their consent, if it is deemed necessary and appropriate. This could also apply to foreign governmental authorities, but this may not necessarily be the case (for instance, the PIPA provides that it is permitted to disclose personal information if such disclosure is 'based on laws', and the term 'laws' for this purpose is interpreted to mean Japanese law only).

V FUNDING

Substantially, all types of funding methods, including equity and debt financing, call loans, repurchase transactions and central bank funding principally by way of open market operations, are available to banks.

Open market operations are provided by the BoJ. Both local entity banks and foreign bank branches may participate, to the extent they satisfy certain requirements prescribed by the BoJ.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

Shareholders of local entity banks may be subject to regulation pursuant to the Banking Act if they qualify as a 'bank principal shareholder' or 'bank holding company'.

A bank principal shareholder is generally defined as a shareholder having 20 per cent (or, in certain cases, 15 per cent) or more of the voting rights of a local entity bank.[28] A bank holding company is defined as a company that has paid an acquisition price for its Japanese subsidiaries' shares exceeding 50 per cent of the total assets of the company, and that holds more than 50 per cent of the voting rights in a local entity bank.[29] Once the shareholder qualifies as a bank holding company, it will be subject to regulations applicable to a bank holding company rather than a bank principal shareholder.[30]

Any person who wishes to become a bank principal shareholder must obtain prior approval from the FSA.[31] Such person is also required to satisfy the following criteria:

a in light of matters concerning funds for the acquisition, the purpose of holding shares or other matters concerning the holding of shares, there must be no risk of impairment to the sound and appropriate management of the business of the bank;

28 Article 2, paragraph 9 of the Banking Act.

29 Article 52-17, paragraph 1 and Article 2, paragraph 13 of the Banking Act.

30 Article 52-9, paragraph 1 and Article 55, paragraph 2 of the Banking Act.

31 Article 52-9, paragraph 1 of the Banking Act.

b in light of the status of property and income and expenditure of the person and its subsidiaries, there must be no risk of impairment to the sound and appropriate management of the business of the bank; and

c the person must have sufficient understanding of the public nature of the business of the bank and have sufficient social credibility.[32]

A bank principal shareholder may be required by the FSA to submit reports or materials, may be inspected by the FSA at its offices and have to answer questions put by an FSA officer, and have to present accounting books and other documents.[33] If a bank principal shareholder fails to satisfy any conditions given by the FSA in conjunction with the approval, the FSA may order the bank principal shareholder to take any actions the FSA considers necessary.[34] Further, a bank principal shareholder having more than 50 per cent of the voting shares of a local entity bank may be ordered by the FSA to submit an improvement plan or otherwise take necessary measures to ensure the sound and appropriate management and operation of the local entity bank.[35] 'Necessary measures' are interpreted to include certain kinds of 'keep well' directions aimed at the local entity bank; for instance, capital support to the local entity bank if it has any problems with capital adequacy.

The regulations applicable to a bank principal shareholder are generally applicable in the same way to a bank holding company and its shareholder.[36] Improvement plans and 'keep well' directions are also applicable to both. Further, the scope of business of a bank holding company and its subsidiaries is restricted to certain financial businesses.[37] The maximum amount of credit that may be extended to a single group of persons by a bank holding company and its subsidiaries is the amount calculated in accordance with a formula specified in the Banking Act.[38]

ii Transfers of banking business

Local entity banks may transfer their banking businesses in one of three ways: a business transfer for all or part of the bank's business; a corporate merger of the whole business; or a corporate split for part of its business. For foreign bank branches, a business transfer is commonly used to amalgamate the Japanese operations of two or more foreign banks. Other procedures of transfer may also be available pursuant to the laws of their home countries, but there is some ambiguity regarding how the special procedures required under the Banking Act to protect customers will apply to transfers conducted pursuant to foreign laws. Both local entity banks and foreign bank branches may be a transferee

32 Article 52-10 of the Banking Act.

33 Article 52-11 and 52-12 of the Banking Act.

34 Article 52-13 of the Banking Act.

35 Article 52-14 and 52-15 of the Banking Act.

36 Article 52-31 to 52-34 of the Banking Act and Article 1-7 of the Ordinance for Enforcement of the Banking Act.

37 Article 52-21, paragraph 1 to 52-23, paragraph 1 of the Banking Act.

38 Article 52-22 of the Banking Act.

of the banking business of another bank. A banking business cannot be transferred to an entity other than a bank unless that entity obtains a banking licence prior to the closing of the transfer.

Business transfer

In summary, the procedure for a business transfer under the Banking Act is:

a the execution of the business transfer agreement between the transferor and transferee;

b in the case of a transfer of a whole business, the completion of procedures for the creditors' protection (among other procedures);[39]

c application to the FSA by both the transferor and the transferee for approval of the business transfer;[40] and

d after approval has been obtained, closing can take place.

Step (b) is performed by way of publishing a notice over a period of at least one month to creditors of the effect of the business transfer. This step essentially enables the transferor bank to replace individual consents (as would usually be required under the Civil Code) with the public notice.[41]

Corporate split and corporate merger

Corporate split and corporate merger procedures are similar to that of a business transfer:

a the execution of the corporate split or corporate merger agreement;

b the procedures for creditors' protection as mentioned above;[42]

c application for the approval of the FSA;[43] and

d the closing after FSA approval has been obtained.

Step (b) must also be performed by way of making a public notice to creditors. By application of the provisions of the Companies Act, all contractual relationships pertaining to the transferred business are transferred to the transferee bank without the individual consent of the counterparties.[44] All of the relevant steps required under the Companies Act and securities laws, as well as the rules of securities exchanges, remain applicable under these procedures.

39 Article 34 of the Banking Act.

40 Article 30, paragraph 3 of the Banking Act.

41 Article 34, paragraphs 3 and 4 of the Banking Act.

42 Article 789, paragraph 2; Article 799, paragraph 2; Article 810, paragraph 2; and Article 789 of the Companies Act; Article 33 and 33-2 of the Banking Act.

43 Article 30, paragraphs 1 and 2 of the Banking Act.

44 Article 750, paragraph 1; Article 754, paragraph 1; Article 759, paragraph 1; and Article 764, paragraph 1 of the Companies Act.

VII THE YEAR IN REVIEW

In March 2015, the Financial System Council of Japan was consulted about the revision of restrictions on bank holding companies. Newspapers have reported that the main purposes of the revision are, *inter alia*, to allow bank holding companies to engage in various business areas including information technology, and to encourage business integration between local banks.

VIII OUTLOOK AND CONCLUSIONS

For more than a decade, the government has proceeded to relax the regulations on financial institutions, aiming to increase the competitiveness of Japan's financial industries; however, in step with the worldwide movement to impose tougher constraints on the financial sector following the global financial crisis, the government also seems to be turning to stricter regulation.

Due to the changes in financial regulatory environments worldwide, it has become more difficult to predict the direction of the banking regulation policies. All participants in the Japanese banking industry are strongly recommended to closely observe any trends and changes in Japan's financial regulations.

Appendix 1

ABOUT THE AUTHORS

HIROHITO AKAGAMI

Anderson Mōri & Tomotsune

Hirohito Akagami is a partner at Anderson Mōri & Tomotsune engaged principally in the fields of financial, corporate and commercial law, with an emphasis on securities work and M&A. Typically, these transactions involve Mr Akagami representing the purchasers for a number of tender offers, which he has been doing for more than 15 years. He also advises clients on a number of domestic and cross-border syndicated loans, securities and other financial transactions, as well as on corporate governance-related matters and regulatory issues.

He graduated from Tokyo University in 1986 and received his LLM from the University of London, London School of Economics and Political Science in 1993. He was also seconded to Slaughter and May in London and Brussels in 1993 and 1994.

He is a member of the Dai-ni Tokyo Bar Association in Japan (1988 to present). He speaks Japanese and English.

WATARU ISHII

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Wataru Ishii is an associate at Anderson Mōri & Tomotsune, engaging in a wide range of general corporate issues. He focuses his practice on financial transactions, including financial regulatory matters.

He received his LLB from Tokyo University in 2002 and his JD from the University of Tokyo School of Law in 2009. He is a member of the Dai-ni Tokyo Bar Association in Japan (2010 to present). He speaks Japanese and English.

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