
Financial Law Board and Recent Financial Law Reforms in Japan

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The views expressed here do not necessarily reflect those of the Financial Law Board
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1. Financial Law Board Overview
 2. Recent Financial Law Developments
 3. Reforms Underway
 - Corporate Law
 - Securities Law
 - Trust Law
 4. Topics on M&A Markets

Financial Law Board Overview (1)

■ Financial Law Board (FLB)

- Established in 1998
- Fourteen members: seven scholars on Commercial law, Civil law, Bankruptcy law and International private law and seven financial lawyers
- Chaired by Prof. Hideki Kanda (Univ. of Tokyo) and Mr. Akihiro Wani (Linklaters)
- Regular meetings on a monthly basis
- BOJ serves as Secretariat
- <http://www.flb.gr.jp/epage/ehome.htm>

Financial Law Board Overview (2)

- Issues addressed include:
 - Corporate law
 - Securities regulation
 - Securitisation
 - Trust law
 - Bankruptcy
 - Financial derivatives
 - Securities settlement
 - International private law

Financial Law Board Overview (3)

■ Recent works

- Opinions on reforms in Corporate law, Bankruptcy (liquidation) law, International private law
- Study on security trust, later recognised by new Trust law
- Study on practically important issues: investment in financial derivatives by corporations for public purposes, assignment of bank loans, etc.

Recent Financial Law Developments (1)

1996	Law on special rules for bankruptcy of financial institutions Japanese "Big Bang"
1997	revised Foreign exchange law Bank holding company law
1998	Financial system reform law Law on asset securitisation through SPCs Law on close-out netting by financial institutions Financial functions revitalisation law
1999	RCC (Resolution and Collection Corporation) formed under revised Deposit insurance law
2000	Civil rehabilitation law Law on sales of financial instruments
2001	Law on book-entry settlement for dematerialised securities
2003	IRCJ (Industrial Revitalisation Corporation) formed under IRCJ Law
2005	Lifting full deposit insurance

Recent Financial Law Developments (2)

	2003	2004	2005	2006	2007
New Corporate reorganisation law	●				
New Bankruptcy (liquidation) law			●		
New Corporate law				●	
Amendments to M&A rules					●
Financial instruments and exchange law				■	
New Trust law				.	
New International Private law				.	

● - implemented, ■-enacted, . - submitted to the Diet

Corporate Law (1)

■ New Corporate Law

- Increased autonomy in decision making structure
- Flexible options for capital structure
- Broadened options for corporate restructuring
- Came into effect in May 2006, amendments to M&A rules in May 2007

Corporate Law (2)

■ Corporate governance

- Increased autonomy in decision making structure
- Rationalised responsibility of directors: from strict liability to negligence
- Mandatory internal control system for big companies with capital of more than JPY 500 million (USD 4 million) or total debt of more than JPY 20 billion (USD 177 million)
- Introduction of LLC with flexible internal decision making

Corporate Law (3)

■ Corporate finance

- New several classes of equity: share with veto power with limited transferability
- No minimum capital requirement for start-up companies
- Expanded choices for corporate dividend policy: dividend in kind, flexible timing in distribution

Corporate Law (4)

■ Corporate restructuring

- Expanded types of consideration to target's shareholders: "cash-out" and "triangular" merger possible
- New "short-form" merger: a parent with more than 90% shares can merge with its subsidiary without voting at subsidiary's shareholders' meeting

Securities Law (1)

- New Financial Instruments and Exchange Law
 - Revision of the current Securities and exchange law
 - Uniform legal infrastructure for financial markets transactions
 - From “sectoral” to “functional” regulation on financial instruments and services
 - Different rules according to types of investors
 - Strengthened disclosure rule and criminal penalty
 - Enacted on June 7 in the Diet

Securities Law (2)

- From “sectoral” to “functional” regulation on financial instruments and services
 - Wide range of financial instruments with risk-return profile under regulation including collective investment funds
 - Derivative-embedded deposit and variable life insurance under the same regulation by Banking law and Insurance business law
 - Flexible coverage of new innovative instruments by way of FSA (Financial Services Agency) ordinance

Securities Law (3)

- Different rules according to types of investors
 - “General” and “professional” investors
 - “Professional” investors with/without an option to be “general”
 - “General” investors with/without an option to be “professional”
 - Suitability rule and full explanation rule for protecting general investors
 - Less burden for professional investors such as “qualified institutional investors”

Securities Law (4)

- Strengthened disclosure rule and criminal penalty
 - Strengthened disclosure rule for publicly listed companies: mandatory quarterly disclosure and mandatory external audit of internal control over financial reporting
 - Toughened criminal penalty for market fraud: maximum ten years' imprisonment, extended by five years

Trust Law (1)

■ New Trust Law

- Current Trust law: coloured by regulatory tones
- Shifting toward civil law principle
- Several new types of trust
- Rationalised responsibility of trustee
- Recognise beneficial interest in trust as securities
- Now under deliberation in the Diet

Trust Law (2)

- **New types of trust - Security trust**
 - Separate security interest over collateral from underlying secured claim
 - Promote syndicated loans and structured finance
 - FLB presented an opinion on validity of security trust under the current Trust law (2005)
 - Explicitly recognised in new Trust law

Trust Law (3)

■ Other new types

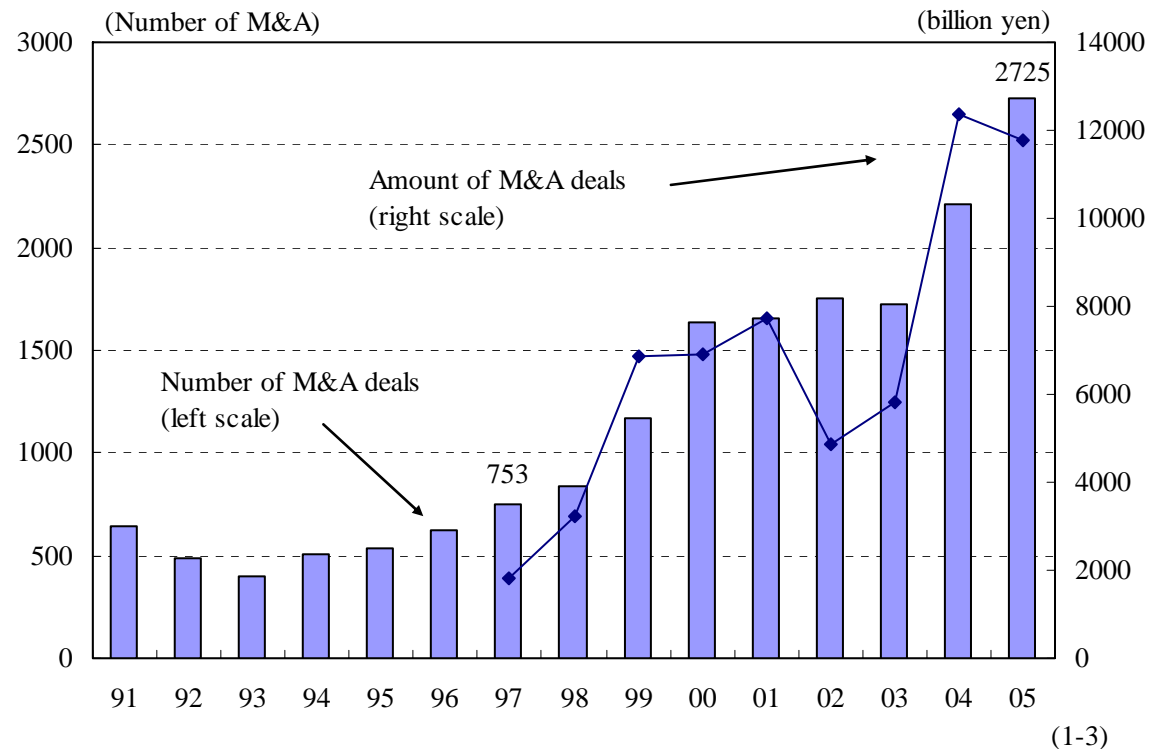
- Declaration of trust: settlor acts as trustee for its own asset
- Trust of business: trust undertakes both asset and liability of settlor's business
- Limited liability trust
- Purpose trust: similar to Cayman charitable trust

Trust Law (4)

- Rationalised responsibility of trustee
 - Relaxed duty of loyalty rule: trustee can acquire trust property under certain conditions
 - Outsourcing trust administration without explicit prior consents
- Recognise beneficial interest in trust as securities

Topics on M&A Markets

1997 **2005**
Amount of M&A deals JPY 1.8 trillion ➔ **JPY 11.8 trillion**
(0.4% of GDP) **(2.3% of GDP)**



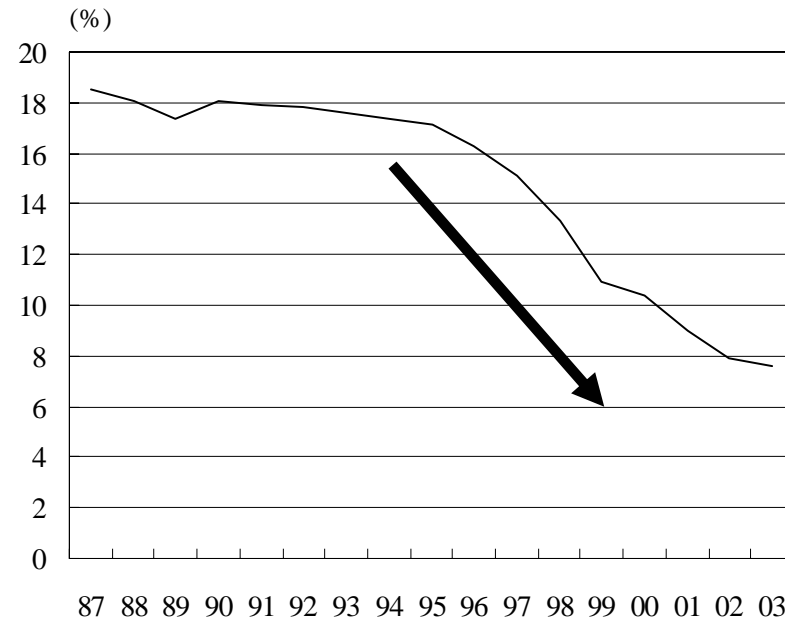
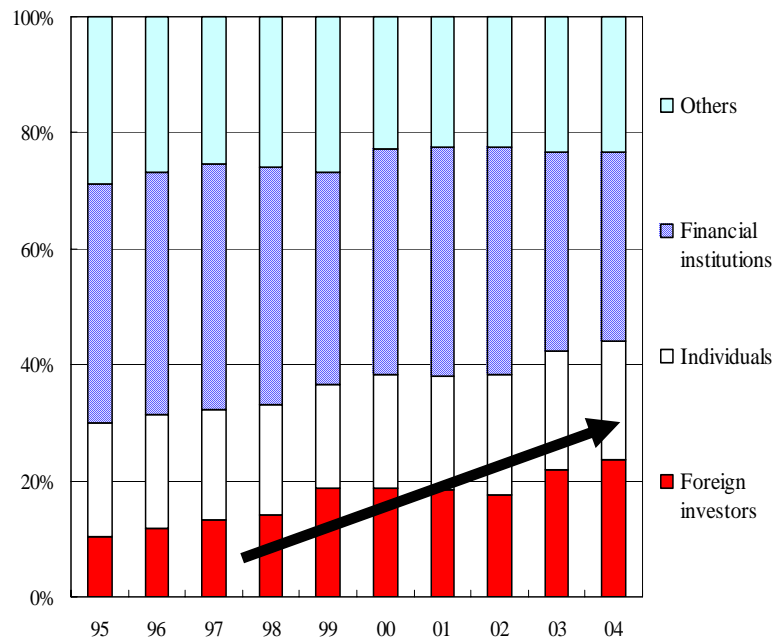
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Source: RECOF

Background (1): M&A Infrastructures

	Corporate Law	Accounting Standards
1997	Simplified merger procedures	
1998		
1999	Introduction of share to share exchange and share transfer	Consolidated financial statements, cash-flow statements
2000	Procedure for spin-offs	Fair value accounting of financial instruments
2001	Deregulated share repurchase, classes of shares	
2003		Impairment of fixed assets
2006	New Corporate law	Business combinations
2007	New Corporate law: amendments to M&A rules	

Background (2): Market Players

(1) Holding share of listed companies' share (2) Cross-shareholding



(source) NLI Research Institute

Recent Issues

- Rules on hostile takeover
 - Unclear regulations over coercive takeovers, excessive defenses
- Regulations over investment funds
 - Certain types of investment funds without public disclosure
 - Unclear accounting standards for scope of consolidation concerning investment funds