Indeed, these incidents can be viewed as evidence that the generation of Japanese who were educated after the Second World War have begun to have control over the government as well as over major corporations. Japan is now directed toward banishing every sort of corruption from the whole society.

Apart from the legislation responding to changes in the financial world, there are also reforms arising from scientific progress and the need for modernisation. The *Brain Death Act* 1997 has passed through the Diet, and will enable medical doctors to use parts of a body whose brain is determined to be dead. The aim of this statute is the utilisation of human bodies for medical purposes. The process is of course very rigid, and those medical doctors who wish to operate under the Act must obtain the consent of the patient and his or her kin.

Other recent modernising measures include legislation which makes environmental assessment obligatory. The *Labour Standards Act* and its related statutory provisions have been amended to provide for sexual equality so that women are no longer equated with children.

In the historical perspective, a few important reforms have been introduced in recent years. First, the code of civil procedure was renewed in 1996 and became effective on 1 January 1998. The old code, enacted in 1890, was written in old language. Now it has been rewritten. Its substance, essentially based on German law, was also partly modified in favour of Anglo-American law but was not drastically changed, the reforms being mainly for the purpose of simplification of language.

Note should also be made of recent discussions relating to the activities of the national defence force. In accordance with changes in the international situation, Japan wishes to play an important role in the United Nations, especially as a member of the Security Council. Because the Tsukuba conference was restricted to reforms in business law, this area was excluded from our discussion.

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Japan

Doom and gloom in the Tokyo market or a global storm?

by Dr Chizu Nakajima

The fall of Yamaichi Securities Co, one of Japan's big four brokerage houses, has further demoralised the people of Japan and has taken jobs away from many hard working men and women. Its repercussions on the rest of the world are still to be felt at the time of writing.

Was Yamaichi's collapse totally unavoidable? The main cause of its failure, according to news reports and announcements from the Bank of Japan (*Financial Times*, 24 November 1997), was Yamaichi's engagement in illegal practices, including making payments to sôkaiya (general meeting fixers) paying compensation to favoured clients and, worst of all, concealing liabilities by moving losses from one account to another, a practice known as tobashi. Whilst these practices had been known to and conducted in the industry for many years and – thanks to media attention – even the public have recently been made aware of them, nothing much has been done to control them notwithstanding the statutory prohibitions, at least until now. It was, so it has been alleged, due to the cover-ups by the securities companies through the use of offshore companies that the regulators had not been able to get to the bottom of the financial state of many houses, including Yamaichi, until it was too late.

There have been other failures including the seventh largest broker, tenth largest commercial bank and a small credit association which, in fact, failed thanks to a man with sôkaiya connections. Whilst Japan has experienced worse economic conditions before the Second World War, what makes everyone in Japan so weary is not only the sheer scale of debt mountains – estimated by the government to be over 20,000 billion yen but rumoured to be at least twice this – but revelations of the link between the financial sector and organised crime and the extent to which those established houses have allowed themselves to be involved with the underworld.

The report of the Securities and Exchange Surveillance Commission (SESC), published in October 1997, noted that its activity had gone up considerably as a result of an increase in crimes involving securities companies. It is, however, more likely that it was public demand for a tighter control of the financial sector and SESC's efforts to step up inspections of financial intermediaries that have uncovered a larger number of cases, resulting in a 'record five criminal complaints' (*Japan Times*, 2 October 1997) filed with the prosecutors. These prosecutions consisted of one against Nomura Securities Co, the largest of the big four, for alleged loss compensations made to sôkaiya, three suspected cases of insider dealing and one case of spreading rumours about listed shares in violation of the *Securities and Exchange Law*. As the report covers only the first half of 1997, more recent investigations into the other three of the big four for alleged loss compensations to sôkaiya have not been included. No doubt the next report will show an even larger increase in the number of investigations carried out by the Commission.

In addition to criminal prosecutions, SESC's report shows that, after carrying out inspections of 83 brokerage firms and 7 financial institutions authorised to conduct securities business, 11 incidents were referred to the Ministry of Finance for administrative sanctions against firms or employees for rule violations. Amongst the referred incidents was a breach of a 'fire wall', i.e. the separation which must be maintained between a parent company and its subsidiary in broking and banking. In this case, an employee of a bank's securities subsidiary obtained from the parent bank reports prepared by a rival company – thus crossing the 'fire wall'. Such conduct is a breach of the Securities and Exchange Law and for the first time SESC recommended administrative actions to be taken.

Whilst the so-called Tokyo big bang has been talked up to provide a focal point for the depressed public and financial sector alike, the magnitude of failures in the financial industry will inevitably refocus people's attention on financial mismanagement and, in particular, the financial industry's links with the underworld. The problem is not the lack of rules and regulations. Indeed the government has been drawing up tougher measures against organised crime (*Yomiuri Shimbun*, 6 October 1996) and it has just announced its intention to increase the penalties for violations of the *Securities and Exchange Act's* provisions on insider dealing by allowing confiscation of profits, as it has been argued that the existing penalties are not sufficiently severe compared to other leading nations such as the US, and are therefore ineffectual (*Nihon Keizai Shimbun*, 10 November 1997).

What exacerbated the current upheaval in the Japanese financial sector was the financial intermediaries' lack of commitment to compliance with rules and regulations and, on the part of the authorities, the lack of enforcement of these rules during the boom period. Therefore, when the Tokyo stock market crashed and the bubble burst at the end of the 1980s, the finance houses were left with mountains of bad debts owed by legitimate businesses and criminal enterprises alike. Had they been more cautious in applying credit and risk analysis to all those borrowers and more observant of rules concerning securities transactions, these failures would not have occurred to this extent. However, whilst the stocks and property market continued to surge, it did not seem so necessary to be overcautious and pedantic in applying rules set by the regulators and certainly the importance of internal controls seemed only a fiction. SESC, which was established in 1992, essentially as a result of a series of revelations about securities companies making loss compensations to favoured clients (including those linked to organised crime), points out that, even though awareness of their importance might have been raised in recent years, there is a lack of commitment amongst these securities companies to compliance with trading rules.

The government's plan is to transfer SESC, which is currently appointed by the Finance Minister, to a new independent agency to be created in summer 1998 in order to conduct the supervision and inspection of financial institutions. It would seem that the Tokyo big bang may well lead to a course similar to that being followed in the City of London which is undergoing regulatory reform under the leadership of the Financial Services Authority. However, what Japan desperately needs is decisive action to bring the current turmoil to an end, not only to protect customers' assets but also to reassure the rest of the world. It now seems most likely that public funds will be used to sustain the financial system. As the second largest creditor in the world, the world economy cannot afford to see Japan tackle the current situation merely as a domestic crisis, as its impacts will be felt round the world for some time to come.

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