Financial Regulatory Reformation in South Korea and Experience of the Consolidated Regulatory System

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Jeongdoo Lee
Abstract

One significant recommendation for the U.S. financial reformation is the consolidation of regulatory system, which South Korea adopted after the Asian financial crisis. This paper briefly reflects the causes of the Korean financial crisis from the points of financial regulation, and explains the process of reformation and experiences of Korean consolidated system including some modifications after the initial reformation. In addition, this paper evaluates the Korean regulatory system with general standards and needs for changes in the backgrounds of various economic and political surroundings. Although there can be general requisites for desirable regulatory system, the reason for the change itself is also important yardstick to evaluate a system because the result of the reformation must satisfy its primary factors. This paper evaluates the Korean financial regulatory reformation with the standards of clear and pertinent objectives, independence, accountability and check for the authority, and efficiency and expertise. Independence of financial regulation and separation of economy policy and financial policy authorities are additional standards for evaluation because they are related to the causes of the financial crisis and have been pointed out as critical matter in Korean system. In conclusion, Korean financial regulatory system, in some aspects, looks like past regulatory system which was targeted for reformation. The basic principle of change was to correct past mistakes and cope with unexpected change of situation. From this point of view, the current system shows some deficits and needs to construct more effective and independent regulatory system which can satisfy the original needs for regulatory reformation.
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<tr>
<td>APRA</td>
<td>Australian Prudential Regulatory Authority</td>
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<td>APRAA</td>
<td>Australian Prudential Regulatory Authority Act of 1988</td>
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<tr>
<td>BAI</td>
<td>Board of Audit and Inspection (S. Korea)</td>
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<td>BOK</td>
<td>Bank of Korea</td>
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<td>BOKA</td>
<td>Bank of Korea Act (S. Korea)</td>
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<td>CCEJ</td>
<td>Citizen’s Coalition for Economic Justice (S. Korea)</td>
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<tr>
<td>CFTC</td>
<td>Commodity Futures Trading Commission (U.S.)</td>
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<td>DPA</td>
<td>Deposit Protection Act (S. Korea)</td>
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<td>FDIC</td>
<td>Federal Deposit Insurance Corporation (U.S.)</td>
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<td>FSC</td>
<td>Financial Supervisory Commission / Financial Services Commission (S. Korea)</td>
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<td>FSCA</td>
<td>Act on the Financial Services Commission (S. Korea)</td>
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<td>FSCMA</td>
<td>Financial Investment Services and Capital Market Act (S. Korea)</td>
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<td>FSMA</td>
<td>Financial Services and Markets Act of 2000 (U.K.)</td>
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<td>FSOA</td>
<td>Act on the Establishment, etc., of Financial Supervisory Organization (S. Korea)</td>
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<td>FSS</td>
<td>Financial Supervisory Service (S. Korea)</td>
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<td>GAO</td>
<td>United States Government Accountability Office</td>
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<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>ISB</td>
<td>Insurance Supervisory Board (S. Korea)</td>
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<tr>
<td>JAP-FSA</td>
<td>Japanese Financial Supervisory Authority</td>
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<tr>
<td>KDIC</td>
<td>Korea Deposit Insurance Corporation</td>
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<tr>
<td>KOPIA</td>
<td>Korea Financial Investment Association</td>
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<tr>
<td>KO-SEC</td>
<td>Korean Securities and Exchange Commission</td>
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<td>KRX</td>
<td>Korea Exchange</td>
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<td>KSE</td>
<td>Korea Stock Exchange</td>
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<td>MOC</td>
<td>Monetary Policy Committee (S. Korea)</td>
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<td>MOFE</td>
<td>Ministry of Finance and Economy (S. Korea)</td>
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<td>MOPB</td>
<td>Ministry of Planning and Budget (S. Korea)</td>
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<td>MOSF</td>
<td>Ministry of Strategy and Finance (S. Korea)</td>
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<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>NSA</td>
<td>Non-bank Supervisory Authority (S. Korea)</td>
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<td>OBS</td>
<td>Office of Bank Supervision (S. Korea)</td>
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<tr>
<td>OCC</td>
<td>Comptroller of the Currency Administrator of National Banks (U.S.)</td>
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<tr>
<td>OMB</td>
<td>Office of Management and Budget (U.S.)</td>
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<tr>
<td>PCFR</td>
<td>Presidential Committee on Financial Reform (S. Korea)</td>
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<tr>
<td>SEC</td>
<td>U.S. Securities and Exchange Commission</td>
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<tr>
<td>SFC</td>
<td>Securities and Futures Commission (S. Korea)</td>
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<tr>
<td>SRO</td>
<td>Self Regulatory Organization</td>
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<td>SSB</td>
<td>Securities Supervisory Board (S. Korea)</td>
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<td>UK-FSA</td>
<td>Financial Supervisory Authority of the United Kingdom</td>
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I. Introduction

In retrospect, it is easy to find causes for crisis and effective counter measures. However, it is difficult to measure any causes for inexperienced crisis in advance. The best thing to prevent such crisis is to consider overall financial system, not just some causes for several problems. In addition, such system should be rechecked from time to time to be effective for future events. Following the global financial crisis originating from the U.S. mortgage market collapse, many countries are trying to find effective measures to protect their own economy and secure the rule of global financial activities. The study about the financial regulatory system is at the center of such endeavor.

Like influenza, financial crisis has repeated periodically. Each crisis came with some modification from prior ones, and there always have been pertinent treatments like a flu vaccine. Some countries have finished their reformation of financial regulatory system and some others are trying to make advanced financial system to give competitiveness and stability for their own industry. The former countries, however, also cannot be free from the future needs for further reform because the system must be updated for the current industry situation as time passes.

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2 Increased convergence in product offerings and increased concentration of assets in large, complex firms pose a challenge for regulatory agencies to act consistently in responding to risks that cut across the functional lines that define the regulatory structure. While the regulatory agencies have taken action to work collaboratively in response to the industry’s trend, we have noted in the past that it is difficult to collaborate within the fragmented U.S. regulatory system and concluded that the structure of the federal regulatory system should be reexamined.


4 GAO, * supra* note 1, at 6 (citing a regulator’s comment, who said that it specifically required institutions to conduct stress tests such as those based on historical events including the collapse of Long-Term Capital Management or the stock market decline of 1987, but the liquidity crisis of 2008 was greater than they had expected).


6 “The developments in the global financial system in late 2007 and early 2008 suggest that the higher quality of supervisory systems in high-income countries may not have been sufficient given the complexity of their financial
What a time being, American standard has been the global standard in many sectors as its power in economy, technology, culture, as well as military have overwhelmed other countries. Recently, the U.S. is studying its new mechanism for financial regulation and it also studies various foreign precedents about financial regulatory reformation.\(^7\) For every country including the U.S., study and comparison of other countries’ system is essential in consideration of such critical change. In the middle of series of financial scandals and economic recession, there have been arguments that the U.S. needs more radical reformation than just a tinkering of present system. And one alternative is the consolidated financial regulatory system which South Korea\(^8\) adopted as a treatment for the severe Asian financial crisis of 1997.\(^9\)

This paper is directed to study the background of financial regulatory reformation of the South Korea, the process of such reformation and its evaluation. It is also more focused on the regulatory structure rather than the detailed prudential regulation. For such purpose, Section II will study the currency crisis of Asia and Korea as a direct dynamic for reformation in financial regulatory system. Without such strong impact, there could not be such radical movement including the shift of regulatory power from government to non-government organization, even though it was not perfect and already returned to the past. Thus, in this section, there will be explanation how the crisis contributed to the reformation.

Section III will show the differences of regulatory systems between prior to the crisis and after the crisis. This also includes several significant changes following the original reformation. Study about the progress of changes will show Korean political and cultural characteristics which are peculiar to Korea and necessary to understand the Korean situation.

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\(^8\) The Republic of Korea [hereinafter Korea or South Korea].

\(^9\) The different areas of the financial services industry have been gradually intermingling over the last quarter of a century. The American model of regulating each facet of finance is based on the historical separation of financial services and not on their current status. Because financial markets move on, the sectoral system put in the late 1980s is no longer fit for the purpose at the beginning of the 21st century. The old divisions between banks, insurance companies, securities firms, investment managers, and the rest, do not reflect the way the financial sector is now organized.”

In section IV, there will be evaluation of new regulatory system from several standards. The most important standard should be the cause of reformation. The evaluation will include whether the new system satisfy the original impetus. If not, there will be explanation what made such result and whether the modified system was pertinent from other standards. Then, section V will be conclusion.

This study can be the introduction to the recent Korean reformation in financial regulatory system which adopted a consolidated system. Korea selected such system after studying various foreign cases and following the recommendation of International Monetary Fund (IMF). In addition, it also has driven to make advanced financial market environment and competitive financial industry, including the consolidation of various financial industry legislations. There are opinions which say that, for the experience of the late 1990s, the impact of the recent worldwide financial crisis was not so severe in Korea because it overcame the late

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<Table 1> Change of Korean Financial Regulatory Statutes following the FSCMA

|----------------------|---------------------|----------------------|--------------------|-------------------------------|---------------------------|-------------------------|-------------------------|

* Source: Financial Supervisory Service [FSS], Financial Supervisory System in Korea 17 (2008).
1990s crisis and radically reformed its systems for future industry environment. Thus, its experience can be helpful for other countries especially in this time of global transition.\footnote{11}

After the sub-prime oriented financial crisis and the Blueprint for a Modernized Financial Regulatory Structure,\footnote{12} there have been numerous discussions relating optimal financial regulatory system.\footnote{13} Recent White paper of Obama administration\footnote{14} is still under scrutiny and it is also unclear whether the White Paper can be realized. As far as it does not lose its dynamic, it is better to be prudent in deciding reformed system than to cope with populism in hasty.\footnote{15} Just for 15 months, however, the White paper refrain most radical changes which were included in the Blueprint. Despite the Blueprint, in White paper, most regulatory system keeps on current system.\footnote{16} There is no clear evidence that the fundamental change is necessary for new regulatory system, needless to say the prompt reformation. Most important issue is that, after the exact diagnose for causes of crisis, the optimal regulatory system can be prescribed.\footnote{17} In such process, however, the impetus for reformation can be weakened and the prescription can be just tinkering. There is a saying that “a crisis makes opportunity.” To make recent financial crisis a precious chance preventing other more severe problems, this discussion should not be just tinkering, but should be one curing various problems in current regulatory system even though not radical nor fundamental one.

\footnote{11}{It is impossible to make any conclusion which system is better than others. There can be, however, some requisites with which good regulatory system must be equipped. Such requisites also must be modified according to each country’s context. See Joseph J. Norton, \textit{Global Financial Sector Reform: The Single Financial Regulator Model Based on the United Kingdom FSA Experience—A Critical Reevaluation}, 39 Int’l Law. 15, 56 (2005).}


\footnote{15}{See Feibelman, supra note 13, at 908-09. See also Luca Enriques, \textit{Regulators’ Response to the Current Crisis and the Upcoming Reregulation of Financial Markets: One Reluctant Regulator’s View}, 30 UPAJIL 1147, 1152-53 (Summer, 2009) (commenting the problems of reregulating financial market “during, or in the aftermath of,” a severe financial crisis).}

\footnote{16}{White Paper, \textit{supra} note 14, at 20.}

\footnote{17}{See Feibelman, \textit{supra} note 13, at 884 (commenting that “only after policymakers identify the risks inherent in the financial system and determine the scope of justifiable regulatory intervention should they attempt to devise or reform the institutional structure”).}
II. What brought the crisis and what happened with the crisis?

1. Overview of Asian Financial Crisis

Many Asian countries experienced hardship for financial crisis of late 1990s and usually this period and situation is described as the “Asian Financial Crisis.” Especially, Indonesia, Korea and Thailand took severe damage in their economy, and the result of the crisis influenced on many other Asian countries.18 More specifically, those situations were defined as “currency crisis,” which means the radical change of foreign exchange rate or the severe unbalance between demand and supply of foreign currency.

Despite several disputes relating the causes of the Asian Financial Crisis, the direct cause of the impact was the quick change of currency rate of each country including *rupiah, baht* and *won* and the loss of governmental control over their currency rate.19 Whatever the cause of the quick currency rate change, the important point is that each country had contributed to such situation and had worsened the financial and corporate structure.20 Unlike Indonesia and Thailand, however, the Korean economic situation was stable and in good indexes and it was difficult to expect such rapid change.21 Even though there were some common factors with other countries, as can be seen in next chapter, the cause of Korean crisis can be more traced to the failure of financial regulation than overall real economy or some other plot theory.22

2. Causes of South Korea’s Financial Crisis

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19 Id., at 133-39.
20 Still, there are various arguments about the cause of Asian financial crisis including the attack of speculative international capital. This paper, however, treats objective facts and analysis related to currency crisis from the point of financial industry regulation.
In addition to its geographical location of Far East, Korea was more competitive than other Southeast Asian countries and there were little direct relations between Korea and Thailand or Indonesia, the origin of the crisis.\textsuperscript{23} Despite these facts, they were all invested by foreign capitals as a same notion of “the emerging market,” and once the investors lost confidence to one part of such emerging market, South Korea could not overcome the doom of its neighbors.\textsuperscript{24} Eventually, 1997 Asian Financial Crisis contributed Korean currency crisis indirectly. Even though it was not a direct contagious effect, the Asian financial crisis made international financial situation fluctuating and this critically affected the Korean economy which already was undergoing several problems.\textsuperscript{25}

Before the crisis, Korean corporations had been in poor performance resulting from over-investment in facilities, burden of high personnel expenses, increase of financial cost and lessened profitability. Despite corporations’ high leverage ratios, government failed in restructuring the industry and aggravated the situation with irrational policies, such as forcing commercial banks to extend additional loans to insolvent firms, allowing bankruptcy deferment accord or co-finance to troubled corporations.\textsuperscript{26} For example, the number of merchant banks increased from six to thirty for 3 years before 1996, and many of them were dominated by Chaebols and supplied cheap short-term funds from international capital market without pertinent regulation.\textsuperscript{27} Commercial banks competed in the similar business and this aggravated the currency mismatch problem.\textsuperscript{28} In those situations, during the first half year of 1997, several giant business groups bankrupted and foreign capital inflow began to decrease as foreign

\textsuperscript{23} For example, “Korea’s GDP was twice as large as that of Indonesia and three times as large as that of Thailand.” See Paul Krugman, The Return of Depression on Economics and the Crisis of 2008 92-93 (2009).

\textsuperscript{24} Id., at 93-94.

\textsuperscript{25} See Kim, supra note 21, at 9. See also Christopher Hale, Addressing the Incentive for Expropriation Within Business Groups: The Case of the Korean Chaebol, 30 Fordham Int’l L.J. 1, 29-30 (2006).

\textsuperscript{26} See Chang Yong Rhee, Oi-Hwoan-Wi Ki-I-Hu Sil-Mul Mit Gum-Yung-Bu-Mun-Ui Ho-Bok-Gwoa-Jeong-Gwoa Gyo-Hun [Recovery of Real and Financial Division after the Foreign Currency Crisis and Lesson] 11 (2001) (commenting the cause of the crisis as government-driven financial industry and moral hazard which caused reckless investment of corporate and insolvent financial companies.)

\textsuperscript{27} See Kim, supra note 21, at 5. Chaebol refers to a South Korean form of business conglomerate of many companies clustered around one parent company. The companies usually hold shares in each other and are often run by one family. The Korean word means "business family" or "monopoly" and is often used to indicate "conglomerate" in English. http://en.wikipedia.org/wiki/Chaebol (last visited Sep. 15, 2009).

\textsuperscript{28} Id.
institutions lost confidence in Asian market and government’s crisis management capacity. Korean currency, won, became devaluated and Bank of Korea (BOK), the central bank of South Korea, must involve the currency market to keep the value of won.

As Asian financial crisis which began from Thailand spread to other Asian countries, it became difficult for Korean foreign exchange banks and corporations to rollover foreign currency denominated loans and large scale of foreign capitals began to outflow. Eventually, the BOK gave up the market intervention and adopted the complete floating exchange rate system. At that time, many Korean foreign exchange banks suffered high non-performance loan ratios and their borrowings in foreign currency were concentrated on short term external debt. As a result, there was severe currency mismatch between usable foreign exchange reserve and matured foreign debts as well as capital mismatch for the non-performing loans, and Korean government had no other alternatives but to ask help from international organizations, which was called International Monetary Fund (IMF) relief package.

In brief, among compound causes, impacted by the instability of international capital market, Korean foreign banks’ weakness, failure in prudential regulation for financial institutions and accumulated flaws in financial industry acted critical role in the Korean financial crisis in 1997. Therefore, in the counter-measures to overcome the crisis, Korea focused on

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29 See Lee, supra note 22, at 172.

30 Before this measure, during two months from October, 1997, foreign exchange transaction for won was suspended three times because the change of currency rate reached the upper limit of fluctuation range. Until December 16, 1997, Bank of Korea kept the daily limit for the range of fluctuating exchange rate (at that time 2.25%). See Id., at 60-62.

31 Banks’ long term borrowing in foreign currency was strictly regulated by government and banks’ business practices preferred to borrow short term loan with low interest rate and lend with high interest rate. See Kim, supra note 21, at 3-4. For the Basel Committee’s regulatory policy, this situation was not confined to the Korean.

Some regulators’ rules distort investment decisions. An example from the 1990s has been lending short-term to Asian and Russian borrowers because such loans carried a lower risk-weighting in the Basel Committee’s rules for capital adequacy. At the end of 1996, 60 per cent of the $380 billion in international bank lending outstanding to Asia had a maturity of less than one year. One of the Basel capital adequacy shortcomings is that short-term lending requires less provisioning than long-term loans. Short-term lending was one of the basic background reasons of the mid-to late 1997 meltdown in East Asia and the August 1998 debacle in Russia. See DIMITRIS N. CHORAFAS, NEW REGULATION OF THE FINANCIAL INDUSTRY 13 (2000).

32 See Kim, supra note 21, at 9.

33 There are various analyses finding the causes from others, such as contagious effect of Asian financial crisis, outflow of foreign capital from direct investment including bonds or securities, attack from the speculative international fund, etc. See Lee, supra note 22, at 172-74. These causes could contribute the crisis but they seemed less important than the matter of financial industry or just indirect cause.
restructuring the financial industry and reforming of the financial regulatory system. Corporate restructuring, which was another important step to overcome the crisis, was also implemented with financial industry restructuring through the Financial Supervisory Commission (FSC), a consolidated financial regulatory authority which was established as a result of the financial regulatory reformation.

3. Effects of the Financial Crisis

a. Overview

Korean financial crisis in 1997 is called by several terms such as currency crisis, financial crisis, IMF bailout, IMF supervision system, etc. Most used term for the crisis was “the IMF bailout” because most people recognized the crisis with IMF’s financing package and its binding recommendations. Besides material and economical hardship, Korean people took serious psychological shock from the fact that Korea suddenly lost its economic sovereignty to the IMF although it had been 11th biggest economy in the world. This impact, however, gave precious opportunity for Korea to correct side-effects from the rapid growth which has been called ‘miracle of Han-river’.


35 Financial Supervisory Commission promoted both restructuring of financial industry and corporate. For the latter, FSC operated a special Task Force Team of “Corporate Restructuring Promotion Team.” For this system in which FSC could approach enormous information about corporate and control various capitals available for them through financial institutions, FSC could accomplish the utmost efficiency in corporate restructuring but, at the same time, there are criticism that there was critical conflict of interest between corporate restructuring and prudential regulation of financial institutions.

36 Even though the emergency relief financing of $57 billion was comprised with various sources (including $21 billion from the IMF, $10 billion from the World Bank, $4 billion from the Asian Development Bank and approximately $22 billion from 12 industrialized countries), the program was called as IMF relief financing because IMF led the financing and reformation programs. See Nam, supra note 18, at 137-38.

37 Usually IMF’s policy recommendation does not have binding effect for any country but, according to the agreement between the Korean government and IMF, IMF’s policy recommendation for Korean government had binding effect until Korea repaid full amount of loans from IMF. Korea finished repayment of IMF loan until August 23, 2001. See Press Release, Ministry of Finance and Economy of Republic of Korea (MOFE), Korea Completes Early Repayment of IMF Loan (Aug. 24, 2001).

b. Momentum for Changes

Until that time, Korean economy was driven by government directly or indirectly for rapid growth.\textsuperscript{39} There were several side-effects of such government driven economy, especially in the time of recession.\textsuperscript{40} Despite such matters, it looked difficult to expect any self-driven changes for traditional political and social governance. But the financial crisis, with various IMF programs, provided Korea chance to change its old problematic system.\textsuperscript{41} Needless to say, there had been several attempts to reform the regulatory system but most of them could not become true for political and social resistance. Eventually, with the pressure of international organizations including IMF and International Bank for Reconstruction and Development (IBRD), reformative legislation could get compromise to be adopted.\textsuperscript{42}

c. Adoption of International Standards

Following the IMF recommendations which were included in the IMF package and conditioned for the relief finance, Korea promised (i) to set a timetable for all banks to meet or exceed Basel standards on capital adequacy, (ii) to strengthen accounting standards and rules to meet international practice and require large financial institutions to have their financial statement audited by internationally recognized firms, (iii) to force market accountability by requiring financial institutions to publish twice yearly data on loans, capital, and ownership, and


\textsuperscript{40} In Korea the big borrowers were banks effectively controlled by Chaebol, the huge conglomerates that have dominated the nation’s economy and its politics….implicit government guarantees were helping underwrite investments that were both riskier and less promising than would have been undertaken without those guarantees, adding fuel to what would probably anyway have been an overheated speculative boom.

\textsuperscript{41} “The crisis has provided the impetus for Thailand, Indonesia, Korea, and other countries to adopt some of the fundamental principles of modernization and prudence that every country’s financial sector requires, but was unable to adopt due to political and social reasons.” See Nam, supra note 18, at 144.

\textsuperscript{42} In December 1997, the IMF made a proposal to the Korean government to restructure its financial division. The proposal included a condition that the Korean government must establish a consolidated financial regulatory agency supervising all types of banks, securities companies and insurance companies. This condition was a pre-requisite for urgently needed aid - Korea was at risk of national insolvency – so it accepted the proposal. Moreover, in October 1998, the IBRD recommended that the consolidated regulatory authority be kept independent and safe from governmental influence. This was a prerequisite for IBRD to provide the second structural adjustment loan. The bank also asked that the newly established regulatory authority retain supervisory power over non-banking financial institutions. Following these recommendations, on January 1, 1999, the FSC was founded as a consolidated financial supervisory authority.
(iv) to pass legislation consolidating the supervision of all banks, securities companies and insurance companies in an agency with operational and financial autonomy. As these conditions were pre-requisite for urgently needed aid for Korea which was at the risk of national insolvency, Korea had no alternatives but to accept. These recommendations were fulfilled by Korean government before it finished repayment of IMF loans on August 2001.

III. Reformations in Financial Regulatory System

1. Overview

After the financial crisis, there have been several changes in financial regulatory system, although sometimes significant and sometimes insignificant. Among them, this paper treats two major changes in history: one is from divided regulatory system to consolidated regulatory system in 1997, and the other is the separation of economic policy and financial policy among the government in 2008.

2. Regulatory System prior to the Financial Crisis

Like many other countries, Korea preserved divided regulatory system for long time according to the kinds of financial services such as bank, non-banks, securities and insurance.

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43 See Nam, supra note 18, at 145.

44 Moreover, in October 1998, the International Bank for Reconstruction and Development (IBRD) recommended that the consolidated regulatory authority be kept independent and safe from governmental influence. This was a prerequisite for IBRD to provide the second structural adjustment loan. The bank also asked that the newly established regulatory authority retain supervisory power over non-banking financial institutions. Seung Wha Chang, The Role of Law in Economic Development and Adjustment Process: The Case of Korea, 34 Int’l Law 267, 278-79 (2000).

45 See MOFE, supra note 37.


47 “From the beginning, the IMF and Korea agreed on four principal subjects for structural reforms: the financial sector, corporate sector, public sector, and labor market. The Korean financial reform efforts began by establishing a government agency charged with consolidated supervision of the financial sector-the FSC.” Chang, supra note 44, at 278-79.
Before the financial crisis, financial regulatory function had been performed by the Ministry of Finance and Economy (MOFE), a government agency which was in charge of national economic policy including monetary and financial policy.\(^48\) As there was limitation with its resources available for financial regulation, the agency controlled financial industry through delegations to several organizations.\(^49\) This system had been natural for developing countries to get efficiency and rapid growth in national economy.

a. Banks

Regulatory authority for banks belonged to several entities. At first, the BOK, through the Office of Bank Supervision (OBS), regulated commercial banks and foreign banks under the Bank of Korea Act and the General Banking Act.\(^50\) Then, the MOFE regulated other specialized banks according to establishing statutes for each institution.\(^51\) MOFE’s regulatory power included government owned specialized banks, such as Korean Development Bank, Export-import Bank of Korea, Industrial Bank of Korea, Housing & Commercial Bank of Korea and several other non-bank financial companies.\(^52\) In addition, the Board of Audit and Inspection (BAI) also had authority to examine government-owned banks and government-invested institutions.\(^53\) In practice, however, there was more complicated relation of authority delegation and most examination for financial institutions was performed by the OBS.\(^54\)


\(^{50}\) It also had regulatory power for the credit business of the National Agricultural Cooperative Federation, the National Federation of Fisheries Cooperative and its Member Cooperatives, and the National Livestock Cooperatives Federation. See Young Cheol Kim, Gum-Yung-Je-Do Gae-Pyun Youn-Gu [STUDY ON THE FINANCIAL SYSTEM REFORMATION] 338 (2005).


\(^{52}\) Id.

\(^{53}\) Board of Audit and Inspection Act, Act No. 4937 (Jan. 15, 1995), art. 23 (S. Korea).

\(^{54}\) As a result, the authority for regulation and the authority for examination could be separated. And, in some case, for the same financial institutions, the examinations were performed by different entities according to the form of delegation. For example, unlike the branch offices, for the head office, MOFE sometimes examine by itself without delegation to the Office of Bank Supervision. See Hong-bum Kim, Jung-Ang-Eun-Haeng-Gwoa Gum-Yung-Gam-Dok-Gi-Nung: I-Ron-Gwoa Sil-Je [Central Bank and Financial Regulatory Function: Theories and Practices], 1 Gum-Yung-Hak-Hoi-Ji (Journal of the Finance Academy) 1, 6 (2006).
b. Other Financial Institutions

For securities business, under the authority of the MOFE, the Securities and Exchange Commission (KO-SEC) and the Securities Supervisory Board (SSB) each performed regulatory power and examination according to the Securities and Exchange Act.\(^{55}\) In addition, the MOFE examined the Korea Stock Exchange (KSE) and securities investment trust companies.\(^{56}\) The Insurance Supervisory Board (ISB) regulated the insurance business under the direction of the MOFE.\(^{57}\) The MOFE also regulated non-bank financial institutions including merchant banks and credit card business.\(^{58}\) With the terminology of “non-bank,” there is technical difference of usage between the U.S. and Korea. Unlike in the U.S. which uses the notion of “non-bank banks’ to indicate shadow banking system,\(^{59}\) in Korea, financial regulatory authority uses “non-bank” to indicate any financial institution which is not a bank-licensed but operates bank-like business including mutual savings banks and credit unions.\(^{60}\) In addition, “non-bank” is used to include any financial relating business such as merchant banking corporations, credit-specialized financial companies and lending companies, except other licensed financial business like as securities companies or insurance companies.\(^{61}\) In this regulatory system, the MOFE took the ultimate responsibility for the regulation of securities and

\(^{55}\) See Kim, supra note 50, at 338.


\(^{57}\) See Kim, supra note 50, at 338.

\(^{58}\) Id.

\(^{59}\) Shadow banking system means any non-depository de facto banking business which take no regulation from financial regulatory authority or comparatively less regulation unlike traditional banks which take deposit and is also under the various regulations for bank business. See Krugman, supra note 23, at 160. Various shadow banking businesses became critical issue of financial industry regulation. See Tobias Adrian & Hyun Song Shin, Federal Reserve Bank of New York, The Shadow Banking System: Implication for Financial Regulation, Staff Report No. 382 (July 2009), available at: http://ssrn.com/abstract=1441324.

\(^{60}\) See FSS, Financial Supervisory System in Korea 2 (2008) [Financial Supervisory System in Korea].

\(^{61}\) In Korea, Merchant banking corporations engage in numerous financing activities, including short and long-term lending, investment trusts, and leasing. Mutual savings banks specialize in financial services to small businesses and households in the rural and regional areas. Credit unions facilitate financing for their members. Credit-specialized financial companies include credit card companies, leasing companies, factoring companies, and new technology venture capital companies. Id. at 6 & 7.
insurance business, even though it performed such function indirectly through other intermediary regulatory organizations.\(^{62}\)

c. Issues in this system

As can be seen in the <Table 2>, most regulatory authority was monopolized by the MOFE and most of them were exercised by various different agencies through complicated delegations because it was impossible for the MOFE to regulate every day-to-day business of the financial industry.\(^{63}\) With the complicate relation of delegation and multi-level regulatory authorities, there was ambiguity of authority and responsibility among regulatory agencies.\(^{64}\) Therefore, there was loophole in the regulation as well as over-lap, and these decreased the regulatory efficiency.\(^{65}\) It also hurt regulatory consistency because there was difference in regulating agency and examining agency and, sometimes, different agencies could examine the same financial institution.\(^{66}\)

As the MOFE had power to direct each regulatory authority, there could be no independence of financial regulation from government and this system deprived the chance to develop financial regulatory expertise.\(^{67}\) Even for the BOK, the central bank of Korea, the Minister of the Finance and Economy was the Chairperson of the Monetary Policy Committee (MPC) which supervised the BOK and the OBS, and the Minister also recommended one member of the committee.\(^{68}\)

At last, it made difficult for each regulatory authority to cooperate closely and exchange useful financial information because there was vertical regulatory system between each authority and the MOFE.\(^{69}\)

\(^{62}\) See Park, supra note 51, at 24.

\(^{63}\) See Lee, supra note 49, at 162, see also supra note 47, at 278-79.

\(^{64}\) See Financial Supervisory System in Korea, supra note, at 21-22.

\(^{65}\) See Park, supra note 51, at 24-25.

\(^{66}\) See Kim, supra note 50, at 339-40.

\(^{67}\) See Kim, supra note 54, at 8.

\(^{68}\) See Kim, supra note 54, at 8.

\(^{69}\) See Kim, supra note 54, at 8.
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<td>Mutual savings bank,</td>
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<td>Installment financing business, Leasing company, Financing business for new technology projects</td>
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<td><strong>Securities</strong></td>
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<td>Investment advisory company, Futures company, Securities Finance Corporation, Korea Securities Depositary</td>
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<td>MOFE</td>
<td>MOFE</td>
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<td>Life insurance company, Non-life insurance company</td>
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<td>Reinsurance company</td>
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<td><strong>Others</strong></td>
<td>MOFE</td>
<td>BAI, MOFE</td>
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<td>Korea Credit Guarantee Fund</td>
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<td><strong>Capital Market</strong></td>
<td>SSB</td>
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OBS (the Office of Bank Supervision in the Bank of Korea), MOFE (Ministry of Finance and Economy), BAI (Board of Audit and Inspection), NSA (Non-bank Supervisory Authority), KO-SEC (Korean Securities and Exchange Commission), SSB (Securities Supervisory Board), ISB (Insurance Supervisory Board).
3. Regulatory System after the Financial Crisis: Remedy for the Crisis

a. Process for New Regulatory System

Even though IMF’s recommendation for regulatory reformation supplied critical dynamic for radical change of regulatory system, before the financial crisis there had been arguments about the matter of regulatory system and Korean government already began the effort to develop the new system directed to correct the old system’s problems. Until recently, however, compared with the substantial regulatory reformation, process for the regulatory reformation has not taken much focus. The impartial and pertinent process is the necessary prerequisite for any reformation process because the reformation inevitably includes critics for past systems and their operators, who sometimes must be responsible for the crisis and, at the same time, the host of such reformation. Moreover, transparent process can secure the confidence from the regulated to the new system. Thus, it cannot be appropriate start for reformation that the same organization which was in the center of the responsibility for the crisis took the handle and drove the reformation of its own system, comparatively in short time. Unfortunately, this happened in Korea with urgent necessity for any reformation. As a result, under the “crisis-

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70 See Lee, supra note 49, at 165. See also National Assembly of the Republic of Korea, Legislative Bill on the Financial Supervisory Authority (Bill No. 141038, Feb. 28, 1995). The bill intended to establish a consolidated financial regulatory organization under the MOFE.

71 With the process of reformation, see Feibelman, supra note 13 (focusing on the process for reforming financial regulation rather than the debate over institutional structure of regulatory oversight).

72 See Omarova, supra note 7, at 925.

73 Even though there were change of heads and names of government agency, it is very difficult to expect any fundamental reformation when the responsible agency was still in center of the reformation. This situation looked possible because it was under the national crisis and the public officials who had monopolized information and expertise could exercise influence on the Korean National Assembly. In contrast, there could not be sufficient study on the financial regulatory reformation by the commentators for the abrupt crisis and reformation finished in rapid. Moreover, the Assembly could not check effectively the administrative branch for the necessity of rapid prescription for the crisis and lack of expertise.

the entity that manages or coordinates the process of regulatory reform will need to have sufficient autonomy and authority to do so....This entity should have permanent staff and the necessary resources to carry out its work in an effective and truly independent manner.

See Feibelman, supra note 13, at 925.
containment.” Korea lost the chance for sufficient comments and procedural appropriateness as well as precious chance for more fundamental reformation.74

i) Presidential Committee on Financial Reform

Presidential Committee on Financial Reform (“PCFR”) was organized as a presidential advisory organization in January, 1997, and it publicized its proposal on the financial regulatory system reformation in June, 1997.75 The PCFR intended to consolidate regulatory authority which had been divided among several agencies and to establish independence of financial regulation from economy policy and monetary policy.76

According to the PCFR’s proposal, at first, Financial Supervisory Commission (“FSC”) should have been established under the Prime Minister and it must retain comprehensive legislative power relating financial industry. The PCFR proposed that the FSC should be placed under the Prime minister to secure the independence from the MOFE.

Secondly, there should be close cooperating system among the financial regulatory authority, FSC, the monetary policy authority, BOK, and the economic policy authority, MOFE.

Thirdly, BOK should retain limited power for bank regulation to secure the efficiency of monetary policy, payment and settlement systems, and the lender of last resort.

Lastly, there should be several interim regulatory organizations, such as Financial Supervisory Service (“FSS”), Securities and Futures Commission (“SFC”) and consolidated deposit insurance organization, to harmonize functional regulation and institutional regulation and to consider the characteristics of institution-based regulation and market-based regulation.77

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74 “The financial crisis did not allow government the luxury of debating the appropriate speed integration. Instead, if forced the National Assembly to pass the financial services act and precluded the gradual approach to integration.” Lee, supra note 49, at 170.

75 See Financial Supervisory System in Korea, supra note 60, at 13.


77 “The functional regulator approach is intended to provide consistency in regulation, focus regulatory restrictions on the relevant functions area, and avoid the potential need for regulatory agencies to develop expertise in all aspects of financial regulation.” See GAO, Financial Regulation, supra note 2, at 9.
ii) Legislation of the “Act on the Establishment, etc. of Financial Supervisory Organizations”

As the PCFR’s proposal became political issue due to the various conflicts of interest among regulatory organizations, government agencies and financial industries, it was kept in dispute at National Assembly. Meanwhile, with the effect of financial crisis, thirteen financial reforming statutes including the “Act on the Establishment, etc, of Financial Supervisory Organizations (FSOA),” passed the congress, suddenly. However, the result included several differences from the initial proposal of the FSRC.

First, the financial industry relating legislative power was retained by the MOFE.79

Second, Corporate Restructuring Promotion Team was established under the FSC and the Chairperson of the FSC became the Head of the team and the FSC took responsibility not only for financial industry restructuring, but also corporate restructuring.80 It means that the FSC was placed under the influence of the MOFE’s economic policy and exposed to various political powers. The PCFR’s proposal did not include the FSC’s crisis management function.81

Third, BOK was deprived of its direct bank regulatory authority and secured independence.82

Lastly, unlike the PCFR’s proposal, consolidated deposit insurance corporation was placed under the MOFE.83

b. Output of the Reformation

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79 As an executive branch, MOFE retained authority to prepare the legislative bill relating to finance and economy and it also prepared the proposal for the ‘Act on the Establishment, Etc. of Financial Supervisory Organizations.’

80 See Financial Supervisory System in Korea, supra note 60, at 13.

81 See Kim, supra note 76, at 180.

82 See Financial Supervisory System in Korea, supra note 60, at 22.

83 See Kim, supra note 76, at 180.
i) Financial Supervisory Commission, Securities and Futures Commission and Financial Supervisory Service

The FSC was established as a representative administrative commission at April 1, 1998. The FSC consisted of three *ex officio* members and six appointed members, each of whom was appointed by the President of Korea for a renewable term of three years. The Chairperson was appointed by the President of Korea upon the recommendation of the Cabinet Council, and concurrently held position of the Governor of the FSS. The Vice-Chairperson was appointed by the President of Korea upon the recommendation of the Minister of Finance and Economy. The Vice-Chairperson concurrently held position of the Chairperson of the SFC. The Standing Commissioner was appointed by the President of Korea upon the recommendation of the Chairperson of the FSC.

As part of its regulatory responsibilities, the FSC deliberated and resolved policy matters relating to the regulation and supervision of financial institutions and the securities and futures markets. The FSC largely delegated authorities relating to the securities and futures markets to the SFC. The FSC also had the authority to issue and revoke licenses to financial institutions. Legislations relating to the financial sector were drafted by the MOFE in consultation with the FSC and submitted to the President.

The Vice-Chairperson of the FSC concurrently held position of the Chairperson of the SFC, while the SFC’s Standing Commissioner and three non-Standing Commissioners were appointed by the President of Korea upon the recommendation of the

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84 Act on the Establishment, Etc. of Financial Supervisory Organizations [FSOA], Act No. 5490 (Dec. 31, 1997), art. 3 (S. Korea).

85 *Id.*, art. 6.

86 *Id.*, art. 4 & 29.

87 *Id.*, art. 4.

88 *Id.*, art. 20.

89 Of the six non-standing commissioners, three are *ex-officio* positions, held by the Vice-Minister of Finance and Economy, the Deputy Governor of the Bank of Korea and the President of the Korea Deposit Insurance Corporation. The remaining three non-standing members are appointed on the recommendation of the Minister of Finance and Economy, who recommends an accounting expert, the Minister of Justice, who recommends a legal expert, and the President of the Korean Chamber of Commerce and Industry, who recommends an industry representative. *See* FSOA, *supra* note 84, art. 4.

90 FSOA, *supra* note 84, art. 64-2.
Chairperson of the FSC. The principal role of the SFC was to investigate market abuses, such as insider trading and market manipulation in the securities and futures markets, and to establish accounting standards and audit reviews. In addition, the SFC conducted advance review of matters relating to the securities and futures markets before they were deliberated on by the FSC.

The FSS was established as a non-capital special purpose corporation. Its budget was supplied by fees collected from market participants and financial institutions and appropriations from the BOK. The FSS’s budget must be approved by the FSC. The Chairperson of the FSC concurrently held position of the Governor of the FSS. As Governor of the FSS, he recommended up to four Deputy Governors and up to nine Assistant Governors who were then appointed by the FSC. The responsibilities of the FSS, as an executive body of the FSC, included the supervision and examination of all financial institutions in Korea. Within its supervisory capacity, the FSS was responsible not only for the supervision of regulations but also for the planning and drafting of matters to be addressed by the FSC.

Within its authorization and supervision function, the FSS strived to enhance supervision standards, risk management, and overall market efficiency. Each department planned and coordinated the implementation of supervisory policy and established standards to be followed by the relevant financial institutions. This task included making recommendations to the FSC about the authorization of a financial institution’s establishment and, where necessary, for mergers, dissolutions and closures. Within this function, FSS staffs also provided guidance on prudential and risk management, and governed other aspects of management such as

91 Id., art. 20.
92 See Financial Supervisory System in Korea, supra note 60, at 19.
93 FSOA, supra note 84, art. 24.
94 See Financial Supervisory System in Korea, supra note 60, at 21.
95 FSOA, supra note 84, art. 45.
96 Id., art. 29.
97 Id., art. 37.
98 Id., art. 37-43.
99 Id.
corporate disclosure.\textsuperscript{100} In order to establish a fair and orderly trading market, the FSS was also a watchdog and investigated market abuses and unfair trading such as insider trading and market manipulation in the securities and futures markets.\textsuperscript{101}

ii) Ministry of Finance and Economy

The MOFE kept its legislative power relating to financial industry. It still retained regulatory authority about specialized banks, such as Korea Development Bank, Export-import Bank of Korea, Industrial Bank of Korea, Housing & Commercial Bank, securities relating organizations, such as Korea Stock Exchange, Korea Securities Depositary and Securities Finance Corporate, and Korea Deposit Insurance Corporation (KDIC).

iii) Bank of Korea and Korea Deposit Insurance Corporation

Both organizations had just a limited authority relating to their special duty. As they had no power to examine banks or limited power to ask information of financial institutions, they needed to keep close cooperation with FSC and FSS. For such reasons, Deputy Governor of the BOK and the President of the KDIC became the non-standing commissioners of the FSC.\textsuperscript{102} The BOK and the KDIC have the power to request the FSC to undertake its own or joint examinations with the FSS.\textsuperscript{103} Moreover, Policy Committee of the KDIC was comprised of the President of the KDIC, the Vice Minister of MOFE, the Vice Minister of the Planning and Budget (MOPB), the Vice Chairperson of the FSC, the Deputy Governor of the BOK, and three members who were commissioned or recommended by the MOSF, the MOPB, the FSC and the BOK.\textsuperscript{104}

iv) Other Regulatory Entities

\textsuperscript{100} See Financial Supervisory System in Korea, supra note 60, at 20-21.
\textsuperscript{101} Id.
\textsuperscript{102} FSOA, supra note 84, art. 4.
\textsuperscript{103} Id., art. 62 & 66.
\textsuperscript{104} Deposit Protection Act [DPA], Act No. 6323 (Dec. 30, 2000), art. 9 (S. Korea). With the recent change of financial regulatory system, the member of the KDIC’s Policy Committee lessened from 9 to 7 and they are the President of the KDIC, the Vice Minister of Ministry of Strategy and Finance (MOSF), the Vice Chairperson of the FSC, the Deputy Governor of the BOK, and three other members who are commissioned or recommended by the MOSF, the FSC and the BOK. See DPA, Act No. 8863 (Feb. 29, 2008).
Besides governmental regulatory organizations, there are several Self-Regulatory Organizations (SROs). The Korea Exchange (KRX) and the Korea Financial Investment Association (KOFIA) discharge self-regulatory function relating securities industry.\(^{105}\) National Credit Union Federation of Korea also performs some degree of self-regulation with FSC/FSS’s delegation of examination authority.\(^{106}\) Although there are other trade associations for each financial business,\(^{107}\) they are defined more as interested organizations.\(^{108}\)

c. Operation and Evaluation of the Initial Reformation

i) Expanded Influence of Government

In practice, the operation of a system is not always coincident with the legislative’s initial intention.\(^{109}\) Before the major change of 2008, there had been several modifications and attempts to change the regulatory system. One notable modification was the change of the characteristics of the FSC’s administration office. At first in April 1998, the office was installed to support the FSC with administrative and non-supervisory affairs by 19 public officials.\(^{110}\) As time passed, however, this office became another separate regulatory organization operated by 126 staffs at September, 2006.\(^{111}\) Eventually, this organization became another regulatory authority besides the Commission itself and the FSS, not just the administrative supporting office, and this result caused confusion with the function of the FSC’s supporting

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\(^{105}\) KRX was established in January 2005 with the merge of Korea Stock Exchange, KOSDAQ Stock Market and Korea Futures Exchange. KOFIA was organized consolidating Korea Securities Dealers Association, Korea Futures Association and Asset Management Association of Korea with the enactment of the FSCMA. See Financial Investment Services and Capital Markets Act [FSCMA], Act No. 8635 (Aug. 3, 2007), art. 283 & 286 (S. Korea).

\(^{106}\) Credit Unions Act, Act No. 8863 (Feb. 29, 2008) art.96 (S. Korea).

\(^{107}\) Such as Korean Federation of Banks, Korea Federation of Savings Banks, The Credit Finance Association of Korea, Korea Life Insurance Association, Korea Fire Protection Association, etc.

\(^{108}\) See Financial Supervisory System in Korea, supra note 60, at 23.


\(^{110}\) See Kim & Yoon, supra note 46, at 211.

\(^{111}\) This number included 54 dispatched staffs from the FSS(29), the Korea Securities Exchange(12) and others(13). See Board of Audit and Inspection [BAI], Audit and Inspection Report on the FSC and the FSS, (2007) 3.
organization and the FSS as an executive arm of the FSC. As the influence of the public officials’ organization increased, the independence of the Commission faded.\(^{112}\)

Government’s legislative bill of 1997 intended to establish an administration bureau in the FSC and to change all FSS staff to public official.\(^{113}\) During the examination in the National Assembly, both clauses were deleted by the Finance and Economy Committee to secure the regulatory organization’s independence.\(^{114}\) In addition to such modification, the Committee stipulated in the FSOA to operate minimum public official for the FSC and also asked the government not to exceed ten public officials even in that case.\(^{115}\)

ii) Critical Experience of Credit Crisis (2003): Avoidable Hardship

In 2003, Korea experienced severe credit crunch and, more seriously, many Koreans got bad credit ratings resulting from the credit card companies’ inappropriate operation. Taking advantage of the national policy emphasizing economic growth after the financial crisis, credit companies issued credit cards negligently without consideration of debtor’s repayment capability.\(^{116}\) Then they issued huge amount of bonds to finance. Over-heated competition and high ratio of overdue credits deteriorated their profitability and this aggravated their credit ratings and their own repayment capacity. This situation gave impact on the bond market with big drop in price of overall bonds making additional financing difficult for other corporate. This became burdensome for overall economy and caused various social problems. These results, however, were not unforeseeable and there had been several tries to correct this situation by the FSC/FSS before it became severe. These trials to regulate credit card companies’ reckless

\(^{112}\) In addition to the supporting organizations comprised with public officials, among 9 commissioners, 6 commissioners were public official or recommended by the public official. See FSOA, supra note 84, art. 4. See also Marc Quintyn et al, supra note 5, at 30.

\(^{113}\) Bill on the ’Act on the Establishment, etc. of Financial Supervisory Organizations,’ Legislative Bill no. 150637 (Aug. 23, 1997), art.15 & addenda art. 5 (S. Korea).

\(^{114}\) See The National Assembly of the Republic of Korea, Minutes of the Finance and Economy Committee 5 (Dec. 29, 1997).

\(^{115}\) Id.

\(^{116}\) Credit card companies distributed credit cards to people on the street. In some cases, they even offered a cash bonus to attract more consumers. So it is no wonder that we had a credit card problem…During the crisis it was very important for the government to boost the economy by all means. In order to promote domestic consumption, the government supported the credit card industry.

operation were frustrated by other government agencies including the MOFE and the Regulatory Reform Committee.\textsuperscript{117} Thus, this credit crisis is treated as a case of failed financial regulation and it also shows one desirable characteristic for good regulatory system, independence.\textsuperscript{118} After the crisis, there was overall inspection by the BAI about the financial regulatory system and it pertinently pointed out several matters such as dispersed regulatory authorities, unclear accountability and difficulty in prompt policy decision, but the inspection also ended without helpful systemic improvement.\textsuperscript{119}

iii) Duplication and Conflict among the FSC/FSS

At first, the FSC indicated the commission itself which was comprised of nine commissioners. The FSOA of 1997 prescribed that the FSC can operate minimum public officials to manage the FSC’s budget, accounting and proceedings.\textsuperscript{120} This intended to secure the independence of the FSC and eliminate government influence. The FSOA of 1999, however, deleted this clause about the number of public officials.\textsuperscript{121} For this change, Finance and Economy Committee of the National Assembly, which retained the authority for the FSOA, submitted dissenting opinion but the government changed the FSOA by the amendment of the Government Organization Act’s Addenda, which was under the jurisdiction of Government Administration and Local Autonomy Committee in the National Assembly.\textsuperscript{122} Eventually, the number of public officials which were intended to support the FSC increased and they involved in financial regulatory function. As there was another organization besides the FSS, the

\begin{itemize}
\item \textsuperscript{117} A Committee which is established under the President to deliberate and coordinate governmental regulatory policies. See Framework Act on Administrative Regulations, Act No. 7796 (Dec. 29, 2005), art. 23 (S. Korea).
\item \textsuperscript{118} Arthur E. Wilmarth, Jr., Does Financial Liberalization Increase the Likelihood of a systemic Banking Crisis? Evidence from the Past Three Decades and the Great Depression, \textit{published in Too-Big-To-Fail: Policies and Practices in Government Bailouts} 1, 2-3 (Benton E. Gup, ed., 2003) (arguing that financial liberalization tends to amplify the business cycle, and it therefore creates a difficult tradeoff between (1) the important policy goal of creating better conditions for economic expansion and (2) the equally important objective of minimizing the risk of a severe economic downturn).
\item \textsuperscript{119} See Kwon, Young Se, Member of the National Assembly, Minute of the National Policy Committee of the National Assembly of the Republic of Korea 32 (Aug. 25, 2004).
\item \textsuperscript{120} FSOA, \textit{supra} note 84, art. 15.
\item \textsuperscript{121} FSOA of 1999, Act No. 5982 (May 24, 1999), art. 15.
\item \textsuperscript{122} See Government Organization Act, Act No. 5982 (May 24, 1999), Addenda art. 3 (S. Korea). \textit{See also} National Assembly of the Republic of Korea, Minute of the National Policy Committee of the National Assembly of the Republic of Korea 25 (Aug. 25, 2004).
\end{itemize}
executive arm of the FSC, regulatory duplication and conflict arose between the FSS and the public officials of the FSC. Moreover, this situation caused confusion with the entity of the FSC because the supporting organization of the public officials carried out the FSC’s legal duties in practice.

iv) Evaluation of the Initial Reformation and Its Operation

Proposal for the establishment of the Financial Services Commission of 2008 commented its backgrounds as a matter of overlapped regulatory authority, inefficiency and financial institution’s regulatory burden stemming from the multi-level regulatory system of the MOFE, the FSC and the FSS.\textsuperscript{123} Most important critic, however, was the financial policy’s subordination to the economic policy and the MOFE’s influence to the FSC/FSS. As the MOFE kept its legislative power relating to the financial industry, it could make important policy and the FSC had limitation as a financial policy authority.\textsuperscript{124} Therefore, the FSC could not check the MOFE’s economic policy and could not kept independence of its primary duty of prudential regulation.\textsuperscript{125} This result also means that the original purpose of the regulatory reformation intended to end the government-driven financial industry was not accomplished.

In sum, even though the creation of the consolidated regulatory system could get positive appraisal as it corrected the past complicate system which had been not only several leveled, but also scattered among several agencies, it could not overcome the matter of government-driven system. It shows that the governance of regulatory authority still remains as major issue in Korea to secure the independence in practice, not just in the statutory purpose.\textsuperscript{126}

\textsuperscript{123} See Finance and Economy Committee of Korean Congress, \textit{Report on the proposal about the act on the establishment, etc. of financial supervisory organizations}, 2 (Feb. 2008).

\textsuperscript{124} As a result, legislations relating to the operations of the FSC were also prepared and proposed by the MOFE and proposals for the acts on the FSC were also more actively discussed at the Strategy and Finance Committee of the Assembly, which supervised the MOFE, than the National Policy Committee, which supervises the FSC.

\textsuperscript{125} See Jeffrey Carmichael, World Bank Institute, \textit{Summary of the Discussion}, in \textit{Aligning Financial Supervisory Structures with Country Needs} 1, 2 (Jeffrey Carmichael et al. eds., 2004) (commenting that countries where attempts to establish a regulatory agency independent of the central bank encountered constitutional difficulties and the resulting agencies lacked the legal power and authority to regulate effectively).

\textsuperscript{126} “In countries where politicians have a strong clout on formally independent regulators, governance mechanisms granting voice to constituencies such as industry, practitioners and consumer representatives can help avoid excessive regulation and hyper-sensitivity to public image concerns…” See Luca Enriques, \textit{Regulators’ Response to the Current Crisis and the Upcoming Reregulation of Financial Markets: One Reluctant Regulator’s View}, 30 UPAJIL 1147, 1151 (Summer, 2009).

a. Background for the Recent Change

In February 2008, the New Korea Party took control for the first time since the Asian Financial Crisis, and a new President, a member of the New Korean Party, inaugurated. This political background prompted to reconsider government systems which were established by former regime, and financial regulatory system was included for such examination. The Korean regulatory system was static by necessity until 2003, when Korea repaid all its debt to the IMF and the IBRD.127 From that time, Korea was no longer obliged to observe the conditions which had been attached to the urgent aid fund provided when the Korea was in its insolvency crisis.128 The new reforms were aimed to correct problems that had arisen with the existing system and to enhance the efficiency of financial regulation. On February 28, 2008, the new reforms, embodied in the Act on the Financial Services Commission (FSCA), came into effect.129

b. Process for Change

Recent change was initiated by the plan which was prepared by the transition team for President-elect and the plan was proposed as a legislative bill in the form of Assembly member’s proposal.130 With the proposal, there were various critics relating to the process itself as well as its substantial plan. As revealed through the public hearing at the National Assembly, there was not enough inspection for the proposal’s propriety and sufficient collection of public opinions.131 In addition, without urgent necessity, the process was driven in haste excluding


128 See Chang, supra note 44, at 278-79.

129 With this act, the name of the ‘Financial Supervisory Commission’ also changed to the ‘Financial Services Commission.’

130 See The National Assembly of the Republic of Korea, Minutes of the Strategy and Finance Committee 10 (2008.1.31.)

131 Young Gil Song, Member of the National Assembly, Minutes of the Strategy and Finance Committee of the National Assembly of the Republic of Korea 46 (Feb. 11, 2008) (arguing that there was no reasonable inspection about the financial companies and consumers’ opinion and that, in the process, the FSS was estranged by the MOFE and the FSC).
careful consideration.\textsuperscript{132} 147 economics and financial professors also pointed out the matter of transparency in preparing the proposal.\textsuperscript{133}

To correct some problems, while keeping the same position which has increased governmental influence on financial regulation, recent change created the powerful governmental authority of the FSC which absorbed MOFE’s most function relating financial industry, including legislative power, and subordinated, not just controlling, the FSS which had fulfilled an important role as a non-government organization.\textsuperscript{134} These changes, however, looked to be taken without reasonable process as seen above. The FSS could be established as a non-governmental regulatory agency under the political and social atmosphere which criticized government driven economy and regulatory failure as a cause of the financial crisis. Despite such background, the result of the reformation could not secure the regulatory independence from the government policy and political influence. In addition, several unnoted changes aggravated this situation increasing the possibility of government’s participation in the FSC’s operation. Although there have been several attempts to be faithful to the initial objectives making the FSS as a sole non-government regulatory authority which would absorb the FSC and be secured its independence from the government and political influence, all of them have failed.\textsuperscript{135}

c. Result of Recent Change

\textsuperscript{132} Eui Hwa Chung, Member of the National Assembly and Chairperson of the Strategy and Finance Committee, Minutes of the Strategy and Finance Committee of the National Assembly of the Republic of Korea 15 (Feb. 11, 2008) (asking that the legislative bill should be passed until Feb. 12, 2008, not to be burden to the new regime, at the public hearing which was held on Feb. 11, 2008).

\textsuperscript{133} Citizen’s Coalition for Economic Justice (CCEJ), Press Release [CCEJ Press Release], 147 economic and financial professor’s public statement on the reformation plan for economic and financial government agencies (Feb. 11, 2008). In this statement, professors asked to prepare reformatory plan with collection of various opinions and sufficient discussion, instead of closed-door session’s rough-and-ready plan. The CCEJ explained the background of the public statement as the perfunctory public hearing of National Assembly which invited affirmative sides. \textit{See also} Yoo, Seung-Min, Member of the National Assembly, Minutes of the Strategy and Finance Committee of the National Assembly of the Republic of Korea 14 (Feb. 11, 2008) (arguing that there should be chance for different opinions, not just for affirmative opinions, in the public hearing).

\textsuperscript{134} \textit{See} Marc Quintyn et al, \textit{supra} note 5, at 26-27 (commenting governments’ preference for more accountability, under the form of control).

\textsuperscript{135} \textit{See} The National Assembly of the Republic of Korea, Proposal on the Financial Supervisory Service Act, Legislative Bill No. 161928 (2002.10.31) and Proposal on the Financial Regulation Act, Legislative Bill No. 171752 (2005.5.2).
The most important change was in the FSC’s status in relation to other administrative agencies.\textsuperscript{136} The FSC gained power over statutes and decrees relating to the financial industry, which had been the domain of the MOFE.\textsuperscript{137} This means that now the authorities writing the laws regarding the financial industry and the authorities regulating the financial industry belong to the same agency.\textsuperscript{138} This change was intended to allow the government agencies to cope with a rapidly changing financial market and enhance regulatory efficiency.\textsuperscript{139}

In addition, the Chairperson of the FSC and the Governor of the FSS now cannot be the same person and the Governor of the FSS becomes one of the five non-standing commissioners of the FSC.\textsuperscript{140} This creates a separation between the policy authority and the administrative authority.\textsuperscript{141} In the past, even though the organizations were separated, independence between the two agencies was not achieved, because the head of both agencies was same person. The office of standing commissioner increased from one to two and the recommendation power of the Minister of Strategy and Finance\textsuperscript{142} and the Minister of Justice for the non-standing commissioner was abolished.\textsuperscript{143}

Another change is that the FSC now holds supervisory power over various financial public enterprises, including the Korean Development Bank, the Industrial Bank of Korea, the

\textsuperscript{136} See Act on the Establishment, Etc. of Financial Services Commission [FSCA], Act No. 8863 (Feb. 29, 2008) art. 3(2) (S. Korea). The FSCA article 3(2) stipulates that “the FSC as the central administrative agency…shall perform duties under its authority independently.” Before the recent change, the FSOA article 3(2) stipulated that “the FSC shall independently perform its duties under the powers vested in it.” As the FSC became the central administrative agency definitely, “independence” looks more difficult to be secured.

\textsuperscript{137} Despite of this change, there are still various problems with the FSC’s exercise of power. For example, as the chairperson of the FSC is not the member of the state council or the Minister, according to the Constitutional Law of the Korea, he cannot countersign proposal for statutes with the president to be submitted to Congress. See Finance and Economy Committee of Korean Congress, Report on the Proposal about the Act on the Establishment, Etc. of Financial Supervisory Organizations, 22 (Feb. 2008), available at http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=Law_BON&LAW_ID=A0496&PROM_NO=08863&PROM_DT=20080229&.

\textsuperscript{138} See Financial Supervisory System in Korea, supra note 60, at 14.

\textsuperscript{139} Id. at 2.

\textsuperscript{140} FSCA, supra note 136, art. 29.


\textsuperscript{142} MOFE changed to the Ministry of Strategy and Finance (MOSF) with the recent amendment in the Government Organization Act of Feb. 28, 2008.

\textsuperscript{143} See Financial Supervisory System in Korea, supra note 60, at 14.
Korea Housing Finance Corporation, the Korea Credit Guarantee Fund, the KDIC, and the Korea Financial Intelligence Unit. With this change, the FSC can control the overall financial industry of Korea, from private companies to public institutions. 144 This has led to various criticisms and worries about the resurgence of complete government control over financial industry like as Japanese Financial Supervisory Authority. 145 This is a particular concern in Korea, where, in the past, the government used its regulatory power over the financial industry to achieve political objectives. 146

With the recent change, the FSC retains more strengthened control for the FSS. The Governor and the Auditor are appointed by the President with the recommendation of the Chairperson of the FSC. The FSC also appoints Deputy Governors of the FSS with the FSS Governor’s recommendation of candidates. 147 The Chairperson of the FSC also can recommend the President to dismiss the FSS Governor. 148

d. Mutual Relations among the Regulatory Organizations

FSC’s four non-standing commissioners are ex-officio positions for the MOSF, FSS, BOK and KDIC. This composition is purposed for cooperation among them including the sharing of financial information. Seemingly, the FSC looks as a control tower of several regulatory agencies. The FSC, however, does not look to be equipped with enough expertise and personnel. Thus, foreign exchange and payment related business is supervised by the BOK, prudential regulation and market supervision is performed by the FSS, and the MOSF still has

144 FSCA, supra note 136. Addenda Article 5.
145 Park, Young-Sun, Member of the National Assembly, Minutes of the Strategy and Finance Committee of the National Assembly of the Republic of Korea 24 (Feb. 11, 2008) (commenting that the Japanese Financial Supervisory Authority (JAP-FSA) became the model of the legislative bill and worrying there was no study if the JAP-FSA could be model as an advanced system).
146 After the Asian Financial Crisis, Korea separated the authority of the financial regulation of the FSC from the authority of the financial policy of the MOFE, because the abuse of governmental control of the financial market was one of the critical causes for the crisis. See FINANCE AND ECONOMY COMMITTEE OF CONGRESS, REPORT ON THE PROPOSAL ABOUT THE ACT ON THE ESTABLISHMENT, ETC. OF FINANCIAL SUPERVISORY ORGANIZATIONS, at 28 (Feb. 2008), See also Hanwool Woo, The establishment of the Financial Services Commission: Criticism of resurgence of government controlling finance, SEGYEILBO, at 13 (Jan. 18, 2008), available at http://www.segye.com/Articles/News/Economy/Article.asp?aid=20080117002544&ctg1=01&ctg2=00&subctg1=01&subctg2=00&cid=0101030100000&dataid=.
147 FSCA, supra note 136, art. 29.
148 Id., art. 32.
critical influential on the economic policy or international cooperative issues. Although the FSC has various authorities for final decision relating to capital market and financial companies, most actual affairs are executed by other agencies. For this reason, financial companies get confused in deciding with which they should discuss their business issues because, according to procedures, there can be different staffs, agencies and opinions.¹⁴⁹

¹⁴⁹ With this situation, a lawyer commented that “it is important…to be familiar with the regulatory hierarchy in the Korean finance industry and how each of these regulators can affect the day-to-day business” See Kye-Sung Chung, Banking and Finance Law Trends and Tactics in South Korea, 2009 WL 2511993, 3 (Aug. 2009).
### Table 3: Financial Institutions under the FSC/FSS’s Supervision

<table>
<thead>
<tr>
<th>Financial Institutions</th>
<th>Number&lt;sup&gt;150&lt;/sup&gt;</th>
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<tbody>
<tr>
<td><strong>Banks</strong></td>
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<tr>
<td>Commercial Banks</td>
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<td>Nationwide Commercial Banks</td>
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<td>Regional Banks</td>
<td>6</td>
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<tr>
<td>Foreign Bank Branches</td>
<td>38</td>
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<tr>
<td>Specialized Banks&lt;sup&gt;151&lt;/sup&gt;</td>
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<tr>
<td><strong>Non-Bank Financial Institutions</strong></td>
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<tr>
<td>Mutual Savings Banks</td>
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<tr>
<td>Merchant Banking Corporations</td>
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<tr>
<td>Credit-Specialized Financial Companies</td>
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<td>Credit Card Companies</td>
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<td>Leasing Companies</td>
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<td>Installment Finance Companies</td>
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<tr>
<td>New Technology Venture Capital Companies</td>
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<tr>
<td>Credit Unions</td>
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<tr>
<td><strong>Insurance Companies</strong></td>
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<tr>
<td>Non-Life Insurance Companies</td>
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<td>Property &amp; Liability Insurance Companies</td>
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<td>Reinsurance Companies</td>
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<tr>
<td>Guarantee Insurance Companies</td>
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<tr>
<td><strong>Securities-Related Companies</strong></td>
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<tr>
<td>Securities Companies</td>
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<tr>
<td>Asset Management Companies</td>
<td>53</td>
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<tr>
<td>Investment Advisory Companies&lt;sup&gt;152&lt;/sup&gt;</td>
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<tr>
<td>Futures Companies</td>
<td>14</td>
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<tr>
<td><strong>Financial Holding Companies</strong></td>
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<sup>150</sup> Based on authorization, including foreign financial institutions branches (as of December 2008).

<sup>151</sup> Korea Development Bank, Export-Import Bank of Korea, Industrial Bank of Korea, National Agricultural Cooperative Federation and National Federation of Fisheries Cooperatives.

<sup>152</sup> Other than 92 investments advisory companies, 53 asset management companies, 23 securities companies, and 65 offshore advisory companies also provided investment advisory services.
IV. Evaluation of the Recent Financial Regulatory Reformation

1. Overview

Periodical evaluation of any regulatory system is necessary not only to make efficient system, but also to manage the system faithful to its duties. Evaluation of a regulatory system is very difficult mission.\(^\text{153}\) Because there are so various regulatory systems and each system is operated in different surroundings, it is almost impossible to compare systems to get meaningful results.\(^\text{154}\) Although countless models possible according to each country’s peculiar conditions, some elements should be deliberated for desirable regulatory system.\(^\text{155}\) In addition, especially with any radical changes by special causes, there should be an evaluation as to how much the new system satisfied the original reasons that prompted the change.\(^\text{156}\) In financial industry,

\(^{153}\) Measuring regulatory quality is a Herculean task. Regulation should aim at supporting the efficient allocation of resources across the economy in normal times. Arguably, the ultimate test of a well-functioning regulatory framework is whether it contributes to the financial system’s intermediation capacity, while decreasing the likelihood and cost of systemic financial crisis. However, achievement of these goals is next to impossible to measure, because they are either very broad (“efficient allocation”) or involve analyzing causality in “tail event.”

Cihak & Tieman, supra note 6, at 4.

\(^{154}\) Id.

\(^{155}\) There are several arguments relating to characteristics for desirable regulatory structure. For example, Nier established ten properties of well-functioning regulatory structure: Ensure all objectives are assigned; Ensure internal consistency of objectives; Assign conflicting objectives to separate institutions; Assign tools commensurate with objectives; Create synergies across tools; Create synergies across regulatory scope (institutions); Reduce the potential for inter-agency frictions; Ensure consistency with pre-existing objectives; Reduce duplication; Reduce compliance costs on the industry. See Erlend Walter Nier, Financial Stability Frameworks and the Role of Central Banks: Lessons from the Crisis, IMF Working Paper (WP/09/70), at 38-39. GAO provided nine characteristics which can be used for evaluating or crafting proposals intended to reform financial regulatory system. They include clearly defined regulatory goals, appropriately comprehensive, system-wide focus, flexible and adaptable, efficient and effective, consistent consumer and investor protection, regulators provided with independence, prominence, authority, and accountability, consistent financial oversight, minimal taxpayer exposure. Although these characteristics include not just standards for regulatory structure, but also for regulatory soft-ware, they are also helpful criteria for studying financial regulatory structure. See also GAO, GAO-09-216, FINANCIAL REGULATION: A FRAMEWORK FOR CRAFTING AND ASSESSING PROPOSALS TO MODERNIZE THE OUTDATED U.S. FINANCIAL REGULATORY SYSTEM 48-63 (2009). Mwenda commented several characteristics of the most effective regulatory bodies as clear responsibilities and objective, adequate powers, adequate resources, transparency, and accountability. See KENNETH KAOMA MWENDA, World Bank, LEGAL ASPECTS OF FINANCIAL SERVICES REGULATION AND THE CONCEPT OF A UNIFIED REGULATOR 12 (2006).

\(^{156}\) Public policy should start from a clear diagnosis of the problem, and that’s the primary way in which they failed. It should have clear goals that address the problem. It should be efficient in a sense that it accomplishes these goals at least cost. And it should minimize distortion of incentives for people and institutions to behave prudently so that regulators don’t encourage even riskier behavior in the future.
which is one of the most internationalized industries and in which transparency is critical for its
global standard, the evaluation should be based on official statutes and system, not on the
practice or unofficial measures.\textsuperscript{157}

2. Standards for Evaluation

a. General Standards for Regulatory Organizations

i) Clear and Pertinent Objectives

Objective is the compass for the regulatory decisions. When there are bunch of
choices relating to policy-making, the organization’s objective provides guideline.\textsuperscript{158} Moreover, objectives become critical standard in evaluating the performance of the organization.\textsuperscript{159} Relying on its objectives, the regulatory agency can establish priorities among several tasks and define responsibilities for regulation.\textsuperscript{160} Therefore, clear and pertinent objectives are basic requirements for the regulatory effectiveness and consistency.\textsuperscript{161} If there are irrelevant objectives or conflicts among objectives, it can cause confusion for regulatory function. The U.S. Treasury also pressed the importance of the clear objectives in its Blueprint for future regulatory system.\textsuperscript{162}


\textsuperscript{157} As to the representatives’ arguments related to the recent financial regulatory reformation proposal, the Vice-
minister of Ministry of Finance and Economy and the Chairperson of the Financial Supervisory Commission impressed the “reasonable operation of system.” See The National Assembly of the Republic of Korea, Minutes of the Strategy and Finance Committee (2008.1.31.) and Minutes of the National Policy Committee (2008.1.29.). At both committees, representatives argued several systemic problems included in the proposal for the revision of ‘Act on the establishment, etc. of financial supervisory organization.’ One representative asked in return for the answer of ‘reasonable operation of system,’ “Is it sensible to correct problematic system through the ‘reasonable operation’ of problematic system, instead correcting the system itself?”

\textsuperscript{158} GAO, GAO-09-216, FINANCIAL REGULATION: A FRAME WORK FOR CRAFTING AND ASSESSING PROPOSALS TO MODERNIZE THE OUTDATED U.S. FINANCIAL REGULATORY SYSTEM 49 (2009).

\textsuperscript{159} “Without more specific program objectives, activities linked to these objectives, and performance measures indentified to assess the extent to which these objectives are achieved, the agencies have a more difficult task of ensuring efficient and effective oversight.” GAO, GAO-07-154, FINANCIAL MARKET REGULATION: AGENCIES ENGAGED IN CONSOLIDATED SUPERVISION CAN STRENGTHEN PERFORMANCE MEASUREMENT AND COLLABORATION 30 (2007).

\textsuperscript{160} GAO, GAO-09-216, FINANCIAL REGULATION: A FRAME WORK FOR CRAFTING AND ASSESSING PROPOSALS TO MODERNIZE THE OUTDATED U.S. FINANCIAL REGULATORY SYSTEM 50 (2009).

\textsuperscript{161} \textit{Id.} at 49.

\textsuperscript{162} Press Release, Treasury, Remarks by Secretary Henry M. Paulson, Jr. on Blueprint for Regulatory Reform, hp-839 (March 31, 2008). Available at \url{http://www.treasury.gov/press/releases/hp897.htm} (commenting that the premise
ii) Independence

Independence means the ability to keep fair and impartial exercise of regulatory power from outside pressure. The degree of independence is greatly influenced by national political culture and tradition. The major outside pressures are usually the political influence from the congress and the executive branch. The degree of independence can be evaluated from several perspectives: regulatory independence, institutional independence and budgetary independence. Regulatory authority retains considerable discretionary power from the decision of on-site examination to the revocation of license and it can influence individual institution’s practical business through unofficial routes. Therefore, there are various inducements to use the regulatory power for other than prudential regulatory purpose. The Japanese and Korean experiences of governmental failure show the result of insufficient independence. Absence of Korean regulatory authorities’ independence and subordination to the governmental and political influence contributed to the Korean financial crisis. The independence, however, does not deny checks from government or congress but such checks

of optimal structure is that clarity of mission and objective will lead to strengthened regulation and improved markets efficiency).

163 Quintyn & Taylor, supra note 34, available at http://www.imf.org/external/pubs/cat/longres.cfm?sk=16993.0 (commenting that, in many western countries, long-standing political institutions such as a transparent political process, a system of constitutional checks and balances, and a free press support regulatory independence).

164 There is an opinion which defines regulatory independence as the “ability of the agency to carry out its operations without undue political or commercial interference.” This opinion sees regulatory organizations’ overall policy direction is part of the government’s policy because the organization is part of the government. See Steven Seelig & Alicia Novoa, Governance Practices at Financial Regulatory and Supervisory Agencies, IMF Working Paper (WP/09/135), at 10. In addition to the independence from the political influence, independence from the industry is also important. Industrial influence, however, is less significant in the unified regulatory system than in the multitude regulatory system and industrial influence usually exercised through the political influence. See KENNETH KAOMA MWENDA, THE WORLD BANK, LEGAL ASPECTS OF FINANCIAL SERVICES REGULATION AND THE CONCEPT OF A UNIFIED REGULATOR 19 (2006).

165 Jang Yung Lee, Korea’s Experience of Financial Supervision and Financial Sector Examination, Financial Stability and Financial Sector Supervision: Lessons from the Past Decade and Way Forward (2007) available at http://www.imf.org/External/NP/seminars/eng/2007/fsa/pdf/s2/6_S2_speaker2.pdf. There are opinions which include supervisory independence to the factors but it looks not much meaningful to distinguish regulation and supervision. In practice, both functions are closely related and influence on each other. Moreover, in the unified regulatory system, both functions are exercised by the same authority and, sometimes, in the same division. See FSS, 2009 GUM-YUNG-GAM-DOK GAE-RON [INTRODUCTION TO THE KOREAN FINANCIAL REGULATORY SYSTEM] 8-9 (2009); Quintyn & Taylor, supra note 34. See also Mwenda, supra note 164, at 5 & 37.

166 UK-FSA is an independent non-governmental organization, but JAP-FSA and Korean FSC are government agencies controlled by executive branches. See Markham, supra note 9, at 376.

167 See Kim & Yoon, supra note 46, at 203.
should not hurt the regulatory authority’s independence. Although there are cases in which regulatory independence can be overridden for national necessity, such as financial crisis or emergency situation, circumstances and regulatory process for such cases should be prescribed.  

There are opinions that include the independence from the central bank’s monetary policy. Independence between the prudential regulatory authority and monetary policy authority can be significant according to individual country’s financial tradition. As the two functions can give efficiency and adverse effects at the same time, many countries selected to separate the monetary policy authority and prudential regulatory authority. With the evaluation of Korean regulatory system, considering the Korean financial tradition, the independence from the central bank is not so much meaningful as the independence from the government and political power. Instead, the monetary policy authority, usually central bank of a nation, can be useful checking tool with its various information and different standpoint.

iii) Accountability and Check for the Authority

In the regulatory field, pertinent check for the authority and high level accountability are necessities. If the regulatory authority retains more power and independence, there should be more checking system. This system may exist within the organization itself and can be congressional or governmental audit system. Confidence from the market and reliance for regulatory policy can be obtained through the transparent and strict checking system for regulatory authority’s operation and policy making. In addition, pertinent checking system

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169 See Mwenda, supra note 164, at 25.
170 “If the single regulator is independent of government, as is the case in the U.K., by what mechanisms can it be held politically accountable in respect of its public interest functions?” See Eilis Ferran, Examining the United Kingdom’s Experience in Adopting the Single Financial Regulator Model, 28 BKNJIL 257, 296-301 (2003).
171 One of critical rationales for duplicated regulatory system is that “two pair of eyes” are better in supervision. But such checking system also can be established among the same organization and this can be more efficient. See Erlend Walter Nier, IMF, Financial Stability Frameworks and the Role of Central Banks: Lessons from the Crisis, at 38-39, IMF Working Paper WP/09/70, (2009).
172 See Mwenda, supra note 164, at 19).
enhances the independence because it can also insulate regulators from unjustifiable outside intervention.\textsuperscript{173}

iv) Efficiency and Expertise

Efficiency means the ability to make similar effect with less resource.\textsuperscript{174} Considering various regulatory cost, inefficient regulatory system can be burdensome for financial industry far from enhancing competitiveness.\textsuperscript{175} For efficiency, policy makers should consider the number of regulators, organization of regulatory system, duplication of regulatory functions, etc.\textsuperscript{176} Evaluation of regulatory operation’s efficiency, however, is very difficult matter.\textsuperscript{177} Cost-benefit analysis can have little significance because the comparative study with other country’s authority cannot provide meaningful result for different circumstances and variants. Even though there is no method to decide whether the budget is pertinent for specific regulation, if there are redundant or needless regulations, or functional overlapping among regulatory authority, the system cannot be efficient.

As the regulated industry become more and more complicated and specialized, more expertise is requested for regulatory organizations.\textsuperscript{178} Although this requirement entails the matter of budget and the level of expertise is vary according to the regulated industry, the organizing principle must secure minimum tools for expertise such as pertinent staffing

\textsuperscript{173} Quintyn & Taylor, supra note 34, available at \url{http://www.imf.org/external/pubs/cat/longres.cfm?sk=16993.0}.

\textsuperscript{174} See Llewellyn, supra note 109, at 40.


\textsuperscript{176} Id., GAO, at 54-55.

\textsuperscript{177} For this reason, the Office of Management and Budget (OMB) also does not apply strict cost-benefit analysis for various financial regulations. See Jackson, supra note 18, at 257-58.

\textsuperscript{178} See Mwenda, supra note 164, at 13.
mechanism, training system, pay level, etc.\textsuperscript{179} UK-FSA’s recent reaction to failure of the Northern Rock also put emphasis on the agency’s expertise.\textsuperscript{180}

b. Needs for Change

Although there can be general requisites for desirable regulatory system, the reason for the change itself is also important yardstick to evaluate a system because the result of the reformation must satisfy its primary factors. The process of the reformation often begins with awareness of issues such as overcoming the crisis or enhancing international competitiveness.\textsuperscript{181} As time passes and discussion progresses among politicians and various entities retaining conflicting interest, the result can be different from the initial intention or fall short to correct the causes which brought the reformation. Therefore, how well the reformed regulatory system satisfies the initial needs for change is another critical standard which is useful for evaluation of regulatory system.

i) Independence of Financial Regulation

Government driven financial industry and allocation of resources had played important role in the rapid growth of Korean economy.\textsuperscript{182} During that period, financial institution’s role was to assist government economy policy through supply and distribution of resources following the government instructions.\textsuperscript{183} At that time, financial regulation was just tools to control financial institutions rather than to regulate sound management or enhance

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{179}Chorafas, \textit{supra} note 31, at 113 (commenting that, since the financial business changes so rapidly, it is absolutely necessary to have intensive life-long training programs for regulators and that training supervisors for the real world is a demanding business). With the FSC, World Bank pointed out the matter of expertise which arose from the limited budget. \textit{See} David Scott, \textsc{A Practical Guide to Managing Systemic Financial Crises: A Review of Approaches Taken in Indonesia, the Republic of Korea, and Thailand} 20, World Bank (May 2002).
\item \textsuperscript{180}“The current training arrangements should be significantly enhanced to ensure that staff receives training appropriate for their roles, and that the roles they are assigned match their skills and experience and the training they have received and assimilated.” \textit{See} UK-FSA, FSA Moves to Enhance Supervision in Wake of Northern Rock: The Recommendations made by Internal Audit, at 6, \textit{available at} http://www.fsa.gov.uk/pubs/other/recommendations.pdf.
\item \textsuperscript{181}Marianne Ojo, \textit{Reviewing Regulatory Objectives: Should the Scope of Financial Regulation be Extended?} (July 2009), \textit{available at} http://ssrn.com/abstract=1413891.
\item \textsuperscript{182}\textit{See} Craig P. Ehrlich & Dae Seob Kang, \textit{Independence and Corruption in Korea}, 16 Colum. J. Asian L. 1, 3 (2002).
\item \textsuperscript{183}\textit{See} Kim & Yoon, \textit{supra} note 46, at 206.
\end{itemize}
\end{footnotesize}
During the financial crisis, however, various side effects and limits of government-driven financial industry were revealed. After abundant studies, Korea came to conclusion that the government-driven financial industry could not be useful anymore in this advanced and internationalized business surroundings. For this history, one critical standard for Korean regulatory system has been how to control the attempt of government which is disposed to use financial industry for its own policy tool.

ii) Separation of Economy Policy and Financial Policy Authorities

Economy policy-making and financial regulation each can be compared to the acceleration and breaking of a car. Economy policy authorities usually prefer to boost economy and emphasize economic growth. Financial regulation emphasizes the prudential operation of financial institutions and this can be influenced by economic policy. One cause of 1997 currency crisis was the loose loans to some corporate conglomerates to boost economic growth and this was one example that economic policy led financial regulatory failure. In addition, severe credit crunch in 2003, which was caused by credit card companies' less regulated business competition, was another example of financial regulatory failure influenced by the economy policy which objected to tightening the credit card business regulation to increase overall consumption. More critically, after the financial crisis, the FSC took the

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184 *Id.*
185 For example, Korea could not establish efficient regulatory mechanism and tradition of accountability and financial institutions also could not increase competitiveness. Moreover, there was severe moral hazard not only among financial institutions, but also in regulatory authorities because they could place the responsibility on the governmental instructions. *See Id.*

Moral hazard describes a situation where parties behave differently because they do not expect to bear the full consequence of their actions. The problem arises because an individual or institution feels that there will be no consequence for their actions, and therefore has a tendency to act less carefully that it otherwise would, leaving another to bear the consequences of those actions.”

*See Samuel, supra* note 3, at 254.

186 *See Kim & Yoon, supra* note 46, at 206.
187 *See Carmichael, supra* note 125, at 6.
188 *See Kim & Yoon, supra* note 46, at 202.
189 The FSC placed too much stress on financial industry restructuring but made light of its basic responsibility of prudential regulation, and it was insufficient to keep transparency and neutrality....It also proceeded prejudiced restructuring rather than impartial liquidation, influenced by the policy for the stimulation of the economy and the Venture-investment boom.
responsibility for corporate restructuring and financial institution’s soundness regulation.\textsuperscript{190} It could be efficient to give both duties to one entity because one critical method of corporate restructuring is to control various credit lines from financial institutions to corporate. But such efficiency hurt the independent and strict soundness regulation of the FSC itself.\textsuperscript{191} With these experiences, in arguments about the Korean regulatory system, the separation of economic policy and financial policy authorities has been one significant issue.\textsuperscript{192}


One member of the National Assembly evaluated the proposal for the revision of the FSOA, which was intended to create the Financial Services Commission, as it looked like to return to the past.\textsuperscript{193} Even though, there had been various critics about the proposal’s problems, most of them are still reasonable for the recently created system. Following study can be useful, not only for the next proposal for reformation, but also for current regulatory agencies, to prevent foreseeable problems by keeping in mind such critics.

a. Objectives

\textit{See} Suh, Hye-Suk, Member of the National Assembly, Minute of the National Policy Committee of the National Assembly of the Republic of Korea 9 (Jan. 29, 2008) (citing an internal report from the Ministry of the Planning and Budget. She also commented that this result exhibited a form of government-driven financial industry which still existed despite the separation of the FSC and the MOFE).

\textsuperscript{190} The World Bank commented the matter of dual roles which caused serious conflict of interest. “The conflicts related both to the supervisor’s prior involvement in permitting the financial system to fall into crisis (and thus its incentives to underestimate or at least underreport the scope of distress) and its responsibility for effectively supervising the system going forward.” \textit{See} Scott, supra note 179, at 20.

\textsuperscript{191} COMMITTEE FOR THE REFORMATION OF FINANCIAL REGULATORY SYSTEM, REFORMATORY PLAN FOR THE FINANCIAL REGULATORY SYSTEM 2 (Dec. 20, 2000).

\textsuperscript{192} Suh, Hye-Suk, Member of the National Assembly, Minute of the National Policy Committee of the National Assembly of the Republic of Korea 9 (Jan. 29, 2008) (commenting several critical financial crisis as the result of government-driven system which disregarded the independence of the financial regulation and asking confirmation of the Chairperson of the FSC, Kim, Yong-Duk, that the lesson from the crisis was the separation of financial regulation from the economic policy. The Chairperson agreed with the result).

\textsuperscript{193} Kang Bong-Kyun, Member of the National Assembly and former Minister of Finance and Economy, Minute of the Economy & Finance Committee of the National Assembly of the Republic of Korea 11 (Jan. 31, 2008) (commenting that the advanced system means the separation of financial function from the politics and that the proposal just intends to resurrect the former MOFE which was prior to the 1990’s financial crisis).
The FSCA states the FSC’s objectives as ‘to contribute to the growth of the national economy by promoting the advancement of the financial industry and the stability of financial markets, by establishing sound credit order and fair financial transaction practices, by protecting financial consumers, such as depositors and investors.’ According to the Act, the utmost objective of the FSC is to contribute to the growth of the national economy and soundness regulation looks to be a measure for such purpose. A Chairperson of the FSC stated in a national assembly committee that financial regulatory organization should be independent from the political power but it could lead and support real economy and be harmonized with macro-economic policy. Although he also commented the possible conflict with the independence and added proviso of ‘consideration of the economic situation,’ from the statutory objective of the FSC, the prudential regulation’s independence from the government can easily subordinate to overall national policy. More clear objectives are needed to be standard for accountability and effectiveness as well as to secure the independence of prudential regulatory organization.

b. Independence

Despite its momentum for the late 1990s reformation, current Korean regulatory system is more nearer to its former system of prior 1990s. Even though the independence from the governmental influence was one of the most important causes, the FSC is the center of the regulatory organizations and one of government agency. Korea sees the FSC as an independent government agency. The Korean standard for the independent government agency, however, is

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194 FSCA, supra note 136, art. 1.

195 Unlike the FSCA, other consolidated regulatory authorities have specific statutory objectives. For example, the Financial Services and Markets Act of 2000 (FSMA) which is the establishing statute for the Financial Supervisory Authority of the United Kingdom (UK-FSA) states regulatory objectives clearly as ‘market confidence, public awareness, the protection of consumers, and the reduction of financial crime.’ See FSMA part I. 2-(2). And the Australian Prudential Regulatory Authority Act of 1998 (APRAA) which established the Australian Prudential Regulatory Authority (APRA) also elucidates the APRA’s purposes as ‘regulating bodies in the financial sector in accordance with other laws of the Commonwealth that provide for prudential regulation or for retirement income standards and administering the financial claims schemes provided for in the Banking Act and the Insurance Act.’ See APRAA part 2. Art. 8.


197 See Financial Supervisory System in Korea, supra note 60, at 14 (commenting the FSC as an independent government agency “whose officers are barred from holding any political position or engaging in any commercial activity”).
different from the U.S. standard which is characterized as the independence from the presidential control.\textsuperscript{198} Even though there are several forms of financial regulatory agency in U.S. such as the Department of the Treasury which is part of the Executive Branch, the SEC which is independent but funded by government budget and the Federal Reserve System which is independent and self-funding,\textsuperscript{199} independent agencies are usually located outside the executive branch, guarded by special appointment and removal process including the congress’s involvement and headed by multi-member groups which is intended not to be governed by one political party and to secure its independence.\textsuperscript{200} Moreover, compared to the independence of the central bank, the independence of the financial regulation has not gotten enough consensuses in Korea and Significance of the regulatory independence is still in argument in Korea.\textsuperscript{201} Unlike its official stand-point, in real regulatory system, Korean system puts more stress on the efficiency and cooperation to the national policy than on the independence. For example, the FSC/FSS sometimes committed to the economic policy which can be inconsistent with the prudential regulation.

c. Efficiency

Unlike productive or profit-making company, it is very difficult to evaluate efficiency of a non-profit organization. Therefore, there has been little discussion about the internal efficiency of the regulatory organizations. Efficiency of the overall regulatory system, however, is can be studied from the point of the regulated industry. Korea has been outspoken about its so-called consolidated single regulatory system.\textsuperscript{202} In reality, however, there are two regulatory entities, the FSC and the FSS, excepting regulation related entities whose basic responsibility is not the financial regulation but directly or indirectly related to financial regulation. This exotic system originated from the needs for independent regulatory system. The initial trial for the specialized private regulatory organization was obstructed by the resistance


\textsuperscript{201} See Marc Quintyn et al, supra note 5, at 34.

\textsuperscript{202} See Financial Supervisory System in Korea, supra note 60, at 13.
that the private organization cannot perform any public function such as financial regulation or supervision.\textsuperscript{203} As a compromise of both positions, besides the FSS, Korea established the FSC as a special committee for administrative function of the financial regulation and as a supervisory organization of the FSS.\textsuperscript{204} As the FSC’s supporting officials became bigger organization and took usual regulatory function by examining agendas presented to the FSC, there was confusion of authority and inefficiency of the regulatory sources. This result severely decreases the merit of the consolidated regulatory organization with the duplication of authority and compliance cost of the regulated.\textsuperscript{205}

In addition, from the point of financial industry, uncooperative system and culture among several regulatory organizations deteriorate the regulatory efficiency and increase the burdensome regulatory cost. For example, with the information sharing, there has been a severe lack of cooperation among the FSS, BOK and KDIC.\textsuperscript{206} To correct this situation, they concluded a ‘Memorandum of Understanding on the Financial Information Sharing.’\textsuperscript{207} According to the BAI’s ‘Requests on the Measures Following the Inspection of the BOK,’ there are still similar problems.\textsuperscript{208} Although each organization needs specific information for its special regulatory

\textsuperscript{203} Man Su Kang, Vice-minister of the Ministry of Finance and Economy, argument at the Finance and Economy Committee of the National Assembly. See National Assembly, Minutes of the Finance and Economy Committee 21 (Oct. 30, 1997).

\textsuperscript{204} There is another explanation that current system was the compromise between the BOK and the MOFE which argued to place the new consolidated regulatory organization under its control. Unlike Korea, in case of UK-FSA, there is no organization similar to the FSC and, in JAP-FSA, there is no organization such as the FSS. See Jin-ho No, Gum-Yung-Gam-Dok Si-S-Tem-Ui Gae-Seon-Bang-An [Direction of Financial Regulatory System Reformation] 9, Hyundai Research Institute, ( Mar. 2, 2004).

\textsuperscript{205} Hak-Yong Shin, Member of the National Assembly, Minute of the National Policy Committee of the National Assembly of the Republic of Korea 17-18 (Jan. 29, 2008).

\textsuperscript{206} BAI, REQUEST ON THE MEASURES FOLLOWING THE INSPECTION OF THE BOK 2 (June 2009).

\textsuperscript{207} Memorandum of Understanding (MOU) is often used between regulatory authorities to increase cooperation, not only in the same jurisdiction, but also among different jurisdictions. See Mwenda, supra note 164, at 11 & 92; BOK, JU-YO-KUK-U1 GUM-YUNG-AN-JEONG YU-GWON-GI-GWOAN-GAN YANG-HAE-GAK-SEO [MOUs AMONG THE FINANCIAL STABILITY AUTHORITIES OF THE MAJOR COUNTRIES (Feb. 2007)].

\textsuperscript{208} For example, the BOK offered only 16 financial reports to the FSS on the request of 108 reports, with the reason of privacy protection, etc., in April 16, 2007. And the FSS offered only 90 financial reports to the BOK on the request of 377 reports, with the reason of business secrete protection, etc., in June 30, 2008. However, in December 4, 2008, the FSS offered 55 reports which it denied to offer for the reason of business secrete protection, etc., and, in February 10, 2009, the BOK offered 7 reports which it denied to offer for the reason of privacy protection, etc., as the FSS asked such information, offering the said 55 financial reports. With this situation, the BAI concluded that both organizations did not apply reasonable standard for the financial information sharing. In addition, the FSS offered only 14 reports to the KDIC on the request of 53 reports, with the reason of verifying process. Among them 14 reports were requested 21 months before the denial. There were several financial reports which were asked to the
purpose and meaningful and timely statistics, it should not be obstruction for efficient information sharing, if there were useful cooperative system among them.\footnote{A newspaper’s editor depicted this situation that both organizations treated the financial information submitted from companies to show its influence on the industry. See Editorial, \textit{Is it really impossible to share financial information between the BOK and the FSS?}, \textit{HAN-GUK-GYEONG-JE-SIN-MUN}, Jul. 4, 2009, available at \url{http://www.hankyung.com/news/app/newsview.php?aid=2009072387611&intype=1}.}

d. Accountability

The FSC and the FSS take periodic and non-periodic inspection from the BAI, not only about their operation, but also financial regulatory policy. In addition, they also report many times their pending issues to the National Assembly and they also take yearly inspection from the Assembly. This system can be enough of a checking mechanism for financial regulatory authority. Excessive political influence and outer intervention, however, can hurt accountability as well as independence.\footnote{See Llewellyn, \textit{supra} note 109, at 29.} Without enough reliance and authority, it is difficult to ask accountability of regulatory organizations for their policy and performance. The short terms of the FSC’s president and the FSS’s Governor show the feeble characteristics to the political influence.\footnote{Refer to the FSC’s history, available at \url{http://www.fsc.go.kr/eng/index.jsp}. See also FSOA, \textit{supra} note 84, art. 6. M. Quintyn and M. W. Taylor commented ‘senior personnel’s security of tenure’ as one critical element of institutional independence. See Quintyn & Taylor, \textit{supra} note 34.} Despite their three year of statutory office term, from the FSC’s organization of April 1, 1998 to the end of 2008, there had been 8 Chairpersons of the FSC. In this culture, it is difficult to expect sincere accountability of regulatory staffs, not just an exterior accountability of the high level persons.

e. Location of the Regulatory Agency

One critical issue in Korean regulatory system, which is difficult to be found in other countries, is whether the non-governmental organization can execute the regulatory or supervisory authority.\footnote{See CCEJ Press Release, \textit{supra} note 133. 147 economic and financial professor’s public statement on the reformation plan for economic and financial government agencies (Feb. 11, 2008). In this statement, professors criticized the plan which was prepared by the transition team for President-elect and became the base of recent change as it purposed to concentrate too much power on the FSC and could go back to the government-driven} As seen above, this issue frustrated plan for the completely independent financial companies again because another regulatory organization denied to share. See BAI, Request on the Measures Following the Inspection of the BOK 3-6 (June 2009).
regulatory organization which was discussed after the late 1990s financial crisis. In addition, it is also important reasoning for re-concentration of regulatory authority to government agency. This situation can be explained as an example of conflict of different legal systems.

Modern legal system of Korea began with the adoption of German and Japanese laws. Like Germany and Japan, Korea also developed with the powerful government-driven leadership which emphasized the efficiency for overall national development rather than transparency or procedural justice. This system made it possible for Korea to overcome the result of Korean War and to be the 12th country in the international trading. As time passed, this system became new tradition and principal for Korea.

During the 1990s financial crisis, however, this system was criticized by international organizations as a critical cause for the crisis and Korea was forced to transfer some governmental authority to the private sector. In addition, unlike its legal system, the market system adopted more and more American systems. Moreover, with the development of Korean democracy and economy, capacity of private sector surpassed the government and voiced their own opinions in several fields including the financial industry. The system of the FSC and the FSS was the compromise among above recent changes and the Korean administrative tradition.

Moreover, recent financial crisis, not only sub-prime oriented global crisis, put more emphasis on the efficient crisis management system and concentrated authority. In this economy. They also argued that the reformed financial regulatory authority should be independent, market-friendly private organization. In addition, they commented that the late 1990’s financial crisis and 2003’s credit crisis resulted from government’s over-emphasis on the efficiency and disregard of the check and balance principle in the economic and financial division.

213 See Ginsburg, supra note 39, at 589-90.
215 See Ginsburg, supra note 39, at 585.
216 Unlike in U.S., in Korea the legal status of regulatory staff is significant. Whether the staff is public servant whose legal status is guaranteed by law is the critical standard to decide whether it can discharge any public authority. For its guaranteed status and peculiar national examination and promotion system in staffing, there are critics relating public servant’s expertise compared to market participants and independence from the government policy. In U.S, the legal status of staff of the OCC, Federal Reserve, FDIC, SEC, CFTC, etc. does not bring such arguments relating to independence or expertise because its system and tradition can guarantee such basic qualifications.
217 See Mwenda, supra note 164, at 29-32.
situation, the old argument of ‘government or private sector’ is one important issue which Korea must solve to reform stable and reliable regulatory authority.

Besides the traditional administrative law principal, which says only public servants can exercise public authority, there are various reasoning for the concentration to the administrative branch.\textsuperscript{219} First, one of them found the cause of the past financial crisis from the failure of policy, not from the systemic defects. Second, another opinion comments that the Korean experience of private organization’s regulation was not different from the past government agencies’ regulation. Third, the financial regulation and policy should be part of the national economic policy and financial industry is the fundamental industry which must support other industries and, thus, cannot be operated only by economic principals. At last, public fund, which is eventually tax payer’s money, is inevitable in the process of financial regulation and cannot be executed without governmental approval which has legal authorization and responsibility for tax expenditure.

In contrast, there are also opinions arguing for the private sector as a primary financial regulatory organization.\textsuperscript{220} First, private sector can execute the public authority if only the congress delegate such authority through a statute. Second, the FSC/FSS system cannot be treated as a private sector regulatory experience because public official concurrently took position of the FSC’s Chairperson and the FSS’s Governor and also retained personnel management authority for FSS’s staffs.\textsuperscript{221} Third, for the peculiar characteristics of Korean bureaucracy, financial regulation administered by government agency includes fatal problems in independence and expertise. Fourth, regulation of normal times and crisis should be differentiated. The reasoning for crisis management cannot be applied for ordinary regulation and it should not be daily system.

Both of system, governmental or private, has merits and short-comings but the private organization looks more ideal to satisfy the standards for desirable regulatory system. In sum, despite various reasoning and studies, most important factor in deciding the regulatory

\textsuperscript{219} See National Assembly of the Republic of Korea, Minutes of the Strategy and Finance Committee of the National Assembly of the Republic of Korea (Feb. 11, 2008) (public hearing on the legislative bill intended to establish the Financial Services Commission).

\textsuperscript{220} Id.

\textsuperscript{221} Jae-Sae Oh, Member of the National Assembly, Minutes of the Strategy and Finance Committee of the National Assembly of the Republic of Korea 46 (Feb. 11, 2008) (arguing that, in this system, the FSS, which should be non-government organization, became a kind of government agency).
system is the political compromise. Considering Korean tradition and reality, without strong impact, it looks difficult to make any private financial regulatory organization in near future, which is completely independent from the administrative branch. In either case, there should be substantial mechanisms to supplement each system’s short-comings discussed above and such mechanisms must be able to overcome the traditional and cultural obstacles for harmonious operation.

f. Other Problems

Under the current system, the FSC retains the authority for the financial policy and the FSS takes responsibility for the financial supervision and capital market inspection. The MOSF has authority for the international finance and foreign exchange policy and the BOK also carries out independent monetary policy. There is, however, no systemic control tower which can manage and mediate these complicate systems. With the recent discussion for the regulatory reformation, an FSC staff said that the FSC should get the authority for international financial policy and treasury function related to financial industry support. An MOSF staff emphasized that the MOSF should retain appropriate authority for macro-economic policy including finance, for rapid and consistent response to the change of economic situations. The FSS has argued that, regardless the reformed regulatory system, the FSS should be an independent private organization. In addition, the BOK also wants to get more regulatory authority as a central bank. For this situation, there should be pertinent controlling system and established culture in

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222 The bureaucracies in...Korea have enjoyed a near-monopoly on the drafting of legislation. This is in part because legislators have historically lacked the staff and expertise to play a role in drafting....Beyond their role as the primary source of policy ideas, bureaucrats have traditionally had some involvement in the legislative process itself.

See Ginsburg, supra note 39, at 592.

223 For example, despite the MOU, there is still in-cooperation with the information sharing between the FSS and the BOK. In addition to the MOU, the vice-president of the BOK is the non-standing commissioner of the FSC which supervises the FSS.

224 Editorial, Is it really impossible to share financial information between the BOK and the FSS?, HAN-GUK-GYEONG-JE-SIN-MUN, Jul. 4, 2009. (Arguing that reformed regulatory system should be equipped with unification and consistency to prevent regulatory confusion, struggle among regulatory agencies, inefficiency and additional burden to the industry.)

which financial regulatory system can accomplish independent and harmonious operation as well as efficiency.\textsuperscript{226}

V. Conclusion

There have been various changes in social structure as well as in financial industry itself. Most traditional principles and systems need to change as time passes. For example, ‘bank run and deposit insurance’ cannot represent ‘the systemic risk and its remedy,’ as anybody can withdraw money from bank without going to bank counter lines and institutional investors, who are not protected by deposit insurance, can withdraw much more money than protected depositors in shorter time with just several ‘clicks’ on a computer terminal.\textsuperscript{227} As the barriers between financial companies become lower and their services become intermingle, the asset management services of other kind financial institutions, not only of the Investment Company, have become significant to the investor.\textsuperscript{228} Financial globalization, which represented most advanced, effective and lucrative business, poses most critical danger from unforeseen aspects as can be seen various regional financial crisis.\textsuperscript{229} With these changes, the evolution of financial regulatory system is inevitable. Despite this upheaval change of financial industry, however, the regulatory system has not shown corresponding changes.\textsuperscript{230} Unlike market system and financial companies which are its counterparts, the regulatory system is very difficult to change without

\textsuperscript{226} Already there have been several systems to coordinate regulatory function including the organization of committees which give commissioner positions to other regulatory organization, periodic meetings of regulatory organizations’ heads, and economic related Ministers’ meeting presided by President.

\textsuperscript{227} Lissa L. Broome & Jerry W. Markham, Regulation of Bank Financial Service Activities: Cases and Materials 96 (Thomson 3\textsuperscript{rd} ed., 2008).


\textsuperscript{229} See Krugman, supra note 23, at 190; See also Yale Law School, The Future of Financial Regulation 89 (2009) (Commenting one notable difference of recent financial crisis as the remarkable speed with which the crisis spread around the globe.)

\textsuperscript{230} The different areas of the financial services industry have been gradually intermingling over the last quarter of a century. The American model of regulating each facet of finance is based on the historical separation of financial services and not on their current status. Because financial markets move on, the sectoral system put in the late 1980s is no longer fit for the purpose at the beginning of the 21st century. The old divisions between banks, insurance companies, securities firms, investment managers, and the rest, do not reflect the way the financial sector is now organized.

Markham, supra note 9, at 393.
powerful impact from outer. At the same time, much preparation for such change is necessary to lessen the possibility of trial and error. Recently, however, there are strong necessities from the market and the regulatory authority for systemic reformation of regulatory system and there have been prolific studies about the financial regulatory system.

As time passes, regulatory systems become more and more complex because the basic reaction of the regulatory authority is to add some regulation to treat an accident which has already happened. In some phase, however, the revision of the regulatory system itself, not just a specific regulation, is needed to enhance the effectiveness of established complex system and to prepare for future event of financial industry. In this situation, pertinent prescription according to the correct diagnosis is most important. Even though to the similar symptom, diagnose can be diverse following various conditions in which a specific market system and regulatory system operate. The essence of the regulatory reformation is not the best practice of a well-developed financial market. Instead, creating individualized system, which reflect its various peculiar background and circumstance, is the cardinal principle. Other country’s experience of financial regulatory reformation, including the motive, procedure, debate, outcome and operational result, can be useful when they are studied in its peculiarity. With some reasons, I prefer the consolidated regulatory system. Nonetheless, it never means a single regulatory authority is sufficient for financial regulation. As financial industry is also a part of national economy and it can never be independent from various administrative purposes, there should be

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232 *Generally see Blueprint, supra* note 12.


234 “Our current regulatory structure was not built to address the modern financial system with its diversity of market participants, innovation, complexity of financial instruments, convergence of financial intermediaries and trading platforms, global integration and interconnectedness among financial institutions, investors and markets.” Press Release, Henry M. Paulson, Jr., Secretary of Treasury, *Blueprint for Regulatory Reform* (Mar. 31, 2008).


pertinent checks and balance among related authorities including Central Bank, Treasury and Congress.\footnote{The Asian financial crisis highlights the need for central bank independence and sound independent macroeconomic policies." See Nam, supra note 18, at 151-52.}

With Korean regulatory system, in some aspects, it looks like past regulatory system which was targeted for reformation. The basic principle of changes was to correct past mistakes and to cope with unexpected change of situation. From this point of view, the current Korean system shows some deficits and needs to construct more effective and independent regulatory system which can satisfy the original needs for regulatory reformation.

FSCMA consolidated six Acts related to capital market and investment companies to enhance competency of capital market and consistency of regulation among similar investment measure and services.\footnote{Consolidated Acts included Securities and Exchange Act, Future Trading Act, Indirect Investment Asset Business Act, Trust Business Act, Merchant Bank Act, and Korean Exchange Act. See FSCMA, supra note 105, addenda art. 2.} Another important purpose of this change was to make advanced environment for capital market and raise its capital market to be a globalized financial hub.\footnote{Kon Sik Kim, supra note 116.} For these objectives there should be outstanding reformation, not only in the market system, but also in the regulatory authority itself which is driving these changes.\footnote{As discussed above, there have been several changes in regulatory system. Those changes, however, are not sufficient to be any critical one in stepping with market development because, after the initial reformation of the late 1990s, the regulatory system became more similar to the prior 1990s’ system which was criticized as one cause of the late 1990s financial crisis. Moreover, most changes were related to the power allocation among administrative branch and more and more authority has been concentrated to the government agencies.} In addition, this reformation should include systems which can overcome the traditional and organizational issues discussed in this paper.