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Comparison of the Financial Systems in England and Germany

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COMPARISON OF THE FINANCIAL SYSTEMS IN ENGLAND & GERMANY

<u>FEATURES OF THE REGULATORY SYSTEM</u>		
	England	Germany
How Many Authorities Are There?	<p>There is 1 main authority in the UK, the FSA. Although other bodies are given some tasks in the regulatory process.</p> <p>Other bodies involved:</p> <ul style="list-style-type: none"> • Treasury • Bank of England • Competition Commission • Director General of Fair Trading • Office of Fair Trading 	<p>There 1 main authority for the supervision of banks, insurances and securities trading companies: the BaFin.</p> <p>Other bodies involved:</p> <ul style="list-style-type: none"> • The Deutsche Bundesbank • The Federal Ministry of Finance • Länder Supervisory Offices for Insurance Enterprises • Länder Supervisory Offices for the Operating of the Stock Exchanges • The Bundeskartellamt (Federal Anti-Trust Office)
Which Authority Makes Regulation?	<ul style="list-style-type: none"> • Parliament – Primary legislation – the FSAMA 2000. • Treasury – Secondary legislation in the form of orders which develop and explain the framework of the FSAMA. • FSA – Rules (secondary legislation), codes, guidelines and directions. 	<ul style="list-style-type: none"> • Parliament –Primary Legislation- Foundation of the BaFin: FinDAG (22 April 2002), other important acts: Banking Act, Act on the Supervision of Insurance Companies, Act on Securities Trading, Act on the Acquisition of Securities and on Take-overs • Federal Ministry of Finance – secondary legislation- is enabled by the FinDAG and by the single Acts to determinate the more specific competences and tasks of the BaFin by executive order law • BaFin is enabled to issue guidelines by mutual agreement with the Bundesbank, if the Bundesbank`s agreement cannot be reached the Federal Ministry of Finance decides after hearing the Bundesbank (Banking supervision) • BaFin is enabled by the Federal Ministry of Finance to

		determinate details
Who is the Supervisor?	The FSA is the only supervisory body under the FSAMA. It is responsible for the supervision of all regulated financial intermediaries.	<ol style="list-style-type: none"> 1. Banking supervision: <ul style="list-style-type: none"> • The Bundesbank analyses most of the documents the credit institutes are obliged to hand in regularly to see if the requirements to run the business are still fulfilled • The BaFin as a public entity is responsible for administrative action taking into considerations the results of the examinations effected by the Bundesbank 2. Insurance supervision: Distinction between Federal State/ Länder <ul style="list-style-type: none"> • The <i>BaFin</i> as a Federal Authority supervises the private insurance companies with major economic importance as well as the public insurances (established by and subject to public law) that are active in more than one <i>Land</i>. • The <i>Länder</i> authorities supervise the public insurances that are active only in one <i>Land</i> and the private insurance companies of less economic importance 3. Securities Trading Supervision <ul style="list-style-type: none"> • The BaFin is responsible for: the orderly implementation of the securities trading, especially: prevention of insider-trading, disclosure duties, securities prospectus, requirements concerning capital investment advice (investor protection) etc. • The Länder authorities control the operating of the stock exchange in general, i.e. the participants in the stock exchange business (admission to the exchange etc.), the electronic auxiliaries, the formation of the

		prices etc.
What System of Checks & Balances Operates?	<p>The FSA is accountable in several ways:</p> <ul style="list-style-type: none"> • Parliamentary control is exercised through the Treasury. This is inline with the traditional doctrine that incorporated bodies should not be answerable through Parliament but should be accountable through Ministers. • The Treasury appoints and dismisses members of the executive board and the chairman of the FSA. (Para. 2(3) Schedule 1 FSAMA) <ol style="list-style-type: none"> 1. The Board can be called into Treasury Committee to be questioned on performance. 2. The FSA must make an Annual report to the Treasury. 3. Treasury has power to review FSA conduct. (ss.12 to 18 FSAMA) 4. The FSA's statutory objectives govern its functions. (s.2 FSAMA) 5. The FSA must have regard to the principles of good regulation when exercising its functions. (s.2 FSAMA) 6. The FSA must consider representations made to it by the Consumer & Practitioner Panels. (s.11 FSAMA) 7. The FSA must hold annual general meetings within 3 months of the Treasury report. 8. The FSA can be liable for tort of misfeasance. 9. The FSA is amenable to judicial review. 10. FSA actions are subject to competition review by the DGFT & the Competition Commission. 	<p>A. BaFin:</p> <ol style="list-style-type: none"> 1. Governmental (by that parliamentary) control <ul style="list-style-type: none"> • The Federal Ministry of Finance controls the legality and merits of the BaFin actions, gives directives to the BaFin, appoints and dismisses the members of the Administrative Council • President and Vice-President of the BaFin are nominated by the Federal government and appointed by the Federal President. 2. Control by government, parliament and representatives of the supervised financial intermediaries: <ul style="list-style-type: none"> • The Administrative Board of the BaFin controls the management of the BaFin (espec. approval of the budget and the annual accounts and - in agreement with the Ministry of Finance- the endorsement of the President). Appointed for 4-5 years, consists in representatives of the Federal Ministry of Finance, of the Federal Ministry of Economics, of the Federal Ministry of Justice, members of Parliament, representatives of credit institutions, of insurance companies, of capital investment companies and of the Bundesbank. • The Advisory Council, members appointed for five years by the Federal Ministry of Finance, gives recommendations to the BaFin. Consists in representatives of science, credit institutions, insurance companies, Bundesbank, unions, associations of medium-sized enterprises and consumer protection

	<p>11. The FSA must also have regard to the principle of good corporate governance. (s.7 FSAMA)</p>	<p>associations.</p> <p>3. Control by the Länder: Securities Council, representatives of all Länder, giving recommendations to the BaFin</p> <p>4. Judicial review:</p> <ul style="list-style-type: none"> • BaFin is a public authority, its administrative actions are subject to judicial review (administrative jurisdiction) <p>B. Bundesbank:</p> <p>1. Governmental control: The members of the Executive Board (all appointed for 8 years) are all appointed by the President of the Federal Republic. The President, the Vice-President and two other members are nominated by the German Federal Government</p> <p>2. Control by the Länder The other four members of the Executive Board are nominated by the <i>Bundesrat</i> (upper house of parliament representing the <i>Länder</i> / the German Federal States) in agreement with the Federal Government.</p>
Who Gives & Enforces Sanctions?	<p>The FSA has powers of investigation, information gathering and discipline.</p> <p>Discipline:</p> <ul style="list-style-type: none"> • The FSA is able to impose discipline by way of public censure and financial penalty. 	<p>The BaFin has powers of investigation, information gathering and discipline</p> <ul style="list-style-type: none"> • The BaFin has the right to audit at any time without a special reason and without advance notice • BaFin can take administrative action:

	<ul style="list-style-type: none"> • Any sanction must be proportionate given the seriousness of the offence and the surrounding circumstances. • The FSA can apply for the court to impose an injunction or restitution against anyone knowingly concerned in an offence. • The FSA can itself impose a restitution order but only against a firm and not an individual. • The FSA can vary or cancel permission to conduct regulated activities. (s.33 FSAMA) • The FSA can withdraw its approval of an approved person. 	<ul style="list-style-type: none"> - Forbid new allocations of loans - Forbid the distribution of dividends - Forbid new deposits - Dismiss the CEO - Withdraw the licence to run a business - Ultima ratio: file for insolvency - Can impose administrative fines - Forbid an offer to acquire shares
Who is in Charge of Defaulting Firms?	<p>The court is primarily in charge of defaulting firms but the FSA has a number of powers.</p> <ul style="list-style-type: none"> • Voluntary arrangements – FSA is entitled to be heard at any hearings. (ss.357 & 358 FSAMA) • Administration Orders – FSA can petition to the court for an administration order in certain circumstance and has the power to participate at hearings. (ss.359-362 FSAMA) • Winding-up – FSA has rights as if it were a creditor. FSA may petition to the court for a body to be wound up. (ss.365-368 FSAMA) • Bankruptcy – FSA has power to petition to the court for a bankruptcy order where the firm is unable to pay regulated activity debt or appears to have no reasonable prospect of doing so.. (s.372(2) FSAMA) 	<ul style="list-style-type: none"> • BaFin files for insolvency if it finds reasons for that assumption • The civil court decides whether a company has become insolvent or not
Who is in Charge of Anti-Trust	<ul style="list-style-type: none"> • The Office of Fair Trading (OFT) 	<ul style="list-style-type: none"> • Bundeskartellamt

Issues?	<ul style="list-style-type: none"> • Competition Commission 	In the case of the acquisition of a substantial part of the assets or of the direct or indirect control or of a participation that reaches 25% or 50% percent of the capital or the voting rights, the Bundeskartellamt controls the concentration if the turnovers (banks: proceeds) reach a certain threshold
Is there an Independent Tribunal or Complaints Procedure?	<p>Yes.</p> <ul style="list-style-type: none"> • The Financial Services Tribunal, an independent body responsible for handling complaints and appeals. The FST is independent and impartial. It is responsible for hearing cases made against decisions made by the FSA. • FSAMA also provides for the Financial Ombudsman Services to provide a means for dealing with some disputes in a quick and informal manner. Essentially a means of ADR. The FOS is elected by the FSA but remains an independent body. 	<ol style="list-style-type: none"> 1. Against the administrative action of the BaFin objection can be filed at the BaFin's internal Objections Committee 2. Despite from that, there is no independent platform dealing with complaints against the BaFin. 3. Since 1992, there is an ombudsman service for private clients of private banks and Sparkassen having problems with their credit institutes <ul style="list-style-type: none"> • private banks: 2 ombudsmänner (ex-BGH-judges), their sentence is binding for the banks, if value up to 5.000€) • Sparkassen: procedures differ from bank to bank, sentence not binding for the bank
Judicial Review Process	Although the FSA is a private body it can be brought to account though judicial review as it clearly exercises public functions. An applicant must comply with stringent rules and apply directly to the administrative court.	The BaFin is a public authority. Its administrative action is subject to juridical review (administrative jurisdiction).
Internal Committees.	<p>The FSAMA provides that there must be:</p> <ul style="list-style-type: none"> • Consumer Panel • Practitioner Panel. <p>The FSA is required to consult with these Panels and</p>	<ol style="list-style-type: none"> 1. Consulting Platforms <ul style="list-style-type: none"> • Administrative Council: controls the management of the BaFin • Advisory Council: giving recommendations

	<p>consider any representation they make. It is not obliged to act in accordance with such representations if it is of a different opinion but it must inform the relevant Panel in writing of its reasons for disagreeing.</p>	<ul style="list-style-type: none"> • Securities Trading Council: representatives of the Länder giving recommendations concerning securities trading <p>2. Objections Committee</p> <p>Internal organ, controlling the administrative actions taken by the BaFin</p>
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<u>THE STOCK EXCHANGE</u>		
	England	Germany
How Many Exchanges Are There?	<ul style="list-style-type: none"> • 1 – London Stock Exchange • 2 Markets – Main Market & AIM • Main Market: <ul style="list-style-type: none"> – Techmark: group within Main Market for innovative technology companies – Techmark Mediscience: group within the Main Market devoted to healthcare companies – Minimum 25% of shares in public hands – 3 years trading record required – Prior shareholder approval needed for certain transactions – Admission documents pre-vetted by UKLA – Sponsor needed for certain transactions – Compliance required with the rules of the UKLA • AIM: <ul style="list-style-type: none"> – Market for smaller, growing companies – No minimum number of shares in public hands – No prior trading record required – Nominated advisor required at all times – More flexible regulatory environment • Landmark: <ul style="list-style-type: none"> – market for quoted regional companies, – composed of over 2,200 businesses traded on the 	<ol style="list-style-type: none"> 1. 8 regional stock exchanges, most transactions are effected at the Frankfurt Stock Exchange 2. Market Segments: <p>Distinction between level of requirements for the issuer (different costs for the issuer/ different risks for the investor)</p> <ul style="list-style-type: none"> • Amtlicher Markt (Official Market) <p>Most important one, over 90% of all transactions.</p> <p>Participants have to be admitted to the stock exchange by an administrative act, they have to fulfill strict public law requirements, for the admission and for the whole time they are listed (obligations to publish certain aspects that could have influence on the investors` decisions)</p> <p>From 1 January 2003 Frankfurt Stock Exchange knows two segments within the Amtlicher Markt: General Standard and Prime Standard, they provide different requirements</p> • Geregelter Markt (Regulated Official Market) <p>Established in 1988 to promote smaller and medium-sized companies, but open to all sizes, requirements for going and being public are not as strict, e.g. no</p>

	<p>main market and AIM</p> <ul style="list-style-type: none"> History - At the turn of 20th Century there were 22 regional exchanges in Britain. In 1973 the 11 remaining regional firms amalgamated with the LSE 	<p>prospectus, but only a (smaller) report, the cost of admission should be 50% compared to the admission on the Amtlicher Markt</p> <p>From 1 January 2003 Frankfurt Stock Exchange knows two segments within the Geregelter Markt: General Standard and Prime Standard, they provide different requirements</p> <ul style="list-style-type: none"> Neuer Markt (New Market until 5/ 2003) From 1997 until 2003: to promote smaller and medium-sized enterprises in innovative and trend-setting sectors Freiverkehr (Regulated Unofficial Market) The Freiverkehr is not an organised market in the sense of § 2 V WpHG. Companies do not have to be admitted by an administrative act but the inclusion of the share is determined by guidelines issued by the company that operates the stock exchanges and decisions whether to include the shares are taken by this private company, securities can be traded under the rule of private law, i.e. with much less admission and follow-up requirements
Can You be Listed on More Than One Exchange?	<p>No. You can only be listed on one market: the Main Market or AIM.</p>	<p>Yes. The admission to trade a security on a stock exchange is an administrative act. If one stock exchange decides not to give permission this decision is normally binding also for the others, § 39 BörsG.</p>

How Many Firms are Listed on Each?	<ul style="list-style-type: none"> • Total – 2692 (all markets) • UK Listed – 1557 – Techmark - 178 • Overseas Listed - 381 • AIM – 754 	<p>January 2004 (cashmarket)</p> <ul style="list-style-type: none"> • All German Exchanges (all markets, including Freiverkehr/ Unofficial Market): 10 710 • Frankfurt Floor total (all markets) : - 5781 (incl. Freiverkehr) - 866 (excl. Freiverkehr)
How Many of These are Domestic / International?	<ul style="list-style-type: none"> • Domestic – 2251 (all markets) • International – 441 (all markets) <ul style="list-style-type: none"> • German – 9 • Italian – 0 • French – 6 • USA – 60 	<p>January 2004 (cashmarket):</p> <ul style="list-style-type: none"> • All German exchanges total (all markets): - domestic: 973 - foreign : 9737 (incl. Freiverkehr) • Frankfurt Floor total (all markets): - Domestic incl. Freiverkehr: 828 - Domestic excl. Feiverkehr: 682 - Foreign incl. Freiverkehr: 4953 - Foreign excl. Freiverkehr: 184
Who Owns the Stock Exchanges?	The LSE, which was itself listed in July, is owned by more than 520 shareholders, mainly banks, fund managers, brokers and private individuals.	<ul style="list-style-type: none"> • The Stock exchange itself is a public authority, e.g. the Frankfurter Wertpapierbörse/ Frankfurt Stock Exchange • The stock exchange is operated by a private company which provides the material resources like contracting the management, renting the building etc. E.g. for Frankfurt: Deutsche Börse AG (major shareholders are banks)
Can a Listed Firm Conduct Deals Outside the SE?	<p>Yes.</p> <p>The Rules of the LSE provide details of when a</p>	<p>Yes.</p> <p>Firms listed on an organised market can also conduct their</p>

	transaction is “on Exchange” and a list of exceptions.	deals on the Freiverkehr (Unofficial Market, seen as a segment of the Stock Exchange but with less public requirements, see above)
Which Provides More Finance / Investment – Banks or SE?	See attached statistics.	See attached statistics

<u>OWNERSHIP OF SHARES</u>		
	England	Germany
Can a Bank own Shares in an Insurance Company?	<p>Yes.</p> <p>There are no restrictions on the ownership of shares in any financial intermediaries unless the owner falls within the definition of a 'controller'. In which case the bank is required to give the FSA prior notification and wait to approval before it becomes a controller. (See s.422 FSAMA & FSA Handbook for more detailed rules.)</p>	<p>Yes.</p> <p>Like in any case of acquisition of voting rights of a certain percentage, notification to the BaFin has to be made, § 21 WpHG.</p>
Can an Insurance Company Own Shares in a Bank?	<p>Yes.</p> <p>There are no restrictions on the ownership of shares in any financial intermediaries unless the owner falls within the definition of a 'controller'. In which case the insurance company is required to give the FSA prior notification and wait to approval before it becomes a controller. (See s.422 FSAMA & FSA Handbook for more detailed rules.)</p>	<p>Yes. See for example the Allianz AG (insurance company)</p> <p>Like in any case of acquisition of voting rights of a certain percentage, notification to the BaFin has to be made, § 21 WpHG.</p>
What Limits Exist for Shareholdings in Banks?	<p>The same limits exist for shareholding in banks as with any other intermediary. Broadly speak the FSAMA mirrors the requirements under Directive 2000/12/EC.</p>	<ul style="list-style-type: none"> • Reaching a 10 % threshold of the shares in credit and financial service institutions, the BaFin controls the acquirer in regard to his trustworthiness and transparency, § 1 IX KWG <i>Kreditwesengesetz</i>/ Banking Act • Apart from that and anti-trust aspects, there are no limits
Can a Bank be a Shareholder of an Industrial Firm?	<p>Yes.</p>	<p>Yes.</p> <p>Like in any case of acquisition of voting rights of a certain percentage, notification to the BaFin has to be made, § 21</p>

		<p>WpHG.</p> <p>Sparkassen:</p> <p>Most of the <i>Sparkassengesetze</i> (Acts of the <i>Länder</i> concerning the <i>Sparkassen</i>) provide quantitative and qualitative restrictions for their <i>Sparkassen</i> concerning high-risk transactions, therefore also limits concerning the acquisition and holding of stakes.</p>
Restrictions on conduct of business?	There are virtually no restrictions on the type of financial business that financial institutions may conduct. For example insurance companies are free to accept life deposits and make loans and mortgages.	<p>There are almost no restrictions on the type of financial business that financial institutions may conduct. E.g. banks can offer insurance products and vice versa, this concept is called "Allfinanz".</p> <p>Exemption: German universal banks cannot run the investment business, e.g. with special sections within the bank, § 2 II lit.c KAGG. They have to establish independent subsidiaries for that.</p>

Abbreviations

For the UK:

ADR	Alternative Dispute Resolution
DGFT	Director General of Fair Trading
FOS	Financial Ombudsman Service
FSA	Financial Services Authority
FSAMA	Financial Services and Markets Act 2000
FST	Financial Services and Markets Tribunal
LSE	London Stock Exchange
OFT	Office of Fair Trading

For Germany:

BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht/ Federal Supervisory Office for Financial Services
BörsG	Börsengesetz / Stock Exchange Act
FinDAG	Finanzdienstleistungsaufsichtsgesetz / Act on the supervision of financial services
KWG	Kreditwesengesetz/ Banking Act
WpHG	Wertpapierhandelsgesetz / Act on securities trading
WpÜG	Wertpapiererwerbs- und Übernahmegesetz/ Securities Acquisition and Take-over Act