

Brussels, 2 October 2019

Toshihide Endo
Commissioner
Financial Services Agency
3-2-1 Kasumigaseki Chiyoda-ku
Tokyo 100-8967 Japan

Subject: Cooperation in the area of banking resolution between the Single Resolution Board and the Financial Services Agency

Dear Commissioner Endo,

I recognize that further cooperation between the Financial Services Agency and the Single Resolution Board in connection with the Resolution planning and the implementation of such planning with respect to Entities with cross-border operations would be mutually beneficial. I also acknowledge that enhancing the exchange of information between our authorities is important in view of the globalisation of financial markets and the increasing cross-border activities undertaken by banking organisations.

In this context, this exchange of Letters (henceforth referred to as 'the Letter') confirms our willingness to cooperate in the interest of fulfilling our respective statutory objectives; enhancing communication and cooperation; assisting each other in the planning and the conduct of an orderly Resolution of an Entity; and maintaining confidence and financial stability in Japan and the European Union.

SECTION ONE: DEFINITIONS

1. For the purpose of this Letter the following definitions apply:
 - A. "Authority" means the Financial Services Agency of Japan (FSA) or the Single Resolution Board (SRB);
 - (i) "Requested Authority" means the Authority to whom a request is made under this Letter; and
 - (ii) "Requesting Authority" means the Authority making a request under this Letter.
 - B. "Authorities" means the FSA and the SRB;
 - C. "Entity" or "Entities" means any banking entity, body or group which is under the responsibility of either of the two Authorities, in accordance with Article 4 of Act for Establishment of the FSA in relation to the FSA, and in accordance with Article 2 of the of the Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism ("SRM") and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1) (SRM Regulation), in relation to the SRB;

- D. "Emergency Situation" means any circumstance in which the financial or operational condition of an Entity has been materially impaired, or can reasonably be expected to be materially impaired, in a manner likely to affect the cross-border operations of the Entity and requiring consultation or coordination by the Authorities;
- E. "European Banking Union" means, collectively, the Participating Member States;
- F. "National Competent Authorities" means a National Competent Authority designated by a participating Member State in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (OJ L 176, 27.6.2013, p. 1.) and Directive 2013/36/EU;
- G. "National Resolution Authorities" means a National Resolution Authority as defined in accordance with Article 3(1)(3) of the SRM Regulation;
- H. "Non-participating Member State" means a Member State of the European Union, whose currency is not the Euro and which has not established a close cooperation in accordance with Article 7 of the Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63) ("Single Supervision Mechanism Regulation" or "SSM");
- I. "Other Governmental Entity" means any one of:
 - (i) Bank of Japan and the Deposit Insurance Corporation of Japan;
 - (ii) the European Central Bank, the European Banking Authority, the National Resolution Authorities and National Competent Authorities of Participating Member States.
- J. "Participating Member State" means a Member State of the European Union, whose currency is the Euro or a Member State of the European Union, whose currency is not the Euro but which has established a close cooperation in accordance with the SSM;
- K. "Person" means a natural person, unincorporated association, partnership, trust, investment company, or corporation;
- L. "Resolution" means actions taken by an Authority to address an Emergency Situation involving a distressed Entity, consonant with its statutory mandate, being:
 - (i) in respect of the FSA for the application of its tasks as a resolution authority, in accordance with the Act for Establishment of the FSA; and
 - (ii) in respect of the SRB, through the application of its tasks of a single Resolution Authority as part of the SRM in accordance with the SRM Regulation.

SECTION TWO: GENERAL FRAMEWORK

2. This Letter is a statement of intent to consult, cooperate, and exchange information in connection with the implementation of the Resolution of Entities in Japan and in the European Banking Union in a manner consistent with and permitted by the laws and requirements that govern the Authorities. The Authorities will take steps to continue and enhance ongoing cooperation and communication through periodic and ad-hoc consultations between them, both during normal business-as-usual circumstances and during periods of financial stress. As the condition of an Entity deteriorates, it is expected that cooperation between the Authorities will intensify as well. Additional communications may take place under the terms of this Letter or as otherwise determined by the Authorities.
3. The SRB fulfils the tasks of a European Resolution Authority as part of the SRM in accordance with the SRM Regulation. The main aims of the SRM are to ensure effective and uniform Resolution rules and equal conditions of Resolution financing across Participating Member States under a centralised power of Resolution. The SRB is responsible for the collection of information and the cooperation with National Resolution Authorities for the elaboration of Resolution planning for entities under its scope, including the assessment of resolvability and the determination of the minimum requirement for own funds and eligible liabilities. In performing its tasks the SRB works with other relevant authorities, which in some instances are the primary sources of certain relevant information and with which requests for such information must be coordinated. It is responsible for the adoption and monitoring of execution of Resolution schemes for all entities falling under its direct scope of responsibilities as set by the SRM Regulation. In accordance with Article 18(7) of the SRM Regulation, the European Commission and the Council of the European Union are responsible for approving or objecting to the Resolution scheme adopted by the SRB with regard to the scheme's discretionary aspects. Moreover, pursuant to Articles 7(3) and 31(1) of the SRM Regulation, the SRB shall receive from National Resolution Authorities any draft decisions on which it may express its views. In case of non-compliance and where necessary to ensure the consistent application of high Resolution standards the SRB may issue warnings to the relevant National Resolution Authority. Furthermore, at any time, the SRB may decide to exercise direct powers under Article 7(4) of the SRM Regulation. The SRB also represents National Resolution Authorities of the Participating Member States for the purpose of consultation and cooperation with Non-Participating Member States or third countries pursuant to Article 32(1) of the SRM Regulation and concludes cooperation arrangements on behalf of National Resolution Authorities of Participating Member States pursuant to Article 32(4) of the SRM Regulation. This does not affect the FSA's ability to communicate, share information and establish relations with National Resolution Authorities, provided that the Financial Services Agency of Japan informs the SRB accordingly.
4. The FSA was originally established in 2000 and became an external organ of the Cabinet Office under the Act for Establishment of the FSA in 2001 by the reorganisation of central government ministries. The FSA is the integrated regulator for banking, securities and insurance, and is one of the institutions which is responsible for resolution planning. It is responsible for inspection and supervision of private-sector financial institutions and surveillance of securities transactions in accordance with Article 4 of the Act for Establishment of the FSA.
5. This Letter expresses the Authorities' intent to enhance and strengthen their consultation and cooperation in understanding the complexities inherent in the cross-border operations of Entities, in conducting cooperative analyses of the challenges in the Resolution of such Entities, and in contingency planning for such challenges and Resolutions.

6. This Letter does not constitute an agreement binding under international law.
7. This Letter does not create any legally binding obligations, confer any rights, modify, supersede any domestic laws or restrict the Authorities in the exercise of their statutory powers and functions. This Letter does not confer any rights upon any Person, including any right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this Letter.
8. The Authorities acknowledge that any particular assistance, information or cooperation may be provided pursuant to the Letter only if permitted under their respective laws, regulations or requirements.
9. This Letter does not affect any arrangements under other agreements or memoranda of understanding, nor does this Letter limit the terms of future arrangements.
10. This Letter does not limit an Authority from taking solely those measures described herein in fulfilment of its Resolution or other functions. In particular, this Letter does not affect any right of an Authority to communicate with, or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of the other Authority.
11. The Authorities intend that the cooperation and information-sharing cooperation methods under this Letter should be implemented in a manner that is compatible with the obligations and commitments that an Authority may have to an asset management, banking or other regulatory Authority or agency pursuant to memoranda of understanding or other agreements.
12. The Authorities intend periodically to review the functioning and effectiveness of cooperation arrangements between them with a view, *inter alia*, to expanding or altering the scope or operation of this Letter should that be judged necessary. Such periodic review will seek to ensure that this Letter accommodates and responds to changing circumstances and benefits from lessons learned. It will also be updated if there are material developments – for example, changes to either of the Authorities’ responsibilities – that are likely to impact the way the FSA and the SRB work together.

SECTION THREE: COMMON PRINCIPLES REGARDING RESOLUTIONS OF ENTITIES WITH CROSS-BORDER OPERATIONS

13. Managing a crisis involving the cross-border activities of an Entity is a matter of common interest for Japan and the European Union. The successful management and Resolution of a crisis involving an Entity with significant cross-border activities in Japan and the European Union requires careful *ex ante* preparation to establish optimal processes and steps to ensure effective coordination and implementation of possible monitoring of Entities, crisis management, recovery and Resolution strategies.
14. Cooperation methods and tools for cross-border Resolution should be flexible and designed to allow for adaptation to the specific features of a crisis and the individual institutions involved. Cross-border cooperation methods will build on the effective cooperation between the Authorities, and the Authorities should undertake steps to improve their ability to promptly assess the broader effects of any financial crisis and its cross-border implications based on common terminology and analyses.
15. Cooperation methods for crisis Resolution should reflect the division of responsibilities between the Authorities and other responsible regulators and supervisors, and the coordinating role of home country regulators and supervisors. Where possible and feasible, the Authorities should implement Resolution options that are consistent with their respective Resolution objectives, in particular aimed at pursuing financial stability

and protecting insured depositors, insurance policy holders and other retail customers, duly considering the potential impact of their Resolution actions on the financial stability of Japan and the European Union.

16. The Authorities recognise the importance of the cross-border crisis management groups ("CMGs") as developed by the Financial Stability Board ("FSB") under the Financial Stability Forum ("FSF") *Principles for Cross-border Cooperation on Crisis Management* (April 2009) and the FSB *Recommendations on Reducing the Moral Hazard posed by Systemically Important Financial Institutions* (2010), and intend to work together to ensure that the CMGs in which they jointly participate effectively strengthen institution-specific cross-border Resolution preparation and cooperation methods, consistent with the FSF *Principles for Cross-border Cooperation on Crisis Management* (April 2009) and the FSB *Key Attributes of Effective Resolution Regimes for Financial Institutions* as adopted by the G20 at the Cannes Summit in November 2011 and as amended in October 2014.

SECTION FOUR: MECHANISM AND SCOPE OF RESOLUTION CONSULTATION, COOPERATION, AND EXCHANGE OF INFORMATION

17. The Authorities recognise the importance of close and effective communication concerning the global operations of Entities, and intend to consult regularly regarding general Resolution developments, including the sharing of all relevant information, including, to the extent permitted by applicable law and not contrary to public policy, agency-developed Resolution strategies pertaining to the group as a whole or to individual subsidiaries where plans of subsidiaries exist, and issues relevant to the operations, activities, and regulation of such Entities. Furthermore, the Authorities will seek to enhance cooperation in the analysis of Entities' Resolution issues, planning for potential Resolution scenarios, and appropriate simulations, contingency planning or other work designed to improve preparations of the Authorities for managing and resolving crises involving Entities.
18. The Authorities will also work with Other Governmental Entities and with Entities themselves in developing Resolution plans and strategies for Entities and in ensuring that such plans and strategies remain current. To the extent possible, in respect of any confidentiality and other restrictions, the Authorities intend to:
- (i) discuss approaches to Resolution planning;
 - (ii) share ideas and strategies; and
 - (iii) facilitate mutual understanding of Resolution plan rulemaking, rules, practice and implementation in each other's jurisdiction.
19. To the extent practicable and as appropriate in the particular circumstances, including the status of efforts to address any difficulties experienced by an Entity, each Authority will endeavour to inform the other Authority:
- (i) of any intended or conducted regulatory changes relating to Resolution regimes and which may have a significant, material impact on the operations or activities of an Entity in the other jurisdiction; and
 - (ii) of the respective statutory and other legal requirements, including procedural requirements, applicable to the recognition and enforcement of foreign Resolution proceedings under their respective jurisdictions.

This will, however, be without prejudice to any cooperation methods relating to specific prudential issues.

20. Each Authority will make available staff as appropriate to give presentations to, and run training sessions for, the other Authority, to share expertise and knowledge.
21. Each Authority will designate a contact person or persons of sufficient seniority *ex ante*, to be involved in ongoing Resolution and crisis management of Entities. These contacts will be listed in Annex of this Letter. Each Authority will inform the other Authority of these appointments and any changes thereto. Senior level contacts will be supported by regular working-level contact and collaboration, potentially including joint work on issue of common interest.
22. To the extent necessary to supplement periodic consultations, and so far as consistent with any Entity-specific cooperation agreements agreed by both parties through any Entity's CMG and with ensuring compliance with the laws or regulations of Japan or the European Union (including the European Banking Union), the Authorities intend to cooperate with each other in assisting with Resolution planning (including implementation of such planning). The assistance covered by this paragraph may include, as appropriate to each Entity and in accordance with the rights of each Authority to collect or otherwise obtain information, providing:
 - (i) information relevant to the financial and operational conditions of an Entity, including, for example, capital structure, liquidity and funding profiles, internal controls procedures, external market or ratings information, Entities and locations providing important operational capabilities, identification of materially significant subsidiaries, branches and affiliates, such as Entities engaged in capital markets, information technology and data processing services;
 - (ii) assistance in interpreting requested information, if such assistance is needed; and
 - (iii) assistance in obtaining other information located in the Requested Authority's jurisdiction that may be relevant to the Requesting Authority's planning and implementation of Resolution.

In addition, the Authorities will discuss and determine the information each should provide to the other for the purpose of planning and implementing Resolutions (which may include monitoring of Entities, crisis management activities and review of recovery and Resolution plans).

23. The Authorities recognise that communication and coordination can play an important role in promoting efficiency and preserving value in the Resolution of an Entity. The Authorities further acknowledge that their legal duties and objectives will often align with the goals of maximising recoveries, minimising losses and minimising moral hazard. Where this is the case, they will endeavour, subject to applicable laws and regulations, to cooperate and coordinate in order to identify and implement Resolution processes and joint communication strategies that meet these goals in both of their respective jurisdictions. For these purposes, both Authorities will provide a list of relevant units and responsible persons with their contact information in Annex A of this Letter.
24. The Authorities recognise that there may from time to time be technical matters related to specific Resolution plans and Resolution cases upon which it might be necessary to take a broadly common view or position. Through regular dialogue, the Authorities will seek to identify such matters. To the extent that the respective objectives of the Authorities can be best advanced through a joint articulation of such view or position and/or through joint engagement with third parties, the Authorities will seek to do so.

25. The Authorities recognise that the cooperation and exchange of information in Emergency Situations need to be intensified and occur at a sufficiently early stage to ensure effective cooperation and coordination in the development and execution of Resolution. The information shared in such Emergency Situations includes, but is not limited to information on the assessments on failing or likely to fail and other conditions for Resolution. Cooperation and exchange of information should also concern the triggers for the application of the Resolution tools and powers, and, as the case may be, the legal requirements and legal obstacles to the recognition, support or provision of effects of Resolution in the other Authority's jurisdiction, if such actions contribute to a more orderly resolution.
26. The Authorities will endeavour to avoid actions that could reasonably be expected to interfere with the Resolution plan, trigger instability elsewhere in the internationally active Entity, or in the financial system of the other Authority's jurisdiction and to ensure continuity of critical functions, while protecting public funds. In the absence of effectively coordinated Resolution among the Authorities, the right of each Authority to act on its own initiative if necessary to preserve domestic financial stability or achieve any other domestic resolution objectives will not be prejudiced.
27. The Authorities endeavour to continue sharing information and cooperating in the preparation and implementation of the reorganisation of the Entity following the execution of Resolution.
28. English will be the working language in all written and spoken communication.

SECTION FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE

29. To the extent possible, a request for information pursuant to Section Four should be made in writing, and addressed to the relevant contact person(s) (see Annex). A request should generally specify the following:
 - (i) the information sought by the Requesting Authority;
 - (ii) a general description of the matter which is the subject of the request and the purpose for which the information is sought;
 - (iii) the desired time period for reply and, where appropriate, the urgency thereof;
 - (iv) to whom, if already known, onward disclosure of information provided to the requesting Participating Authority is likely to be necessary on a need-to-know basis; and
 - (v) any information known to, or in the possession of, the requesting Participating Authority that might assist the Participating Authority receiving the request in fulfilling the request.

When receiving requests for information or assistance, the Authorities should provide one another with the fullest cooperation consistently with this Letter and their responsibilities and legal frameworks. In case of denial of assistance, the requested Authority should give reasons for not providing the requested assistance.

Any reply to any request for information or assistance done as per above will indicate the sensitivity of the information contained in such reply.

30. In Emergency Situations, the Authorities will endeavour to notify each other of the Emergency Situation and communicate information to each other as would be

appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed subsequently in writing. The Authorities will endeavour to provide information as quickly as possible during Emergency Situations.

SECTION SIX: PERMISSIBLE USES AND CONFIDENTIALITY OF INFORMATION

31. It is understood that information may be shared pursuant to this Letter to the extent such sharing is reasonable and subject to any relevant statutory and regulatory provisions, including those restricting disclosure. In addition, the provision of, or request for, information under this letter may be denied on grounds of public interest or national security, or when disclosure would interfere with an ongoing investigation.
32. The provisions of this Letter, as determined by the Authorities, are without prejudice to the relevant legal framework applicable in case of information sharing related to criminal proceedings carried out by judicial authorities.
33. Any confidential information received from a Requested Authority will be used only for the planning and implementation of Resolutions (which may include monitoring of Entities, crisis management activities and review of Resolution plans). To the extent permitted by law, a Requesting Authority will hold confidential all information (other than publicly available information) received from a Requested Authority pursuant to this Letter and will not disclose such information other than as necessary to carry out its Entity monitoring, crisis management, Resolution planning or implementation responsibilities and consistent with paragraphs 34, 35, and 36.
34. Except as provided in paragraphs 35 and 36, before a Requesting Authority discloses any confidential information received from a Requested Authority to a third party, the Requesting Authority will request and obtain prior written consent from the Requested Authority, which will not be unreasonably withheld.
35. In the event that a Requesting Authority is required by statute or legal process¹ to disclose confidential information provided pursuant to this Letter, it will, to the extent permitted by law, inform the Requested Authority about such possible onward sharing. If the Requested Authority does not consent to such disclosure, then, the Requesting Authority will take all available and appropriate steps to resist disclosure, including by employing legal means to challenge the order or by advising the third party requiring such information of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.
36. With respect to paragraph 34, the SRB represents that it is required by Article 30(2) of the SRM Regulation to disclose on an ongoing basis during business-as-usual (for example, to individual members of internal Resolution teams), confidential information with National Resolution Authorities (the "Onward Sharing Recipients"). The SRB further represents that obtaining consent of, or providing notice to, the Financial Services Agency of Japan prior to such disclosure to the Onward Sharing Recipients would prove burdensome in light of the ongoing nature of this requirement to disclose. The SRB may therefore disclose confidential information to the Onward Sharing Recipients on a need-to-know basis pursuant to this requirement, subject to the following condition:

¹ In the case of the SRB, this may mean sharing with the European Commission, the Council of the European Union, and the European Central Bank.

Before disclosing confidential information to the Onward Sharing Recipients, the SRB will obtain assurance from each Onward Sharing Recipient receiving such confidential information, that, in addition to such professional secrecy requirements as may be required by law, the confidential information will not be further disclosed by the Onward Sharing Recipient, except to other National Resolution Authorities on a need-to-know basis or as authorised by the SRB after the SRB obtains the FSA's written consent.

The SRB will inform the FSA without undue delay of such requests and of any information shared with any of the Onward Sharing Recipients as a result thereof.

37. No privileges or confidentiality associated with information provided by an Authority are intended to be waived as a result of sharing such information pursuant to this Letter.

SECTION SEVEN: DATA PROTECTION

38. The personal data exchanged on the basis of this Letter are processed in line with the applicable legal framework. In particular, the SRB processes personal data, including that contained in the information received from the FSA, in accordance with Regulation (EU) No 2018/1725 or Regulation (EU) No 2016/679, and in line with the SRB Privacy Note, as the case may be. The FSA, on the other hand, processes personal data, including that contained in information received from the SRB, in accordance with Act No.120 with National Public Service Act.

SECTION EIGHT: REVIEW AND AMENDMENT

39. Authorities may review the functioning and effectiveness of cooperation and information exchange under this Letter, either every two years, or after an earlier interval when deemed necessary by both Authorities.
40. Any amendment to this Letter requires mutual consent of the Authorities and will be confirmed in writing unless otherwise determined upon.

SECTION NINE: APPLICATION AND DISCONTINUATION

41. Cooperation in accordance with this Letter will commence as of the date of the acknowledgment of the receipt of the Letter and acceptance of its content by the FSA and will continue indefinitely, subject to modification by the mutual consent of the Authorities or discontinuation by an Authority with 30 days advance written notice to the other Authority. After discontinuation, the confidentiality terms in Section Six will continue to apply to any information provided under this Letter prior to discontinuation.



I believe that enhanced cooperation under this Letter will lead to a mutually beneficial relationship between the FSA and the SRB.

With my best regards,

For the Single Resolution Board

Elke König

Chair

Signed by the recipient at Tokyo, on this 11 day of October, 2019 for acknowledgment of the receipt of this Letter and acceptance of its content.

Toshihide Endo

Commissioner
Financial Services Agency