



FINANCIAL SERVICES AGENCY
GOVERNMENT OF JAPAN

3-2-1 Kasumigaseki Chiyoda-ku Tokyo 100-8967 Japan

Mr. Hufeld,
President
The Federal Financial Supervisory Authority
53117 Bonn

GERMANY

7 June, 2019

Subject: Exchange of Letters for Cooperation in the area of financial institutions supervision between the Financial Services Agency of Japan and Federal Financial Supervisory Authority of Germany

Dear Mr. Hufeld,

We recognise that further cooperation between the Financial Services Agency of Japan (FSA) and Federal Financial Supervisory Authority of Germany (BaFin) in the area of the supervision and oversight of cross-border establishments would be mutually beneficial. It is also acknowledged that enhancing the exchange of information between authorities is important in view of the globalisation of financial markets and the increasing cross-border activities undertaken by financial Institutions.

In this context, this Letter confirms the interest of the FSA in enhancing cooperation with the BaFin in a mutually beneficial manner, in accordance with respective laws and regulations.

This Exchange of Letters replaces the Letters exchanged between the FSA and the BaFin in July 2006.

1. The FSA and the BaFin (collectively, the Authorities) have reached the following consensus in order to establish a framework for the sharing of information to facilitate the performance of their respective duties and to promote the safe and sound functioning of financial institutions with cross-border establishments in their respective jurisdictions (hereafter referred to as "financial institutions").
2. The Authorities express their willingness to cooperate with each other on the basis of mutual trust and understanding in the supervision of cross-border establishments within their respective jurisdictions. It is understood that this letter does not in itself have any legal force but intends to confirm the willingness of the Authorities to make use of their powers to co-operate with each other and to provide a framework for the future co-operation explaining the terms and conditions under which the Authorities are able to co-operate and, in particular, to share information with each other. In this respect they intend to work towards the following outcomes:
 - a. the operations of the cross-border establishments of financial institutions under their respective jurisdictions are prudently conducted;

- b. the head offices and parent financial institutions exercise adequate and effective control over the operations of their cross-border establishments; and
- c. their respective ongoing supervision of financial institutions effectively covers cross-border establishments on a consolidated basis and they assist each other in performing such function.

The Authorities

3. The FSA was originally established in 2000 and became an external organ of the Cabinet Office under the Act for Establishment of the Financial Services Agency 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.
4. As the central body in accordance with the law on a single financial services supervisory authority (“Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht”), the German Banking Act (“KWG”) and other special laws, the BaFin is entrusted with the supervision of banks to the extent these are not supervised by the European Central Bank (ECB)¹, insurance companies and investment firms in Germany. As an independent superior federal authority within the purview of the Federal Ministry of Finance, the BaFin forms a part of the direct federal administration. Exercising its sovereign functions, also within the Single Supervisory Mechanism, the BaFin closely co-operates with the Deutsche Bundesbank in carrying out the supervision of banks and investment firms. In this context the Deutsche Bundesbank is entrusted inter alia with the ongoing monitoring of banks and investment firms.”

Definitions

5. For the purpose of this Letter:
 - a. “Authorities” means the FSA and the BaFin;
 - b. “Financial institution” means any entity, that is authorized, designated; recognized, qualified, licensed, or registered, and supervised or overseen by the Authorities;
 - c. “Cross-border establishment” means a branch, representative office or subsidiary of a financial institution in each case which is established in the jurisdiction other than that of its head office or parent financial institution, which is supervised by the relevant Authority in that jurisdiction, and which gives rise to the need for consolidated supervision;

¹ 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 (Official Journal of the European Union, Legislation series 287, 29.10.2013, p. 63).

The list of significant credit institutions and of less significant credit institutions is published on the ECB's website: <https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html>

- d. "Jurisdiction" means the country, state or other territory, as the case may be, in which the FSA or the BaFin has legal authority, power and/or jurisdiction by law;
- e. "Home Authority" means the Authority of the jurisdiction where the head office or parent financial institution of a cross-border establishment is established;
- f. "Host Authority" means the Authority of the jurisdiction where the cross-border establishment is established;
- g. "Material supervisory concern" encompasses a matter relating to (a) whether the operations of a financial institution are conducted in a safe and sound manner and substantially in conformity with applicable prudential standards; (b) whether there has been evidence of a material violation of law; or (c) events that would have a material adverse effect on the financial stability of financial institutions in the jurisdiction of the other Authority. A material supervisory concern as described herein would include concerns that arise from actions of cross-border establishments.
- h. "Requested Authority" means the Authority to whom a request is made pursuant to this Letter; and
- i. "Requesting Authority" means the Authority that makes a request pursuant to this Letter.

Scope and General Principles

- 6. This Letter is a statement of intent of the Authorities and does not create legally binding obligations nor supersedes domestic laws. It is intended to complement, but does not alter the existing arrangements including the IOSCO Multilateral Memorandum of Understanding (MMoU) and the IAIS MMoU.
- 7. The Authorities will, within the framework of this Letter, provide each other with the fullest assistance possible to promote the safe and sound functioning of financial institutions.
- 8. The Authorities recognise the importance and desirability of mutual assistance and exchange of information. Information would be shared to the extent reasonable and subject to any relevant statutory provisions, including those restricting disclosure. In addition, the matter of or request for information under this Letter may be denied on the grounds of national security or when disclosure would interfere with an ongoing investigation. Where a request for assistance is denied, or where assistance is not available under domestic law, the Requested Authority will provide the reasons for not granting the assistance.
- 9. Requests for assistance will be made in writing. However, where the Authorities perceive a need for expedited action, requests may be initiated in any form but will be confirmed subsequently in writing in English. The request will indicate the urgency of the request, or the desired time period for the reply. The reply will indicate the sensitivity of the information contained in the reply.

Sharing of information

- 10. Information-sharing includes contact during the authorisation and licensing process, in the supervision of the on-going activities of financial institutions and in the handling of problem institutions.

11. In connection with the licensing process and with the process of authorisation of acquisition, the Home and Host Authorities will, upon request and to the extent permitted by law, cooperate in the following way:
 - a. the Host Authority should notify the Home Authority, without delay, of applications for approval to establish offices or make acquisitions in the host jurisdiction;
 - b. the Home Authority will inform the Host Authority whether the applicant financial institution is in substantial compliance with applicable laws and regulations; and whether it may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. The Home Authority should also, upon request, assist the Host Authority with verifying or supplementing any information submitted by the applicant
 - c. the Home Authority will inform the Host Authority about the nature of its regulatory system and the extent to which it will conduct consolidated or group-wide supervision over the applicant bank. Similarly, the Host Authority will inform the Home Authority about the nature of its regulatory system and the extent to which it will supervise the cross-border establishment of the applicant institution; and
 - d. the Home and Host Authorities will share information on the fitness and propriety of prospective managers of a cross-border establishment.

12. In connection with the ongoing supervision of their cross-border establishments, each Authority intends to:
 - a. provide relevant information to the other Authority regarding material developments or supervisory concerns in respect of the operations of a cross-border establishment;
 - b. respond to requests for information on their respective national regulatory systems and inform the other Authority about major changes, in particular those which have a significant bearing on the activities of cross-border establishments;
 - c. inform the other Authority of material administrative penalties imposed, or other formal enforcement action taken, against a cross-border establishment. Prior notification will be made, as far as practicable and subject to applicable laws. Furthermore, the Authorities will collaborate, if appropriate, in cases where supervisory corrective measures are taken against a cross-border establishment;
 - d. notify the other Authority of its plan for remedial action to address a material supervisory concern prior to taking the appropriate action or, as circumstances dictate, as soon thereafter as practicable; and,
 - e. facilitate the transmission of any other relevant information that might be required to assist with the supervisory process.

13. In carrying out the measures stipulated above in the case of a Japanese or German financial institution facing serious financial difficulties that could have a material adverse impact on the operations of such financial institution in the respective host jurisdiction, the Authorities recognise that close liaison between them would be mutually advantageous. The Authorities will endeavour to communicate such information as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts by the Home Authority to resolve the financial institution's difficulties and restore confidence in the financial institution.

14. The Authorities will cooperate and will endeavour to share relevant information in the process of decision-making with regard to granting permission (consent) to acquiring shares (stakes) by person or institutions registered in one jurisdiction of a financial institution registered in the other Jurisdiction. The term “acquisition” means the acquisition of a participatory interest in the capital of a financial institution registered within Japan or Germany in the amount that requires, under national legislation, preliminary permission (consent) from the appropriate supervisory authority.
15. Requests for information should normally be made in writing in English. However, when there is a need for expedited action, requests may be initiated in any form, including orally, but should be confirmed subsequently in writing. The authority receiving such requests will endeavour to provide the information as quickly as possible.
16. The BaFin will pass on information received from the FSA to the Deutsche Bundesbank to the extent it is responsible for supervising the Cross-border establishment, having regard to the domestic allocation of responsibility for the supervision of Authorised Institutions in Germany as outlined in Section 7 KWG (Banking Act), on the basis that the Deutsche Bundesbank will preserve the confidentiality of the information and will not disclose it without the prior written consent of the FSA to third parties and otherwise in accordance with the provisions of this Letter for Cooperation. Notwithstanding paragraph 22 of this Letter for Cooperation, FSA may request the BaFin to limit such information sharing.

The role of the European Central Bank

17. By November 2014, the European Central Bank (hereinafter referred to as “ECB”) took over the supervision of significant institutions of the Euro zone. In accordance with the provisions of the corresponding European regulations (no. 468/2014 and no. 1024/2014) the BaFin will pass on specific information received from the FSA to the ECB to the extent it is responsible for supervising the Cross-border establishment on the basis that ECB will preserve the confidentiality of the information and will not disclose it without the prior written consent of the FSA to third parties and otherwise in accordance with the provisions of this Letter for Cooperation. Notwithstanding paragraph 22 of this Letter for Cooperation, FSA may request the BaFin to limit such information sharing.

On-site Visits

18. The Authorities recognise that cooperation is particularly useful in assisting each other in carrying out on-site visits at cross-border establishments in the host jurisdiction. Prior to deciding whether an on-site visit is necessary, the Home Authority may request relevant information prepared by the Host Authority.
19. The Home Authority will notify the Host Authority of plans to visit a cross-border establishment or to appoint a third party (auditors / certified public accountants or Deutsche Bundesbank) to conduct a visit on its behalf, and indicate the purposes and scope of the visit. The Host Authority will allow the Home Authority to conduct on-site visits unless such visit would prevent the Host Authority from performing the daily supervision and other activities. In the latter case, the Host Authority will clarify the reason. As mutually confirmed between the Authorities, on-site visits may be carried out by the Home Authority or the third party appointed by the Home Authority alone, or

accompanied by the Host Authority. Following the on-site visit, an exchange of views will take place between the visiting team and the Host Authority.

Crisis Management

20. In connection with cross-border cooperation on crisis management:
 - a. for a cross-border establishment and its head office or parent financial institution affected by crisis, the Home and Host Authorities may consider together possible issues and barriers that may arise in cross-border cooperation in crisis management, and seek potential solutions;
 - b. the Home and Host Authorities may inform their counterparts on request, on a timely basis, to the extent permissible and appropriate, of the arrangements for crisis management developed for a specific Cross-border establishment and its head office or parent financial institution.

Treatment of information exchanged

21. Any supervisory information received should be used by the recipient only for lawful supervisory purposes, including any necessary action taken by the recipient against a relevant financial institution. Information received should not be used in criminal proceedings carried out by court or judge, including as evidence in criminal court. In the case that such use is needed, the request must be made in accordance with procedures prescribed in the relevant laws for international mutual assistance in investigations.
22. To the extent permitted by respective laws and regulations, the Authorities should hold confidential any supervisory information received, and will not disclose it without prior consent of the other Authority. If either of the Authorities is legally required to disclose the confidential information received from the other Authority, the Authorities will consult with each other before disclosing it. If the Authority providing the information objects to the disclosure, the other Authority will make its best efforts in resisting the disclosure of the information at issue.
23. The Signatory Authorities represent and acknowledge that under the terms of this EoL they process personal data, including that contained in information received from the other Authority, in accordance with applicable laws and regulations.
24. The terms and conditions stated above do not apply to publicly available information.

Suspected activities

25. The Authorities intend to cooperate closely when they identify suspected activities or financial transactions in cross-border establishments during the performance of their supervision. For the purposes of this Letter, suspected activities include, but not limited to money laundering, the financing of terrorism, and unauthorised banking. Such cooperation will be in terms of the national laws and statutes governing sharing of such information.

Ongoing Coordination

26. The Authorities will promote their cooperation through visits for information purposes. In addition, the Authorities will also pursue areas where the training of staff at either agency would benefit from input and support by the other agency in order to reinforce sound supervisory practices in both Jurisdictions.
27. The Authorities will conduct meetings as often as appropriate to discuss issues concerning financial institutions that maintain cross-border establishments in the respective jurisdictions, and to review the effectiveness of cooperation arrangements.


Modifications and Duration

28. This Letter will continue indefinitely subject to modification by the mutual consent of the Authorities or the termination of cooperation under this Letter by either Authority with 30 days advance notice in writing. After the termination, the confidentiality matters will continue to apply to any information provided under this Letter prior to the termination.
29. Any revision or modification of this Letter will only become valid after such revision or modification was accepted in writing by both Authorities.

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

Yours sincerely,

Financial Services Agency
Government of Japan

 Dated: 7 June 2019
Toshihide Endo
Commissioner