

Gabriel Bernardino
Chairman

Mr Himino Ryoza
Commissioner
Financial Services Agency
3-2-1 Kasumigaseki Chiyoda-ku
Tokyo, 100-8967
Japan



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Exchange of Letters on Co-operation in the area of Insurance Supervision between the Financial Services Agency and the European Insurance and Occupational Pensions Authority

Dear Mr Himino,

I believe that constructive dialogue and effective cooperation between the Financial Services Agency (FSA) and the European Insurance and Occupational Pensions Authority (EIOPA) with regards to strengthening the exchange of information on regulatory developments and enhancing the supervisory cooperation in relation to insurance companies would be mutually beneficial. I also acknowledge that these steps are important in view of the globalisation of the insurance sector and the financial markets in which they operate.

In this context, this Exchange of Letters confirms our willingness to further enhance our regulatory and supervisory cooperation, in the interest of fulfilling our respective statutory objectives as further set out below in order to contribute to the protection of policyholders and to support the stability of the financial system.

The envisaged cooperation acknowledges the joint EU-Japan financial regulatory forum established under the Japan-EU Economic Partnership Agreement.

EIOPA and the FSA enter into the Exchange of Letters for the purpose of providing a framework for co-operation in the context of their respective tasks as well as mutual understanding, and exchanging information and technical assistance pertaining to the insurance sector on a reciprocal basis, to the extent permitted by the applicable laws, regulations, and requirements.

1. DEFINITIONS

For the purposes of these Letters, the terms set out below have the assigned meanings unless the context requires otherwise:

Authority means:

- EIOPA is a European Supervisory Authority and an independent advisory body to the European Parliament, the Council of the European Union and the European Commission, established under Regulation (EU) No. 1094/2010¹ ("The Regulation"). EIOPA's core responsibilities are as follows:
 - to support the stability of the financial system, transparency of markets and financial products as well as contribute to the protection of policyholders, pension scheme members and beneficiaries. EIOPA is commissioned to monitor and identify trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors;
 - to ensure the orderly functioning and integrity of financial markets in the European Union, as well as to pursue a constructive dialogue and effective cooperation with supervisory authorities outside the European Union; and
 - to contribute as a competent authority to colleges of supervisors ("EEA Colleges"), which may include third country subsidiaries and

¹ The Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Insurance and Occupational Pensions Authority.

branches or financial groups having their headquarters in third countries and their subsidiaries or branches in the European Union.

- 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 (Establishment Act) in 2001 as a result of the reorganisation of central government ministries. Under the Establishment Act, the FSA has statutory responsibility for regulation and supervision of financial institutions, including insurance companies in Japan;
- EIOPA and the FSA shall be collectively referred to herein as the "**Authorities**";

Jurisdiction means the country, state or other territory, as the case may be, in which EIOPA or the FSA has legal authority, power, and/or jurisdiction by laws, regulations, and requirements;

Laws, regulations, and requirements means any laws, regulations, and requirements of the European Union in force, including those applying to EIOPA and those of Japan;

Requested Authority means the Authority to whom a request is made pursuant to these Letters;

Requesting Authority means the Authority that makes a request pursuant to these Letters; and

Insurance Company means:

- an insurance undertaking, captive insurance undertaking, third country insurance undertaking, reinsurance undertaking, captive reinsurance undertaking or a third country reinsurance undertaking as defined in Article 13 of Directive 2009/138/EC ("Solvency II") for EU companies;
- an insurance company, an insurance holding company, subsidiary of an insurance company or an insurance holding company, a foreign

insurance company, or other legal entity, that conducts insurance business or other activities related to insurance business, as stipulated in the Insurance Business Act (Act No. 105 of 1995), including those defined in Article 2, Paragraphs 2, 7, 16, and 18.

2. OBJECTIVES

2.1 These Letters set forth the basis upon which EIOPA and the FSA propose to provide for regulatory and supervisory co-operation, including the development and implementation of risk-based solvency frameworks, conduct of business supervision, mutual assistance, and the exchange of information. The purpose of these Letters is to provide a framework for co-operation, increased mutual understanding, exchange of information, and technical assistance to the extent permitted by laws, regulations, and requirements which EIOPA and the FSA are subject to.

The Authorities confirm that they will continue to engage in dialogue to seek to identify areas for cooperation and may share information on regulatory developments of mutual interest, including the development of international standards.

2.2 The Authorities intend to use their best endeavours to ensure that the fullest mutual assistance is provided within the terms of these Letters and engage in consultations, as appropriate, on mutually agreeable approaches designed to enhance the integrity and the efficiency of their respective insurance markets, and the exercise of insurance market regulatory and supervisory functions within the framework set out under clause 2.1.

2.3 These Letters do not modify or supersede any laws, regulations, and requirements in force in, or applying to, EIOPA, the FSA or the jurisdictions in which they are authorized to regulate or supervise the business of insurance and do not create any legally binding obligations on or confer any rights to, EIOPA or the FSA. These Letters are not intended to affect any arrangements in existence to which either of the Authorities is a participant.

3. SCOPE

- 3.1 The Authorities confirm that these Letters should be the basis of their co-operation concerning the exchange of regulatory information and experience in the development and implementation of the risk-based insurance supervisory framework in their respective jurisdictions. The Authorities also confirm that such enhanced cooperation should include regulatory matters related to the development of international standards in the field of insurance. The co-operation should be carried out efficiently and effectively, without imposing an unnecessary burden on the Authorities.
- 3.2 The Authorities' cooperation encompasses their dialogue and exchange of information on the assessment work needed for any EIOPA advice on an equivalence decision and later the monitoring of this decision according to the Solvency II framework of the European Union.
- 3.3 The Authorities confirm that these Letters should be the basis of their co-operation in view of ensuring optimal supervision for Insurance Companies with international activities in the European Union and Japan. The co-operation should be carried out efficiently and effectively, and it should not impose an unnecessary burden on Insurance Companies or for the Authorities.
- 3.4 The Authorities will make all reasonable efforts to exercise the co-operation and co-ordination in a spirit of mutual trust.
- 3.5 The Authorities confirm that it would be beneficial for the common understanding of their respective supervisory regimes to establish a dialogue to share information on and, where appropriate, collaborate on matters of regulation as well as on matters relating to supervision of Insurance Companies.

- 3.6 The Authorities will attempt to meet once a year at mutually agreeable locations for the regulatory dialogue, to discuss ways to enhance cooperation and other topics of mutual interest. Additional meetings may be arranged by mutual consensus.
- 3.7 EIOPA will support FSA's participation in the activities of European supervisory colleges formed by the competent authorities of the European Union when a Japanese Insurance Company is involved. The FSA is also committed to support EIOPA's participation in the FSA's supervisory colleges where a European Insurance Company is concerned.
- 3.8 The Authorities, as deemed appropriate by each respective Authority, may provide mutual assistance periodically such as through formal or informal training held in the host country and ad hoc expertise in relation to issues of common interest.
- 3.9 The Authorities shall make a request under these Letters in writing to the other for assistance; and the requested Authority shall endeavour to provide a response to the requesting Authority as soon as reasonably practicable.
- 3.10 The Authorities confirm that: (i) information requested should only be used for the purposes of a request made; and (ii) if information obtained under these Letters is required to be used or disclosed for an alternate purpose (i.e., other than that originally requested), consent from the requested Authority is required to be obtained in writing prior to such use or disclosure.
- 3.11 The Authorities recognize the need and desirability of providing mutual assistance and exchanging information; however, each Authority retains the right to deny or defer assistance for any reason.
- 3.12 The Authorities acknowledge that they may only provide information under these Letters if permitted or not prevented under applicable laws, regulations, and requirements.

3.13 For EIOPA, all confidential information exchanged under these Letters will be subject to EIOPA's obligation of professional secrecy². For the FSA, all confidential information exchanged under these Letters will be subject to the FSA's obligation of professional secrecy³.

3.14 The Authorities will bear their own respective expenses that may be incurred by them under these Letters. However, where the cost of fulfilling a request is deemed substantial, the responding Authority may, on a case-by-case basis, request the requesting Authority to bear some or all of such costs. Any resolution on such a request should be developed based on mutual consensus.

4. CONFIDENTIALITY

4.1 If the Authorities receive confidential information under these Letters, they confirm that they will treat such information as confidential in accordance with the matters of these Letters.

4.2 An Authority that receives confidential information under these Letters may use information for the purposes set forth in the request for information and/or assistance. Information received should not be used in criminal proceedings carried out by court or judge, including as evidence in a criminal court. In the case that such use is legally required, the request must be made in accordance with procedures prescribed in the relevant laws, regulations, and requirements for international mutual assistance in investigation.

4.3 The requesting Authority confirms that it will seek prior written consent from the requested Authority before disclosing any confidential information that it receives under these Letters to third parties.

² For EIOPA primarily: Article 70 of The Regulation (EU) No. 1094/2010 and "EIOPA's Rules of Procedure on Professional Secrecy for Non-Staff" (EIOPA-MB-17-039).

³ For the FSA primarily: Article 100 of National Public Service Act (Act No. 120 of October 21, 1947).

- 4.4 Before disclosing the information obtained pursuant to these Letters to third parties, the requesting Authority will seek a commitment from them to keep the information confidential.
- 4.5 The requesting Authority will undertake every effort to comply with any restrictions on the use or disclosure of information that are confirmed when the information is provided.
- 4.6 If the requesting Authority is subject to a mandatory disclosure requirement or receives a legally enforceable demand for information under applicable laws, regulations, and requirements, the requesting Authority will notify the requested Authority of its obligation to disclose and will endeavour to seek prior written consent from the requested Authority before making a disclosure. If the requested Authority withholds its consent, the requesting Authority will make its best efforts to protect the confidentiality of information obtained according to its confidentiality obligation, and if necessary, to resist disclosure, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available, for example, by advising the concerned court or relevant authority of the possible negative consequences of a disclosure on future co-operation between the Authorities.
- 4.7 The Authorities confirm that they will treat the confidential information received under these Letters as confidential to the extent permitted by laws, regulations, and requirements even after termination of these Letters.

5. MODIFICATIONS and TERMINATION

- 5.1 These exchanged Letters will continue indefinitely unless the modification by the mutual consent of the Authorities or the termination of cooperation under these Letters 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 these Letters prior to the termination.

