

Japan-EU EPA/FTA Negotiation
Consolidated Text
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CHAPTER [V] SECTION [VI]
Financial Services

Article [1]
Scope

[This Section shall apply to measures by a Party affecting trade in financial services.]

1. For the purpose of Article 1(4) j of Chapter I "services supplied in the exercise of governmental authority" means the following:

- (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (b) activities forming part of a statutory system of social security or public retirement plans; and
- (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Party or its public entities.

2. For the purposes of Article 1(4) j of Chapter I, if a Party allows any of the activities referred to in paragraph 1(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

3. Article 1(4) k of Chapter I shall not apply to services covered by this Section.

4. The provisions of this article shall not be construed as limiting the rights of investors and investments under [Chapter II Section 2 [Investment Protection]] of this Title.

Article [2]
Definitions

For the purposes of this [Chapter and of Chapters II Section 1, III and IV of this Title]

- (a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance).

Financial services include the following activities:

- [(i)] [A.] Insurance and insurance-related services
 - [(A)] [1.] direct insurance (including co-insurance):
 - [(aa)] [(a)] life;
 - [(bb)] [(b)] non-life;
 - [(B)] [2.] reinsurance and retrocession;
 - [(C)] [3.] insurance intermediation, such as brokerage and agency; and
 - [(D)] [4.] services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
- [(ii)] [B.] Banking and other financial services (excluding insurance)
 - [(A)] [1.] acceptance of deposits and other repayable funds from the public;
 - [(B)] [2.] lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - [(C)] [3.] financial leasing;
 - [(D)] [4.] all payment and money transmission services, including credit, charge and debit cards, travellers cheques, and bankers drafts;
 - [(E)] [5.] guarantees and commitments;
 - [(F)] [6.] trading for own account or for account of customers, whether on an exchange, in an over- the-counter market or otherwise, the following:
 - [(aa)] [(a)] money market instruments (including cheques, bills and certificates of deposits);
 - [(bb)] [(b)] foreign exchange;
 - [(cc)] [(c)] derivative products including, but not limited to, futures and options;
 - [(dd)] [(d)] exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - [(ee)] [(e)] transferable securities;
 - [(ff)] [(f)] other negotiable instruments and financial assets, including bullion;
 - [(G)] [7.] participation in issues of all kinds of securities, including underwriting and placement as agent, whether publicly or privately, and provision of services related to such issues;
 - [(H)] [8.] money broking;
 - [(I)] [9.] asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - [(J)] [10.] settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
 - [(K)] [11.] provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - [(L)] [12.] advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs [(A)] [(1)] through [(K)] [(11)], including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

- (b) “financial service supplier” means any natural or juridical person of a Party wishing to supply or supplying financial services but the term “financial service supplier” does not include a public entity;
- (c) “new financial service” means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the [JP: Area] [EU: Territory] of a Party but which is supplied in the [JP: Area] [EU: Territory] of the other Party.
- (d) “public entity” means:
 - [(i)] a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - [(ii)] a private entity, performing functions normally performed by a central bank or a monetary authority, when exercising those functions;
- (e) “self-regulatory organisation” means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party.

Article [3]

Financial Services new to the [JP: Area] [EU: Territory] of a Party

A Party shall permit financial service suppliers of the other Party established in the area of the former Party to offer in the [JP: Area] [EU: Territory] of the former Party any new financial service.

Notwithstanding (Market Access, paragraph on juridical form) of Chapter [X] (X), a Party may determine the juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service.

Where such authorisation is required, it may be refused for prudential reasons and not for the only reason that the service is new to the territory/area of a Party.

Article [4]

Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its [JP: Area] [EU: Territory] access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not

intended to confer access to the Party's lender of last resort facilities.

**Article [5]
Self-regulatory organisations**

When a Party requires membership or participation in, or access to, any self-regulatory organisation in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure that such self-regulatory organisations observe the obligations of Article [X] (National Treatment - Investment) with respect to financial service suppliers of the other Party.

**Article [6]
Transfers of Information and Processing of Information**

New language round 17:

[1. Each Party shall allow a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the financial service supplier's ordinary course of business. Nothing in this paragraph restricts the right of a Party to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts, so long as such measures are not used to circumvent the provisions of this Article.

2. Each Party shall adopt or maintain appropriate measures for the protection of privacy and personal data with regard to the transfer of financial information.]

Drafting Note: JP can accept this. EU is encouraged to update its final position.

**Article [7]
Effective and transparent regulation**

1. Where a license is required for the supply of a financial service, a Party shall make the requirements and procedures for such a license publicly available.

2. If a Party requires additional information from the applicant in order to process its application, it shall notify the applicant without undue delay.

3. Each Party shall endeavour to ensure that the rules of general application adopted or maintained by self-regulatory bodies in that Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

**Article [8]
Prudential carve-out**

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, including for:
 - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
 - (b) ensuring the integrity and stability of the Party's financial system.
2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's obligations under this Agreement.
3. Nothing in [this Title] shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

**[EU: Article [9]
Supply of Insurance Services by Postal Insurance Entities**

1. The disciplines set out in this section apply where a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this paragraph do not include the supply of insurance related to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.
2. No Party shall adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:
 - (a) imposing more onerous conditions on a private supplier's licence to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or
 - (b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.
3. With respect to the supply of insurance services described in paragraph 1 by a postal insurance entity, a Party shall apply the same regulations and enforcement activities as apply

to the supply of like insurance services by private suppliers.

4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services described in paragraph 1 to publish an annual financial statement with respect to the supply of such services. The statement shall provide the level of detail required by the relevant generally accepted accounting principles and shall be subject to auditing standards, applied in the Party's territory with respect to publicly traded private enterprises supplying like services, or equivalent rules.

5. Paragraphs 1 to 4 do not apply to a postal insurance entity in the territory of a Party:

(a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantage that modifies the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or

(b) if neither the sale of direct life nor non-life insurance underwritten by the postal insurance entity accounts for more than ten percent of total annual premium income in the relevant segment of the Party's market.

6. For purposes of this section, postal insurance entity means an entity that underwrites and sells insurance to the general public and is owned or controlled, directly or indirectly, by a postal entity of the Party.]

[EU: Article [10]

Supply of Insurance Services by Mutual Aid Cooperatives

1. No Party shall adopt or maintain measures that create conditions of competition that are more favourable to mutual aid cooperatives with respect to the supply of insurance services as compared to other suppliers of like insurance services in its market, including by imposing less onerous capital or protection funding requirements.

2. A Party shall apply the same level of supervisory oversight and enforcement activities to mutual aid cooperatives as it applies to the supply of like insurance services by other private insurance undertakings. Where a Party's supervisory regime includes proportionality provisions, including possible exemptions for smaller and less complex insurance undertakings, such provisions shall apply to all insurance undertakings, irrespective of their legal form.

3. A Party shall require mutual aid cooperatives to publish an annual financial statement with respect to the supply of insurance services. The statement shall provide the level of detail required by the relevant generally accepted accounting principles and shall be subject to auditing standards, applied in the Party's territory with respect to publicly traded private enterprises supplying like services, or equivalent rules.]

Annex of Financial Services [Section]

Regulatory Co-operation on Financial Regulation

Article X - 1 Regulatory co-operation

1. The Parties shall work together bilaterally and in international bodies with the objective of further strengthening global financial stability, fair and efficient markets and protection of investors, depositors, policy-holders and persons to whom fiduciary duty is owed by a financial services supplier (“regulatory co-operation”).
2. In their regulatory co-operation the Parties shall base themselves on the principles and prudential standards agreed at multilateral level and follow the principles set out in Article X-3 – (Principles of regulatory co-operation) as implemented in the framework envisaged in Article X-5 (Framework for regulatory co-operation).

Article X - 2 Scope of regulatory co-operation

1. The regulatory co-operation shall cover the entire area of financial services **[JP: except insurance services supplied by mutual aid cooperatives]**, which shall also include accounting and audit frameworks, unless the Parties specifically agree otherwise.
2. The provisions of this Chapter shall be without prejudice to the distribution and the exercise of competences of regulatory and supervisory authorities of the Parties. The Parties recognise that their regulatory co-operation in the area of financial services should be based on due consideration of differences in market structures and in the range of business models that may exist between the Parties in this area.

Article X - 3 Principles of regulatory co-operation

1. Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector are implemented and applied in its **[JP: Area]** **[EU: Territory]**. Such internationally agreed standards are, inter alia, the standards and principles issued by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Organization of Securities Commissions, and the Financial Stability Board.
2. The Parties shall use their best endeavours to achieve mutual compatibility of their

respective regulatory and supervisory frameworks for financial services in a way that supports the objectives mentioned in Article X-1.

3. Without prejudice to its own legislative processes, each Party shall make its best endeavours to offer the other Party an opportunity to be informed at an early stage and to provide comments on its forthcoming regulatory initiatives in the area of financial services that may be of relevance to that other Party.
4. The Parties shall be able, wherever possible, to rely on each other's rules and supervision. The foregoing shall be without prejudice to each Party's right to assess, on the basis of its own rules, in particular criteria for reliance, the regulatory and supervisory framework of the other Party with a view to establishing reliance. For the purposes of any such assessment, a Party shall not require that the other Party's rules and supervision are identical to its own rules and supervision, but shall base its assessment on regulatory outcomes.
5. The Parties shall keep each other informed of how they provide for effective supervision and enforcement of rules for implementing internationally agreed standards or any other rules, in particular in the areas where one of the Parties relies on the regulatory and supervisory framework of the other Party.
6. The Parties shall in the process of formulation of their planned regulatory initiatives in the area of financial services, give reasonable consideration to the impacts of such initiatives on market operators and the jurisdiction of the other Party.
7. Each Party shall examine a measure which has been brought to its attention by a specific request, in writing, of the other Party and which may have an impact on the ability of market operators to provide financial services within the [JP: Areas] [EU: territories] of the Parties, with a view to rendering, insofar as possible, the measure mutually compatible.
8. Any Party may rescind at any time its decision to rely on the regulatory and supervisory framework of the other Party and revert to the application and enforcement of its own rules, where the rules of the other Party are no longer equivalent in outcome, the other Party fails to enforce its rules effectively or there is insufficient co-operation of the other Party in the supervision of financial institutions. The Parties shall consult with each other in an appropriate manner prior to reverting to the application and enforcement of their own rules.

Article X - 4 Joint EU-Japan Financial Regulatory [Forum]

1. The Parties hereby establish the Joint EU-Japan Financial Regulatory [Forum].
2. The [Forum] is in charge of steering regulatory co-operation between the Parties in the area of financial services referred to Article X-2. In particular, the [Forum] takes stock of progress and undertakes forward planning of regulatory co-operation. The [Forum] shall observe the principles of regulatory co-operation laid out in Article X-3 implemented in the

framework referred to in Article X-5.

3. The [Forum] shall be composed of representatives of the European Commission and of the Government of Japan including the Financial Services Agency mandated to deal at technical level with financial services regulatory issues.

Without prejudice to the right of each Party to decide on the composition of its representation in the [Forum], each Party in the [Forum] may request the other Party to invite representatives from other financial regulatory or supervisory authorities within that other Party's [JP: Area] [EU: territory] with a view to contributing to the [Forum]'s discussions and preparatory work in matters related to the activity of such other financial regulatory or supervisory authorities. The other Party should give positive consideration to such request.

4. The meetings of the [Forum] will be co-chaired by senior officials from the Financial Services Agency of Japan and from the European Commission, or their successors.

5. Each Party in the [Forum] shall designate a contact point to facilitate regulatory co-operation. The [Forum] may establish expert working groups to examine specific issues.

6. The meetings of the [Forum] shall be held alternately in Tokyo, Japan and in Brussels, Belgium, at least once a year, and whenever members consider it expedient or necessary.

Article X - 5 Framework for regulatory co-operation

1. The [Forum] shall develop and apply a framework for regulatory co-operation in order to implement the principles set out in Article X-3.

2. The framework for regulatory co-operation shall include:

- (a) A mechanism for information exchange and consultation with the other Party, in appropriate forms, on forthcoming initiatives, without prejudice to each Party's own legislative and administrative processes.
- (b) Guidelines on reliance on each other's regulatory and supervisory framework, where possible, adapted for each specific area of financial regulation.
- (c) A procedure for examining measures referred to in paragraph 7 of Article X-3 which have been brought to its attention by a specific request of the other Party.
- (d) Guidelines on the governance of the [Forum].
- (e) A process for technical mediation referred to in Article X-6.
- (f) If so agreed, any other arrangements to enhance regulatory co-operation.

3. The framework for regulatory co-operation may also envisage specific arrangements facilitating co-operation in cross-border supervision and enforcement.

Article X - 6 Technical mediation

1. Chapter XXX (Dispute Settlement) shall not apply to the settlement of disputes arising under [this additional provision (Regulatory co-operation in the area of financial services)].

2. Without prejudice to paragraph 1, any Party may request in writing the other Party that a process of technical mediation is launched with respect to the principles of regulatory co-operation as set out in Article X-3. The process of technical mediation may be launched only after the Parties agree on its use in a specific matter.

3. Upon agreement of the Parties to launch the process pursuant to paragraph 2, the [Forum] shall establish a working group for technical mediation. The working group for technical mediation shall be composed of representatives of each Party in the [Forum] and shall be chaired by a mediator with relevant expertise independent of either Party, who shall be appointed by the [Forum].

4. The chair shall submit a report with the results of the technical mediation to the co-chairs of the [Forum].

5. The Parties undertake to act in good faith in an attempt to resolve any dispute arising under this [Annex].