

COMMUNICATION FROM JAPAN

Transitional Review Mechanism in connection with Paragraph 18 of
the Protocol on the Accession of the People's Republic of China

Questions and Comments of Japan on the Implementation by China
of its Commitments on Trade in Financial Services

The attached communication has been received from the delegation of Japan with the request that it be distributed to Members of the Committee on Trade in Financial Services.

1. Japan welcomes that, in the second year after accession, implementation by China of its commitments on trade in financial services has progressed and is entering into a cruising phase. It appreciates efforts by China for developing and improving necessary regulatory framework and smoothly implementing phase-in commitments. In a transitional period of evolving regulations, the importance of regulatory transparency, predictability, stability and consistency is paramount; the value of market access commitments and the efforts to implement them could be easily clouded out by a shortness of such elements either in regulations themselves or in their application. The transitional review mechanism could be useful for making those transitional efforts more efficient and productive, and it is a pleasure for Japan to contribute to this process.

2. In this context, China is further invited to take necessary steps to ensure regular and effective application of public comments procedures, well-in-advance publication of laws and regulations, avoidance of abrupt regulatory change, clear-demarcation of departmental responsibilities, improvement in inter-departmental and central-provincial coordination and consistency, etc.

3. In accordance with Paragraph 18 of the Protocol on the Accession of the People's Republic of China, which states that "China shall provide relevant information to each subsidiary body in advance of the review" and in the spirit of cooperation to render the TRM process most efficient and effective, Japan requests China to provide in advance of the Regular Meeting of the Committee on Trade in Financial Services responses and relevant information to the following questions and comments.

I. INSURANCE AND INSURANCE RELATED SERVICES

4. China's Schedule of Specific Commitments provides that foreign life and non-life insurers, and insurance brokers are permitted to provide services in Shanghai, Guangzhou, Dalian, Shenzhen and Foshan, and that all the geographic restrictions are to be eliminated in three years since accession. Please confirm that China permits licensed foreign-invested insurers in any of these cities to provide services nationally solely based on existing licenses, without applying for a new license. If not, please explain how such a restriction is consistent with the Schedule of Specific Commitments.

5. Article 37 of a draft of *Rules of the Regulations on Administration of Foreign-Funded Insurance Companies*, for which public comments have been invited since 31 July, provides that a

minimum capital requirement of Renminbi (RMB) 200 million for the initial branch, and additional RMB 20 million in operational capital for each subsequent branch, up to a total of RMB 500 million. Article 13 of the *Insurance Company Administrative Measures*, on the other hand, requires insurers with national license, beyond the initial four branches, additional RMB 50 million in registered capital per branch, up until RMB 1.5 billion. Moreover, a draft of a revised *Insurance Company Administrative Measures* was recently disclosed for public comments, and its Articles 6 (1) and 12 stipulated the same capital requirements as in *Rules of the Regulations on Administration of Foreign-Funded Insurance Companies* and no longer differentiated regional and national licenses. Please explain the relationship between these different capital requirements and license requirements, and the relationship between regional and national licenses. More specifically, please confirm that foreign-invested insurers are required to put in place RMB 200 million, not RMB 500 million, for the initial national operation and face a capital requirement of no more than RMB 500 million, not RMB 1.5 billion.

6. The *Provisional Procedures on the Management of Foreign Exchange in the Insurance Industry* regulate insurance contracts denominated by foreign currency. Japan wishes to note that some joint-venture insurers were recently permitted to issue such contracts. Please explain why all joint-venture insurers are not allowed to do so. Further, please elaborate on the prudential justification for the regulation to the extent that foreign-denominated insurance contracts are prohibited, and on specific criteria upon which approval is based.

7. Article 20 (1) of the *Administrative Regulation on Foreign-Invested Insurance Company* prohibits foreign-invested insurers to engage in any of the outward or inward cross-boarder reinsurance with their associated enterprises unless they are otherwise approved by CIRC, whereas Article 89 of the *Insurance Company Administrative Rules* simply requires an approval from CIRC to engage in this line of service. Japan notes that these regulations have an adverse effect on foreign-invested insurers and constitute discrimination that modifies competitive conditions in the sense of Article XVII:3 of the GATS. Please explain, in this context, the consistency of these regulations with China's commitments in Paragraph 308 of China's Working Party Report, namely that "China's licensing procedures and conditions would not act as barriers to market access and would not be more trade restrictive than necessary." Please elaborate on the prudential justification for such prohibition and specific criteria upon which CIRC bases its consideration.

II. BANKING

8. Article 6 of the *People's Bank of China (PBOC) Draft Notice No. 28* prohibits both foreign and domestic-invested banks to raise more than 40 percent of their total liabilities from the RMB inter-bank market. Japan has voiced its concern that the article would unduly inhibit the activities of foreign-invested banks, who are not in a position to establish large RMB deposit bases, compared to domestic banks. With this in mind, please explain the consistency of these regulations with the above-mentioned China's commitments in Paragraph 308, and please provide any updates concerning the review of the article.

9. China's Schedule of Specific Commitments provides that foreign financial institutions will be permitted to provide local currency business services to Chinese enterprises, within two years after accession. Japan wishes to indicate that currently, practices such as netting settlement of spot operation and collateral loans on foreign securities are not permitted to the foreign financial institutions. Please elaborate on specific procedures and criteria employed in determining the extent of local currency services that a foreign financial institution is allowed to engage. Moreover, please confirm that foreign financial institutions are allowed to fully engage in local currency business within two years from accession in accordance with GATS Article XVII.
