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European Banking Authority
Tour Europlaza, 20 avenue André Prothin,
92400 Courbevoie, France

Japanese Bankers Association

JBA comments on the EBA Consultation Paper on Regulatory Products on Third-Country Branches under the Capital Requirements Directive

Dear Sirs/Madams:

The Japanese Bankers Association[1] (JBA) appreciates the opportunity to provide our comments on the European Banking Authority's (EBA) Consultation Paper on Regulatory Technical Standards (RTS) and Guidelines (GL) on third-country branches under the Capital Requirements Directive (CRD) concerning booking arrangements, capital endowment and supervisory colleges, published on 11 July 2025.

We support the overarching objective of the proposed regulatory framework for third-country branches (TCBs), which aims to enhance consistency and transparency in supervision across the EU.
At the same time, we respectfully suggest that further clarification and operational flexibility be needed in the following areas to ensure practical and proportionate implementation:

- Ambiguity in the interpretation of provisions regarding the establishment of colleges of supervisors;
- Unclear definitions and scope of recording obligations under booking arrangements; and
- Scope of liabilities and treatment of capital instruments under the capital endowment requirement.

We hope that our comments will contribute to constructive discussions at the EBA and help refine the framework to better reflect practical realities.

1. Consultation on Regulatory Technical Standards on cooperation and colleges of supervisors for third-country branches (EBA/CP/2025/15)

Question 1: Do you consider that the provisions on the establishment and functioning of colleges of supervisors for third-country branches set out in Chapter 1 are appropriate and sufficiently clear?

We believe that further clarification is needed in the following areas:

[1] The Japanese Bankers Association is the leading trade association for banks, bank holding companies and bankers associations in Japan. As of 1 July, 2025, the JBA has 112 Full Members (banks), 3 Bank Holding Company Members (bank holding companies), 76 Associate Members (banks & bank holding companies), 49 Special Members (regionally-based bankers associations) and one Sub-Associate Member for a total of 241 members.

- Articles 48p.2(a) and 48p.2(c) of CRD IV offer two different options for establishing a college of supervisors when a third-country group has both TCBs and subsidiaries within the EU. However, the draft RTS does not address the scenario where a third-country group has TCBs and subsidiaries subject to Article 116 of CRD IV, but no college of supervisors has yet been formed. It is unclear whether, upon the entry into force of CRD VI, a college should be established under Article 48p.2(a) or 48p.2(c). We respectfully request that the EBA clarify this point in the draft RTS. There is concern that a college may initially be formed with the National Competent Authority (NCA) of the largest TCB acting as the lead competent authority, only to be replaced later when a college is established for the group's subsidiaries under Article 116. Such a transition could disrupt supervisory continuity and should be avoided.
- Regarding Article 14 of the draft RTS, which includes provisions on the exchange of Supervisory Review and Evaluation Process (SREP)-related information, we note that the requirements under Article 48n.6 of CRD VI will be developed in separate guidelines by the EBA. In light of this, we recommend that the draft RTS avoid overly prescriptive provisions and allow flexibility to accommodate future changes.

Question 2: Do you consider that the provisions on the general cooperation and information exchange for the supervision of third-country branches (outside of the college context) set out in Chapter 2 are appropriate and sufficiently clear?

While we support the objective of enhancing cooperation, we are concerned that the draft RTS may be overly prescriptive. We respectfully suggest that:

- Greater flexibility should be granted to competent authorities to exchange information in a manner they consider to be appropriate.
- Reducing the level of prescriptiveness in the draft RTS and allowing colleges to operate based on principles rather than detailed rules would promote a more pragmatic and proportionate approach to supervising third-country groups.

Question 3: Do you consider that the draft RTS provide an appropriate level of proportionality adapted to specific context and nature of third-country branches?

TCBs are part of the same legal entity as the head undertaking and are already considered within the scope of the group supervisory college and crisis management group at the head office level. Cooperation between colleges at both the EU and head office levels is essential to ensure effective and consistent supervision.

2. Consultation on Regulatory Technical Standards specifying the booking arrangements that third-country branches (EBA/CP/2025/16)

Question 1: Is the proposed distinction between the concepts of "assets and liabilities booked" and "assets and liabilities originated" sufficiently clear?

We respectfully request the EBA to clarify that the requirement to record “assets and liabilities originated” specifically pertains to intragroup transfers. Article 48h.4(b) of CRD VI limits the scope to items booked or held remotely within the same group. However, Article 2.1(b) of the draft RTS defines originated assets and liabilities more broadly, referring to transfers to “other entities”, which could be interpreted to include third-party transactions such as asset sales. Therefore, we recommend that the draft RTS explicitly limit this obligation to group entities only.

Additionally, the draft RTS should clarify the conditions under which a TCB is no longer required to record items in the registry book. This should include cases where risks and obligations have been transferred and the branch no longer has access to relevant data

Question 2: Is the proposed concept of “off-balance sheet items” sufficiently clear?

We respectfully request the EBA to confirm that the definition of 'off-balance sheet items' is aligned with the definition in the Capital Requirements Regulation (CRR) applicable to banks. The current wording may be subject to misinterpretation due to its ambiguity.

Question 3: Do you have any comments on the proposed bookkeeping requirements under paragraph 3?

The draft RTS should clearly state that the requirements should be applied proportionately based on the size and complexity of the TCB. We are concerned that Article 2.3(a) of the draft RTS may restrict branches from using group-wide systems and applications, especially where these are managed separately. We recommend removing the word “systems” from this paragraph to avoid unintended limitations.

Question 5: Do you agree with the proposed treatment and measurement of assets and liabilities originated?

Question 6: Do you have any comments on the minimum content of the registry book proposed in Article 3?

Please refer to our response to Question 1, which addresses both the scope of originated items and the conditions under which they should be recorded or removed from the registry book.

Question 7: Do you have any comments on the approach proposed to provide information in the registry book on the risks associated to the assets, liabilities and off-balance sheet items, and how they are managed?

We believe that risk-related information should not be recorded in the registry book. Instead, such information should be managed through regular risk management processes and regulatory reporting, in cooperation with supervisory authorities. Embedding risk data into the registry book may lead to duplication and operational inefficiencies.

3. Consultation on Guidelines on third country branches capital endowment requirement (EBA/CP/2025/17)

Question 1: Do you consider the described requirements that capital endowment instruments should meet appropriate to ensure that they are available for use in the case of resolution of the TCB and for the purposes of the winding-up of the TCB? Is there any further requirement the EBA should consider adding? Or alternatively removing?

We believe that requiring TCBs to encumber assets that would otherwise qualify as liquid for the purpose of meeting the capital endowment obligation imposes an undue burden on them, for the following reasons:

(i) This requirement does not apply to credit institutions established within the EU, making its exclusive application to TCBs inequitable. Moreover, it is unclear how restricting the usability of liquid assets enhances the resolution capacity of TCBs, which are already subject to the TLAC requirements at the group level.

(ii) Depositors of TBCs are already protected under the Deposit Guarantee Scheme (DGS), with coverage limits determined by policymakers. Given that the intent of the capital endowment requirement is to protect depositors, this objective is already addressed through the existing DGS framework.

(iii) Loss-absorbing requirements are typically applied to the liability side of the balance sheet, not the asset side—TLAC being a prime example. Accordingly, TCBs already comply with these requirements through their group's TLAC requirements.

In light of the above, we respectfully request that the EBA treat assets held in escrow accounts under the capital endowment requirement as unencumbered for liquidity purposes.

Furthermore, given that the purpose of the capital endowment requirement is to protect depositors, we respectfully request further clarification on the scope of liabilities included in the calculation of the TCB capital endowment. Specifically, we consider that the following liabilities should be excluded:

- Intragroup borrowing, as it does not pose a risk of loss to customers.
- Market-oriented instruments such as CDs, CPs, and bonds, as professional investors are expected to fully understand their risk profiles.

Additionally, we believe that deposits maturing within 30 days should also be excluded, depending on the outflow rates applied in the liquidity coverage ratio (LCR) requirement. This is because the expected outflow in the LCR is already held as high-quality liquid assets to meet the LCR requirement. Deposits included in the liabilities used to calculate the capital endowment requirement should be those remaining after applying the outflow rates under the LCR requirement.

Question 2: Do you consider the list of instruments proposed for the purposes of Article 48e(2)(c) of Directive 2013/36/EU adequate? Is there any further instrument the EBA should consider adding? Or alternatively removing?

We welcome the inclusion in paragraph 12(c) of the draft GL of debt securities issued or guaranteed by non-EU governments or central banks, provided they meet supervisory and regulatory equivalence and qualify for a 0% risk weight under Articles 114(7) and 115(4) of Regulation (EU) 575/2013.

This flexibility is essential for third-country banks and allows for efficient use of group resources.

However, the current drafting may, in practice, preclude the use of non-EU government bonds in many cases due to the strict conditions under Article 114(7) of the CRR, particularly the requirement that the TCB be funded in the domestic currency of the issuing country.

We therefore respectfully request that the EBA clarify in the draft GL that TCBs, being part of the same legal entity as the head undertaking, can be considered as funded in the domestic currency of the head undertaking. This would facilitate the appropriate use of group resources and enhance the effectiveness and flexibility of the capital endowment requirement.

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We thank the EBA for the opportunity to comment on the Consultation Paper and hope our comments will contribute to further consideration by the EBA.

Yours faithfully,

Japanese Bankers Association