

Creation of an alternative dispute resolution framework for financial services

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Speedread

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On 17 June 2009, a bill to amend the Financial Instruments and Exchange Act, the Banking Act and other related legislation was enacted. Among other things, these amendments set out a framework for alternative dispute resolution (ADR) in financial services. This aims at protecting investors by expediting resolutions and reducing the cost of financial disputes, and also at giving the parties involved the flexibility to reach optimum solutions.

The characteristics of the Japanese system of financial services ADR are as follows:

Industry players in a number of finance industry sub-sectors will be given the opportunity to voluntarily establish a dispute resolution body for their industry sub-sector. Once the Financial Service Agency of Japan (FSA) approves the operational rules, it will then designate such body to act as the dispute resolution body for that sub-sector, with the FSA responsible for supervision to ensure that a neutral position and fair procedures are maintained.

Financial institutions in the sub-sectors for which a dispute resolution body is not created are required to take equivalent measures of their own to respond to disputes and handle customers' complaints.

The dispute resolution body will handle customers' complaints and request financial institutions within the sub-sector to expedite their responses. The dispute resolution body will also form a resolution panel for each dispute case. Each panel will be made up of members who are attorneys, consumer advocates and finance industry experts.

Financial institutions will execute a basic agreement for protocol implementation with the dispute resolution body for their relevant sub-sector. Under the agreement, they are required to participate in the prescribed ADR process when cases are raised by customers.

Participating financial institutions have to provide any documents requested by the panel regarding specific cases that are raised with the panel.

Financial institutions are also required to respect the draft settlement proposed by the panel, so the ruling by the panel is binding on participants, except in cases where judicial procedure is commenced.

The more the government has been promoting its "Savings to Investment" policy, the greater the obligation to explain to individual investors the risks involved in financial instruments. Contrary to expectations, however, the number of investor complaints is growing and the neutrality of existing ADR systems seem doubtful to many individuals. The financial services ADR system is expected to be more attractive to individual investors.

Most of these amendments will come into effect within a year of 24 June 2009.

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