

ANNEX XI

REFERRED TO IN ARTICLE 3.21

FINANCIAL SERVICES

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FINANCIAL SERVICES

Article 1

Scope and Definitions

1. This Annex applies to measures by Parties affecting trade in financial services.¹
2. For the purposes of subparagraph 1(b) of Article 3.3 (Definitions) of the Agreement, “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 Government.
3. For the purposes of subparagraph 1(b) of Article 3.3 (Definitions) of the Agreement, if a Party allows any of the activities referred to in subparagraphs 2(b) or 2(c) of this article to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.
4. Subparagraph 1(c) of Article 3.3 (Definitions) of the Agreement shall not apply to services covered by this Annex.
5. For the purposes of this Annex:
 - (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:

Insurance and insurance-related services

 - (i) direct insurance (including co-insurance):

¹ For the purposes of this Annex, “trade in financial services” shall be understood in accordance with the definition contained in subparagraph 1(a) of Article 3.3 (Definitions) of the Agreement.

- (aa) life;
- (bb) non-life;
- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency;
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (aa) money market instruments (including cheques, bills, certificates of deposits);
 - (bb) foreign exchange;
 - (cc) derivative products including, but not limited to, futures and options;
 - (dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (ee) transferable securities;
 - (ff) other negotiable instruments and financial assets, including bullion;
- (xi) 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;

- (xii) money broking;
 - (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depositary and trust services;
 - (xiv) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
 - (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs 5(a)(v) through 5(a)(xv), 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) “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 monetary authority, when exercising those functions.

Article 2

National Treatment

1. Each Party shall grant, on a national treatment basis, to financial service suppliers of another Party established in its 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 paragraph is not intended to confer access to the Party’s lender of last resort facilities.

2. Where:
- (a) membership or participation in, or access to, a self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association, is required by a Party in order for financial service suppliers of another Party to supply financial services on an equal basis with financial service suppliers of the Party; or
 - (b) a Party provides directly or indirectly such entities, privileges or advantages in supplying financial services,

the Party shall ensure that such entities accord national treatment to financial service suppliers of another Party resident in its territory in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein.

Article 3

Transparency

1. Each Party shall promote regulatory transparency in financial services taking into account:
- (a) the work undertaken by the Parties under the GATS and in other fora relating to trade in financial services;
 - (b) the importance of regulatory transparency, of identifiable policy objectives and of clear and consistently applied regulatory processes; and
 - (c) any consultations that the Parties may have between them.
2. The competent authorities of each Party shall make available to interested persons domestic requirements and procedures for completing applications relating to the supply of financial services.
3. Where a licence or an authorisation is required for the supply of a financial service, the competent authorities of a Party shall make the requirements for such a licence or an authorisation publicly available. The period of time normally required to reach a decision concerning an application for a licence or an authorisation shall be made:
- (a) available to the applicant upon request;
 - (b) publicly available; or
 - (c) available by a combination of both.

Article 4

Expeditious Application Procedures

1. The competent authorities of each Party shall process expeditiously applications related to the supply of financial services submitted by service suppliers of other Parties.
2. If the competent authorities of a Party require additional information from the applicant in order to process its application, they shall notify the applicant without undue delay.
3. Upon request by the applicant, the competent authorities of a Party shall provide, without undue delay, information concerning the status of its application.
4. The competent authorities of each Party shall notify the applicant of the outcome of its application promptly after a decision is taken. In case a decision is taken to deny an application, the reason for the denial shall be made known to the applicant.
5. Where a licence or an authorisation is required for the supply of a financial service and if the applicable requirements are fulfilled, the competent authorities of a Party shall grant the applicant a licence or an authorisation as a rule within six months² after the submission of its application is considered complete under that Party's domestic laws and regulations.

Article 5

Domestic Regulation

1. Notwithstanding any other provision of Chapter 3 (Trade in Services) of the Agreement, a Party shall not be prevented from adopting or maintaining reasonable measures for prudential reasons³, including for:
 - (a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or
 - (b) ensuring the integrity and stability of that Party's financial system.

Where such measures do not conform with the provisions of Chapter 3 (Trade in Services) of the Agreement, they shall not be used as a means of avoiding that Party's commitments or obligations under Chapter 3 (Trade in Services) of the Agreement.

2. Measures referred to in paragraph 1 shall not be more burdensome than necessary to achieve their aim or constitute a disguised restriction on trade in services,

² Where it is not practicable to take a decision within six months, the regulatory authority shall notify the applicant without undue delay and shall decide as expeditiously as possible thereafter.

³ It is understood that "prudential reasons" may include the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers.

and shall not discriminate against financial services or financial service suppliers of another Party in comparison to the Party's own like financial services or like financial service suppliers.

3. Each Party shall make its best endeavours to ensure that the Basel Committee's "Core Principles for Effective Banking Supervision", the standards and principles of the International Association of Insurance Supervisors, and the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation" are implemented and applied in its territory.

4. Nothing in Chapter 3 (Trade in Services) of the Agreement 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.

Article 6

Recognition of Prudential Measures

Where a Party recognises, by agreement or arrangement, prudential measures of a non-party in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for another Party to negotiate its accession to such an agreement or arrangement, or to negotiate a comparable agreement or arrangement with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords such recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

Article 7

Transfers of Information and Processing of Information

No Party shall take measures that prevent transfers of information into or out of the Party's territory or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier of another Party. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of Chapter 3 (Trade in Services) of the Agreement.
