

ANNEX VIII

REFERRED TO IN ARTICLE 36

FINANCIAL SERVICES

Article 1

Definitions

For the purposes of Chapter III and this Annex:

I. “*financial service*” means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities:

A. *Insurance and insurance-related services:*

1. direct insurance (including co-insurance):
 - (a) life;
 - (b) non-life;
2. reinsurance and retrocession;
3. insurance inter-mediation, such as brokerage and agency;
4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

B. *Banking and other financial services (excluding insurance):*

1. acceptance of deposits and other repayable funds from the public;
2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
3. financial leasing;
4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
5. guarantees and commitments;
6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

- (a) money market instruments (including cheques, bills, certificates of deposits);
 - (b) foreign exchange;
 - (c) derivative products including, but not limited to, futures and options;
 - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets, including bullion;
- 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;
 - 8. money broking;
 - 9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - 10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - 11. provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 - 12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

II. “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.

III. “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.

IV. For the purpose of scheduling market access commitments in financial services, the mode of supply referred to in Article 22 (o) (i) of this Agreement means the supply of financial services by non-resident suppliers of financial services into the territory of a Party; a “non-resident supplier of financial services” is a financial service supplier of a Party which supplies a financial service into the territory of another Party from an establishment located in the territory of a GATS Member, regardless of whether such a financial service supplier has or has not a commercial presence in the territory of the Party in which the financial service is supplied.

Article 2

National Treatment

1. Under terms and conditions that accord national treatment, each Party shall grant 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. When membership or participation in, or access to, any 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 any 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 entities accord national treatment to financial service suppliers of any other Party resident in the territory of the Party.

Article 3

Prudential Measures

1. Nothing in Chapter III and its Annexes shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

- (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) the maintenance of the safety, soundness, integrity or financial responsibility of financial service suppliers; or
- (c) ensuring the integrity and stability of a Party's financial system.

2. These measures shall not be more burdensome than necessary to achieve their aim, and shall not constitute a means of arbitrary or unjustifiable discrimination against financial service suppliers of another Party in comparison to its own like financial service suppliers, or a disguised restriction on trade in services.

3. Nothing in Chapter III and its Annexes shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

4. Each Party shall make its best endeavours to ensure that the Basle 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.

Article 4

Recognition

1. A Party may recognise prudential measures of any other country in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for another Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones 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 recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

Article 5

Data Processing

1. Each Party shall permit a financial service supplier of another 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 ordinary course of business of such financial service supplier.

2. As far as the transfer of data obtained in the course of the supply of financial services is concerned, each Party shall adopt or maintain adequate safeguards on the protection of the confidentiality and integrity of such records, and to that end Parties may have consultations whenever necessary.

3. 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 this Agreement.

Article 6

Specific Exceptions

1. Nothing in Chapter III and its Annexes shall be construed to prevent a Party, including its public entities, from exclusively conducting activities or supplying services in its territory forming part of a public retirement plan or statutory system of social security.

2. Nothing in Chapter III and its Annexes shall be construed to prevent a Party, including its public entities, from exclusively conducting activities or supplying services in its territory for the account or with the guarantee or using the financial resources of the Party, or its public entities.

3. If a Party allows any of the activities or services referred to in paragraphs 1 or 2 to be conducted or supplied by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities and services.

4. Nothing in Chapter III and its Annexes shall apply to activities conducted or services supplied by a central bank or monetary authority or by any other public entity, in pursuit of monetary or exchange rate policies.

Article 7

Modification of Schedules

1. A Party may propose to introduce or amend limitations contained in a specific commitment referred to in the financial services section of its Schedule, to the extent that such amendments do not decrease the level of commitment undertaken by the Party and provided that the proposed amendments do not reduce the opportunities of the service suppliers of another Party affected by the amendments compared to the situation prevailing immediately before the amendments.

2. The amending Party shall notify its intent to amend a commitment to the other Parties at least three months before the intended date of implementation of the amendment. On receiving such written notification, the other Parties may request consultations regarding the proposed amendment. If agreement is not reached by consultations, the matter shall be dealt with in accordance with Chapter IX.
