

Annex 4
referred to in Chapter 7

Financial Services

Article 1
Definitions

For the purposes of this Annex:

- (a) the term “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):
- (A) life; and
 - (B) 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, travelers checks 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:
 - (A) money market instruments (including checks, bills and 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 and forward rate agreements;
 - (E) transferable securities; and
 - (F) 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, depository 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; and
 - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (b) the term “financial service computing facility” means a computer server or storage device for processing or storage of information relevant for the conduct of the ordinary business of a financial service supplier;
 - (c) the term “financial service supplier” means any natural person or juridical person of a Party seeking to supply or supplying financial services but the term “financial service supplier” does not include a public entity;
 - (d) the term “new financial service” means any financial service which is not supplied in the Area of a Party but is supplied and regulated in the Area of the other Party. This may include a service related to current and new products, or the manner in which a product is delivered;
 - (e) the term “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 a monetary authority, when exercising those functions; and
- (f) the term “self-regulatory organization” means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or other organization or association, that:
 - (i) is recognized as a self-regulatory organization and exercises regulatory or supervisory authority over financial service suppliers by legislation or delegation from central or local governments or authorities; or
 - (ii) exercises regulatory or supervisory authority over financial service suppliers by legislation or delegation from central or local governments or authorities.

Article 2

Scope

1. This Annex shall apply to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in subparagraph (o) of Article 7.2.

2. For the purposes of subparagraph (j) of Article 7.2, the term “services supplied in the exercise of governmental authority” means the following:

- (a) activities conducted by a central bank or a 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; or
- (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government.

If a Party allows any of the activities referred to in subparagraph (b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, the term “services” shall include such activities.

- 3. Subparagraph (l) of Article 7.2 shall not apply to services covered by this Annex.

Article 3 New Financial Services

- 1. A Party shall permit financial service suppliers of the other Party to offer in its Area any new financial service, provided that the introduction of this new financial service does not require the former Party to adopt a new law or modify an existing law.
- 2. Notwithstanding subparagraph 2(e) of Article 7.3, a Party may determine the juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. If a Party requires a financial service supplier to obtain authorization to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorization and may refuse the authorization only for prudential reasons.

Article 4 Prudential Measures

Notwithstanding any other provision of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party’s commitments or obligations under this Agreement.

Article 5
Treatment of Certain Information

Nothing in this 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

1. A Party may recognize prudential measures of any international standard-setting body, the other Party or a non-Party in determining how its measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based on an agreement or arrangement with the international standard-setting body, the other Party or the non-Party concerned, or may be accorded autonomously.

Note: For greater certainty, nothing in Article 7.7 shall be construed to require a Party to accord such recognition to prudential measures of the other Party.

2. A Party that is a party to an agreement or arrangement referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party to negotiate its accession to such an agreement or arrangement, 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.

3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the circumstances referred to in paragraph 2 exist.

Article 7
Transparency

1. The Parties recognize that transparent measures governing the activities of financial service suppliers are important in facilitating their ability to gain access to, and operate in, each other's markets. Each Party commits to promote regulatory transparency in financial services.
2. A Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective and impartial manner.
3. A Party shall ensure that measures of general application adopted or maintained are promptly published or otherwise made publicly available.
4. To the extent practicable, a Party shall:
 - (a) publish in advance any regulation of general application related to the subject matter of this Annex that it proposes to adopt and the purpose of the regulation; and
 - (b) provide interested persons and the other Party with a reasonable opportunity to comment on such proposed regulation.
5. To the extent practicable, a Party should allow a reasonable period of time between the date of publication of any final regulation of general application and the date when it enters into effect.
6. A Party shall ensure that the rules of general application adopted or maintained by a self-regulatory organization of the Party are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.
7. A Party shall maintain or establish appropriate mechanisms for responding to enquiries from interested persons of the other Party regarding measures of general application covered by this Annex.

8. A Party's regulatory authority shall make available to interested persons of the other Party its requirements, including any documentation required, for completing applications relating to the supply of financial services.

9. On request of an applicant in writing, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a complete application of a financial service supplier of the other Party relating to the supply of a financial service within a reasonable period of time, and shall notify the applicant of the decision without undue delay. An application shall not be considered complete until all relevant proceedings are conducted and all necessary information is received. Where it is not practicable for such a decision to be made within a reasonable period of time, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable period of time thereafter.

11. On request of an unsuccessful applicant in writing, a Party's regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for the denial of the application.

Article 8

Financial Services Exceptions

For greater certainty, nothing in this Annex shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Annex, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or between the other Party and non-Parties where like conditions prevail, or a disguised restriction on investment in financial service suppliers or trade in financial services.

Article 9

Transfers of Information and Processing of Information

1. The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information, the processing of information and the location of financial service computing facilities, provided that this paragraph does not affect a Party's rights and obligations under this Annex.
2. A Party shall not take measures that prevent:
 - (a) transfers of information, including transfers of data by electronic or other means, necessary for the conduct of the ordinary business of a financial service supplier in its Area; or
 - (b) processing of information necessary for the conduct of the ordinary business of a financial service supplier in its Area.
3. Nothing in paragraph 2 shall prevent a regulatory authority of a Party, for regulatory or prudential reasons, from requiring a financial service supplier in its Area to comply with its laws and regulations in relation to data management and storage and system maintenance, as well as to retain within its Area copies of records, provided that such requirements shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.
4. Nothing in paragraph 2 shall restrict the right of a Party to protect personal data, personal privacy, and the confidentiality of individual records and accounts including in accordance with its laws and regulations, provided that such a right shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.
5. Nothing in paragraph 2 shall be construed to require a Party to allow the cross-border supply or consumption abroad of services in relation to which it has not made commitments, including to allow non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing as referred to in subparagraph (a)(xv) of Article 1.

Article 10
Self-Regulatory Organizations

If a Party requires a financial service supplier of the other Party to be a member of, participate in or have access to a self-regulatory organization to provide a financial service in its Area, that Party shall ensure that the self-regulatory organization observes that Party's obligations under Article 7.4.

Article 11
Payment and Clearing Systems

Under the terms and conditions that accord national treatment, a Party shall grant financial service suppliers of the other Party established in its Area 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 Article is not intended to confer access to the former Party's lender of last resort facilities.

Article 12
Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall consider such a request.
2. Consultations under this Article shall include the relevant representatives of the contact points specified in Article 13.

Article 13
Contact Points

Each Party shall, upon entry into force of this Agreement, designate a contact point for the effective implementation and operation of this Annex and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

Article 14
Dispute Settlement

Arbitrators of the arbitral tribunal established pursuant to Chapter 21 for disputes on any provision of this Annex shall have the necessary expertise relevant to the specific financial service under dispute.