

## **ANNEX ON FINANCIAL SERVICES**

### **1. Scope and Definition**

- (a) This Annex applies 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 Article 1(hh) of this Agreement.
- (b) For the purposes of Article 1(bb) of this Agreement, "services supplied in the exercise of governmental authority" means the following:
  - (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
  - (ii) activities forming part of a statutory system of social security or public retirement plans; and
  - (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
- (c) For the purposes of Article 1(bb) of this Agreement, if a Party allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.
- (d) Article 1(cc) of this Agreement shall not apply to services covered by this Annex.

### **2. Prudential Measures, Exchange Rate and Financial Stability**

- (a) Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking 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; to ensure the integrity and stability of the financial system; or to ensure the stability of the exchange

rate<sup>1</sup>, including to prevent speculative capital flows, subject to the following:

- (i) 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;
  - (ii) for measures to ensure the stability of the exchange rate including to prevent speculative capital flows, such measures shall be no more than necessary, and phased out within one year or when conditions no longer justify their institution or maintenance; and
  - (iii) for measures to ensure the stability of the exchange rate including to prevent speculative capital flows, such measures shall be applied on a Most-Favoured-Nation basis.
- (b) 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.

### 3. **Recognition**

- (a) 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 upon an agreement or arrangement with the country concerned or may be accorded autonomously.
- (b) A Party that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their 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,

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<sup>1</sup> The measures to ensure the stability of the exchange rate including to prevent speculative capital flows shall not be adopted or maintained for the purpose of protecting a particular sector.

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 any other Party to demonstrate that such circumstances exist.

- (c) Where a Party is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article 7 shall not apply.

#### 4. **Dispute Settlement**

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

#### 5. **Definitions**

For the purposes of this Annex:

- (a) **A financial service** is 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
  - (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, 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:
  - (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.
- (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;
  - (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) **A 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.