

Annex 8-A Financial Services

Scope and Definitions

1. This Annex shall apply to measures adopted or maintained by a Party affecting the supply of financial services.

2. For purposes of this Annex:

financial institution means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

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:
 - (i) direct insurance (including co-insurance):
 - (A) life;
 - (B) non-life;
 - (ii) reinsurance and retrocession;
 - (iii) insurance inter-mediation, such as brokerage and agency; and
 - (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and
- (b) Banking and other financial services (excluding insurance):
 - (i) acceptance of deposits and other repayable funds from the public;
 - (ii) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
 - (iii) financial leasing;

- (iv) all payment and money transmission services, including credit, charge and debit cards, travelers checks and bankers drafts;
- (v) guarantees and commitments;
- (vi) 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, forward rate agreements;
 - (E) transferable securities; and
 - (F) other negotiable instruments and financial assets, including bullion;
- (vii) 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;
- (viii) money broking;
- (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (x) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (xi) provision and transfer of financial information, and financial data processing and related software; and

- (xii) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (i) through (xi), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier means any natural person or juridical person of a Party that seeks to provide or provides financial services and does not include a public entity;

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new financial service means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party; and

public entity means:

- (a) 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
- (b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

Prudential Carve-out¹

3. Notwithstanding any other provision of this Agreement, each Party may adopt or maintain measures for supervision reasons including prudential reasons and oversight reasons², including:

- (a) the protection of investors, depositors, policy-holders, any

¹ Any measure which is applied to financial service suppliers established in a Party's territory that are not regulated and supervised by the financial supervisory authority of that Party would be deemed to be a prudential measure for purposes of this Agreement. For greater certainty, any such measure shall be taken in line with paragraphs 3 through 6.

² It is understood that the term "supervision reasons including prudential reasons and oversight reasons" may include the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers.

other consumers/users/customers or persons to whom a fiduciary duty is owed by a financial service supplier; and

- (b) ensuring the integrity and stability of the Party's financial system.

4. These measures shall not be more burdensome than necessary to achieve their aim, and where they do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding each Party's commitments or obligations under such provisions.

5. Nothing in this Agreement 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.

6. Without prejudice to other means of supervision including prudential regulation, and oversight of cross-border trade in financial services, a Party may within its domestic laws and regulations require the authorization of cross-border financial service suppliers of the other Party and of financial instruments.

Transparency

7. The Parties recognize that transparent regulations and policies governing the activities of financial service suppliers are important in facilitating access of foreign financial service suppliers to, and their operations in, each other's markets. Each Party shall endeavor to promote regulatory transparency in financial services.

Self-Regulatory Organizations

8. When a Party requires membership or participation in, or access to, any self-regulatory organizations, securities or futures exchange or market, clearing agency or any other organization or association, in order for financial service suppliers of the other Party to supply financial services on an equal basis to financial service suppliers of the Party, or when the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Article 8.3 by such self-regulatory organization.

Payment and Clearing Systems

9. Under terms and conditions that accord national treatment, each Party shall grant financial service suppliers of the other 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.

*New Financial Services*³

10. Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service that the Party would permit its own financial service suppliers to supply, in like circumstances, under its domestic law, provided that the introduction of the new financial services does not require a new law or modification of an existing law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within reasonable timeframes, and in accordance with its domestic laws and regulations. The authorization may be refused only for prudential reasons.

Treatment of Certain Information

11. Nothing in this Chapter requires a Party to furnish or allow access to:
- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
 - (b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Transfer of information

12. The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information and the processing of information.⁴

13. A Party shall not take measures that prevent:
- (a) transfers of information, including transfers of data by

³ The Parties understand that nothing in this paragraph shall prevent a financial institution of a Party from applying to the other Party to request that it authorizes the supply of a financial service that is supplied in neither Party's territory. Such application shall be subject to the laws and regulations of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of this paragraph.

⁴ For greater certainty, a Party may adopt a different regulatory approach, and this paragraph does not affect and is without prejudice to a Party's rights and obligations under paragraphs 12 through 15.

electronic or other means, necessary for the conduct of the ordinary business of a financial service supplier in its territory; or

- (b) processing of information necessary for the conduct of the ordinary business of a financial service supplier in its territory.

14. Nothing in paragraph 13 prevents a regulatory authority of a Party, for regulatory or prudential reasons, from requiring a financial service supplier in its territory to comply with its laws and regulations in relation to data management and storage and system maintenance, as well as to retain within its territory 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.

15. Nothing in paragraph 13 restricts 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.

Specific Exceptions

16. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by its domestic regulations, by financial service suppliers in competition with public entities or private institutions.

17. Nothing in this Agreement shall apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

18. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities except when those activities may be carried out, as provided by its domestic regulations, by financial service suppliers in competition with public entities or private institutions.

Recognition

19. Where a Party recognizes, 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 the other 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 the other Party to demonstrate that such circumstances exist.