

## CHAPTER 10

### FINANCIAL SERVICES

#### Article 10.1: Definitions

For the purposes of this Chapter:

**cross-border financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such a service;

**cross-border trade in financial services** or **cross-border supply of financial services** means the supply of a financial service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

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

**financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

**financial service** means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

#### *Insurance and insurance-related services*

- (a) direct insurance (including co-insurance):
  - (i) life;

- (ii) non-life;
- (b) reinsurance and retrocession;
- (c) insurance intermediation, such as brokerage and agency; and
- (d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

*Banking and other financial services (excluding insurance)*

- (e) acceptance of deposits and other repayable funds from the public;
- (f) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (g) financial leasing;
- (h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and banker's drafts;
- (i) guarantees and commitments;
- (j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (i) money market instruments (including cheques, bills, certificates of deposits);
  - (ii) foreign exchange;
  - (iii) derivative products, including futures and options;
  - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (v) transferable securities; and
  - (vi) other negotiable instruments and financial assets, including bullion;
- (k) 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;
- (l) money broking;

- (m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

**financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

**investment** means “investment” as defined in Article 8.1 (Definitions)<sup>1</sup>, except that, with respect to “loans” and “debt instruments” referred to in that Article:

- (a) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

**investor of a Party** means a Party, or a person of a Party, that attempts to make<sup>2</sup>, is making, or has made an investment in the territory of the other Party;

**new financial service** means a financial service not supplied in the Party’s territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party’s territory;

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<sup>1</sup> For greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 8 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 8.1 (Definitions)

<sup>2</sup> For greater certainty, the Parties understand that an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licenses.

**person of a Party** means “person of a Party” as defined in Article 1.3 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**public entity** means a central bank or monetary authority of a Party, or any financial institution that is owned or controlled by a Party; and

**self-regulatory organisation** means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central or regional government.

## **Article 10.2: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) financial institutions of the other Party;
  - (b) investors of the other Party, and investments of those investors, in financial institutions in the Party’s territory; and
  - (c) cross-border trade in financial services.
2. Chapter 8 (Investment) and Chapter 9 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter.
  - (a) Article 8.8 (Expropriation and Compensation), Article 8.9 (Transfers), Article 8.14 (Special Formalities and Information Requirements), Article 8.15 (Denial of Benefits), Article 8.16 (Investment and Environmental, Health and other Regulatory Objectives) and Article 9.10 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.
  - (b) Article 9.12 (Payments and Transfers) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 10.6 (Cross-Border Trade).
3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:
  - (a) activities or services forming part of a public retirement plan or statutory system of social security; or

- (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter shall not apply to government procurement of financial services.

5. This Chapter shall not apply to subsidies or grants with respect to the cross-border supply of financial services, including government-supported loans, guarantees and insurance.

### **Article 10.3: National Treatment<sup>3</sup>**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party, and to investments of investors of the other Party in financial institutions, treatment no less favourable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, financial institutions and investments of investors in financial institutions, of the Party of which it forms a part.

4. For the purposes of the national treatment obligations in Article 10.6.1 (Cross-Border Trade), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

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<sup>3</sup> For greater certainty, whether treatment is accorded in “like circumstances” under Article 10.3 or Article 10.4 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

#### **Article 10.4: Most-Favoured-Nation Treatment**

1. Each Party shall accord to:
  - (a) investors of the other Party, treatment no less favourable than that it accords to investors of a non-Party, in like circumstances;
  - (b) financial institutions of the other Party, treatment no less favourable than that it accords to financial institutions of a non-Party, in like circumstances;
  - (c) investments of investors of the other Party in financial institutions, treatment no less favourable than that it accords to investments of investors of a non-Party in financial institutions, in like circumstances; and
  - (d) cross-border financial service suppliers of the other Party, treatment no less favourable than that it accords to cross-border financial service suppliers of a non-Party, in like circumstances.
2. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms.

#### **Article 10.5: Market Access for Financial Institutions**

Neither Party shall adopt or maintain, with respect to financial institutions of the other Party or investors of the other Party seeking to establish those institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
  - (i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
  - (ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical

units in the form of quotas or the requirement of an economic needs test;<sup>4</sup> or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

### **Article 10.6: Cross-Border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 10-A.

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory. A Party may define “doing business” and “solicitation” for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of the other Party and of financial instruments.

### **Article 10.7: New Financial Services<sup>5</sup>**

Each Party shall permit a financial institution of the other Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law.<sup>6</sup>

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<sup>4</sup> Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

<sup>5</sup> The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to the other Party to request that it authorise the supply of a financial service that is not supplied in the territory of either Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

Notwithstanding Article 10.5(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorisation and may refuse the authorisation only for prudential reasons.

#### **Article 10.8: Treatment of Certain Information**

Nothing in this Chapter shall require 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.

#### **Article 10.9: Senior Management and Boards of Directors**

1. Neither Party shall require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.
2. Neither Party shall require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

#### **Article 10.10: Non-Conforming Measures**

1. Article 10.3, Article 10.4, Article 10.5, Article 10.6 and Article 10.9 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central level of government, as set out in Section A of its Schedule to Annex III;

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<sup>6</sup> For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.



- (ii) a regional level of government, as set out in Section A of its Schedule to Annex III; or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed:
    - (i) immediately before the amendment, with Article 10.3, Article 10.4, Article 10.5 or Article 10.9; or
    - (ii) on the date of entry into force of this Agreement, with Article 10.6.

2. Article 10.3, Article 10.4, Article 10.5, Article 10.6 and Article 10.9 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in Section B of its Schedule to Annex III.

3. A non-conforming measure, set out in a Party's Schedule to Annex I or II as not subject to Article 8.4 (National Treatment), Article 8.5 (Most-Favoured-Nation Treatment), Article 8.11 (Senior Management and Boards of Directors), Article 9.3 (National Treatment) or Article 9.4 (Most-Favoured-Nation Treatment), shall be treated as a non-conforming measure not subject to Article 10.3, Article 10.4 or Article 10.9, as the case may be, to the extent that the measure, sector, subsector or activity set out in the entry is covered by this Chapter.

4. Article 10.3 shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

- (a) Article 17.8 (National Treatment); or
- (b) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 17 (Intellectual Property).

5. Article 10.4 shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

- (a) Article 17.8 (National Treatment); or
- (b) Article 4 of the TRIPS Agreement.

## **Article 10.11: Exceptions**

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Administration and Trade Facilitation), Chapter 5 (Trade Remedies), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>7</sup> including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. If these measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapter 8 (Investment), Chapter 9 (Cross-Border Trade in Services), Chapter 12 (Telecommunications) including specifically Article 12.23 (Relation to Other Chapters), or Chapter 13 (Electronic Commerce), shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 8.10 (Performance Requirements) with respect to measures covered by Chapter 8 (Investment), under Article 8.9 (Transfers) or Article 9.12 (Payments and Transfers).

3. Notwithstanding Article 8.9 (Transfers) and Article 9.12 (Payments and Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter 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 Chapter, 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 Parties and non-Parties where like

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<sup>7</sup> The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

#### **Article 10.12: Recognition**

1. A Party may recognise prudential measures of a non-Party in the application of measures covered by this Chapter.<sup>8</sup> That recognition may be:

- (a) accorded autonomously;
- (b) achieved through harmonisation or other means; or
- (c) based upon an agreement or arrangement with the non-Party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the Parties.

3. If a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

#### **Article 10.13: Transparency and Administration of Certain Measures**

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border 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. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. Paragraphs 2, 3 and 4 of Article 25.2 (Publication), shall not apply to regulations of general application relating to the subject matter of this Chapter. Each Party shall, to the extent practicable:

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<sup>8</sup> For greater certainty, nothing in Article 10.4 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord recognition to prudential measures of the other Party.

- (a) publish in advance any such regulation 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 that proposed regulation.

4. At the time that it adopts a final regulation, a Party shall, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed regulation.<sup>9</sup>

5. To the extent practicable, each Party shall allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.

6. Each Party shall ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing an application relating to the supply of financial services.

9. On request of an applicant, 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 an investor in a financial institution, a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service, within 120 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. If it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.

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<sup>9</sup> For greater certainty, a Party may address those comments collectively on an official government website.

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

#### **Article 10.14: Self-Regulatory Organisations**

If a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation in order to provide a financial service in or into its territory, it shall ensure that the self-regulatory organisation observes the obligations contained in Article 10.3 and Article 10.4.

#### **Article 10.15: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant financial institutions 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 Article is not intended to confer access to the Party's lender of last resort facilities.

#### **Article 10.16: Expedited Availability of Insurance Services**

The Parties recognise the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorisation of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavour to maintain or improve those procedures.

#### **Article 10.17: Performance of Back-Office Functions**

1. The Parties recognise that the performance of the back-office functions of a financial institution in its territory by the head office or an affiliate of the financial institution, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that financial institution. While a Party may require financial institutions to ensure compliance with any domestic requirements applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

2. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its territory to retain certain functions.

#### **Article 10.18: Consultations**

1. A Party may request, in writing, consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request to hold consultations.

2. With regard to matters relating to existing non-conforming measures maintained by a Party at a regional level of government as referred to in Article 10.10.1(a)(ii):

(a) a Party may request information on any non-conforming measure at the regional level of government of the other Party. Each Party shall establish a contact point to respond to those requests and to facilitate the exchange of information regarding the operation of measures covered by those requests.

(b) if a Party considers that a non-conforming measure applied by a regional level of government of the other Party creates a material impediment to trade or investment by a financial institution, an investor, investments in a financial institution or a cross-border financial service supplier, the Party may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

3. Consultations under this Article shall include officials of the authorities specified in Annex 10-B.

4. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

#### **Article 10.19: Dispute Settlement**

1. Chapter 27 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. If a Party claims that a dispute arises under this Chapter, Article 27.9 (Composition of Panels) shall apply, except that:

- (a) if the Parties agree, each panellist shall meet the qualifications in paragraph 3; and
- (b) in any other case:
  - (i) each Party shall select panellists that meet the qualifications set out in either paragraph 3 or Article 27.10.1 (Qualifications of Panellists); and
  - (ii) if the responding Party invokes Article 10.11, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties otherwise agree.

3. In addition to the requirements set out in Article 27.10.1(b) to (d) (Qualifications of Panellists), panellists in disputes arising under this Chapter shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. If a Party seeks to suspend benefits in the financial services sector, a panel that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 27.18.5 (Non-Implementation – Compensation and Suspension of Benefits), shall seek the views of financial services experts, as necessary.

#### **Article 10.20: Portfolio Management**

1. A Party shall allow a financial institution organised in the territory of the other Party to provide the following services to a collective investment scheme located in its territory<sup>10</sup>:

- (a) investment advice; and
- (b) portfolio management services, excluding:
  - (i) trustee services; and
  - (ii) custodial services and execution services that are not related to managing a collective investment scheme.

2. Paragraph 1 is subject to Article 10.6.3.

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<sup>10</sup> For greater certainty, a Party may require a collective investment scheme or a person of a Party involved in the operation of the scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme.

3. For the purposes of paragraph 1, collective investment scheme means:
- (a) For Australia, a “managed investment scheme” as defined under section 9 of the *Corporations Act 2001* (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the *Corporations Act 2001* (Cth), or an entity that:
    - (i) carries on a business of investment in securities, interests in land, or other investments; and
    - (ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the *Corporations Act 2001* (Cth)) made on terms that the funds subscribed would be invested;
  - (b) For Peru:
    - (i) mutual funds for investments and securities, pursuant to Legislative Decree N° 861 (*Texto Único Ordenado de la Ley de Mercado de Valores aprobado mediante Decreto Supremo N° 093-2002-EF*); or
    - (ii) investment funds, pursuant to Legislative Decree N° 862 (*Decreto Legislativo N° 862, Ley de Fondos de Inversión y sus Sociedades Administradoras*).

#### **Article 10.21: Transfer of Information**

Each Party shall allow a financial institution of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing if such processing is required in the institution’s ordinary course of business. Nothing in this Chapter restricts the right of a Party to adopt or maintain measures to:

- (a) protect personal data, personal privacy and the confidentiality of individual records and accounts; or
- (b) require a financial institution to obtain prior authorisation from the relevant regulator to designate a particular enterprise as a recipient of such information, based on prudential considerations,<sup>11</sup>

provided that this right is not used as a means of avoiding the Party’s commitments or obligations under this Chapter.

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<sup>11</sup> For greater certainty, this requirement is without prejudice to other means of prudential regulation.



## **Article 10.22: Transparency Considerations**

In developing a new regulation of general application to which this Chapter applies, a Party may consider, in a manner consistent with its laws and regulations, comments regarding how the proposed regulation may affect the operations of financial institutions, including financial institutions of the Party or the other Party. These comments may include:

- (a) submissions to a Party by the other Party regarding its regulatory measures that are related to the objectives of the proposed regulation; or
- (b) submissions to a Party by interested persons, including the other Party or financial institutions of the other Party, with regard to the potential effects of the proposed regulation.

## ANNEX 10-A

### CROSS-BORDER TRADE

#### Australia

##### *Insurance and insurance-related services*

1. Article 10.6.1 shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of “cross-border supply of financial services” in Article 10.1, with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) consultancy, risk assessment, actuarial and claim settlement services; and
- (d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 10.1, of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

##### *Banking and other financial services (excluding insurance)*

2. Article 10.6.1 shall apply only with respect to the provision and transfer of financial information, and financial data processing and related software as referred to in subparagraph (o) of the definition of “financial service” in Article 10.1 subject to prior authorisation from the relevant regulator as required; and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of “financial service” in Article 10.1.

## Peru

### *Insurance and insurance-related services*

1. Article 10.6.1 shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of “cross-border supply of financial services” in Article 10.1, with respect to:

- (a) insurance of risks related to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising there from; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) consultancy, actuarial, risk assessment and claim settlement services; and
- (d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 10.1, of insurance of risks relating to services listed in subparagraphs (a) and (b) in this paragraph.

### *Banking and other financial services (excluding insurance)*

2. Article 10.6.1 shall apply only with respect to the provision and transfer of financial information, and financial data processing and related software as referred to in subparagraph (o) of the definition of “financial service” in Article 10.1<sup>12</sup>, subject to prior authorisation from the relevant regulator, as required, and advisory and other auxiliary financial services<sup>13</sup>, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of “financial service” in Article 10.1 (Definitions).<sup>14</sup>

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<sup>12</sup> The Parties understand that, if the financial information or financial data processing referred to in paragraph 2 of this Annex involves personal data, the treatment of such personal data shall be in accordance with Peru’s law regulating the protection of such data and Article 10.23.

<sup>13</sup> The Parties understand that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of “financial service” in Article 10.1.

<sup>14</sup> The Parties understand that a trading platform, whether electronic or physical, does not fall within the range of services specified in this paragraph.

## **ANNEX 10-B**

### **AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES**

The authorities for each Party responsible for financial services are:

- (a) for Australia, the Treasury and the Department of Foreign Affairs and Trade;
- (b) for Peru, the Ministry of Economy and Finance (*Ministerio de Economía y Finanzas*), in coordination with financial regulators.