ANNEX 8-B

FINANCIAL SERVICES

Article 8-B.1: Definitions

For the purposes of this Annex:

cross-border financial service supplier 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;

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 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), as well as services incidental or auxiliary to a service of a financial nature. Financial services comprise 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 transactions;

(g) financial leasing;

(h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers 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, but not limited to, 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 means any natural or juridical person of a Party that seeks to supply or supplies financial services but the term “financial service supplier” does not include a public entity; 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.

Article 8-B.2: Scope

1. This Annex applies to measures adopted or maintained by a Party affecting trade in financial services, in addition to Chapter 8 (Trade in Services).[1]

2. For the purposes of this Chapter, trade in financial services is defined as the supply of a financial service through the following modes:

(a) from the territory of a Party into the territory of the other Party (mode 1);

(b) in the territory of a Party to the financial service consumer of the other Party (mode 2);

(c) by a financial service supplier of a Party, through commercial presence in the territory of the other Party (mode 3); and

(d) by a financial service supplier of a Party, through presence of natural persons in the territory of the other Party (mode 4).

3. For the purposes of Article 8.2.5 (Scope and Coverage), "a service supplied in the exercise of governmental authority" includes the following:

(a) activities conducted by a central bank or 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; and

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

[1] "Trade in financial services" is to be understood in accordance with the definition of "trade in services" contained in Article 8.1 (Definitions).

Article 8-B.3: Regulatory Transparency

1. The Parties recognise that transparent measures 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 the market of each other. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application adopted or maintained by a Party to which this Annex applies are promptly published or otherwise made publicly available.[2]

3. Each Party shall, to the extent practicable:

(a) publish in advance any regulations of general application relating to the subject matter of this Annex that it proposes to adopt and the purpose of the regulations; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on the proposed regulations.

4. At the time it adopts final regulations, each Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.[3]

5. To the extent practicable, each Party should allow reasonable period of time between publication of final regulations and their effective date.

6. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations[4] of the Party are promptly published or otherwise made publicly available in such a manner as to enable interested persons to become acquainted with them.[5] Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons of the other Party regarding measures of general application to which this Annex applies.[6]

7. The regulatory authorities of each Party shall make available to interested persons of the other Party their requirements, including any documentation required, for completing applications relating to the supply of financial services.

---

[2] For greater certainty, the Parties agree that such information may be published in the language chosen by each Party.

[3] For greater certainty, a Party may consolidate its responses to the comments received from interested persons and publish them separately.

[4] This paragraph only applies to a Party when that Party has established self-regulatory organisations.

[5] For greater certainty, the Parties agree that such information may be published in the language chosen by each Party.

[6] The Parties confirm their shared understanding that interested persons in this Article should only be persons whose direct financial interest could be potentially affected by the adoption of the regulations of general application.

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

9. The regulatory authorities of each Party shall make administrative decisions on a completed application of a financial service supplier of the other Party seeking to supply a financial service in the territory of that Party within 180 days and shall notify the applicant of the decision in writing without undue delay. An application shall not be considered complete until all relevant proceedings are conducted and the regulatory authorities consider all necessary information is received. Where it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant without delay and shall endeavour to make the decision within a reasonable time thereafter.

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

Article 8-B.4: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall allow financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities[7], 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.

Article 8-B.5: Confidential Information

Nothing in Chapter 8 (Trade in Services) or in this Annex requires a Party to furnish, disclose or allow access to:

(a) any confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises; and

(b) information relating to the affairs and accounts of individual customers.

Article 8-B.6: Prudential Measures, Financial Stability and Exchange Rate Stability

Nothing in this Agreement shall prevent a Party from taking 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 services supplier, or to ensure the integrity and stability of the financial system or to ensure the stability of the exchange rate

[7] For the purposes of this Article, "public entities" only includes entities covered by subparagraph (a) of the definition of "public entity" of Article 8-B.1 (Definitions).

including to prevent speculative capital flow. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the commitments or obligations of the Party under this Agreement.

Article 8-B.7: Recognition

1. A Party may recognise prudential measures of the other Party or a non-Party in determining how the Party's measures relating to financial services shall be applied.[8] Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement with a non-Party such as those referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other 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 an adequate opportunity for the other Party to demonstrate that such circumstances exist.

Article 8-B.8: Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Annex. The other Party shall give sympathetic consideration to the request.

2. Consultations under this Article shall include officials of the relevant financial authorities.

3. Nothing in this Article shall be construed to require financial authorities participating in consultations under paragraph 2 to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

4. Where a financial authority of a Party requires information for supervisory purposes concerning a financial service supplier in the territory of the other Party, such financial authority may approach the competent financial authority in the territory of the other Party to seek the information. The provision of such information may be subject to the terms, conditions and limitations contained in the relevant law of the other Party or to the requirement of a prior agreement or arrangement between the respective financial authorities.

[8] For greater certainty, nothing in Article 8.5 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord such recognition to prudential measures of the other Party.

Article 8-B.9: Dispute Settlement

1. Chapter 15 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under the scope of this Annex.

2. In addition to the requirements set out in Article 15.9.7 (Composition of Arbitral Tribunals), financial service arbitrators shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

3. In any dispute where an arbitral tribunal finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector to the same extent of the effect that such measure have on the financial services sector of the Party; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.