

ANNEX 6-C
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 modes of service supply as defined in Article 6.1.
- (b) For the purposes of “services” as defined in Article 6.1, "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; or
 - (iii) 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 “services” as defined in Article 6.1, if a Party allows any of the activities referred to in subparagraph (b)(ii) or (iii) 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) “a service supplied in the exercise of governmental authority” as defined in Article 6.1 shall not apply to services covered by this Annex.
- (e) References to "service supplier of the other Party" and "service supplier" as defined in Article 6.1, shall mean "financial service supplier of the other Party" and "financial services supplier" respectively, as defined in paragraph 8.

2. Domestic Regulation

- (a) Notwithstanding any other provisions 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 any other relevant Chapters of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under such Chapters.
- (b) Nothing in this Annex 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 international standard setting body or non-Party 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 international standard setting body or non-Party 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 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.
- (c) Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances as referred to in subparagraph (b) exist.

4. Transparency

- (a) The Parties recognise 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.
- (b) Each Party shall ensure that all measures of general applications relating to the supply of financial services are administered in a reasonable, objective, and impartial manner in sectors where specific commitments are undertaken.
- (c) In lieu of Article 6.20, each Party shall, to the extent practicable:
 - (i) publish in advance any regulations of general application relating to the supply of financial services that it proposes to adopt; and
 - (ii) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.
- (d) At the time it adopts final regulations of general application relating to the supply of financial services that it proposes to adopt, each Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.
- (e) To the extent practicable, each Party should allow reasonable time between publication of final regulations of general application and their effective date.
- (f) Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.
- (g) Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application relating to the supply of financial services.

- (h) Each Party's regulatory authorities shall make available to interested persons the requirements, including any documentation required, for completing applications relating to the supply of financial services.
- (i) On the 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.
- (j) Unless any specified period for an administrative decision is provided for in the applicable laws or regulations, a Party's regulatory authority shall make an administrative decision on a completed application of an applicant 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 are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, or the period specified under the applicable laws or regulations, as the case may be, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.
- (k) On the request of an unsuccessful applicant, a regulatory authority that has denied an application, to the extent practicable, inform the applicant of the reasons for denial of the application.

5. Treatment of Certain Information

Nothing in this Annex requires a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial service suppliers;
- (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; or
- (c) any confidential or proprietary information in the possession of public entities.

6. New Financial Services

- (a) A "new financial service" is a financial service that is not supplied by any financial service supplier in the territory of a Party but which is supplied within the territory of the other Party and includes financial products or the manner in which a financial product or service is delivered.¹
- (b) Each Party shall permit a financial institution of the other Party² to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 6.4.2(e), a Party may

¹ The Parties understand that new financial services include financial services and products that are existing and may be developed in future within the territory of only one Party.

² 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.

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. Where a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorisation and the authorisation may be refused only for prudential reasons.

7. Dispute Settlement

Arbitral tribunals agreed between or appointed by the Parties under Chapter Fourteen (Dispute Settlement) for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

8. Definitions

For the purposes of this Annex:

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

- (a) Direct insurance (including co-insurance):
 - (i) life,
 - (ii) non-life;
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency;
- (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 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; or
- (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 wishing to supply or supplying financial services but the term “financial service supplier” does not include a public entity;

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; and

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