

FINANCIAL SERVICES

ARTICLE 10-B.1

Scope and definitions

1. This Annex applies to measures by a State Party affecting the supply of financial services. References to the supply of a financial service shall mean the supply of a service as defined in subparagraph (a) of Article 10.2 (Definitions) of Chapter 10 (Trade in Services).
2. For the purposes of subparagraph (b) of Article 10.2 (Definitions) of Chapter 10 (Trade in Services), "services supplied in the exercise of governmental authority" means:
 - (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.
3. For the purposes of subparagraph (b) of Article 10.2 (Definitions) of Chapter 10 (Trade in Services), if a State Party allows any of the activities referred to in subparagraphs (b) or (c) of paragraph 2 to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.
4. Subparagraph (c) of Article 2 (Definitions) of Chapter 10 (Trade in Services) shall not apply to services covered by this Annex.
5. In case of inconsistency between the provisions of this Annex and any other provision of this Agreement, the provisions of this Annex shall prevail to the extent of such inconsistency.

6. For the purposes of this Annex:

- (a) "financial service" means any service of a financial nature offered by a financial service supplier of a State 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) to (xv), including credit reference and analysis, investment and

portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(b) "financial service supplier" means any natural or juridical person of a State 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 State Party, or an entity owned or controlled by a State 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;

(d) "self-regulatory organisation" means any non-governmental body, including any organisation or association that is recognised by a State Party as a self-regulatory organisation, and exercises regulatory or supervisory authority over financial services suppliers by statute or delegation from the government or relevant authorities;

(e) "new financial service" means a service of a financial nature, including services related to existing and new financial products or the manner in which a financial product is delivered, that is not supplied by any financial service supplier in the territory of a State Party but which is supplied in the territory of another State Party.

ARTICLE 10-B.2

New Financial Services¹

1. A State Party [A] shall permit a financial service supplier of another State Party [B] (who is authorised, regulated or supervised to supply financial services in B), to supply through commercial presence in A's territory, any new financial services that A would permit its own financial service suppliers (who are authorised, regulated or supervised to supply financial services in A), in like circumstances, to supply without adopting a law or modifying an existing law.²

2. A "new financial service" shall be permitted and provided in accordance with laws and regulations of the State Party in whose territory it is intended to be supplied and is subject to the approval, regulation and supervision of competent authorities of that State Party.

3. Notwithstanding subparagraph (e) of Article 10.3(2) (Market Access) of Chapter 10 (Trade in Services), a State 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. Where a State Party requires such authorisation to supply a new financial service, the State Party shall decide within a reasonable time whether to issue the authorisation.

ARTICLE 10-B.3

Prudential Carve-Out

1. Nothing in this Agreement shall be construed as preventing a State Party from adopting or maintaining measures for prudential reasons, such as:

¹ The State Parties understand that nothing in this Article prevents a financial service supplier of a State Party from applying to another State Party to consider authorising the supply of a financial service that is not supplied in the territory of any State Party. Such application shall be subject to the law of the State Party to which the application is made and, for greater certainty, shall not be subject to the obligations of this Article.

² For greater certainty, a State Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
 - (b) the maintenance of the safety, soundness, integrity, or financial responsibility of a financial service supplier; or
 - (c) ensuring the integrity and stability of a State Party's financial system.
2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding a State Party's commitments or obligations under this Agreement.
3. Nothing in this Agreement shall be construed to require a State Party to furnish or allow access to information relating to the affairs and accounts of individual clients or any confidential or proprietary information in the possession of public entities.

ARTICLE 10-B.4

Domestic Regulation

1. These provisions apply to measures of the State Parties relating to licensing requirements and procedures and qualification requirements and procedures that affect trade in financial services as defined in this Annex.
2. Disciplines in this Article shall only apply to sectors for which a State Party has undertaken specific commitments and to the extent that these commitments apply.
3. The State Parties recognise the right to regulate, and to introduce new regulations, on the supply of financial services within their territories in order to meet their policy objectives.
4. Each State Party shall ensure that all measures of general application relating to supply of financial services are:
- (a) administered in a reasonable, objective and impartial manner; and

(b) promptly published or otherwise made available in a manner so as to enable interested persons to become acquainted with them.

5. If a State Party requires authorisation for the supply of a service, the competent authorities of a State Party shall make publicly available the necessary licensing requirements and procedures, or qualification requirements and procedures for completing applications relating to the supply of financial services.

6. To the extent practicable, and in accordance with its laws and regulations, each State Party shall endeavour to:

(a) publish in advance any measure of general application relating to the supply of financial services that it proposes to adopt and the purpose of the measure, and

(b) provide interested persons with a reasonable opportunity to comment on such proposed measures.

7. To the extent practicable, each State Party shall endeavour to allow a reasonable time between the publication of final measures of general application relating to the supply of financial services and their effective date.

8. The competent authorities of each State Party shall process without undue delay applications related to the supply of financial services submitted by service suppliers of another State Party.

9. Each State Party shall maintain appropriate mechanisms for responding to enquiries from interested persons regarding measures of general application relating to the supply of financial services.

10. Where a State Party requires authorisation for the supply of a financial service, the competent authorities of the State Party shall:

- (a) to the extent practicable, permit an applicant to submit an application at any time throughout the year³;
- (b) allow a reasonable period for the submission of an application where specific time periods for applications exist;
- (c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the State Party's laws and regulations;
- (d) if they consider an application complete for processing under the State Party's laws and regulations,⁴ within a reasonable period of time after the submission of the application ensure that:
 - (i) the processing of the application is completed; and
 - (ii) the applicant is informed of the decision concerning the application⁵, to the extent possible in writing⁶;
- (e) at the request of an applicant, provide without undue delay, information concerning the status of the application;
- (f) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format; and

³ Competent authorities are not required to start considering applications outside of their official working hours and working days.

⁴ Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".

⁵ Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application or rejection of the application.

⁶ "In writing" may include in electronic form.

(g) accept copies of documents, that are authenticated in accordance with the State Party's laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

11. Each State Party shall ensure that its competent authorities, with respect to authorisation fees⁷ they charge, provide applicants with a schedule of fees or information on how fee amounts are determined.

12. Each State Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory.⁸

13. Each State Party shall maintain or institute as soon as practicable judicial, arbitral, or administrative tribunals or procedures that provide for, at the request of an affected financial service supplier of a State Party, a prompt review of, and if justified, appropriate remedies for, administrative decisions affecting trade in financial services. If such procedures are not independent of the agency entrusted with the administrative decision concerned, each State Party shall ensure that the procedures are applied in a way that provides for an objective and impartial review.

14. Nothing in paragraph 13 shall be construed to require a State Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

⁷ Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

⁸ For greater certainty, for the purposes of this Annex, regulatory standards adopted by international standard-setting bodies may be considered as internationally agreed standards, where the State Parties' financial regulatory authorities have agreed on such regulatory standards and participate in such bodies.

ARTICLE 10-B.5

Self-Regulatory Organisations

1. Where a State Party requires a financial service supplier of another State Party established in its territory to be a member of, participate in, or have access to, a self-regulatory organisation, to provide a financial service in the territory of that State Party, that State Party shall ensure observance of the obligations set out in Article 10.4 (National Treatment) of Chapter 10 (Trade in Services) by such self-regulatory organisation.
2. For greater certainty, nothing in this Article prevents a self-regulatory organisation referred to in paragraph 1 from adopting its own requirements or procedures that are consistent with the obligations set out in Article 10.4 (National Treatment) of Chapter 10 (Trade in Services), which, insofar as such measures are taken by non-governmental bodies and are not taken in relation to the exercise of powers delegated by central, regional, or local governments or authorities, are not considered to be measures of a State Party and do not fall within the scope of this Annex.

ARTICLE 10-B.6

Recognition of prudential measures

1. A State Party may recognise prudential measures of another State Party or a non-State Party in the application of measures covered by this Annex. That recognition may be:
 - (a) accorded autonomously;
 - (b) achieved through harmonisation or other means; or
 - (c) based upon an agreement or arrangement with another State Party or a non-State Party.
2. In the case a State Party accords recognition as set out in paragraph 1, the State Party shall provide adequate opportunity to another State 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 relevant State Parties.

3. If a State Party accords recognition of prudential measures under subparagraph (c) of paragraph 1 and the circumstances laid out in paragraph 2 exist, that State Party at the date of the entry into force of this Agreement or thereafter, shall provide adequate opportunity to another State Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

ARTICLE 10-B.7

Payment and Clearing Systems

Under terms and conditions that accord national treatment, each State Party shall, as permitted by each State Party's access criteria, grant to financial service suppliers of another State Party, established in its territory and regulated or supervised as financial service suppliers under its relevant laws and regulations, access to payment and clearing facilities 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 State Party's lender of last resort facilities.

ARTICLE 10-B.8

Transfer and processing of information

1. Each State Party shall, in accordance with its laws and regulations and subject to appropriate safeguards on privacy and confidentiality, permit a financial service supplier of another State Party to transfer information in electronic or other form, into and out of its territory, for data processing, where such processing is required in the ordinary course of business of such financial service supplier.

2. Nothing in this Article restricts the right of a State Party to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts, provided that such measures are not used to circumvent this Article.

ARTICLE 10-B.9

Consultations

1. A State Party may request consultations with another State Party regarding any matter arising under this Agreement that affects financial services. The other State Party shall give sympathetic consideration to the request. The consulting State Parties shall report the results of their consultations to the Joint Committee established pursuant to Article 19.1 (Joint Committee) of Chapter 19 (Institutional, General and Final Provisions).
2. Consultations under this Article shall include officials of the relevant authorities.
3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.
4. Nothing in this Article shall be construed to require a State Party to derogate from its relevant laws and regulations regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the State Parties.
5. Consultations in accordance with this Article are without prejudice to and do not replace consultations under Article 18.6 (Consultations) of Chapter 18 (Dispute Settlement).

ARTICLE 10-B.10

Dispute Settlement

1. Except otherwise provided for, Chapter 18 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Annex.
2. When a State Party claims that a dispute arises under this Annex, including when there is a

dispute in which a State Party invokes Article 10-B.3 (Prudential Carve-Out):

- (a) the chairperson of the arbitration panel shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions; and
- (b) the arbitration panel shall compose of arbitrators meeting the criteria set out in paragraph 3 of Article 18.9 (Composition and establishment of the arbitration panel) of Chapter 18 (Dispute Settlement).

If disputing State Parties so agree, the arbitration panel may compose entirely of arbitrators who have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

3. Notwithstanding Article 18.15 (Compensation and suspension of concessions or other obligations) of Chapter 18 (Dispute Settlement), where an arbitration panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

- (a) only the financial services sector, the complaining State Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining State Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the State Party's financial services sector; or
- (c) only a sector other than the financial service sector, the complaining State Party may not suspend benefits in the financial services sector.