

## **CHAPTER 11**

### **FINANCIAL SERVICES**

#### **Article 11.1: Scope and Coverage**

1. This Chapter applies 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 such investors, in financial institutions in the Party's territory; and
- (c) cross-border trade in financial services.

2. Chapters 9 (*Investment*) and 10 (*Cross-Border Trade in Services*) apply to measures described in paragraph 1 only to the extent that these Chapters or the Articles therein are incorporated into this Chapter. Accordingly:

- (a) Articles 9.7 (*Expropriation and Compensation*), 9.8 (*Transfers*), 9.11 (*Denial of Benefits*) and 10.12 (*Denial of Benefits*) are hereby incorporated into and made a part of this Chapter;
- (b) Article 9.13 (*Investor-State Dispute Settlement*) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 9.7 (*Expropriation and Compensation*), 9.8 (*Transfers*), 9.11 (*Denial of Benefits*) as incorporated into this Chapter; and
- (c) Article 10.11 (*Transfers and Payments*), 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 11.5.

3. This Chapter does 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 if a Party allows any of the activities or services referred to in sub-paragraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter does not apply to laws, regulation or requirements governing the procurement by government agencies of financial services purchased for government purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

#### **Article 11.2: National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favorable 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 purposes of the national treatment obligations in Article 11.6.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

#### **Article 11.3: Most-Favoured Nation Treatment**

Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of the other Party or of a non-Party, in like circumstances.

#### **Article 11.4: Recognition of Prudential Measures**

1. A Party may recognise prudential measures of the other Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded unilaterally;
- (b) achieved through harmonization or other means; or

- (c) based upon an agreement or arrangement with the other Party or a non-Party.

2. A Party according 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. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, the 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 11.5: Market Access for Financial Institutions**

A Party shall not adopt or maintain, with respect to financial institutions of the other Party, either on the basis of a regional sub-division 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 requirements of an economic needs test;
  - (i) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (i i) 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; 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 a numerical quota 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 11.6: Cross-Border Trade in Financial Services**

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 as specified in Annex 11.6.
2. A 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 that other Party.
3. This Article does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this obligation, as long as such definitions are not inconsistent with paragraph 1.
4. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration, authorisation or licensing of cross-border financial service suppliers of the other Party and of financial instruments.

### **Article 11.7: New Financial Services<sup>1</sup>**

A Party shall permit a financial institution of the other Party to supply any new financial service that the former Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 11.5(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires such authorization of the new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

### **Article 11.8: Treatment of Certain Information**

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

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<sup>1</sup> The Parties understand that nothing in this Article 11.7 prevents a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is not supplied in the territory of any Party. Such 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 the obligations of Article 11.7.

interests or prejudice legitimate commercial interests of particular enterprises.

#### **Article 11.9: Senior Management and Boards of Directors**

1. A Party may not require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. A Party may not require that a majority 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 11.10: Non-Conforming Measures**

1. Articles 10.2, 10.3, 10.5, 10.6 and 10.9 do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at the central level of government, as set out by that Party in Section A of its Schedule to Annex III (*Non-Conforming Measures*); or
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in sub-paragraph (a).
2. Articles 10.2, 10.3, 10.5, 10.6 and 10.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in Section B of its Schedule to Annex III (*Future Measures*).
3. Section C of the Schedule to Annex III establishes certain specific commitments by each Party.
4. A non-conforming measure set out in a Party's Schedule to Annex I or II as a measure to which Articles 9.3 (*National Treatment*), 9.4 (*Most-Favored Nation Treatment*), 10.3 (*National Treatment*), 10.4 (*Most-Favored Nation Treatment*) and 10.5 (*Market Access*) does not apply, shall be treated as a non-conforming measure described in paragraph 1(a) to which Articles 11.2, 11.3, or 11.5, as the case may be, does not apply, to the extent that the measure, sector, sub-sector or activity set out in the schedule of non-conforming measures is covered by this Chapter.

#### **Article 11.11: Exceptions**

1. Notwithstanding any other provision of this Chapter, Chapters 9 (*Investment*), 12 (*Telecommunications*) or 13 (*Electronic Commerce*), including specifically Article 12.12 (*Relationship with other Chapters*), and in

addition Article 11.1 with respect to the supply of financial services in the territory of a Party by an investor of the other Party or investments of investors of the other Party, as defined in Chapter 9 (*Investment*), a Party shall not be prevented from adopting or maintaining measures for prudential reasons<sup>2</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. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter, Chapters 9 (*Investment*), 12 (*Telecommunications*) or 13 (*Electronic Commerce*), including specifically Article 12.12 (*Relationship with other Chapters*), and in addition Article 11.1 with respect to the supply of financial services in the territory of a Party by an investor of the other Party or investments of investors of the other Party, as defined in Chapter 9 (*Investment*), applies 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 Articles 9.6 (*Performance Requirements*), 9.8 (*Transfers*) or 10.11 (*Transfers and Payments*).

3. Notwithstanding Articles 9.8 (*Transfers*) or 10.11 (*Transfers and Payments*), 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 the adoption or enforcement by any Party of 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 countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

#### **Article 11.12: Transparency**

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border financial

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<sup>2</sup> It is understood 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.

service suppliers are important in facilitating financial institutions located outside the territory of the Party, financial institutions of the other Party and cross-border financial service suppliers to gain access to and operate in the other Party's market. Each Party commits to promote regulatory transparency in financial services.

2. In lieu of Article 14.2 (*Publication*), a Party shall, to the extent practicable:

- (a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and
- (b) provide interested persons of the other Party a reasonable opportunity to comment on such proposed regulations.

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

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

5. Each Party shall ensure that the rules of general application adopted or maintained by their self-regulatory organisations are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

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

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

9. A regulatory authority shall make an administrative decision on a completed 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 are held and all necessary information is received. Where 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 time thereafter.

### **Article 11.13: Self-Regulatory Organisations**

Where 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 to provide a financial service in or into the territory of that Party, that Party shall ensure observance of the obligations set out in Articles 11.2 and 11.3 by such self-regulatory organisation.

### **Article 11.14: Consultations**

1. A Party may request 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. The Parties shall report the results of their consultations to the Administrative Commission established pursuant to Article 17.1 (*Administrative Commission of the Agreement*).
2. Consultations under this Article shall include officials of the authorities specified in Annex 11A.
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 Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

### **Article 11.15: Dispute Settlement**

1. Except otherwise provided for, Chapter 15 (*Dispute Settlement*) applies as modified by this Article to the settlement of disputes arising under this Chapter.
2. When a Party claims that a dispute arises under this Chapter, the panel shall compose:
  - (a) where the disputing Parties so agree, entirely of panelists meeting the criteria set out in paragraph 3; and
  - (b) in any other case, panelists meeting the criteria set out in either paragraph 3 or in Article 15.7.5 (*Composition of Arbitral Panels*),



However, the chair of the panel shall meet the criteria set out in paragraph 3 if Article 11.11 is invoked by the Party complained against, unless the Parties agree otherwise.

3. Financial services panelists shall :

- (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
- (b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and
- (c) meet the criteria set out in Article 15.7.5 (*Composition of Arbitral Panels*).

4. Notwithstanding Article 15.16 of Dispute Settlement (*Non-implementation – Compensation and Suspension of Benefits*), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute 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 that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

#### **Article 11.16: Definitions**

For purposes of this Chapter:

1. **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 services;

2. **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 one Party into the territory of the other Party;
- (b) in the territory of one Party by one person of that Party to a person of the other Party; or

(c) by a national of one 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 investor of the other Party, or investments of such investors, in financial institutions in the Party's territory;

3. **enterprise of a Party** means an enterprise, as defined in Article 1.3.3 (*Definitions of General Application*), organised or constituted under the laws of a Party and a branch located in the territory of a Party. For the purposes of this Chapter, an **enterprise of a Party** includes a branch of an enterprise of a non-Party in the territory of a Party;

4. **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 is located;

5. **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;

6. **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;

(i) non-life;

(b) reinsurance and retrocession;

(c) insurance intermediation, such as brokerage and agency;

(d) service 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, travelers checks 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 checks, 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;
  - (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;
- (p) advisory, intermediation and other auxiliary financial services on all the activities listed in sub-paragraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

7. **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;

8. **investment** means “investment” as defined in Article 9.1 (*Definitions*), 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 where 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 of a financial institution referred to in sub-paragraph (a), is not an investment;

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 if such loan or debt instrument meets the criteria for investments set out in Article 9.1 (*Definitions*).

9. **investor of a Party** means a Party or state enterprise thereof, or a person of that Party, that attempts to make, is making, or has made an investment in the territory of the other Party;

10. **new financial service** means, for purposes of Article 11.7, 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;

11. **public entity** means:

- (a) a government, 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

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

**ANNEX 11A**  
**AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES**

The authority of each Party responsible for financial services is:

- (a) for Panama, the Ministry of Trade and Industries or its successor in consultation with the corresponding competent authorities (*Superintendencia de Bancos, Superintendencia de Seguros y Reaseguros and the Comision Nacional de Valores*);  
and
- (b) for Singapore, the Monetary Authority of Singapore.

## **ANNEX 11.6**

### **APPLICATION OF ARTICLE 11.6**

**For Panama:**

Article 11.6 applies to the cross-border supply of or trade in financial services as defined in sub-paragraph (a) of the definition of "cross-border trade in financial services or cross-border supply of financial services" in Article 11.16 with respect to the Parties' commitments set out in their respective Schedules to the General Agreement on Trade in Services, including any changes to their Schedules made after the entry into force of this Agreement pursuant to the Doha Development Agenda or any other negotiations under GATS.

**For Singapore:**

Article 11.6 applies to the cross-border supply of or trade in financial services as defined in sub-paragraph (a) of the definition of "cross-border trade in financial services or cross-border supply of financial services" in Article 11.16 with respect to the Parties' commitments set out in their respective Schedules to the General Agreement on Trade in Services, including any changes to their Schedules made after the entry into force of this Agreement pursuant to the Doha Development Agenda or any other negotiations under GATS.