

## ANNEX 7-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 supply of a service as defined in sub-paragraph (t) of Article 7.1 (Definitions).
- (b) For the purposes of sub-paragraph (a) of Article 7.1 (Definitions), “**a service 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; and
  - (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 sub-paragraph (a) of Article 7.1 (Definitions), if a Party allows any of the activities referred to in sub-paragraphs (b)(ii) or (b)(iii) of this paragraph 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) Sub-paragraphs (b), (d), (o) and (v) of Article 7.1 (Definitions) shall not apply to services covered by this Annex.
- (e) For the purposes of this Annex, references to “*service supplier of the other Party*” and “*service supplier*” in Chapter 7 (Trade in Services), shall mean “**financial service supplier of the other Party**” and “**financial service supplier**” respectively, as defined in paragraph 7 of this Annex.

## 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 to the provisions of this Agreement, they shall not be used as a means of avoiding the Party’s commitments or obligations under the Agreement.
- (b) Nothing in this Agreement 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 the other Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:
  - (i) accorded unilaterally;
  - (ii) achieved through harmonisation or other means; or
  - (iii) based upon an agreement or arrangement with the other Party or a non-Party.
- (b) A Party according recognition of prudential measures under sub-paragraph (a) above 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.
- (c) Where a Party accords recognition of prudential measures under sub-paragraph (a)(iii) above with a non-Party and the circumstances set out in sub-paragraph (b) above 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.

### **4. New Financial Services**

Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service of a type similar to those services that it would permit its own financial service suppliers, in like circumstances, to supply under its domestic law. A Party may determine the institutional and juridical form through which the new financial services may be supplied and may require authorisation for the supply of the service. Where a Party requires such authorisation of the new financial services, it shall give its decision within a reasonable time and the authorisation may only be refused for prudential reasons.

### **5. Transparency**

- (a) Each Party shall ensure that measures of general application relating to supply of financial services are promptly published or otherwise made available in a manner so as to enable interested persons to become acquainted with them.
- (b) To the extent practicable, and in accordance with its domestic law, each Party shall:
  - (i) publish in advance any measure of general application relating to supply of financial services that it proposes to adopt and the purpose of the measure; and
  - (ii) provide interested persons with a reasonable opportunity to comment on such proposed measures.
- (c) To the extent practicable, each Party shall allow a reasonable time between the

publication of final measures of general application relating to supply of financial services and their effective date.

- (d) Each Party shall ensure that all measures of general application relating to supply of financial services are administered in a reasonable, objective and impartial manner.
- (e) Each Party shall maintain appropriate mechanisms for responding to enquires from interested persons regarding measures of general application relating to supply of financial services.

## 6. Dispute Settlement

Persons appointed to arbitration panels under Chapter 16 (Dispute Settlement) for disputes on obligations in financial services matters under this Agreement shall have the necessary expertise or experience relevant to the specific financial service under dispute, and be chosen strictly on the basis of objectivity, reliability and sound judgment.

## 7. Modification of Commitments for Financial Services

- (a) A Party (referred to in the following sub-paragraphs as the “**modifying Party**”) may, in accordance with sub-paragraphs (b) and (c) below, modify or add to its commitments for Financial Services as set out in its Schedule of Specific Commitments for Trade in Services.
- (b) Such modifications or additions shall not:
  - (i) be introduced for the purpose of affording undue protection to financial institutions of the modifying Party; and
  - (ii) discriminate between the other Party and any non-Party, except for measures that accord differential treatment to that non-Party under any bilateral or multilateral international agreement between the modifying Party and such non-Party in force or signed prior to, on or after the date of entry into force of this Agreement.
- (c) The modifying Party may only make such modifications or additions if it:
  - (i) notifies the other Party in writing of its intent at least three (3) months prior to the date of implementation of the measure;
  - (ii) begins consultations with the other Party upon request by that Party and gives due consideration to the views expressed by that Party in such consultations with a view to reaching an agreement on the appropriate compensatory adjustments; and
  - (iii) makes compensatory adjustments to its Schedule of Commitments for Financial Services in accordance with any agreement reached between the Parties on compensatory adjustments, to the extent possible in the same sector or sub-

sector of the financial institution that is affected by the modification so as to maintain a general level of mutually advantageous commitments that is not less favourable to investments and trade in financial services than that provided for in its Schedule of Commitments prior to the modification.

- (d) If agreement is not reached between the Parties on any necessary compensatory adjustments, the matter may be referred to arbitration.

## 8. Definitions

For the purposes of this Annex:

- (a) “**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*

- (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;
  - (B) derivative products including, but not limited to, futures and options;
  - (C) 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 sub-paragraphs (v) through (xv) above, 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 Party wishing to supply or supplying financial services, but the term “**financial service supplier**” does not include a public entity;
- (c) “**juridical person**” has the same meaning as sub-paragraph (f) of Article 7.1 (Definitions).
- (d) “**juridical person of a Party**” means a juridical person which is either:
- (i) constituted or otherwise organised under the law of the other Party;  
or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:

- (A) natural persons of the other Party; or
  - (B) juridical persons of the other Party identified under sub-paragraph (d)(i) above;
- (e) “**natural person of a Party**” has the same meaning as sub-paragraph (l) of Article 7.1 (Definitions);
- (f) “**public entity**” means:
  - (i) 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
  - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;
- (g) “**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 government or authorities.