

ANNEX 11-C FINANCIAL SERVICES

ARTICLE 11.1: SCOPE AND DEFINITIONS

1. This Annex applies to measures affecting the trade of financial services¹.
2. For the purpose of this Annex:

financial institution means any financial intermediary or other enterprise that is authorized 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). Financial services include the following activities:

- (a) Insurance and insurance-related services
 - (i) direct insurance (including co-insurance):
 - (A) life;
 - (B) non-life;
 - (ii) reinsurance and retrocession;
 - (iii) insurance inter-mediation, such as brokerage and agency; and
 - (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
- (b) Banking and other financial services (excluding insurance):
 - (i) acceptance of deposits and other repayable funds from the public;
 - (ii) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - (iii) financial leasing;
 - (iv) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 - (v) guarantees and commitments;

¹ “trade in financial services” shall be understood in accordance with the definition contained in paragraph 2 of Article I of the General Agreement of Trade in Services (GATS)

- (vi) 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 checks, 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;
- (vii) 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;
- (viii) money broking;
- (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (x) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (xi) provision and transfer of financial information, financial data processing and related software;
- (xii) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (i) through (xi) above, 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. 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;

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency or other organization or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers;

services supplied in the exercise of governmental authority includes the following:

- (a) activities conducted by a central bank or a 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.

For the purposes of the definition of "services", contained in this Chapter, if a Party allows any of the activities, referred to in subparagraphs (b) or (c) above, to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

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

ARTICLE 2: CLEARANCE AND PAYMENT SYSTEMS

1. Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to the use of payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to a Party's lender of last resort facilities.

2. Where membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Party in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party; or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure that such entities accord national treatment to financial service suppliers of the other Party resident in its territory.

ARTICLE 3: PRUDENTIAL CARVE-OUT

1. Notwithstanding any other provisions of this Annex, a Party may adopt or maintain measures for prudential reasons including for:

- (a) the protection of investors, depositors, policy-holders, policy claimants, persons to whom a fiduciary duty is owed by a financial service supplier or any similar financial market participants;
- (b) ensuring the integrity and stability of a Party's financial system.

2. Measures referred to in paragraph 1 shall not be more burdensome than necessary to achieve their aim or constitute a disguised restriction on trade in services, and shall not discriminate against financial services or financial service suppliers of the other Party in comparison to its own like financial services or like financial service suppliers.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to personal data the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

4. Without prejudice to other means of prudential regulation of the cross-border supply of financial services, a Party may require the registration or authorization of cross-border suppliers of financial services of the other Party and of financial instruments.

ARTICLE 4: RECOGNITION OF PRUDENTIAL MEASURES

1. Where a Party recognizes, by agreement or arrangement, prudential measures of a non-Party in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for another Party to negotiate its accession to such an agreement or arrangement, or to negotiate a comparable agreement or arrangement 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.

2. Where a Party accords such recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

ARTICLE 5: DATA PROCESSING

1. Each Party shall permit a financial service supplier of the other 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 Annex restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts, and other information protected under Law.

ARTICLE 6: SPECIFIC EXCEPTIONS

1. Nothing in this Annex shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities or measures conducted or adopted by a central bank or monetary, exchange rate or credit authority or by any other public entity in pursuit of monetary and related credit or exchange rate policies.
3. Nothing in this Annex shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
4. Nothing in this Annex shall be construed to prevent a Party from adopting measures that limits 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.