

Annex 7
referred to in Chapter 7

Financial Services

Article 1
Scope of Application

1. This Annex provides for supplementary provisions to Chapter 7, including scope of application and definitions, and the BIT, and shall apply to measures by a Party affecting trade in financial services.

2. Appendix of this Annex provides for specific exceptions for Peru concerning the activities or services referred to in subparagraph 2(a)(ii) of Article 2 of this Annex.

Article 2
Definitions

1. For the purposes of this Annex:

(a) the term "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:

(i) insurance and insurance-related services

(A) direct insurance (including co-insurance):

(aa) life; and

(bb) non-life;

(B) reinsurance and retrocession;

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

- (D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
- (ii) banking and other financial services (excluding insurance)
 - (A) acceptance of deposits and other repayable funds from the public;
 - (B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - (C) financial leasing;
 - (D) all payment and money transmission services, including credit, charge and debit cards, travelers checks and bankers drafts;
 - (E) guarantees and commitments;
 - (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (aa) money market instruments (including checks, bills and certificates of deposits);
 - (bb) foreign exchange;
 - (cc) derivative products including, but not limited to, futures and options;
 - (dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (ee) transferable securities; and

- (ff) other negotiable instruments and financial assets, including bullion;
- (G) 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;
- (H) money broking;
- (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (J) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (K) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) through (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (b) the term "financial service supplier" means a person wishing to supply or supplying financial services but "financial service supplier" does not include a public entity;

- (c) the term "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, which is not supplied by any financial service supplier in the Area of a Party but which is supplied in the Area of the other Party or in any other member of the World Trade Organization;
 - (d) the term "public entity" means:
 - (i) a government, the central bank or 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 the central bank or monetary authority, when exercising those functions;
 - (e) the term "self-regulatory body" means any non-governmental body, including any securities or futures exchange or market, clearing agency, or any other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers; and
 - (f) the term "trade in financial services" or "supply of financial services" means:
 - (i) cross-border trade in financial services; and
 - (ii) the supply of financial services by covered investments.
2. (a) For the purposes of paragraph 5 of Article 101, the term "services supplied in the exercise of governmental authority" means the following:

- (i) activities conducted by the central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (ii) activities or services forming part of a statutory system of social security or public retirement plans; and
 - (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
- (b) For the purposes of paragraph 5 of Article 101, if a Party allows any of the activities or services referred to in subparagraphs (a) (ii) or (a) (iii) to be conducted by its financial service suppliers in competition with a public entity or another financial service supplier, "services supplied in the exercise of governmental authority" shall not include such activities or services.
- (c) The term "services supplied in the exercise of governmental authority" as defined in paragraph 5 of Article 101 shall not apply to services covered by this Annex.

Article 3 New Financial Services

A Party shall permit financial service suppliers of the other Party established in the Area of the former Party to offer in the Area of the former Party any new financial service. However, nothing in this Annex shall prohibit a Party from requiring the issuance of a decree or any kind of regulation by the executive branch, regulatory agencies or central bank, in order to authorize the supply of new financial services not specifically authorized in its law.

Note: Notwithstanding the provision of paragraph (e) of Article 106, for prudential reasons within the context of paragraph 1 of Article 8 of this Annex, 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.

Article 4 Payment and Clearing Systems

Under terms and conditions that accord national treatment, a Party shall grant to financial service suppliers of the other Party established in the Area of the former Party access to payment and clearing systems 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 former Party's lender of last resort facilities.

Article 5 Self-Regulatory Bodies

Where:

- (a) membership or participation in, or access to, a self-regulatory body 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
- (b) the Party provides directly or indirectly such bodies, privileges or advantages in supplying financial services,

the Party shall ensure that such bodies accord national treatment to financial service suppliers of the other Party resident in the Area of the former Party.

Article 6

Transparency

1. Each Party shall promote regulatory transparency in financial services. Accordingly, the Parties shall undertake to consult, as appropriate, for the purpose of implementing objective and transparent regulatory procedures in each Party, taking into account:

- (a) the work undertaken by the Parties under the GATS and in other fora relating to trade in financial services; and
- (b) the importance of regulatory transparency, identifiable policy objectives and clear and consistently applied regulatory procedures that are communicated or otherwise made publicly available.

2. The competent authorities of each Party shall, to the extent practicable, make available to interested persons, upon request, the requirements and procedures for completing applications related to the trade in financial services.

3. Where a license is required for the supply of a financial service, the competent authorities of a Party shall make the requirements and procedures for such a license publicly available. The period of time normally required to reach a decision concerning an application considered complete under the Party's laws and regulations for a license shall:

- (a) be made available to any applicant upon request;
- (b) be made publicly available; or
- (c) be made available by a combination of subparagraphs (a) and (b).

4. In lieu of Article 5, each Party shall, to the extent practicable, publish in advance any regulations of general application relating to the subject matter of this Annex that it proposes to adopt and the purpose of the regulations.

Note: For greater certainty, where a Party publishes regulations in advance as described in this paragraph, the Party shall provide an address, whether electronic or otherwise, to which interested persons and the other Party may send their comments.

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

Article 7 Expeditious Application Procedures

1. The competent authorities of each Party shall process, without undue delay, applications related to the supply of financial services submitted by service suppliers of the other Party.

2. If the competent authorities of a Party require additional information from the applicant in order to process its application, they shall notify the applicant of the requirement to be fulfilled for the processing of the application without undue delay.

3. If the competent authorities of a Party deny an application, the reason for the denial shall, to the extent practicable, be made known to the applicant upon request.

4. Where a license is required for the supply of a financial service, and if the applicable requirements for the granting of a license are fulfilled, the competent authorities of a Party shall grant the applicant a license, as a rule within six months after the submission of its application is considered complete under the laws and regulations of that Party. Where it is not practicable for a decision to be made within six months, the competent authorities shall endeavor to make the decision within a reasonable period of time thereafter.

Article 8 Exceptions

1. Notwithstanding any other provisions of Chapters 7 through 9 and the BIT, including any of their Annexes, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for:

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

2. Where such measures do not conform with the provisions referred to in paragraph 1, they shall not be used as a means of avoiding the Party's obligations under those provisions.

Article 9 Effective and Transparent Regulation

1. Each Party shall make its best endeavors to ensure that the Basel Committee's "Core Principles for Effective Banking Supervision", the standards and principles of the International Association of Insurance Supervisors and the International Organization of Securities Commissions' "Objectives and Principles of Securities Regulation" are implemented and applied in its Area.

2. 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.

Article 10 Recognition of Prudential Measures

Where a Party recognizes, by an agreement or arrangement, prudential measures of a non-Party, including members of any international regulatory body, in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for the other 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. Where a Party accords such recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

Article 11 Transfers of Information and Processing of Information

Neither Party shall take measures that prevent transfers of information into or out of its Area or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier of the other Party. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of Chapter 7 or of the BIT, including any of their Annexes.

Note: For Peru, where a financial service supplier intends to make a significant outsourcing of its data processing to be done abroad, Peru will require the financial service supplier to obtain prior authorization of the relevant regulator in writing.

Article 12

Dispute Settlement

Arbitral tribunals established under Article 209 for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

Appendix
Specific Exceptions for Peru

1. Chapter 7 and this Annex shall apply to measures adopted or maintained by a Party relating to activities or services described in subparagraph 2(a)(ii) of Article 2 of this Annex only to the extent that a Party allows its financial service suppliers to supply such activities or services in competition with a public entity or another financial service supplier. For Peru, Chapter 7 and this Annex shall not apply to such measures:

- (a) to the extent that Peru reserves such activities or services to the government, a public entity or a financial service supplier and they are not supplied in competition with another financial service supplier; or
- (b) relating to those contributions with respect to which the supply of such activities or services is so reserved.

2. With respect to the activities or services described in subparagraph 2(a)(ii) of Article 2 of this Annex, Peru may:

- (a) designate, formally or in effect, a monopoly, including a financial service supplier, to supply some or all activities or services;
- (b) permit or require participants to place all or part of their relevant contributions under the management of an entity other than the government, a public entity or a designated monopoly;
- (c) preclude, whether permanently or temporarily, some or all participants from choosing to have certain activities or services supplied by an entity other than the government, a public entity or a designated monopoly; and

(d) require that some or all activities or services be supplied by financial service suppliers located in the Area of Peru. Such activities or services may include the management of some or all contributions or the provision of annuities or other withdrawal (distribution) options using certain contributions.

3. For the purposes of this Appendix, the term "contribution" means an amount paid by or on behalf of an individual with respect to, or otherwise subject to, a plan or system described in subparagraph 2(a)(ii) of Article 2 of this Annex.