

# Chapter 20: Financial Services – Text of the 2023 Canada - Ukraine Free Trade Agreement

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The 2017 CUFTA will remain in force until entry into force of the 2023 modernized agreement. Until such time, please refer to the [2017 CUFTA text](#) for information on the existing trade agreement between Canada and Ukraine.

## Article 20.1: Definitions

For the purposes of this Chapter:

**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 a service;

**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 a Party into the territory of the other Party;
- (b) in the territory of a Party to a person of the other Party;  
or
- (c) by a national of a 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 investment in that territory;

**financial institution** means a 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 institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by a person of the other Party;

**financial service** means a 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; and
  - (ii) 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;

*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 transaction;
- (g) financial leasing;
- (h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques 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 cheques, bills, certificates of deposits);
- (ii) foreign exchange;
- (iii) derivative products, including futures and options;
- (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
- (v) transferable securities; and
- (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; and
- (p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring, and strategy;

**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;

**investment** means "investment" as defined in Article 17.1 (Definitions), except that, with respect to "a loan to an enterprise" and "a debt instrument of an enterprise" referred to in that Article:

- (a) a loan to or debt instrument issued by a financial institution is an investment only if 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 issued by a financial institution referred to in subparagraph (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 for the purposes of Chapter 17 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 17.1 (Definitions);

**investor of a Party** means a Party, or a person of a Party, that attempts to make [Footnote1](#), is making, or has made an investment in the territory of the other Party. For the purpose of this definition, a "person of a Party" that is an enterprise of a Party means:

- (a) an enterprise that is constituted or organized under the law of that Party and that has substantial business activities in the territory of that Party. A determination of whether an enterprise has substantial business activities in the territory of a Party requires a case-by-case, fact-based inquiry; or
- (b) an enterprise that is constituted or organized under the law of that Party, and is directly or indirectly owned or controlled by a national of that Party or by an enterprise mentioned under subparagraph (a);

**new financial service** means 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;

**person of a Party** means "person of a Party" as defined in Article 1.5 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**public entity** means a central bank or monetary authority of a Party, or a financial institution that is owned or controlled by a Party; and

**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 regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central or regional government.

## Article 20.2: Scope

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

2. Chapter 17 (Investment) and Chapter 18 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that those Chapters are incorporated into this Chapter.

- (a) Article 17.4 (Right to Regulate), Article 17.5 (Non-Derogation), Article 17.8 (Treatment in Case of Armed Conflict, Civil Strife, or Natural Disaster), Article 17.9 (Minimum Standard of Treatment), Article 17.10 (Expropriation), Article 17.11 (Transfer of Funds), Article 17.16 (Denial of Benefits), Article 17.17 (Special

Formalities and Information Requirements), Article 17.19 (Exclusions), and Article 18.9 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

- (b) Sections D and E of Chapter 17 (Investment) are hereby incorporated into and made a part of this Chapter<sup>Footnote2</sup> solely for claims that a Party has breached Article 17.8 (Treatment in Case of Armed Conflict, Civil Strife, or Natural Disaster), Article 17.10 (Expropriation), or Article 17.11 (Transfer of Funds), incorporated into this Chapter under subparagraph (a).<sup>Footnote3</sup>
- (c) Article 18.10 (Payments and Transfers) 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 20.6.

3. This Chapter shall 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 applies to the extent that a Party allows any of the activities or services referred to in subparagraph (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 government procurement of financial services.

5. This Chapter does not apply to subsidies or grants with respect to the cross-border supply of financial services, including government-supported loans, guarantees, and insurance.

## **Article 20.3: National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable 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. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a government other than at the central level of government, treatment accorded, in like circumstances, by that government to financial institutions of the Party, investors of the Party, and investments of those investors, in financial institutions, of the Party of which it forms a part.

4. For the purposes of the national treatment obligations in Article 20.6, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

5. Whether treatment is accorded in like circumstances depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors in financial institutions, investments in financial institutions, financial institutions, financial services, or financial service suppliers on the basis of legitimate public policy objectives.

6. Paragraphs 1 and 2 prohibit discrimination based on nationality. A difference in treatment accorded to an investor of another Party, or their investments, in a financial institution, or a financial institution of another Party and a Party's own investors, or their investments, in a financial institution, or financial institutions does not, in and of itself, establish discrimination based on nationality.

## Article 20.4: Most-Favoured-Nation Treatment

1. Each Party shall accord to:

- (a) investors of the other Party, treatment no less favourable than that it accords to investors of a non-Party, in like circumstances;
- (b) financial institutions of the other Party, treatment no less favourable than that it accords to financial institutions of a non-Party, in like circumstances;
- (c) investments of investors of the other Party in financial institutions, treatment no less favourable than that it accords to investments of investors of a non-Party in financial institutions, in like circumstances; and
- (d) cross-border financial service suppliers of the other Party and the financial services they supply, treatment no less favourable than that it accords to cross-border financial service suppliers of a non-Party and the financial services they supply, in like circumstances.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment accorded, in like circumstances, by that government to: financial institutions of a non-Party; investors of a non-Party, and investments of those investors, in financial institutions; or financial services or cross-border financial service suppliers of a non-Party.

3. The "treatment" referred to in paragraph 1 and 2 does not include procedures for the resolution of investment disputes between investors and states provided for in other international investment treaties and other trade agreements.

4. Substantive obligations in other international investment treaties and other trade agreements do not in themselves constitute "treatment", and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party pursuant to those obligations.



5. Whether treatment is accorded in like circumstances depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors in financial institutions, investments in financial institutions, financial institutions, financial services, or financial service suppliers on the basis of legitimate public policy objectives.

6. Paragraph 1 prohibits discrimination based on nationality. A difference in treatment accorded to an investor of another Party, or their investments, in a financial institution, or a financial institution of another Party and a Party's own investors, or their investments, in a financial institution, or financial institutions does not, in and of itself, establish discrimination based on nationality.

## **Article 20.5: Market Access for Financial Institutions**

1. A Party shall not adopt or maintain with respect to financial institutions of the other Party or investors of the other Party seeking to establish those institutions, either on the basis of a regional subdivision 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 requirement of an economic needs test;
  - (ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) 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<sup>Footnote4</sup>; 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 numerical quotas 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 20.6: Cross-Border Trade**

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 specified in Annex 20-A (Cross-Border Trade).
2. Each 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 a Party other than the permitting Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory. A Party may define "doing business" and "solicitation" for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorization of cross-border financial service suppliers of the other Party and of financial instruments.

## **Article 20.7: New Financial Services**

Each Party shall permit a financial institution of the other Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law. <sup>Footnote6</sup> Notwithstanding Article 20.5(1)(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. If a Party requires a financial institution to obtain authorization to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorization and may refuse the authorization only for prudential reasons.

## **Article 20.8: Treatment of Customer Information**

This Chapter does not require a Party to disclose information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers.

## **Article 20.9: Senior Management and Boards of Directors**

1. A Party shall not require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.
2. A Party shall not require that more than a simple 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.
3. A Party may require financial institutions operating within their territory, or subject to their jurisdiction, to nominate women to senior management positions or to boards of directors.

## **Article 20.10: Non-Conforming Measures**

1. Articles 20.3 through 20.6 and Article 20.9 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:

- (i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III;
- (ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III; or
- (iii) a level of government other than the central or regional levels;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed:
  - (i) immediately before the amendment, with Article 20.3, Article 20.4, Article 20.5, or Article 20.9; or
  - (ii) on the date of entry into force of the Agreement for the Party applying the non-conforming measure, with Article 20.6.

2. Articles 20.3 through 20.6 and Article 20.9 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-conforming measure, set out in a Party's Schedule to Annex I or II as not subject to Article 17.6 (National Treatment), Article 17.7 (Most-Favoured-Nation Treatment), Article 17.13 (Senior Management and Boards of Directors), Article 18.3 (National Treatment), or Article 18.4 (Most-Favoured-Nation Treatment), shall be treated as a non-conforming measure not subject to Article 20.3, Article 20.4, or Article 20.9, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the entry is covered by this Chapter.

4. Article 20.3 shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 12 (Intellectual Property).

5. Article 20.4 shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by Article 4 of the TRIPS Agreement.

## **Article 20.11: Exceptions**

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (National Treatment and Market Access), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Trade Facilitation), Chapter 5 (Trade Remedies), Chapter 6 (Sanitary and Phytosanitary Measures), and Chapter 7 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons<sup>Footnote7</sup>,<sup>Footnote8</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. If these measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapter 17 (Investment), Chapter 18 (Cross-Border Trade in Services), Chapter 19 (Development and Administration of Measures), Chapter 22 (Telecommunications) including specifically Article 22.24 (Relation to Other Chapters), or Chapter 8 (Digital Trade), shall apply 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 Article 17.12 (Performance Requirements) with respect to measures covered by Chapter 17 (Investment), under Article 17.11 (Transfer of Funds) or Article 18.10 (Payments and Transfers).

3. Notwithstanding Article 17.11 (Transfer of Funds) and Article 18.10 (Payments and Transfers), 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 a Party from adopting or enforcing 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 Parties or between Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

## **Article 20.12: Recognition**

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

- (a) accorded autonomously;
- (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 that accords 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 relevant Parties.

3. If a Party accords recognition of prudential measures under subparagraph 1(c) and the circumstances set out in paragraph 2 exist, that 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. For greater certainty, nothing in Article 20.4 requires a Party to accord recognition to prudential measures of any other Party.

## **Article 20.13: Transparency**

1. Chapter 19 (Development and Administration Measures), Chapter 26 (Good Regulatory Practices), and paragraphs 2, 3, and 4 of Article 15.2 (Publication) do not apply to a measure relating to this Chapter.

2. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

3. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

4. Each Party shall, to the extent practicable:

- (a) publish in advance any such regulation that it proposes to adopt and the purpose of the regulation; and
- (b) provide interested persons and other Parties with a reasonable opportunity to comment on that proposed regulation.

5. At the time that it adopts a final regulation, a Party should, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed regulation. [Footnote9](#)

6. To the extent practicable, each Party should allow a reasonable period of time between publication of a final

regulation of general application and the date when it enters into effect.

7. Each Party shall ensure that the rules of general application adopted or maintained by a self-regulatory organization of the Party are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

8. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

## **Article 20.14 Processing of Applications**

1. If a Party requires authorization for the supply of a financial service, it shall ensure that its financial regulatory authorities:

- (a) to the extent practicable, permit an applicant to submit an application at any time throughout the year<sup>Footnote10</sup>;
- (b) allow a reasonable period for the submission of an application if specific time periods for applications exist;
- (c) provide to service suppliers and persons seeking to supply a service the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending, and renewing such authorization;
- (d) to the extent practicable, provide an indicative timeframe for processing of an application;
- (e) at the request of the applicant, provide without undue delay information concerning the status of the application;
- (f) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's laws and regulations;
- (g) endeavour to accept applications in electronic format;
- (h) accept copies of documents that are authenticated in accordance with the Party's domestic laws and regulations, in place of original documents, unless the



financial regulatory authorities require original documents to protect the integrity of the authorization process;

- (i) in the case of an application considered complete under the Party's laws and regulations<sup>Footnote11</sup> within a reasonable period of time, after the submission of the application, ensure that:
  - (i) the processing of an application is completed; and
  - (ii) the applicant is informed of the decision concerning the application, to the extent possible in writing<sup>Footnote12</sup>;
- (j) in the case of an application considered incomplete under the Party's law, within a reasonable period of time, to the extent practicable:
  - (i) inform the applicant that the application is incomplete;
  - (ii) at the request of the applicant, identify the additional information required to complete the application and provide guidance on why the application is considered incomplete; and
  - (iii) provide the applicant with the opportunity<sup>Footnote13</sup> to provide the additional information that is required to complete the application;

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;

- (k) if an application is rejected, to the extent practicable, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application<sup>Footnote14</sup> solely on the basis of an application has been previously rejected; and

- (l) ensure that authorization, once granted, enters into effect without undue delay, subject to applicable terms and conditions.<sup>Footnote15</sup>

2. Each Party shall ensure that its financial regulatory authorities, with respect to an authorization fee<sup>Footnote16</sup> they charge, provide an applicant with a schedule of fees or information on how fee amounts are calculated, and do not use the fees as a means of avoiding the Party's commitments or obligations under this Chapter.

3. If a Party adopts or maintains measures with respect to authorization requirements and procedures for the supply of a financial services, the Party shall ensure that:

- (a) the financial regulatory authority reaches and administers its decisions in a manner independent from any suppliers of the services for which authorization is required<sup>Footnote17</sup>;
- (b) such measures are based on objective and transparent criteria<sup>Footnote18</sup>;
- (c) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist;
- (d) the procedures do not in themselves unjustifiably prevent fulfilment of requirements; and
- (e) such measures do not discriminate against natural persons on the basis of gender.<sup>Footnote19</sup>

## **Article 20.15: Self-Regulatory Organizations**

If 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 organization in order to provide a financial service in or into its territory, it shall ensure that the self-regulatory organization observes the obligations contained in this Chapter.

## **Article 20.16: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory 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 Party's lender of last resort facilities.

## **Article 20.17: Expedited Availability of Insurance Services**

Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorization of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavour to maintain or improve those procedures.

## **Article 20.18: Performance of Back-Office Functions**

1. The Parties recognize that the performance of the back-office functions of a financial institution in its territory by the head office or an affiliate of the financial institution, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that financial institution. While a Party may require financial institutions to ensure compliance with any domestic requirements applicable to those functions, they recognize the

importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

2. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its territory to retain certain functions.

## **Article 20.19 Cross-Border Electronic Payments**

The Parties endeavour to support the development of efficient, safe and secure cross-border electronic payments by fostering the development and adoption of internationally accepted standards, promoting interoperability and the interlinking of payment infrastructures, and encouraging useful innovation and competition in the payments ecosystem.

## **Article 20.20: Transfer of Information**

A Party shall not prevent a financial institution or a cross-border financial services supplier of the party from transferring information, including personal information, into and out of the Party's territory by electronic or other means when this activity is for the conduct of business within the scope of the license, authorization, or registration of that financial institution or cross-border financial services supplier of the other party. Nothing in this Article restricts the right of a 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 20.21: Financial Services Committee**

1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial

services set out in Annex 20-B (Authorities Responsible for Financial Services).

2. The Financial Services Committee shall:

- (a) supervise the implementation of this Chapter and its further elaboration;
- (b) consider issues regarding financial services that are referred to it by a Party; and
- (c) participate in the dispute settlement procedures in accordance with Article 20.24.

3. The Financial Services Committee shall meet as the Parties decide to assess the functioning of this Agreement as it applies to financial services. The Financial Services Committee shall inform the Commission of the results of any meeting.

4. The Financial Services Committee shall endeavour to encourage the participation of women when undertaking its functions, such as by seeking to establish a gender balance among their membership.

## **Article 20.22: Consultations**

1. A Party may request, in writing, 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 to hold consultations. The consulting Parties shall report the results of their consultations to the Financial Services Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 20-B (Authorities Responsible for Financial Services).

3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any

action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

## **Article 20.23: Dispute Settlement**

1. Chapter 28 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. For disputes arising under this Chapter or a dispute in which a Party invokes Article 20.11, when selecting panellists to compose a panel under Article 28.7 (Establishment of a Panel), each disputing Party shall select panellists so that:

- (a) the chairperson has expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meets the qualifications set out in Article 28.9 (Qualifications of Panellists); and
- (b) each of the other panellists:
  - (i) has expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meets the qualifications set out in subparagraphs 1(b) through 1(f) of Article 28.9 (Qualifications of Panellists); or
  - (ii) meets the qualifications set out in Article 28.9 (Qualification of Panellists).

3. A Party may request the establishment of a panel pursuant to Article 20.24(3) to consider whether and to what extent Article 20.11 is a valid defence to a claim without having to request consultations under Article 28.5 (Consultations). The panel shall endeavour to present its initial report pursuant to Article 28.11 (Panel Reports) within 120 days of the selection of the last panellist.

4. If a Party seeks to suspend benefits in the financial services sector, a panel that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 28.13 (Non-Implementation – Suspension of Benefits), shall seek the views of financial services experts, as necessary.

5. Notwithstanding Article 28.13 (Non-Implementation – Suspension of Benefits), when a panel's determination is that a Party's measure is inconsistent with this Agreement and the measure affects:

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

## **Article 20.24: Investment Disputes in Financial Services**

1. If a dispute under Section D of Chapter 17 (Investment) involves a measure referred to in Article 20.2 (Scope), arbitrators shall be selected in accordance with Article 17.26 (Arbitrators) as modified in this Article, such that:

- (a) the presiding arbitrator has expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meets the qualifications set out in Article 17.26 (Arbitrators); and
- (b) each of the other arbitrators of the tribunal:
  - (i) meets the qualifications set out in Article 17.26 (Arbitrators); or
  - (ii) have expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meet the qualifications set out in paragraphs 3 and 6 of Article 17.26 (Arbitrators).

2. If a dispute under Section E of Chapter 17 (Investment) involves a measure referred to in Article 20.2, the arbitrator shall have expertise or experience in financial services law or practice, such as the regulation of financial institutions.

3. If an investor of a Party submits a claim to arbitration under Section D of Chapter 17 (Investment), and the respondent asserts a defence under Article 20.11, the respondent shall, no later than the date the tribunal fixes for the respondent to submit its principal submission on the merits, such as the counter-memorial, submit in writing to the authorities responsible for financial services of the Party of the claimant, as set out in Annex 20-B (Authorities Responsible for Financial Services), a request for a joint determination by the financial authorities of the Parties on the issue of whether and to what extent Article 20.11 is a valid defence to the claim. The respondent shall provide the tribunal, if constituted, a copy of its request. The tribunal may proceed to hear the claim only as provided in paragraphs 5, 6, and 7.

4. With respect to the joint determination by the financial authorities of the Parties referred to in paragraph 3:

- (a) the financial authorities of the Parties shall have 60 days from the date of the receipt of the request to exchange positions;
- (b) the financial authorities of the Parties shall have 60 days from the exchange of positions in subparagraph (a) to make a joint determination;
- (c) if a joint determination is made under subparagraph (b), the financial authorities of either Party shall transmit their decision to the disputing parties and the tribunal, if constituted; and
- (d) If the financial authorities of the Parties have not made a joint determination under sub-paragraph (b), either Party may request, within 130 days of the receipt of the request for a joint determination, an arbitral panel to be established under Chapter 28 (Dispute Settlement) to decide whether and to what extent the paragraph asserted is a valid defence to the claim. The arbitral panel shall transmit its decision to the disputing parties and to the tribunal, if constituted.

5. If it is determined in the joint determination referred to in subparagraph 4(b) or the decision of the arbitral panel referred



to in subparagraph 4(d) that the paragraph asserted is a valid defence to all parts of the claim, the investor is deemed to have withdrawn its claim and to have discontinued the proceeding, with prejudice. The tribunal, if constituted, shall take note of the discontinuance in an order, after which the authority of the tribunal shall cease.

6. If it is determined the joint determination referred to in subparagraph 4(b) or the decision of the arbitral panel referred to in subparagraph 4(d) that the paragraph asserted is only a valid defence to a part of the claim, the investor is deemed to have withdrawn that part of the claim and to have discontinued that part of the proceedings, with prejudice. The tribunal shall take note of the discontinuance of that part of the claim in an order and shall not proceed with the part of the claim for which the paragraph asserted is determined to be a valid defence.

7. If the financial authorities of the Parties do not make a joint determination under subparagraph 4(b) and no request for the establishment of an arbitral panel has been made under subparagraph 4(d), the tribunal may decide the matter, provided that:

- (a) in addition to the disputing parties, the Party of the investor may make oral or written submissions to the tribunal regarding the issue of whether and to what extent the paragraph asserted is a valid defence to the claim prior to the tribunal deciding this issue. Unless it makes such as submission, the Party of the investor shall be presumed, for the purposes of the arbitration, to take a position on the application of the paragraph asserted that is not inconsistent with that of the respondent Party; and
- (b) the tribunal shall draw no inference regarding the application of the paragraph asserted from the fact that the authorities have not made a joint determination as described in subparagraph 4(b).

8. For the purposes of this Article, the definitions of the following terms set out in Article 17.1 (Definitions) are incorporated, mutatis mutandis: "claimant", "disputing parties", "disputing party", "non-disputing Party", and "respondent".

# Annex 20-A: Cross-Border Trade

Canada [Footnote20](#)

## *Insurance and insurance-related services*

1. Article 20.6 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 20.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
  - (i) maritime transport and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported; the vehicle transporting the goods; and any liability deriving therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance, as described in subparagraph (d) of the definition of "financial service" in Article 20.1 (Definitions); and
- (d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 20.1 (Definitions), of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

## *Banking and other financial services (excluding insurance)*

2. Article 20.6. (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 20.1 (Definitions), with respect to:

- (a) provision and transfer of financial information, and financial data processing, as referred to in subparagraph (o) of the definition of "financial service" in Article 20.1 (Definitions);

- (b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 20.1 (Definitions); and
- (c) electronic payments services for payment card transactions falling within subparagraph (h) of the definition of "financial services" in Article 20.1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.1, and including only:
  - (i) the processing of financial transactions, such as verification of financial balances, authorization of transactions, notification of banks (or credit card issuers) of individual transactions, and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions, and
  - (ii) those services that are provided on a business-to-business basis and use proprietary networks to process payment transactions,

but not including the transfer of funds to and from transactors' accounts.<sup>[Footnote21](#)</sup>

### *Portfolio Management Services*

3. Article 20.6 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 20.1 (Definitions), with respect to the following services if they are provided to a collective investment scheme located in Canada:

- (a) investment advice; and
- (b) portfolio management services, excluding:
  - (i) trustee services; and

- (ii) custodial services and execution services that are not related to managing a collective investment scheme.

4. For the purposes of paragraph 3, in Canada, a **collective investment scheme** means, an "*investment fund*"<sup>Footnote22</sup> as defined under the relevant *Securities Act*.

## Ukraine

### *Insurance and insurance-related services*

1. Article 20.6 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 20.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
  - (i) maritime transport and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance, as described in subparagraph (d) of the definition of "financial service" in Article 20.1 (Definitions); and
- (d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 20.1 (Definitions), of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

### *Banking and other financial services (excluding insurance)*

2. Article 20.6 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in

subparagraph (a) of the definition of "cross-border supply of financial services" in Article 20.1 (Definitions), with respect to:

- (a) provision and transfer of financial information, and financial data processing, as referred to in subparagraph (o) of the definition of "financial service" in Article 20.1 (Definitions); and
- (b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 20.1 (Definitions);
- (c) electronic payments services for payment card transactions falling within subparagraph (h) of the definition of "financial services" in Article 20.1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.1, and including only:
  - (i) the processing of financial transactions, such as verification of financial balances, authorization of transactions, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions, and
  - (ii) those services that are provided on a business-to-business basis and use proprietary networks to process payment transactions,

but not including the transfer of funds to and from transactors' accounts.<sup>[Footnote23](#)</sup>

### *Portfolio Management Services*

3. Article 20.6 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 20.1 (Definitions), with respect to the following services if they are provided to a collective investment scheme located in Ukraine:

- (a) investment advice, and
- (b) portfolio management services, excluding:
  - (i) trustee services, and
  - (ii) custodial services and execution services that are not related to managing a collective investment scheme.

4. For the purposes of paragraph 3, in Ukraine, a collective investment scheme means collective investment institutions that operate in accordance with the legislation on collective investment institutions.

## **Annex 20-B: Authorities Responsible for Financial Services**

### **Authorities Responsible for Financial Services**

The authorities for each Party responsible for financial services are:

- (a) For Canada, the Department of Finance Canada
- (b) For Ukraine, the National Bank of Ukraine

## **Footnotes**

### **Footnote 1**

For greater certainty, the Parties understand that an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licenses.

[Return to footnote1referrer](#)

### **Footnote 2**

For greater certainty, Section D of Chapter 17 (Investment) shall not apply to cross-border trade in financial services.

[Return to footnote2referrer](#)

### **Footnote 3**

For greater certainty, if an investor of a Party submits a claim to arbitration under Section D of Chapter 17 (Investment): (1) as referenced in Article 17.28 (Applicable Law and Interpretation), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration; (2) pursuant to Article 17.29 (Preliminary Objections), a Tribunal shall address and decide as a preliminary question any objection by the respondent Party that, as a matter of law, a claim submitted is not a claim for which an award in favour of the investor may be made under this Agreement, including that a dispute is not within the competence of the Tribunal, or that a claim is manifestly without legal merit; and (3) pursuant to Article 17.36 (Final Award), the Tribunal shall make an order with respect to the costs of the arbitration.

[Return to footnote3referrer](#)

### **Footnote 4**

Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

[Return to footnote4referrer](#)

### **Footnote 5**

The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to the other Party to request that it authorize the supply of a financial service that is not supplied in the territory of any Party. That 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 this Article.

[Return to footnote5referrer](#)

### **Footnote 6**

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

[Return to footnote6referrer](#)

#### **Footnote 7**

The Parties understand 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 as well as the safety, and financial and operational integrity of payment and clearing systems.

[Return to footnote7referrer](#)

#### **Footnote 8**

For greater certainty, if a measure challenged under Section D of Chapter 17 (Investment) is determined to have been adopted or maintained by a Party for prudential reasons in accordance with procedures in Article 20.24, a Tribunal shall find that the measure is not inconsistent with the Party's obligations in the Agreement and accordingly shall not award any damages with respect to that measure.

[Return to footnote8referrer](#)

#### **Footnote 9**

For greater certainty, a Party may address those comments collectively on an official government website.

[Return to footnote9referrer](#)

#### **Footnote 10**

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

[Return to footnote10referrer](#)

#### **Footnote 11**

Financial regulatory authorities may require that all information is submitted in a specific format to consider it "complete for processing".

[Return to footnote11referrer](#)



**Footnote 12**

"In writing" may include in electronic form.

[Return to footnote12referrer](#)

**Footnote 13**

For greater certainty, such opportunity does not require a competent authority to provide extensions of deadlines.

[Return to footnote13referrer](#)

**Footnote 14**

Financial regulatory authorities may require that the content of such an application be revised.

[Return to footnote14referrer](#)

**Footnote 15**

Financial regulatory authorities are not responsible for delay due to reasons outside their competence.

[Return to footnote15referrer](#)

**Footnote 16**

An authorization fee does not include a fee 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.

[Return to footnote16referrer](#)

**Footnote 17**

This provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

[Return to footnote17referrer](#)

**Footnote 18**

Such criteria may include, *inter alia*, competence and the ability to supply a service, including to do so in a manner consistent with a Party's regulatory requirements. Financial regulatory authorities may assess the weight to be given to each criterion.

[Return to footnote18referrer](#)

**Footnote 19**

For greater certainty, legitimate differentiation, as well as the adoption of temporary special measures

aimed at accelerating *de facto* gender equality, shall not be considered discrimination for the purposes of this provision.

[Return to footnote19referrer](#)

**Footnote 20**

For greater certainty, Canada requires that a cross-border financial services supplier maintain a local agent and records in Canada.

[Return to footnote20referrer](#)

**Footnote 21**

Nothing in this subparagraph prevents a Party from adopting or maintaining measures to protect personal data, personal privacy, and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this subparagraph. For greater certainty, nothing in this subparagraph prevents a Party from adopting or maintaining measures that regulate fees, such as interchange or switching fees, or that impose fees.

[Return to footnote21referrer](#)

**Footnote 22**

In Canada, a financial institution organized in the territory of another Party can only provide custodial services to a collective investment scheme located in Canada if the financial institution has shareholders' equity equivalent to at least \$100 million.

[Return to footnote22referrer](#)

**Footnote 23**

Nothing in this subparagraph prevents a Party from adopting or maintaining measures to protect personal data, personal privacy, and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this subparagraph. For greater certainty, nothing in this subparagraph prevents a Party from adopting or

maintaining measures that regulate fees, such as interchange or switching fees, or that impose fees.

[Return to footnote23referrer](#)