

09 FINANCIAL SERVICES

ARTICLE 1

Definitions and Scope

1. The purpose of this Chapter is to provide for commitments additional to Chapter 7 (Trade in Services) and Chapter 8 (Investment) in relation to financial services to ensure that the market access treatment of financial services is based on transparent principles that are applied in a non-discriminatory manner. In the event of any inconsistency between the former provisions and the provisions of this Chapter, the latter shall prevail to the extent of such inconsistency.
2. For the purposes of this Chapter:
 - (a) “financial service” means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature. Financial services shall include the activities as stated in Appendix 1;
 - (b) “financial service supplier” means any natural or legal person authorised by the law of a Party to supply financial services;
 - (c) “new financial service” means a financial service, 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; and
 - (d) “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.
3. For the purposes of Articles 1(a) and 2.2(b) of Chapter 7 (Trade in Services), “a service supplied in the exercise of governmental authority” means the following:
 - (a) activities conducted by a central bank or monetary authority or by any other public entity, including the management of official foreign reserves, 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.

4. If a Party allows any of the activities referred to in Articles 1.3(b) or 1.3(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, measures affecting such activities shall not be excluded from this Chapter and Chapter 7 (Trade in Services).

ARTICLE 2

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 a Party would permit its own financial service suppliers, in like circumstances, to supply under its domestic law. A Party may however determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

ARTICLE 3

Prudential and Regulatory Supervision

1. Nothing in this Agreement shall be construed to prevent a Party from taking measures for prudential reasons, including measures 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 a Party's financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

2. These measures shall not constitute a means of arbitrary or unjustifiable discrimination against financial service suppliers of the other Party in comparison to its own like financial service suppliers, or a disguised restriction on trade in services. Each Party shall endeavour to ensure that these measures are not more burdensome than necessary to achieve their aim.

3. 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 4

Transfers of Information and Processing of Information

Neither Party shall take measures that prevent transfers of information 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. Nothing in this paragraph 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 this Agreement.

ARTICLE 5

Exceptions

For the avoidance of doubt, this Chapter shall be subject to the general and security exceptions listed in Articles 18 and 19 of Chapter 7 (Trade in Services) and Articles 19 and 20 of Chapter 8 (Investment).

ARTICLE 6

Dispute Settlement

Arbitral tribunals agreed between or appointed by the Parties under Chapter 16 (Dispute Settlement) to adjudicate disputes on prudential issues and other financial matters, and any procedures agreed for good offices, conciliation or mediation on such matters, shall have or provide for the necessary expertise relevant to the specific financial service and dispute.

APPENDIX 1

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;
 - (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;

- (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 subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.