

ANNEX 7 C

FINANCIAL SERVICES

1. Scope and Definition

- (a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph (r) of Article 7.1.
- (b) For the purposes of paragraph (m) of Article 7.1, "services supplied in the exercise of governmental authority" means the following:
 - (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies; or
 - (ii) activities forming part of a statutory system of social security or public retirement plans; or
 - (iii) activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
- (c) For the purposes of paragraph (m) of Article 7.1, if a Party allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.
- (d) Paragraph (a) of Article 7.1 shall not apply to services covered by this Annex.
- (e) References to "service supplier of the other Party" and "service supplier" in Chapter 7, shall mean "financial service supplier of the other Party" and "financial services supplier" respectively, as defined in paragraph 10 of this Annex.

2. Domestic Regulation

- (a) Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy

holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of Chapter 7, they shall not be used as a means of avoiding the Party's commitments or obligations under Chapter 7.

- (b) Nothing in Chapter 7 shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. Recognition

- (a) A Party may recognise prudential measures of any international standard setting body or non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the international standard setting body or non-Party concerned or may be accorded autonomously.
- (b) A Party that is a party to such an agreement or arrangement referred to in subparagraph 3(a), whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones 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.
- (c) Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances as referred to in subparagraph (b) exist.

4. New Financial Services

- (a) For the purposes of paragraph 4 of Article 7.2, a “new financial service” is a financial service that is not supplied by any financial service supplier in the territory of the first Party but which is supplied within the territory of the other Party and includes existing and new financial products or the manner in which a financial product or service is delivered. Commitments on such new financial services will be based on the principles outlined in Articles 7.3 to 7.6.

- (b) Each Party shall permit a financial service supplier of the other Party who is authorised to do business and regulated or supervised by a public entity under the law of the Party in whose territory it operates to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply. Notwithstanding paragraph 4 of Article 7.2 and subparagraph 2(e) of Article 7.3, a Party may 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 a Party requires such authorisation of the new financial service, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

5. Transparency

- (a) In lieu of Article 7.18, each Party shall, to the extent practicable
 - (i) Make available in advance any regulations of general application relating to the supply of financial services that it proposes to adopt; and
 - (ii) Provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.
- (b) Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.
- (c) On the request of an applicant, the regulatory authority shall inform the applicant of the status of the application. If such authority requires additional information from the applicant, it shall notify the applicant without due delay.
- (d) A regulatory authority shall make an administrative decision on a completed application of an applicant relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.
- (e) Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application, covered by this Annex.

- (f) Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.
- (g) To the extent practicable, each Party should allow reasonable time between the publication of final regulations and their effective date.
- (h) At the time it adopts final regulations, a Party shall endeavour, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

6. Transfer of Information

No 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.

7. Modification of Schedules

- (a) A Party (referred to in this Article as the "modifying Party") may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.
- (b) A modifying Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the other Party no later than three months before the intended date of implementation of the modification or withdrawal.
- (c) At the request of the other Party, the benefits of which under this Agreement may be affected (referred to in this Article as an "affected Party") by a proposed modification or withdrawal notified under subparagraph (b), the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, both Parties shall endeavour to maintain a general level of mutually advantageous commitments not less

favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.

- (d) The Parties shall endeavour to conclude negotiations on such compensatory adjustment to mutual satisfaction within six months, failing which recourse may be had to the provisions of Chapter 15 of this Agreement.
- (e) If the affected Party does not refer the matter to dispute settlement within one month from the expiration of the period referred to in sub-paragraph (d), the modifying Party shall be free to implement the proposed modification or withdrawal.
- (f) The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the dispute settlement panel.
- (g) If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the dispute settlement panel, the affected Party may modify or withdraw substantially equivalent benefits in conformity with those findings.

8. Dispute Settlement

Arbitral tribunals agreed between or appointed by the Parties under Chapter 15 for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

9. Definitions

For the purposes of this Annex:

- (a) A financial service is any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

- (i) Direct insurance (including co-insurance):
 - (A) life
 - (B) non-life

- (ii) Reinsurance and retrocession;
- (iii) Insurance intermediation, such as brokerage and agency;
- (iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

- (v) Acceptance of deposits and other repayable funds from the public;
- (vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) Financial leasing;
- (viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) Guarantees and commitments;
- (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;
 - (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.
- (b) A financial service supplier means any natural or juridical person of a Party wishing to supply or supplying financial services but the term “financial service supplier” does not include a public entity.
- (c) "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.
- (d) “Self-regulatory organization” means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organization or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, by statute or delegation from central, regional or local governments or authorities.