

ANNEX XII

REFERRED TO IN ARTICLE 8.21

FINANCIAL SERVICES

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FINANCIAL SERVICES

ARTICLE 1

Scope and Definitions

1. This Annex applies to measures by the State Parties affecting trade in financial services.¹

2. For the purposes of subparagraph (b) of Article 8.2 (Definitions) of the Agreement, “services supplied in the exercise of governmental authority” means:

- (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (b) activities forming part of a statutory system of social security or public retirement plans; and
- (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

3. For the purposes of subparagraph (b) of Article 8.2 (Definitions) of the Agreement, if a State Party allows any of the activities referred to in subparagraphs 2 (b) or 2 (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.

4. Subparagraph (c) of Article 8.2 (Definitions) of the Agreement shall not apply to services covered by this Annex.

5. For the purposes of this Annex:

- (a) “financial service” means any service of a financial nature offered by a financial service supplier of a State 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):
 - (aa) life;

¹ For the purposes of this Annex, “trade in financial services” shall be understood in accordance with the definition contained in subparagraph 1 (a) of Article 8.2 (Definitions) of the Agreement.

- (bb) 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:
 - (aa) money market instruments (including cheques, bills, 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;
 - (ff) 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, depositary 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) “financial service supplier” means any natural or juridical person of a State 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 State Party, or an entity owned or controlled by a State 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 organisation” means a non-governmental body, including any organisation or association, that is recognised by a State Party as a self-regulatory organisation and exercises regulatory or supervisory authority over financial services suppliers by delegation from a State Party, when exercising such authority.

ARTICLE 2

National Treatment

1. With regard to payment and clearing systems, in accordance with national treatment, each State Party shall grant to financial service suppliers of another State Party established in its territory on the basis of its regulatory requirements, access to payment and clearing facilities operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to a State Party’s lender of last resort facilities.

2. With regard to self-regulatory organisations, when a State Party requires membership or participation in, or access to, any self-regulatory organisation, in order for financial service suppliers of the other State Party to supply financial services on an equal basis with financial service suppliers of the State Party, or when the State Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the State Party shall ensure that such entities accord national treatment to financial service suppliers established in the territory of that State Party in the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein.

ARTICLE 3

Transparency

1. Each State Party shall promote regulatory transparency in financial services taking into account:
 - (a) the work undertaken by the State Parties under the GATS and in other fora relating to trade in financial services;
 - (b) the importance of regulatory transparency, of identifiable policy objectives and of clear and consistently applied regulatory processes; and
 - (c) any consultations that the State Parties may have between them.
2. The competent authorities of each State Party shall make available to interested persons domestic requirements and procedures for completing applications relating to the supply of financial services.
3. Where a licence is required for the supply of a financial service, the competent authorities of a State Party shall make the requirements for such a licence publicly available. The period of time normally required to reach a decision concerning an application for a licence should:
 - (a) be made available to the applicant upon request;
 - (b) be made publicly available; or
 - (c) be made available by a combination of both.

ARTICLE 4

Application Procedures

1. The competent authorities of each State Party shall process without undue delay applications related to the supply of financial services submitted by service suppliers of other State Parties.
2. If the competent authorities of a State Party require additional information from the applicant in order to process its application, they shall notify the applicant without undue delay.
3. Upon request by the applicant, the competent authorities of a State Party shall provide, without undue delay, information concerning the status of its application.
4. The competent authorities of each State Party shall notify the applicant of the outcome of its application promptly after a decision is taken. In case a decision is taken to deny an application, the reason for the denial shall be made known to the applicant.
5. Where a licence is required for the supply of a financial service and if the applicable requirements are fulfilled, the competent authorities of a State Party shall grant the applicant a licence, within a reasonable period of time after the submission of its application is considered complete under that State Party's domestic laws and regulations.

ARTICLE 5

Domestic Regulation

1. Notwithstanding any other provision of Chapters 8 (Trade in Services) and 9 (Investment) of the Agreement, a State Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for:

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

2. Where such measures do not conform with Chapters 8 (Trade in Services) and 9 (Investment) of the Agreement, they shall not be used as a means to avoid that State Party's commitments or obligations under Chapters 8 (Trade in Services) and 9 (Investment) of the Agreement.

3. Each State Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory.

4. Nothing in Chapters 8 (Trade in Services) and 9 (Investment) of the Agreement shall be construed to require a State Party to disclose information relating to the affairs and accounts of individual clients and customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 6

Mutual Recognition of Prudential Measures

1. A State Party may recognise prudential measures of another State Party in determining how the State Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement or may be accorded autonomously.

2. A State Party that is a party to an agreement or arrangement such as those referred to in paragraph 1 with a non-Party, whether future or existing, shall afford adequate opportunity for another State Party to negotiate its accession to such agreement or arrangement 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. Where a State Party accords recognition autonomously, it shall afford adequate opportunity for another State Party to demonstrate that such circumstances exist.