

ANNEX XV

REFERRED TO IN ARTICLE 7.22

FINANCIAL SERVICES

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FINANCIAL SERVICES

ARTICLE 1

Scope and Definitions

1. This Annex applies to measures by a Party affecting trade in financial services.¹
2. For the purposes of this Annex:
 - (a) “financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

- (i) direct insurance (including co-insurance):
 - (aa) life;
 - (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 transactions;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

¹ “Trade in financial services” shall be understood in accordance with the definition contained in subparagraph 1 (a) (i) of Article 7.2 (Definitions) of the Agreement.

- (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 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 organisation” means any non-government body, including any securities or futures exchange or markets, clearing or payment settlement agency, other organisation or association that is recognised by legislation as a self-regulatory organisation and exercises regulatory or supervisory authority over financial service suppliers established and authorised to supply financial services pursuant to legislation or delegation from central, regional or local governments or authorities, when exercising such authority;
- (e) for the purposes of subparagraph (a)(ii) of Article (Definitions) of the Agreement, “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;
 - (ii) activities forming part of a statutory system of social security or public retirement plans; and
 - (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government;
- (f) for the purposes of subparagraph (a)(ii) of Article (Definitions) of the Agreement, if a Party allows any of the activities referred to in subparagraphs (e)(ii) or (e)(iii) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities; and
- (g) Subparagraph (a)(iii) of Article (Definitions) of the Agreement shall not apply to services covered by this Annex.

ARTICLE 2

National Treatment

1. Each Party shall grant, on a national treatment basis, to financial service suppliers of another Party established to supply financial services in the Party’s territory, and regulated or supervised by the relevant competent authorities², under the Party’s domestic

² For Malaysia, the competent authority is the Central Bank of Malaysia.

laws, 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 paragraph is not intended to confer access to the Party's lender of last resort facilities.

2. Where a Party requires a financial services supplier of another Party established and authorised to supply financial services in the Party's territory, to be a member of, participate in, or have access to a self-regulatory organisation in order to supply a financial services in the Party's territory, the Party shall ensure that the self-regulatory organisation observes the obligation of Article 7.6 (National Treatment) of the Agreement.

ARTICLE 3

Transparency

1. The competent authorities of each Party shall make available to financial service suppliers domestic requirements and procedures for completing applications relating to the supply of financial services.

2. Where a licence is required for the supply of a financial service, the competent authorities of a Party shall make the requirements of general application for such a licence publicly available. The period of time normally required to reach a decision concerning an application for a licence shall:

- (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

Expeditious Application Procedures

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

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

3. Upon request by the applicant, the competent authorities of a Party shall provide, without undue delay, information concerning the status of the application.

4. The competent authorities of each Party shall notify the applicant of the outcome of the application promptly after a decision has been taken. In case a decision is taken to deny an application, on request of the concerned applicant, the competent authorities shall, to the extent practicable, make the reason for the denial 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 Party shall make an administrative decision, as a rule within six months after the submission of an application is considered complete under that Party's domestic laws and regulations. Where it is not practicable for such a decision to be made within six months, the competent authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter. Once the licence is granted, it shall enter into effect without undue delay, subject to applicable terms and conditions.

ARTICLE 5

Domestic Regulation

1. Notwithstanding Chapter 7 (Trade in Services) and Chapter 8 (Investment) of the Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for:

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

Where such measures do not conform with Chapter 7 (Trade in Services) or Chapter 8 (Investment) of the Agreement, they shall not be used as a means of avoiding that Party's commitments or obligations under Chapter 7 (Trade in Services) or Chapter 8 (Investment) of the Agreement.

2. These measures shall not constitute an arbitrary or unjustifiable discrimination against financial service suppliers of another Party in comparison to its own like financial service suppliers, or a disguised restriction on trade in services.

3. Each Party shall endeavour to ensure that the Basel Committee's "Core Principles for Effective Banking Supervision", the International Association of Insurance Supervisors' "Insurance Core Principles", and the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation" are implemented and applied in its territory.

4. Nothing in Chapter 7 (Trade in Services) of the 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 6

Recognition of Prudential Measures

1. A Party may recognise prudential measures of any other Party or non-Party in determining how the 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 with the Party or non-Party concerned or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their 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. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that such circumstances exist.

ARTICLE 7

Transfers of Information and Processing of Information

No Party shall, subject to its domestic laws, regulations and policies, take measures that prevent transfers of information into or out of the Party's territory or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier of another Party. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Chapter.
