

CHAPTER 9

FINANCIAL SERVICES

Article 9.1: Scope and Coverage

1. This Chapter applies to measures affecting the supply of financial services.
2. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:
 - (a) activities or services forming part of a public retirement plan or statutory system of social security;
 - (b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities; or
 - (c) activities or services conducted by a central bank, monetary authority or any other public entity in pursuit of monetary or exchange rate policies.
3. This Chapter does not apply to laws, regulations, or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

Article 9.2: National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 8-A with regards to Financial Services, and subject to any conditions and qualifications set out therein, each Party shall accord to financial services and financial service suppliers of the other Party, in respect of all measures affecting the supply of financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers¹⁸.
2. A Party may meet the requirement in paragraph 1 by according to financial services and financial service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own like financial services and financial service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of financial services or financial service suppliers of the Party compared to like financial service or financial service suppliers of the other Party.

¹⁸ Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant financial services or financial service suppliers.

Article 9.3: Market Access for Financial Institutions

1. With respect to market access through the financial services supply, each Party shall accord to financial services and financial service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 8-A.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments in Annex 8-A, are defined as:

- (a) limitations on the number of financial service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;
- (b) limitations on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of financial service operations or on 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 test¹⁹;
- (d) limitations on the total number of natural persons that may be employed in a particular financial service sector or that a financial service suppliers 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;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 9.4: Treatment of Certain Information

Nothing in this Chapter 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.

¹⁹ This subparagraph does not cover measures of a Party which limit inputs for the supply of financial services.

Article 9.5: Prudential Carve Out

1. Notwithstanding any other provisions of this Chapter or Chapter 12 (Investment), 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.
2. Where such measures do not conform to the provisions of this Agreement referred to in paragraph 1, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

Article 9.6: Transparency²⁰

1. The Parties recognise that transparent regulations and policies governing the activities of financial service suppliers are important in facilitating access to, and their operations in, each other's markets. Each Party commits to promote regulatory transparency in financial services.
2. Each Party shall ensure that all measures of general application to which this Chapter shall apply are administered in a reasonable, objective, and impartial manner.
3. In lieu of paragraph 2 of Article 18.1 (Publication), each Party, to the extent possible:
 - (a) shall publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulations; and
 - (b) shall provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.
4. To the extent possible, each Party shall endeavour to allow reasonable time between publication of final regulations of general application and their effective date.
5. Each Party shall establish or maintain appropriate channels for receiving inquiries regarding measures of general application covered by this Chapter.
6. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.
7. A Party's regulatory authority shall inform the applicant of the status of its application within the timeframe as stipulated by relevant regulations. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

²⁰ Both Parties respect each other's domestic legal requirements and recognise the commitments of the Article on Transparency undertaken in the WTO Protocol in the accession of the People's Republic of China.

8. A Party's regulatory authority shall make an administrative decision on a completed application of financial service suppliers of the other Party relating to the supply of a financial service within the timeframe as stipulated by relevant regulations, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all necessary information is received. Where it is not practicable for an administrative decision to be made within 180 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within the timeframe as stipulated by relevant regulations thereafter.

9. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent possible, inform the applicant of the reasons for denial of the application.

Article 9.7: 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 systems²¹ 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 9.8: Recognition of Prudential Measures

1. A Party may recognise prudential measures of a 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 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 the other Party to negotiate its accession to such an 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 Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

Article 9.9: Specific Commitments²²

²¹ For greater certainty, for China, the High Value Payment System and the Bulk Electronic Payment System are provided by the People's Bank of China, and for Korea, the large amount payment and clearing system services are provided by the Bank of Korea and the small amount payment and clearing system services are provided by the Korea Financial Telecommunications and Clearings Institute.

²² Notwithstanding this Article, the Specific Commitments for Financial Services by a Party in relation to Articles 9.2 and 9.3 shall be contained in the Schedule of Specific Commitments in the Annex 8-A.

Annex 9-A sets out certain specific commitments by each Party.

Article 9.10: Committee on Financial Services

1. The Committee on Financial Services (hereinafter referred to as the “Committee”) established in accordance with Article 19.4 (Committees and Other Bodies) shall comprise officials of each Party responsible for financial services as set out in paragraph 2 of Annex 9-A.
2. The Committee shall:
 - (a) supervise the implementation of this Chapter and its further elaboration; and
 - (b) consider issues regarding financial services that are referred to it by a Party, including ways for the Parties to cooperate more effectively in the financial services sector.
3. The Committee shall meet as agreed, to assess the functioning of this Agreement as it applies to financial services.

Article 9.11: Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give due consideration to the request.
2. Consultations under this Article shall include officials of the authorities specified in paragraph 2 of Annex 9-A.

Article 9.12: Dispute Settlement

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

Article 9.13: Prior Consultation for Investment Disputes in Financial Services

Where an investor of a Party in financial institutions submits a claim under Article 12.12 (Settlement of Investment Disputes between a Party and an Investor of the Other Party), and the respondent invokes Article 9.5 as a defence, upon request from the respondent, both Parties shall consult with each other and attempt in good faith to make a determination which shall be binding on the tribunal within 180 days after the claim is submitted.

Article 9.14: Definitions

For the purposes of this Chapter:

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

- (a) Direct insurance (including co-insurance):
 - (i) life,
 - (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 transactions;
- (g) Financial leasing;
- (h) All payment and money transmission services, including credit, charge and debit cards, traveller's 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, but not limited to, 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 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;

measures means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form taken by:

- (i) central or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities;

supply of a financial service means the supply of a service:

- (i) from the territory of a Party into the territory of the other Party;
- (ii) in the territory of a Party by a person of that Party to a person of the other Party;
- (iii) by a financial service supplier of a Party, through commercial presence in the territory of the other Party; or
- (iv) by a financial service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party;

public entity means a government, a central bank or 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 a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.