

CHAPTER 11 FINANCIAL SERVICES

Article 11.1 Scope

1. This Chapter provides for commitments additional to Chapters 9 (Trade in Services) and 14 (Investment) in relation to financial services.
2. This Chapter shall apply to measures adopted or maintained by a Party affecting the supply of a financial service. Reference to the supply of a financial service in this Chapter shall mean the supply of a service defined in subparagraph (n) of Article 9.2 (Trade in Services - Definitions).

Article 11.2 Definitions

1. For the purposes of this Chapter:
 - (a) the term "financial service" means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the activities stated in Annex 9 (Financial Services);
 - (b) the term "financial service supplier" means any person that seeks to supply or supplies a financial service but does not include a public entity;
 - (c) the term "new financial service" means any service of a financial nature, 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 a Party but which is supplied in the other Party;
 - (d) the term "public entity" means:

- (i) the Government, 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
 - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and
- (e) the term "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency, or any other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers.

2. For the purposes of subparagraph 2(e) of Article 9.1 (Trade in Services - Scope), the term "services supplied in the exercise of governmental authority" means, in respect of a financial service:

- (a) activities conducted by the central bank or monetary authority of a Party 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 2(e) of Article 9.1 (Trade in Services - Scope), if a Party allows any of the activities referred to in subparagraphs 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services supplied in the exercise of governmental authority" shall exclude such activities.

4. Subparagraph (j) of Article 9.2 (Trade in Services - Definitions) shall not apply to the services covered by this Chapter.

Article 11.3 New Financial Services

Each Party shall permit financial service suppliers of the other Party established in the former Party to offer in the former Party any new financial service that a Party would permit its own financial service suppliers to offer, in like circumstances.

Article 11.4 Domestic Regulation

Nothing in this Agreement shall prevent a Party from adopting or maintaining measures relating to financial services or the financial system 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 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.

Article 11.5 Recognition

1. A Party may recognise prudential measures of any international regulatory 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 harmonisation or otherwise, may be based upon an agreement or arrangement with the international regulatory body 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 the other Party to negotiate its accession to such an agreement or arrangement, or to negotiate one comparable 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 11.6

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 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 and Chapters 9 (Trade in Services) and 14 (Investment).

Article 11.7

Regulatory Transparency

1. Each Party, recognising the importance of transparent regulations and policies governing the activities of financial service suppliers in facilitating their ability to gain access to and operate in each other's market, shall promote regulatory transparency in financial services.

2. To the extent possible, each Party shall allow a reasonable period of time between the publication of final regulations and their effective date.

3. To the extent possible, each Party shall, on request of the other Party, within a reasonable period of time, respond to specific questions and substantive comments from, and provide information to, the other Party on any measures of general application it proposes to adopt with respect to any matter covered by this Chapter.

4. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made publicly available in such a manner as to enable interested persons of the other Party to become acquainted with them.

5. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from interested persons of the other Party regarding measures of general application covered by this Chapter.

6. Each Party's competent authorities shall, to the extent possible, make publicly available their requirements, including any documentation required, for completing applications relating to the supply of financial services.

7. Where a Party's competent authority requires additional information from an applicant of an application relating to the supply of financial services, it shall notify the applicant without undue delay of such additional information required.

8. A Party's competent authorities shall make an administrative decision within a reasonable period of time on an application, regarded as complete under its laws and regulations, of a financial service supplier of the other Party, relating to the supply of a financial service, and shall, to the extent possible, promptly notify the applicant of the decision in writing.

Article 11.8
Self-Regulatory Organisations

When membership or participation in, or access to, any self-regulatory organisation is required by a Party in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the former Party, or when the former Party provides directly or indirectly such organisation privileges or advantages in supplying financial services, the former Party shall ensure that such organisation accords national treatment to financial service suppliers of the other Party resident in the former Party.

Article 11.9
Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in the former Party 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 Article is not intended to confer access to the Party's lender of last resort facilities.

Article 11.10
Sub-Committee on Financial Services

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Financial Services (hereinafter referred to in this Chapter as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;

- (b) discussing any issues related to financial services, including prudential policies and supervision of financial institutions, with a view to enhancing trade relations between the Parties in the field of financial services and to promoting efficient and transparent administration of their financial systems;
- (c) reporting the findings of the Sub-Committee to the Joint Committee; and
- (d) carrying out other functions as may be delegated by the Joint Committee.

3. The Sub-Committee shall be composed of:

- (a) for Australia, officials from the Department of Foreign Affairs and Trade and the Department of the Treasury, or their successors, and, as necessary, officials from the relevant financial regulatory authorities including the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission, or their successors; and
- (b) for Japan, officials from the Ministry of Foreign Affairs and the Financial Services Agency, or their successors.

4. The Sub-Committee shall meet annually, or as otherwise agreed. The Sub-Committee shall inform the Joint Committee of the results of each meeting.

Article 11.11
Consultations

Without prejudice to Article 19.4 (Dispute Settlement - Consultations), 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 sympathetic consideration to the request. The Parties shall report the results of their consultations to the Sub-Committee. Consultations under this Article and consultations under Article 19.4 (Dispute Settlement - Consultations), that affect financial services shall include officials specified in paragraph 3 of Article 11.10.

Article 11.12
Dispute Settlement

1. Further to subparagraph 9(a) of Article 19.6 (Dispute Settlement - Establishment and Composition of Arbitral Tribunals), all arbitrators appointed in accordance with paragraphs 5 and 6 of Article 19.6 (Dispute Settlement - Establishment and Composition of Arbitral Tribunals), for a dispute arising under this Chapter shall, unless otherwise agreed by the Parties, have expertise or experience in laws or practice of financial services, which may include the laws and regulations concerning financial service suppliers.

2. Further to Article 19.15 (Dispute Settlement - Compensation and Suspension of Concessions), where an arbitral tribunal finds a measure of a Party to be inconsistent with this Agreement and the measure under dispute affects:

- (a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.