

## CHAPTER 17

### FINANCIAL SERVICES

#### Article 17.1: Definitions

For the purposes of this Chapter:

**computing facility** means a computer server or storage device for the processing or storage of information for the conduct of business within the scope of the license, authorization, or registration of a covered person, but does not include a computer server or storage device of or those used to access:

- (a) financial market infrastructures;
- (b) exchanges or markets for securities or for derivatives such as futures, options, and swaps; or
- (c) non-governmental bodies that exercise regulatory or supervisory authority over covered persons;

**covered person** means

- (a) a financial institution of another Party; or
- (b) a cross-border financial service supplier of another Party that is subject to regulation, supervision, and licensing, authorization, or registration by a financial regulatory authority of the Party;<sup>1</sup>

**cross-border financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of that service;

**cross-border trade in financial services** or **cross-border supply of financial services** means the supply of a financial service:

- (a) from the territory of a Party into the territory of another Party;

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<sup>1</sup> For greater certainty, whenever a cross-border financial service supplier of another Party is subject to regulation, supervision, and licensing, authorization, or registration by a financial regulatory authority of the Party, that supplier is a covered person for the purposes of this Chapter. For greater certainty, if a financial regulatory authority of the Party foregoes imposition of certain regulatory or supervisory requirements on the condition that a cross-border financial service supplier of another Party comply with certain regulatory or supervisory requirements imposed by a financial regulatory authority of the other Party, that supplier is a covered person.

- (b) in the territory of a Party by a person of that Party to a person of another Party; or
- (c) by a national of a Party in the territory of another Party,

but does not include the supply of a financial service in the territory of a Party by a covered investment;

**financial institution** means a financial intermediary or other enterprise that is authorized to do business and is regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

**financial institution of another Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by a person of another Party;

**financial market infrastructure** means a multi-participant system in which a covered person participates with other financial service suppliers, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions;

**financial service** means a service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. 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, travelers checks, 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 checks, bills, certificates of deposits),
  - (ii) foreign exchange,
  - (iii) derivative products, including futures and options,
  - (iv) exchange rate and interest rate instruments, including products such as swaps and 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 supply of services related to these 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 of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

**investment** means “investment” as defined in Article 14.1 (Definitions), except that with respect to “loans” and “debt instruments” referred to in that Article:

- (a) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted, or debt instrument owned, by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 14 (Investment), if that loan or debt instrument meets the criteria for investments set out in Article 14.1 (Definitions);

**investor of a Party** means a Party, or a person of a Party, that attempts to make,<sup>2</sup> is making, or has made an investment in the territory of another Party;

**new financial service** means a financial service not supplied in the Party’s territory that is supplied within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party’s territory;

**person of a Party** means “person of a Party” as defined in Article 1.5 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**public entity** means a central bank or monetary authority of a Party, or a financial institution that is owned or controlled by a Party; and

**self-regulatory organization** means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from a central or regional government.

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<sup>2</sup> For greater certainty, the Parties understand that an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channeling resources or capital in order to set up a business, or applying for permits or licenses.

## **Article 17.2: Scope**

1. This Chapter applies to a measure adopted or maintained by a Party relating to:
  - (a) a financial institution of another Party;
  - (b) an investor of another Party, and an investment of that investor, in a financial institution in the Party's territory; and
  - (c) cross-border trade in financial services.
2. Chapter 14 (Investment) and Chapter 15 (Cross-Border Trade in Services) apply to a measure described in paragraph 1 only to the extent that those Chapters are incorporated into this Chapter.
  - (a) Article 14.6 (Minimum Standard of Treatment), Article 14.7 (Treatment in Case of Armed Conflict or Civil Strife), Article 14.8 (Expropriation and Compensation), Article 14.9 (Transfers), Article 14.13 (Special Formalities and Information Requirements), Article 14.14 (Denial of Benefits), Article 14.16 (Investment and Environmental, Health, Safety, and other Regulatory Objectives), and Article 15.11 (Denial of Benefits) are incorporated into and made a part of this Chapter.
  - (b) Article 15.12 (Payments and Transfers) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 17.3.3 (National Treatment), Article 17.5.1(b) and (c) (Market Access), and Article 17.6 (Cross-Border Trade Standstill).
3. This Chapter does not apply to a measure adopted or maintained by a Party relating to:
  - (a) an activity or a service forming part of a public retirement plan or statutory system of social security; or
  - (b) an activity or a service conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,except that this Chapter applies to the extent that a Party allows an activity or service referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.
4. This Chapter does not apply to government procurement of financial services.
5. This Chapter does not apply to a subsidy or a grant provided by a Party, including a government supported loan, guarantee, and insurance, with respect to the cross-border supply of financial services by a cross-border supplier of another Party.

### **Article 17.3: National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions, and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of another Party, and to investments of investors of another Party in financial institutions, treatment no less favorable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. Each Party shall accord to:

- (a) financial services or cross-border financial service suppliers of another Party seeking to supply or supplying the financial services as specified by the Party in Annex 17-A (Cross-Border Trade); and
- (b) financial services or cross-border financial service suppliers of another Party seeking to supply or supplying financial services subject to paragraph 4,

treatment no less favorable than that it accords to its own financial services and financial service suppliers, in like circumstances.

4. Subparagraph 3(b) does not require a Party to permit a cross-border financial service supplier of another Party to do business or solicit in the Party's territory. A Party may define "doing business" and "solicitation" in its law for the purposes of this paragraph.

5. The treatment to be accorded by a Party under paragraphs 1, 2, and 3 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to financial institutions of the Party, investors of the Party, and investments of those investors, in financial institutions; or financial services or financial service suppliers, of the Party.

6. For greater certainty, whether treatment is accorded in "like circumstances" under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors in financial institutions, investments in financial institutions, financial institutions, or financial services or financial service suppliers on the basis of legitimate public welfare objectives.

#### **Article 17.4: Most-Favored-Nation Treatment**

1. Each Party shall accord to:
  - (a) investors of another Party, treatment no less favorable than that it accords to investors of any other Party or of a non-Party, in like circumstances;
  - (b) financial institutions of another Party, treatment no less favorable than that it accords to financial institutions of any other Party or of a non-Party, in like circumstances;
  - (c) investments of investors of another Party in a financial institution, treatment no less favorable than that it accords to investments of investors of any other Party or of a non-Party in financial institutions, in like circumstances; and
  - (d) financial services or cross-border financial service suppliers of another Party, treatment no less favorable than that it accords to financial services and cross-border financial service suppliers of any other Party or of a non-Party, in like circumstances.
2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to financial institutions of another Party or a non-Party; investors of another Party or a non-Party, and investments of those investors, in financial institutions; or financial services or cross-border financial service suppliers of another Party or non-Party.
3. For greater certainty, whether treatment is accorded in “like circumstances” under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors in financial institutions, investments in financial institutions, financial institutions, or financial services or financial service suppliers on the basis of legitimate public welfare objectives.

#### **Article 17.5: Market Access**

1. No Party shall adopt or maintain with respect to:
  - (a) a financial institution of another Party or, an investor of another Party seeking to establish those institutions;
  - (b) a cross-border financial service supplier of another Party seeking to supply or supplying the financial services as specified by the Party in Annex 17-A (Cross-Border Trade); or

- (c) a cross-border financial service supplier of another Party seeking to supply or supplying financial services, subject to paragraph 2,

either on the basis of a regional subdivision or on the basis of its entire territory, a measure that:

- (d) imposes a limitation on:
  - (i) the number of financial institutions or cross-border financial service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test,
  - (ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test,
  - (iii) the total number of financial service operations or 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 test,<sup>3</sup> or
  - (iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution or cross-border financial service supplier 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; or
- (e) restricts or requires specific types of legal entity or joint venture through which a financial institution or cross-border financial service supplier may supply a service.

2. Subparagraph 1(c) does not require a Party to permit a cross-border financial service supplier of another Party to do business or solicit in the Party's territory. A Party may define "doing business" and "solicitation" in its law for the purposes of this paragraph.

3. No Party shall require a cross-border financial service supplier of another Party to establish or maintain a representative office or an enterprise, or to be resident, in its territory as a condition for the cross-border supply of a financial service, with respect to the financial services referred to in Article 17.6 (Cross-Border Trade Standstill) and the financial services as specified by the Party in Annex 17-A (Cross-Border Trade).

4. For greater certainty, a Party may require the registration or authorization of a cross-border financial service supplier of another Party or of a financial instrument.

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<sup>3</sup> Subparagraph (d)(iii) does not cover measures of a Party that limit inputs for the supply of financial services.



## **Article 17.6: Cross-Border Trade Standstill**

No Party shall adopt a measure restricting any type of cross-border trade in financial services by cross-border financial service suppliers of another Party that the Party permitted on January 1, 1994, or that is inconsistent with Article 17.3.3 (National Treatment), with respect to the supply of those services.

## **Article 17.7: New Financial Services<sup>4</sup>**

Each Party shall permit a financial institution of another Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law.<sup>5</sup> Notwithstanding Article 17.5.1(a) and(e) (Market Access), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. If a Party requires a financial institution to obtain authorization to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorization and may refuse the authorization only for prudential reasons.

## **Article 17.8: Treatment of Customer Information**

This Chapter does not require a Party to disclose information related to the financial affairs or accounts of individual customers of financial institutions or cross-border financial service suppliers.

## **Article 17.9: Senior Management and Boards of Directors**

1. No Party shall require a financial institution of another Party to engage a natural person of a particular nationality as senior managerial or other essential personnel.
2. No Party shall require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

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<sup>4</sup> The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to another Party to request that it authorize the supply of a financial service that is not supplied in the territory of any Party. That application will be subject to the law of the Party to which the application is made and, for greater certainty, is not subject to this Article.

<sup>5</sup> For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

## **Article 17.10: Non-Conforming Measures**

1. Article 17.3 (National Treatment), Article 17.4 (Most-Favored-Nation Treatment), Article 17.5 (Market Access), and Article 17.9 (Senior Management and Boards of Directors) do not apply to:

- (a) an existing non-conforming measure that is maintained by a Party at:
  - (i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III,
  - (ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III, or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed:
  - (i) immediately before the amendment, with Articles 17.3.1 and 17.3.2 (National Treatment), Article 17.4 (Most-Favored-Nation Treatment), Article 17.5.1(a) (Market Access), or Article 17.9 (Senior Management and Boards of Directors), or
  - (ii) on the date of entry into force of this Agreement for the Party applying the non-conforming measure with Article 17.3.3 (National Treatment), Article 17.5.1(b) (Market Access), or Article 17.5.1(c) (Market Access).

2. Article 17.3 (National Treatment), Article 17.4 (Most-Favored-Nation Treatment), Article 17.5 (Market Access), Article 17.6 (Cross-Border Trade Standstill), and Article 17.9 (Senior Management and Boards of Directors) do not apply to a measure that a Party adopts or maintains with respect to a sector, subsector, or an activity, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-conforming measure, set out in a Party's Schedule to Annex I or II as not subject to Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 14.11 (Senior Management and Boards of Directors), Article 15.3 (National Treatment) or Article 15.4 (Most-Favored-Nation Treatment), shall be treated as a non-conforming measure

not subject to Article 17.3 (National Treatment), Article 17.4 (Most-Favored-Nation Treatment) or Article 17.9 (Senior Management and Boards of Directors), as the case may be, to the extent that the measure, sector, subsector or activity set out in the Party's schedule to Annex I or II is covered by this Chapter.

4. (a) Article 17.3 (National Treatment) does not apply to a measure that falls within an exception to, or derogation from, the obligations which are imposed by:
  - (i) Article 20.8 (National Treatment), or
  - (ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 20 (Intellectual Property Rights).
- (b) Article 17.4 (Most-Favored-Nation Treatment) does not apply to a measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:
  - (i) Article 20.8 (National Treatment), or
  - (ii) Article 4 of the TRIPS Agreement.

#### **Article 17.11: Exceptions**

1. Notwithstanding the other provisions of this Agreement except for Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Agriculture), Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures), Chapter 6 (Textiles and Apparel), Chapter 7 (Customs Administration and Trade Facilitation), Chapter 9 (Sanitary and Phytosanitary Measures), Chapter 10 (Trade Remedies), and Chapter 11 (Technical Barriers to Trade), a Party is not prevented from adopting or maintaining a measure for prudential reasons,<sup>6</sup> including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. If the measure does not conform with the provisions of this Agreement to which this exception applies, the measure must not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapter 14 (Investment), Chapter 15 (Cross- Border Trade in Services), Chapter 18 (Telecommunications) including specifically Article 18.26 (Relation to Other Chapters), or Chapter 19 (Digital Trade), applies to a non-discriminatory measure of general application taken by a public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph does not affect a Party's obligations under Article

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<sup>6</sup> The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

14.10 (Performance Requirements) with respect to a measure covered by Chapter 14 (Investment), under Article 14.9 (Transfers) or Article 15.12 (Cross Border Trade in Services, Payments and Transfers).

3. Notwithstanding Article 14.9 (Transfers) and Article 15.12 (Payments and Transfers), as incorporated into this Chapter, a Party may prevent or limit a transfer by a financial institution or a cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to that institution or supplier, through the equitable, non-discriminatory and good faith application of a measure relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining a measure necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties or between Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

#### **Article 17.12: Recognition**

1. A Party may recognize prudential measures of another Party or a non-Party in the application of a measure covered by this Chapter. That recognition may be:

- (a) accorded autonomously;
- (b) achieved through harmonization or other means; or
- (c) based upon an agreement or arrangement with another Party or a non-Party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

3. If a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

4. For greater certainty, nothing in Article 17.4 (Most-Favored-Nation Treatment) requires a Party to accord recognition to prudential measures of any other Party.

### **Article 17.13: Transparency and Administration of Certain Measures**

1. Chapter 28 (Good Regulatory Practices) and Chapter 29 (Publication and Administration) do not apply to a measure relating to this Chapter.
2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.
3. Each Party shall, to the extent practicable:
  - (a) publish in advance any regulation that it proposes to adopt and the purpose of the regulation; and
  - (b) provide interested persons and other Parties with a reasonable opportunity to comment on that proposed regulation.
4. At the time that it adopts a final regulation, a Party should, to the extent practicable, address in writing the substantive comments received from interested persons and other Parties with respect to the proposed regulation. For greater certainty, a Party may address those comments collectively on an official government website.
5. To the extent practicable, each Party should allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.
6. Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons and other Parties regarding measures of general application covered by this Chapter.
7. If a Party requires authorization for the supply of a financial service, it shall ensure that its financial regulatory authorities:
  - (a) to the extent practicable, permit an applicant to submit an application at any time;
  - (b) allow a reasonable period for the submission of an application if specific time periods for applications exist;
  - (c) provide to service suppliers and persons seeking to supply a service the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending, and renewing such authorization;

- (d) to the extent practicable, provide an indicative timeframe for processing of an application;
- (e) endeavor to accept applications in electronic format;
- (f) accept copies of documents that are authenticated in accordance with the Party's law, in place of original documents, unless the financial regulatory authorities require original documents to protect the integrity of the authorization process;
- (g) at the request of the applicant, provide without undue delay information concerning the status of the application;
- (h) in the case of an application considered complete under the Party's laws and regulations, within a reasonable period of time taking into account the available resources of the competent authority after the submission of the application, ensure that the processing of an application is completed, and that the applicant is informed of the decision concerning the application, to the extent possible in writing;
- (i) in the case of an application considered incomplete under the Party's law, within a reasonable period of time, to the extent practicable:
  - (i) inform the applicant that the application is incomplete,
  - (ii) at the request of the applicant, provide guidance on why the application is considered incomplete, and
  - (iii) provide the applicant with the opportunity<sup>7</sup> to provide the additional information that is required to complete the application; and

if none of the actions in subparagraphs (i) through (iii) is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;
- (j) in the case of a rejected application, to the extent practicable, either on its own initiative or upon the request of the applicant, inform the applicant of the reasons for rejection and, if applicable, the procedures for resubmission of an application;
- (k) with respect to an authorization fee<sup>8</sup> charged by financial regulatory authorities:

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<sup>7</sup> For greater certainty, this opportunity does not require a competent authority to provide extensions of deadlines.

<sup>8</sup> An authorization fee includes a licensing fee and fees relating to qualification procedures but does not include a fee for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

- (i) provide applicants with a schedule of fees or information on how fee amounts are calculated, and
  - (ii) do not use the fees as a means of avoiding the Party's commitments or obligations under this Chapter; and
- (l) ensure that authorization, once granted, enters into effect without undue delay.

#### **Article 17.14: Self-Regulatory Organizations**

If a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organization in order to provide a financial service in or into its territory, it shall ensure that the self-regulatory organization observes the obligations contained in this Chapter.

#### **Article 17.15: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of another Party established in its territory 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 does not confer or require access to the Party's lender of last resort facilities.

#### **Article 17.16: Expedited Availability of Insurance Services**

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorization of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavor to maintain or improve those procedures, as appropriate, to expedite availability of insurance services by licensed suppliers.

#### **Article 17.17: Transfer of Information**

No Party shall prevent a covered person from transferring information, including personal information, into and out of the Party's territory by electronic or other means when this activity is for the conduct of business within the scope of the license, authorization, or registration of that covered person. Nothing in this Article restricts the right of a Party to adopt or maintain measures

to protect personal data, personal privacy and the confidentiality of individual records and accounts, provided that such measures are not used to circumvent this Article.

#### **Article 17.18: Location of Computing Facilities**

1. The Parties recognize that immediate, direct, complete, and ongoing access by a Party's financial regulatory authorities to information of covered persons, including information underlying the transactions and operations of such persons, is critical to financial regulation and supervision, and recognize the need to eliminate any potential limitations on that access.
2. No Party shall require a covered person to use or locate computing facilities in the Party's territory as a condition for conducting business in that territory, so long as the Party's financial regulatory authorities, for regulatory and supervisory purposes, have immediate, direct, complete, and ongoing access to information processed or stored on computing facilities that the covered person uses or locates outside the Party's territory.<sup>9</sup>
3. Each Party shall, to the extent practicable, provide a covered person with a reasonable opportunity to remediate a lack of access to information as described in paragraph 2 before the Party requires the covered person to use or locate computing facilities in the Party's territory or the territory of another jurisdiction.<sup>10</sup>
4. Nothing in this Article restricts the right of a Party to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this Article.

#### **Article 17.19: Committee on Financial Services**

1. The Parties hereby establish a Committee on Financial Services (Financial Services Committee). The principal representative of each Party must be an official of the Party's authority responsible for financial services set out in Annex 17-B (Authorities Responsible for Financial Services).

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<sup>9</sup> For greater certainty, access to information includes access to information of a covered person that is processed or stored on computing facilities of the covered person or on computing facilities of a third-party service supplier. For greater certainty, a Party may adopt or maintain a measure that is not inconsistent with this Agreement, including any measure consistent with Article 17.11.1 (Exceptions), such as a measure requiring a covered person to obtain prior authorization from a financial regulatory authority to designate a particular enterprise as a recipient of that information, or a measure adopted or maintained by a financial regulatory authority in the exercise of its authority over a covered person's business continuity planning practices with respect to maintenance of the operation of computing facilities.

<sup>10</sup> For greater certainty, so long as a Party's financial regulatory authorities do not have access to information as described in paragraph 2, the Party may, subject to paragraph 3, require a covered person to use or locate computing facilities either in the territory of the Party or the territory of another jurisdiction where the Party has that access.



2. The Financial Services Committee shall supervise the implementation of this Chapter and its further elaboration, including by considering issues regarding financial services that are referred to it by a Party.

3. The Financial Services Committee shall meet as the Parties decide to assess the functioning of this Agreement as it applies to financial services. The Financial Services Committee shall inform the Commission of the results of any meeting. The Parties may invite, as appropriate, representatives of their domestic financial regulatory authorities to attend meetings of the Committee.

#### **Article 17.20: Consultations**

1. A Party may request, in writing, consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to this request. The consulting Parties shall report the results of their consultations to the Financial Services Committee.

2. A Party may request information on an existing non-conforming measure of another Party as referred to in Article 17.10.1 (Non-Conforming Measures). Each Party's financial authorities specified in Annex 17-B (Authorities Responsible for Financial Services) shall be the contact point to respond to those requests and to facilitate the exchange of information regarding the operation of measures covered by those requests.

3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulatory authorities or the requirements of an agreement or arrangement between financial regulatory authorities of the Parties, or to require a financial regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

#### **Article 17.21: Dispute Settlement**

1. Chapter 31 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. For disputes arising under this Chapter or a dispute in which a Party invokes Article 17.11 (Exceptions), when selecting panelists to compose a panel under Article 31.9 (Panel Composition), each disputing Party shall select panelists so that:

- (a) the chairperson has expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meets the qualifications set out in Article 31.8.2 (Roster and Qualifications of Panelists); and

(b) each of the other panelists:

- (i) has expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meets the qualifications set out in paragraph (2)(b) through (2)(d) of Article 31.8.2 (Roster and Qualifications of Panelists); or
- (ii) meets the qualifications set out in Article 31.8.2 (Roster and Qualification of Panelists).

3. If a Party seeks to suspend benefits in the financial services sector, a panel that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 31.19 (Non-Implementation – Suspension of Benefits), shall seek the views of financial services experts, as necessary.

4. Notwithstanding Article 31.19 (Non-Implementation – Suspension of Benefits), when a panel's determination is that a Party's measure is inconsistent with this Agreement and the measure 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 another sector, the complaining Party may not suspend benefits in the financial services sector that have an effect that exceeds the effect of the measure in the complaining Party's financial services sector.

## ANNEX 17-A

### CROSS-BORDER TRADE

#### Canada<sup>11</sup>

##### *Insurance and Insurance-Related Services*

1. Articles 17.3.3 (National Treatment) and 17.5.1 (Market Access) apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of “cross-border supply of financial services” in Article 17.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
  - (i) maritime transport and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom, and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance as described in subparagraph (d) of the definition of “financial service” in Article 17.1 (Definitions); and
- (d) insurance intermediation such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 17.1 (Definitions) of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

##### *Banking and Other Financial Services (excluding insurance)*

2. Articles 17.3.3 (National Treatment) and 17.5.1 (Market Access) apply to the cross-border supply of or trade in financial services, as defined in subparagraphs (a) of the definition of “cross-border supply of financial services” in Article 17.1 (Definitions), with respect to:

- (a) the provision and transfer of financial information and financial data processing as described in subparagraph (o) of the definition of “financial service” in Article 17.1 (Definitions);

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<sup>11</sup> For greater certainty, Canada requires that a cross-border financial services supplier appoint a local agent in Canada that is provided with power of attorney.

- (b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service” in Article 17.1 (Definitions); and
- (c) electronic payment services for payment card transactions falling within subparagraph (h) of the definition of “financial service” in Article 17.1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.1, and including only:
  - (i) the processing of financial transactions, such as verification of financial balances, authorization of transactions, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions, and
  - (ii) those services that are provided on a business-to-business basis and use proprietary networks to process payment transactions,

but not including the transfer of funds to and from transactors’ accounts.<sup>12</sup>
- (d) the following services if they are provided to a collective investment scheme located in Canada:
  - (i) investment advice, and
  - (ii) portfolio management services, excluding:
    - (A) trustee services, and
    - (B) custodial services and execution services that are not related to managing a collective investment scheme.

3. For the purposes of paragraph 3, in Canada:

- (a) **payment card** means a “payment card” as defined under the Payment Card Networks Act as of January 1, 2015. For greater certainty, physical and electronic forms of credit and debit cards are included in the definition. For greater certainty,

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<sup>12</sup> Nothing in this subparagraph prevents a Party from adopting or maintaining measures to protect personal data, personal privacy, and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this subparagraph. For greater certainty, nothing in this subparagraph prevents a Party from adopting or maintaining measures that regulate fees, such as interchange or switching fees, or that impose fees.

credit cards include pre-paid cards.

- (b) a **collective investment scheme** means, an “*investment fund*”<sup>13</sup> as defined under the relevant Securities Act.

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<sup>13</sup> In Canada, a financial institution organized in the territory of another Party can only provide custodial services to a collective investment scheme located in Canada if the financial institution has shareholders’ equity equivalent to at least \$100 million.

## **Mexico**

### *Insurance and insurance-related services*

1. Article 17.3.3 (National Treatment) and Article 17.5.1 (Market Access) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of “cross-border supply of financial services” in Article 17.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation, space launching and freight (including satellites), with such insurance to cover all or any of the following: the goods being transported; and the vehicle transporting the goods, when such vehicles have foreign registration or are property of persons domiciled abroad, and
  - (ii) goods in international transit;
- (b) any other insurance of risks, if the person seeking to purchase the insurance demonstrates that none of the insurance companies authorized to operate in Mexico is able or deems convenient to enter into such insurance proposed to it;
- (c) reinsurance and retrocession; and
- (d) insurance intermediation, as referred to in subparagraph (c) of the definition of “financial service” in Article 17.1 (Definitions), and services auxiliary to insurance, as referred to in subparagraph (d) of the definition of “financial service” in Article 17.1 (Definitions), only in respect of insurance referred to in the section of Mexico in this Annex.

### *Banking and other financial services (excluding insurance)*

2. Article 17.3.3 (National Treatment) and Article 17.5.1 (Market Access) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of “cross-border supply of financial services” in Article 17.1 (Definitions), with respect to:

- (a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of “financial service” in Article 17.1 (Definitions);
- (b) advisory and other auxiliary services,<sup>14</sup> excluding intermediation, and credit

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<sup>14</sup> The Parties understand that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of “financial service” in Article 17.1 (Definitions).

reference and analysis, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of “financial service” in Article 17.1 (Definitions);

- (c) the following services if they are provided to a collective investment scheme in Mexico:
  - (i) investment advice, and
  - (ii) portfolio management services, excluding:
    - (A) trustee services, and
    - (B) custodial services and execution services that are not related to managing a collective investment scheme; and
- (d) electronic payment services for payment card transactions falling within subparagraph (h) of the definition of “financial service” in Article 17.1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.1, and including only:
  - (i) receiving and sending messages for: authorization requests, authorization responses (approvals or declines), stand-in authorizations, adjustments, refunds, returns, retrievals, charge backs and related administrative messages,
  - (ii) calculation of fees and balances derived from transactions of acquirers and issuers, and receiving and sending messages related to this process to acquirers and issuers, and their agents and representatives,
  - (iii) the provision of periodic reconciliation, summaries and instructions regarding the net financial position of acquirers and issuers, and their agents and representatives for approved transactions,
  - (iv) value-added services related to the main processing activities referred to in subparagraphs (i), (ii), and (iii), such as fraud prevention and mitigation activities, and administration of loyalty programs, and
  - (v) those services that are provided on a business-to-business basis and use proprietary networks to process payment transactions, as referenced in subparagraphs (i)-(iv),

but not including the transfer of funds to and from transactors’ accounts.

For Mexico, a **payment card** means a credit card, debit card, and reloadable card in physical form or electronic format, as defined under Mexican law.<sup>15</sup>

3. For the purposes of paragraph 2(b) and 2(c), in Mexico a **collective investment scheme** means the “Managing Companies of Investment Funds (*Sociedades Operadoras de Fondos de Inversión*)” established under the Investment Funds Law (*Ley de Fondos de Inversión*). A financial institution organized in the territory of another Party will only be authorized to provide portfolio management services to a collective investment scheme located in Mexico if it provides the same services in the territory of the Party where it is established.

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<sup>15</sup> Nothing in this subparagraph prevents a Party from adopting or maintaining measures to protect personal data, personal privacy, and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this subparagraph. For greater certainty, nothing in this subparagraph prevents a Party from adopting or maintaining measures that regulate fees, such as interchange or switching fees, or that impose fees.



## **United States**

### *Insurance and insurance-related services*

1. Article 17.3.3 (National Treatment) and Article 17.5.1 (Market Access) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of “cross-border supply of financial services” in Article 17.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with that insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom, and
  - (ii) goods in international transit; and
- (b) reinsurance and retrocession; services auxiliary to insurance, as referred to in subparagraph (d) of the definition of “financial service” in Article 17.1 (Definitions); and insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 17.1 (Definitions).

### *Banking and other financial services (excluding insurance)*

2. Article 17.3.3 (National Treatment) and 17.5.1 (Market Access) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of “cross-border supply of financial services” in Article 17.1 (Definitions), with respect to:

- (a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of “financial service” in Article 17.1 (Definitions);
- (b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of “financial service” in Article 17.1 (Definitions);
- (c) investment advice to a collective investment scheme located in the Party’s territory;
- (d) portfolio management services, excluding
  - (i) trustee services, and
  - (ii) custodial services and execution services that are not related to managing

a collective investment scheme; and

- (e) electronic payment services for payment card transactions falling within subparagraph (h) of the definition of “financial service” in Article 17.1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.1, and including only:
  - (i) the processing of financial transactions such as verification of financial balances, authorization of transactions, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions, and
  - (ii) those services that are provided on a business-to-business basis and use proprietary networks to process payment transactions,

but not including the transfer of funds to and from transactors’ accounts.

For the United States, a **payment card** means a credit card, charge card, debit card, check card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing similar functions as these cards, and the unique account number associated with that card, product, or service.

<sup>16</sup>

3. For the purposes of subparagraphs 2(c) and 2(d), for the United States, a **collective investment scheme** means an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*.<sup>17</sup>

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<sup>16</sup> Nothing in this subparagraph prevents a Party from adopting or maintaining measures to protect personal data, personal privacy, and the confidentiality of individual records and accounts, provided that these measures are not used to circumvent the commitments or obligations of this subparagraph. For greater certainty, nothing in this subparagraph prevents a Party from adopting or maintaining measures that regulate fees, such as interchange or switching fees, or that impose fees.

<sup>17</sup> Custodial services are included in the scope of the commitment made by the United States under this Annex only with respect to investments for which the primary market is outside the territory of the Party.

## **ANNEX 17-B**

### **AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES**

The authorities for each Party responsible for financial services are:

- (a) for Canada, the Department of Finance of Canada;
- (b) for Mexico, the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*); and
- (c) for the United States, the Department of the Treasury for the purposes of Annex 17-C (Mexico-United States Investment Disputes in Financial Services) and for all matters involving banking, securities, and financial services other than insurance, and the Department of the Treasury, in cooperation with the Office of the U.S. Trade Representative, for insurance matters.

## **ANNEX 17-C**

### **MEXICO-UNITED STATES INVESTMENT DISPUTES IN FINANCIAL SERVICES**

1. Annex 14-D (Mexico-United States Investment Disputes) applies as modified by this Annex to the settlement of a qualifying investment dispute under this Chapter.

2. In the event that a disputing party considers that a qualifying investment dispute under this Chapter cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under Annex 14-D a claim:

(i) that the respondent has breached:

(A) Article 17.3.1 (National Treatment), Article 17.3.2 (National Treatment), Article 17.4.1(a) (Most-Favored-Nation Treatment), Article 17.4.1(b) (Most-Favored-Nation Treatment), or Article 17.4.1(c) (Most-Favored-Nation Treatment)<sup>18</sup> except with respect to the establishment or acquisition of an investment; or

(B) Article 14.8 (Expropriation and Compensation) as incorporated into this Chapter under Article 17.2.2(a) (Scope), except with respect to indirect expropriation; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of a financial institution of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under Annex 14-D a claim:

(i) that the respondent has breached:

(A) Article 17.3.1 (National Treatment), Article 17.3.2 (National Treatment), Article 17.4.1(a) (Most-Favored-Nation Treatment),

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<sup>18</sup> For the purposes of this paragraph: (i) the “treatment” referred to in Article 17.4.1(a) (Most-Favored-Nation Treatment), Article 17.4.1(b) (Most-Favored-Nation Treatment), and Article 17.4.1(c) (Most-Favored-Nation Treatment) excludes provisions in other international trade or investment agreements that establish international dispute resolution procedures or impose substantive obligations; and (ii) the “treatment” referred to in these subparagraphs only encompasses measures adopted or maintained by the other Annex Party, which for greater clarity may include measures adopted in connection with the implementation of substantive obligations in other international trade or investment agreements.

Article 17.4.1(b) (Most-Favored-Nation Treatment), or Article 17.4.1(c) (Most-Favored-Nation Treatment), except with respect to the establishment or acquisition of an investment; or

(B) Article 14.8 (Expropriation and Compensation) as incorporated into this Chapter under Article 17.2.2(a), except with respect to indirect expropriation; and

(ii) that the financial institution has incurred loss or damage by reason of, or arising out of, that breach.

3. If an investor of an Annex Party submits a claim to arbitration under Annex 14-D (Mexico-United States Investment Disputes) as modified by this Annex:

(a) the presiding arbitrator and the other arbitrators shall be selected so that the presiding arbitrator has expertise or experience in financial services law or practice such as the regulation of financial institutions, and, to the extent practicable, the other arbitrators have expertise or experience in financial services law or practice such as the regulation of financial institutions; and

(b) the respondent shall endeavor to consult with its domestic financial regulatory authorities on the claim.

4. No claim shall be submitted to arbitration under Annex 14-D (Mexico-United States Investment Disputes) as modified by this Annex unless the conditions in Article 14.D.5.1 (Conditions and Limitations on Consent) of Annex 14-D (Mexico-United States Investment Disputes) are satisfied, except the relevant time period in subparagraph (b) is 18 months.

5. If an investor of an Annex Party submits a claim to arbitration under Annex 14-D (Mexico-United States Investment Disputes) as modified by this Annex, and the respondent invokes Article 17.11 (Exceptions) as a defense, the following provisions of this Article apply:

(a) The respondent shall, no later than the date the tribunal fixes for the respondent to submit its counter-memorial, or in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment, submit in writing to the authorities responsible for financial services of the Annex Party of the claimant, as set out in Annex 17-B (Authorities Responsible for Financial Services), a request for a joint determination by the authorities of the respondent and the Annex Party of the claimant on the issue of whether and to what extent Article 17.11 (Exceptions) is a valid defense to the claim.

(i) The respondent shall set out in the request the text of a proposed joint determination that specifies the claims to which it considers Article 17.11

(Exceptions) a valid defense.

- (ii) The respondent shall promptly provide the tribunal, if constituted, a copy of the request.
  - (iii) The authorities of the Annex Party of the claimant shall notify the authorities of the respondent in writing that the request has been received.
  - (iv) The arbitration may proceed with respect to the claim only as provided in subparagraph (g).<sup>19</sup>
- (b) The authorities referred to in subparagraph (a) shall attempt in good faith to make a joint determination as described in that subparagraph within 120 days after the date of the written request for that determination. The authorities may, in extraordinary circumstances, agree to extend the date for a joint determination for up to 60 additional days.
- (c) The authorities of the Annex Party of the claimant shall notify the authorities of the respondent within 120 days after the date of the written request for a joint determination under subparagraph (a), or within the period agreed under subparagraph (b), whichever is longer, whether the authorities of the Annex Party of the claimant agree to the proposed joint determination submitted under subparagraph (a)(i), propose an alternative joint determination, or will not, for any reason, agree to a joint determination.
- (d) If the authorities of the Annex Party of the claimant make no notification under subparagraph (c), they shall be presumed to take a position that is consistent with that of the authorities of the respondent, and a joint determination shall be deemed to be made regarding the issue of whether and to what extent Article 17.11 (Exceptions) is a valid defense to the claim as set out in the proposed joint determination submitted under subparagraph (a)(i).
- (e) Any joint determination made or deemed to be made shall be transmitted promptly to the disputing parties, the Committee and, if constituted, to the tribunal. The joint determination shall be binding on the tribunal and any decision or award issued by the tribunal must be consistent with that determination.
- (f) If the authorities referred to in subparagraph (a), within 120 days after the date of the written request for a joint determination under subparagraph (a) or within the date agreed under subparagraph (b), whichever is longer, have not made a

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<sup>19</sup> The term “joint determination” as used in this subparagraph refers to a determination by the authorities responsible for financial services of the respondent and of the Annex Party of the claimant, as set out in Annex 17-B (Authorities Responsible for Financial Services).

determination as described in subparagraph (a), the tribunal shall decide the issue left unresolved by the authorities.

- (i) The tribunal shall draw no inference regarding the application of Article 17.11 (Exceptions) from the fact that the competent authorities have not made a determination as described in subparagraph (a).
  - (ii) The Annex Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 17.11 (Exceptions) is a valid defense to the claim. Unless it makes such a submission, the Annex Party of the claimant shall be presumed, for purposes of the arbitration, to take a position on Article 17.11 (Exceptions) not inconsistent with that of the respondent.
- (g) The arbitration referred to in subparagraph (a) may proceed with respect to the claim:
  - (i) 10 days after the date a joint determination under subparagraph (a) has been received by the disputing parties and, if constituted, the tribunal; or
  - (ii) 10 days after the expiration of the 120-day period following the request for a joint determination under subparagraph (a) or the expiration of the period agreed under subparagraph (b), whichever is longer.
- (h) On the request of the respondent made within 30 days after the expiration of the 120-day period following the request for a joint determination under subparagraph (a), or within 30 days after the expiration of the period agreed under subparagraph (b), whichever is longer, or, if the tribunal has not been constituted as of the expiration of the 120-day or the period agreed under subparagraph (b), within 30 days after the tribunal is constituted, the tribunal shall address and decide the issue or issues left unresolved by the authorities as referred to in subparagraph (c) prior to deciding the merits of the claim for which Article 17.11 (Exceptions) has been invoked by the respondent as a defense. Failure of the respondent to make that request is without prejudice to the right of the respondent to invoke Article 17.11 (Exceptions) as a defense at any appropriate phase of the arbitration.

6. If a respondent asserts that the measure alleged to be a breach is within the scope of a non-conforming measure set out in the responding Party's Schedule to Annex III, Article 10 of Annex 14-D (Mexico-United States Investment Disputes) shall apply to any request of the respondent for an interpretation of the Commission on the issue.

## **ANNEX 17-D**

### **LOCATION OF COMPUTING FACILITIES**

Article 17.18 (Location of Computing Facilities) does not apply to existing measures of Canada for one year after the entry into force of this Agreement.