

CHAPTER 10 FINANCIAL SERVICES

Article 10.1 Definitions

For the purposes of this Chapter:

“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 such services;

“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 one Party into the territory of the other Party;
- (b) in the territory of one Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investor of the other Party, or investments of such investors, in financial institutions in the Party’s territory;

“enterprise” means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation, and a branch of an enterprise;

“enterprise of a Party” means an enterprise constituted or organised under the law of a Party, and a branch²⁵ located in the territory of a Party, and carrying out substantive business activities there;

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

“financial institution of the other Party” means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

“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), as well as

²⁵ For greater certainty, a branch of an enterprise of a non-Party shall not be considered as an enterprise of a Party.

services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

- (a) Insurance and insurance-related services:
 - (i) direct insurance (including co-insurance):
 - (A) life;
 - (B) non-life;
 - (ii) reinsurance and retrocession;
 - (iii) insurance intermediation, such as brokerage and agency; and
 - (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
- (b) Banking and other financial services (excluding insurance):
 - (i) acceptance of deposits and other repayable funds from the public;
 - (ii) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
 - (iii) financial leasing;
 - (iv) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 - (v) guarantees and commitments;
 - (vi) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including cheques, bills and certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities; and

- (F) other negotiable instruments and financial assets, including bullion.
- (vii) 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;
- (viii) money broking;
- (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (x) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (xi) provision and transfer of financial information, and financial data processing and related software; and
- (xii) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (i) through (xi), 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 person of a Party that seeks to supply or supplies financial services; but the term “financial service supplier” does not include a public entity;

“investment” means “investment” as defined in Article 12.1 (Definitions) of Chapter 12 (Investment), 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 where 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 of a financial institution referred to in subparagraph (a), is not an investment;

For greater certainty, a loan granted by 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 if such loan or debt instrument meets the criteria for investments set out in Article 12.1 (Definitions) of Chapter 12 (Investment).

“investor of a Party” means a national or enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party, provided, however, that

a natural person who possesses dual nationality shall be deemed to possess exclusively the nationality of the State of his or her dominant and effective nationality;

“new financial service” means a service of a financial nature, including services related to existing and new financial products or the manner in which a financial product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party;

“person of a Party” means either a natural person²⁶ or an enterprise of a Party and, for greater certainty, does not include a branch of an enterprise of a non-party;

“public entity” means:

- (a) a government, a central bank or a monetary authority of a Party or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
- (b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

“self-regulatory organisation” means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from the government or relevant authorities.

Article 10.2

Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) financial institutions of the other Party;
 - (b) investors of the other Party, and investments of such investors, in financial institutions in the Party’s territory; and
 - (c) cross-border trade in financial services.
2. Chapter 7 (Cross-Border Trade in Services) and Chapter 12 (Investment) apply to measures described in paragraph 1 only to the extent that these Chapters or the Articles therein are incorporated into this Chapter. Accordingly:

²⁶ For the purpose of this subparagraph, “natural person of a Party” means any person who is a citizen of a Party within the meaning of its Constitution and its domestic laws. A natural person who possesses dual nationality shall be deemed to possess exclusively the nationality of the State of his or her dominant and effective nationality.

- (a) Article 7.9 (Transfers and Payments) of Chapter 7 (Cross-Border Trade in Services) is incorporated, *mutatis mutandis*, into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to the obligations pursuant to Article 10.5 (Cross-Border Trade in Financial Services);
 - (b) Article 7.10 (Denial of Benefits) of Chapter 7 (Cross-Border Trade in Services), Article 12.11 (Expropriation), including Annex 12-A (Expropriation), Article 12.12 (Transfers) and Article 12.22 (Denial of Benefits) of Chapter 12 (Investment) are hereby incorporated, *mutatis mutandis*, into and made a part of this Chapter; and
 - (c) Section 12-B (Investor-State Dispute Settlement) of Chapter 12 (Investment) is hereby incorporated, *mutatis mutandis*, into and made a part of this Chapter solely for claims that a Party has breached Article 12.11 (Expropriation), including Annex 12-A (Expropriation), Article 12.12 (Transfers) and Article 12.22 (Denial of Benefits) of Chapter 12 (Investment) as incorporated into this Chapter.
3. This Chapter does not apply to measures adopted or maintained by a Party relating to:
- (a) activities or services forming part of a public retirement plan or statutory system of social security; or
 - (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,
- except that this Chapter shall apply if a party allows any of the activities or services referred to in subparagraphs (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 the government procurement of financial services.
5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.

Article 10.3

National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable 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 the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable 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. For purposes of the national treatment obligations in paragraph 1 of Article 10.5 (Cross-Border Trade in Financial Services), each Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own financial service suppliers with respect to the supply of the relevant service.

Article 10.4
Market Access for Financial Institutions

A Party shall not adopt or maintain, with respect to financial institutions of the other Party, either on the basis of a regional sub-division or on the basis of its entire territory, measures that:

- (a) impose limitations on:
 - (i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements 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;
 - (iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of a numerical quota or the requirement of an economic needs test; or

- (v) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
- (b) restrict or require specific types of legal entity or joint venture through which a financial service supplier may supply a financial service.

Article 10.5
Cross-Border Trade in Financial Services

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply financial services, subject to non-conforming measures set out in its Schedule to Annex 10-A and Annex 10-B.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of that other Party.
3. This Article does not require a Party to permit such suppliers to do or solicit business in its territory. Each Party may define “doing business” and “solicitation” for purposes of this obligation, as long as such definitions are not inconsistent with paragraph 1.
4. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration, authorisation or licensing of cross-border financial service suppliers of the other Party and of financial instruments.

Article 10.6
Non-Conforming Measures

1. Article 10.3 (National Treatment), Article 10.4 (Market Access for Financial Institutions) and Article 10.5 (Cross-Border Trade in Financial Services) do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party as set out by that Party in its Schedule to Annex 10-A;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any 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 at the date of entry into force of this Agreement, with Article 10.3 (National Treatment), Article 10.4 (Market Access for Financial Institutions) and Article 10.5 (Cross-Border Trade in Financial Services).

2. Article 10.3 (National Treatment), Article 10.4 (Market Access for Financial Institutions) and Article 10.5 (Cross-Border Trade in Financial Services) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities as set out by that Party in its Schedule to Annex 10-B.
3. A non-conforming measure set out in a Party's Schedule to Annex 7-A or Annex 7-B as a measure to which Article 7.3 (National Treatment), Article 7.4 (Market Access) of Chapter 7 (Cross-Border Trade in Services), or 12.4 (National Treatment) of Chapter 12 (Investment) does not apply shall be treated as a non-conforming measure described in paragraphs 1 and 2, to which Article 10.3 (National Treatment), Article 10.4 (Market Access for Financial Institutions) or Article 10.5 (Cross-Border Trade in Financial Services), as the case may be, does not apply, to the extent that the measure, sector, sub-sector or activity set out in the schedule of non-conforming measures is covered by this Chapter.

Article 10.7
New Financial Services²⁷

1. Each Party shall permit a financial institution of the other Party to supply any new financial service that the first Party would permit its own financial institutions to supply, in like circumstances, under its domestic law, provided that the supply of the new financial service does not require a new law or modification of an existing law by the first Party.
2. Notwithstanding paragraph (b) of Article 10.4 (Market Access for Financial Institutions), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorisation and the authorisation may only be refused for prudential reasons.

Article 10.8
Regulatory Transparency

²⁷ The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to the other Party to consider authorising the supply of a financial service that is not supplied in the territory of any Party. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of this Article.

1. Each Party shall ensure that measures of general application relating to supply of financial services are promptly published or otherwise made available in a manner so as to enable interested persons to become acquainted with them.
2. To the extent practicable, and in accordance with its domestic law, each Party shall:
 - (a) publish in advance any measure of general application relating to supply of financial services that it proposes to adopt and the purpose of the measure, and
 - (b) provide interested persons with a reasonable opportunity to comment on such proposed measures.
3. To the extent practicable, each Party shall allow a reasonable time between the publication of final measures of general application relating to supply of financial services and their effective date.
4. Each Party shall ensure that all measures of general application relating to supply of financial services are administered in a reasonable, objective and impartial manner.
5. Each Party shall maintain appropriate mechanisms for responding to enquires from interested persons regarding measures of general application relating to supply of financial services.

Article 10.9 **Recognition of Prudential Measures**

1. A Party may recognise prudential measures of the other Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:
 - (a) accorded unilaterally;
 - (b) achieved through harmonisation or other means; or
 - (c) based upon an agreement or arrangement with the other Party or a non-Party.
2. A Party according recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other 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 Parties.
3. Where a Party accords recognition of prudential measures under paragraph 1(c) with a non-Party and the circumstances set out in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 10.10

Self-Regulatory Organisations

Where a Party requires a financial institution of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to provide a financial service in the territory of that Party, that Party shall ensure observance of the obligations set out in Article 10.3 (National Treatment) by such self-regulatory organisation.

Article 10.11 Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall, as permitted by each Party's access criteria, grant to financial institutions of the other Party, established in its territory and regulated or supervised as financial institutions under its domestic law, 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 a Party's lender of last resort facilities.

Article 10.12 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 paragraph 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 provision of this Agreement.

Article 10.13 Treatment of Certain Information

Nothing in this Agreement requires a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (b) any confidential or proprietary information, the disclosure of which would impede law enforcement or otherwise be contrary to public interests or prejudice the legitimate commercial interests of particular enterprises.

Article 10.14 Exceptions

1. Nothing in this Chapter, or Chapter 8 (Telecommunications) including specifically Article 8.19 (Relationship to Other Chapters), Chapter 9 (Electronic Commerce) or

Chapter 12 (Investment), and in addition Article 7.2 (Scope and Coverage) of Chapter 7 (Cross-Border Trade in Services) with respect to the supply of financial services in the territory of a Party by an investor of the other Party or investments of investors of the other Party, as defined in Chapter 12 (Investment), applies to measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 7.9 (Transfers and Payments) of Chapter 7 (Cross-Border Trade in Services), Article 12.7 (Performance Requirements) or Article 12.12 (Transfers) of Chapter 12 (Investment).

2. Notwithstanding any other provisions of the Agreement, a Party shall not be prevented from taking measures for prudential reasons²⁸, 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. Where such measures do not conform to the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.
3. Notwithstanding Article 7.9 (Transfers and Payments) of Chapter 7 (Cross-Border Trade in Services) and Article 12.12 (Transfers) of Chapter 12 (Investment), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures 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 the adoption or enforcement by a Party of measures 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 such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

Article 10.15 Consultation

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 sympathetic consideration to the request. The Parties shall report the results of their

²⁸ The Parties understand that the term "prudential reasons" may include the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers.

consultations to the Joint Committee established pursuant to Article 18.1 (Joint Committee) of Chapter 18 (Institutional, General and Final Provisions).

2. Consultations under this Article shall include officials of the relevant authorities.
3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.
4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

Article 10.16
Dispute Settlement

1. Except otherwise provided for, Chapter 17 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.
2. When a Party claims that a dispute arises under this Chapter, the arbitration panel shall compose:
 - (a) where the disputing Parties so agree, entirely of panelists meeting the criteria set out in paragraph 3; and
 - (b) in any other case, panelists meeting the criteria set out in either paragraph 3 or in paragraph 6 of Article 17.7 (Composition and Establishment of the Arbitration Panel) of Chapter 17 (Dispute Settlement).

However, the chair of the panel shall meet the criteria set out in paragraph 3 if Article 10.14 (Exceptions) is invoked by the Party complained against, unless the Parties agree otherwise.

3. Financial services panelists shall:
 - (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
 - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and
 - (c) meet the criteria set out in paragraph 6 of Article 17.7 (Composition and Establishment of the Arbitration Panel) of Chapter 17 (Dispute Settlement).

4. Notwithstanding Article 17.11 (Compensation and Suspension of Concessions or Other Obligations) of Chapter 17 (Dispute Settlement), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:
 - (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
 - (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; or
 - (c) only a sector other than the financial service sector, the complaining Party may not suspend benefits in the financial services sector.

Article 10.17
Modification or Addition of Reservations

1. A Party (referred to in the following paragraphs as the “modifying Party”) may, in accordance with paragraphs 2 and 3, modify or add to its non-conforming measures as set out in Annex 10-A and 10-B.
2. Such modifications or additions shall not:
 - (a) be introduced for the purpose of affording undue protection to financial institutions of the modifying Party; and
 - (b) discriminate between the other Party and any non-Party, except for measures that accord differential treatment to any non-Party under any bilateral or multilateral international agreement between either Party and such non-Party in force or signed prior to, on or after the date of entry into force of this Agreement.
3. The modifying Party may only make such modifications or additions if it:
 - (a) notifies the other Party in writing of its intent at least three months prior to the date of implementation of the measure;
 - (b) begins consultations with the other Party upon request by that other Party and gives due consideration to the views expressed by that Party in such consultations with an agreement on the appropriate compensatory adjustments; and
 - (c) makes compensatory adjustments to its Schedule to Annex 10-A or Annex 10-B in accordance with any agreement reached between the Parties on compensatory adjustments, to the extent possible in the same sector or sub-sector of the financial institution that is affected by the modification so as to maintain a general level of mutually advantageous commitments that is not

less favourable to investments and trade in financial services than that provided for in its Schedule prior to the modification.

4. If agreement is not reached between the Parties on any necessary compensatory adjustments, the matter may be referred to arbitration in accordance with the procedures set out in Chapter 17 (Dispute Settlement).
5. Paragraph 1 of this Article shall not be construed to prejudice the right of both Parties to maintain any existing measures or adopt new measures consistent with the reservations set out in Annex 10-A and Annex 10-B.