

CHAPTER 8

FINANCIAL SERVICES

Article 8.1: Definitions

For the purposes of this Chapter:

commercial presence means any type of business or professional establishment, including through:

- (a) the constitution, acquisition or maintenance of an enterprise; or
- (b) the creation or maintenance of a branch or a representative office,

within the Area of a Party for the purpose of supplying a financial service;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the activities in Annex 8-A;

financial service supplier means any person of a Party that seeks to supply or supplies a financial service but does not include a public entity;

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;

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

self-regulatory organisation means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party; and

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

- (a) from the Area of a Party into the Area of the other Party (Cross-border supply: Mode 1);
- (b) in the Area of a Party to a person of the other Party (Consumption abroad: Mode 2);
- (c) by a financial service supplier of a Party, through commercial presence in the Area of the other Party (Commercial presence: Mode 3); or
- (d) by a natural person of a Party in the Area of the other Party (Presence of natural persons: Mode 4).

Article 8.2: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in financial services.

2. This Chapter shall not apply to:

- (a) government procurement;
- (b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers;
- (c) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (d) activities forming part of a statutory system of social security or public retirement plans; or
- (e) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Party.

3. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its Area, and does not confer any right on that natural person with respect to that access or employment.

4. If a Party allows any activities referred to in paragraph 2(d) and paragraph 2(e) to be conducted by its financial service suppliers in competition with a public entity or a

financial service supplier, measures affecting such services shall not be excluded from this Chapter.

Article 8.3: Market Access

1. With respect to market access through the modes of supply identified in Article 8.1, each Party shall accord financial services and financial service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.

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

- (a) limitations on the number of financial service suppliers whether in the form of numerical quotas, monopolies, exclusive financial service suppliers or the requirement of an economic needs test;
- (b) limitations on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of financial service operations or on the total quantity of financial service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test¹;
- (d) limitations on the total number of natural persons that may be employed in a particular financial service sector or that a 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;
- (e) measures which restrict or require specific types of legal entities or joint ventures through which a financial service supplier may supply a financial service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

¹ Paragraph 2(c) does not cover measures of a Party which limit inputs for the supply of financial services.

Article 8.4: National Treatment²

Each Party shall accord to financial services and financial service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own financial services and financial service suppliers.

Article 8.5: Most-Favoured-Nation Treatment

Each Party shall accord to financial services and financial service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to financial services and financial service suppliers of a non-Party.

Article 8.6: Special Formalities and Information Requirements

1. Nothing in Article 8.4 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the supply of a financial service by a financial service supplier of the other Party through commercial presence in the Area of the Party, such as a residency requirement for registration or a requirement that a commercial presence be legally constituted or organised under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to that commercial presence pursuant to this Chapter.

2. Notwithstanding Articles 8.4 and 8.5, a Party may require a financial service supplier of the other Party supplying a financial service through commercial presence in the Area of the Party to provide information concerning that commercial presence solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of that supplier or the commercial presence. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 8.7: Senior Management and Boards of Directors

1. A Party shall not require that a financial service supplier of the other Party with commercial presence in its Area engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a minority of the board of directors of a financial service supplier of the other Party within its Area be composed of natural

² For greater certainty, whether treatment is accorded in “like circumstances” under Articles 8.4 or 8.5 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

persons of the Party or natural persons residing in the Area of the Party or a combination thereof.

Article 8.8: Schedule of Specific Commitments

1. Each Party shall adopt a schedule of its financial services commitments in accordance with this Article.

Scheduling of Market Access

2. In scheduling commitments pursuant to Article 8.3, a Party shall set out in Section A of its Schedule the specific commitments it undertakes, and any terms, limitations or conditions with respect to sectors where such commitments are undertaken.

3. A non-conforming measure maintained pursuant to Article 7.3 (Market Access) of Chapter 7 (Cross-Border Trade in Services), as set out in Annex I of a Party's Schedule, shall be treated as a term, limitation or condition under Article 8.3, to the extent that the measure set out in the entry is covered by this Chapter.

4. Any measure maintained in sectors, subsectors or activities not subject to Article 7.3 (Market Access) of Chapter 7 (Cross-Border Trade in Services), as set out in Annex II of a Party's Schedule, shall be treated as not subject to Article 8.3, to the extent that the sector, subsector or activity set out in the entry is covered by this Chapter.

Scheduling of Other Commitments

5. Articles 8.4, 8.5 and 8.7 shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in Part I of Section B of its Schedule;
 - (ii) the regional level of government, as set out by that Party in Part I of Section B of its Schedule; or
 - (iii) the local level of government;
- (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 immediately before the amendment, with Articles 8.4, 8.5 and 8.7.

6. A non-conforming measure maintained pursuant to Articles 7.4 (National Treatment), 7.5 (Local Presence) or 7.6 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services), or Articles 12.4 (National Treatment), 12.5 (Most-Favoured-Nation Treatment) or 12.7 (Senior Management and Boards of Directors) of Chapter 12 (Establishment and Related Provisions), as set out in Annex I of a Party's Schedule, shall be treated as a non-conforming measure not subject to Articles 8.4, 8.5 or 8.7, as the case may be, to the extent that the measure set out in the entry is covered by this Chapter.

7. Articles 8.4, 8.5 and 8.7 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in Part II of Section B of its Schedule.

8. Any measure adopted or maintained with respect to sectors, subsectors or activities not subject to Articles 7.4 (National Treatment), 7.5 (Local Presence) or 7.6 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services), or Articles 12.4 (National Treatment), 12.5 (Most-Favoured-Nation Treatment) or 12.7 (Senior Management and Boards of Directors) of Chapter 12 (Establishment and Related Provisions), as set out in Annex II of a Party's Schedule, shall be treated as not subject to Articles 8.4, 8.5 or 8.7, as the case may be, to the extent that the sector, subsector or activity set out in the entry is covered by this Chapter.

Article 8.9: Electronic Payment Systems

1. A Party shall allow the supply of electronic payment services for payment transactions into its Area from the Area of the other Party by a person of that other Party. A Party may condition the cross-border supply of such electronic payment services on one or more of these requirements that a service supplier of the other Party:

- (a) register or be authorised by relevant authorities;
- (b) be a supplier who supplies such services in the Area of the other Party; or
- (c) designate an agent office or maintain a representative or sales office in the Party's Area.

2. For the purposes of this Article, electronic payment services for payment transactions do not include the transfer of funds to and from transactors' accounts. Furthermore, electronic payment services for payment transactions include only those payment network services that use proprietary networks to process payment transactions. These services are provided on a business to business basis.

3. Nothing in this Article shall be construed to prevent a Party from adopting or maintaining measures for public policy purposes, provided that these measures are not

used as a means to avoid the Party's obligation under this Article. For greater certainty, such measures may include:

- (a) measures to protect personal data, personal privacy and the confidentiality of individual records, transactions and accounts, such as restricting the collection by, or transfer to, the cross-border service supplier of the other Party, of information concerning cardholder names;
- (b) the regulation of fees, such as interchange or switching fees; and
- (c) the imposition of fees as may be determined by a Party's authority, such as those to cover the costs associated with supervision or regulation or to facilitate the development of the Party's payment system infrastructure.

Article 8.10: Effective and Transparent Regulation in the Financial Services Sector

1. Each Party's appropriate regulatory authority shall make available to interested persons its requirements for completing applications relating to the supply of financial services.
2. At the request of an applicant, the appropriate regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.
3. A Party's regulatory authority shall make a decision on a complete application relating to the supply of financial services and notify the applicant of the decision within a reasonable period of time. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received.
4. On request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for the denial of the application.
5. Each Party shall endeavour to implement and apply in its Area internationally agreed standards for regulation and supervision in the financial services sector and for the fight against money laundering. For this purpose, and if appropriate, the Parties shall cooperate and exchange information and experience within the Joint Commission or any ad hoc sub-committee or body established by the Joint Commission.

Article 8.11: Expedited Availability of Insurance

The Parties recognise 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 time; not requiring product approval or authorisation 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 related to the offering of products within the scope of an insurance licence, the Party shall endeavour to maintain or improve these existing procedures.

Article 8.12: Financial Services New to the Area of a Party

Each Party shall permit financial service suppliers of the other Party established in its Area to supply any new financial service that the Party would permit its own like financial service supplier to supply without additional legislative action by the Party. Notwithstanding Article 8.3.2(e), a Party may determine the institution and juridical form through which the service may be supplied and may require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may be refused only for prudential reasons.

Article 8.13: Self-Regulatory Organisations

When membership of, participation in, or access to, a self-regulatory organisation is required by a Party in order for financial service suppliers of the other Party to supply financial services in or into the Area of the Party, the Party shall ensure that:

- (a) the self-regulatory organisation observes the obligations of Articles 8.4 and 8.5 with respect to financial service suppliers of the other Party; and
- (b) a rule of general application adopted or maintained by a self-regulatory organisation of the Party is promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with it.

Article 8.14: Performance of Back-Office Functions

1. The Parties recognise that the performance of the back-office functions of a financial institution in its Area by the head office or an affiliate of the financial institution, or by an unrelated service supplier, either inside or outside its Area, is important to the effective management and efficient operation of that financial institution. While a Party may require financial institutions to ensure compliance with any domestic requirements applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

2. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its Area to retain certain functions.

Article 8.15: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its Area access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 8.16: Denial of Benefits

1. A Party may, at any time, deny the benefits of this Chapter to a financial service supplier of the other Party if the financial service supplier is:

- (a) an enterprise owned or controlled by persons of a non-Party; and
- (b) the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a financial service supplier of the other Party if the financial service supplier is an enterprise owned or controlled by persons of a non-Party or by persons of the denying Party that has no substantial business activities in the Area of the other Party.

Article 8.17: Payments and Transfers

1. Each Party shall permit all transfers and payments that relate to the supply of financial services to be made freely and without delay into and out of its Area.

2. Each Party shall permit transfers and payments that relate to the supply of financial services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraph 1 and paragraph 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;

- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) criminal or penal offences;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 8.18: Disclosure of Confidential Information

Without prejudice to Article 19.1 (Disclosure of Information) of Chapter 19 (General Provisions and Exceptions), nothing in this Chapter or Section B (Movement of Information and Location of Computing Facilities for Financial Services) of Chapter 11 (Electronic Commerce) shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers of financial service suppliers, or any confidential or proprietary information in the possession of public entities.

Article 8.19: Prudential Exception

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Technical Barriers to Trade), Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 14 (Intellectual Property), a Party shall not be prevented from adopting or maintaining reasonable measures for prudential reasons, such as:

- (a) protecting investors, depositors, financial market participants, policy-holders, or persons to whom a fiduciary duty is owed by a financial service supplier;
- (b) maintaining the safety, soundness, integrity or financial responsibility of financial service suppliers; or
- (c) ensuring the integrity and stability of a Party's financial system.

2. Where such measures as referred to in paragraph 1 do not conform with the provisions of this Chapter and Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

Article 8.20: Recognition

1. A Party may recognise prudential measures of the other Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement with a third party such as those referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

Article 8.21: Consultations

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

2. Nothing in this Article shall be construed to require financial authorities participating in consultations to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

3. Where a financial authority of a Party requires information for supervisory purposes concerning a financial service supplier in the Area of the other Party, such financial authority may approach the competent financial authority in the Area of the other Party to seek the information. The provision of such information may be subject to the terms, conditions and limitations contained in the other Party's relevant laws and regulations or to the requirement of a prior agreement or arrangement between the respective financial authorities.

Article 8.22: Contact Points

1. Each Party shall designate one or more contact points to facilitate communication between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party.

2. Each Party shall notify the other Party promptly of any amendments to the details of its contact points.