

Annex 4
Financial Services

Section 1
Scope and Definitions

1. This Annex shall apply to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph (u) of Article 58.

2. (a) For the purposes of this Annex, the term:

(i) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(A) Insurance and Insurance-Related Services

(AA) direct insurance (including co-insurance):

(aa) life; and

(bb) non-life;

(BB) reinsurance and retrocession;

(CC) insurance intermediation, such as brokerage and agency; and

(DD) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and

(B) Banking and Other Financial Services (Excluding Insurance)

(AA) acceptance of deposits and other repayable funds from the public;

(BB) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(CC) financial leasing;

- (DD) all payment and money transmission services, including credit, charge and debit cards, traveler's checks, and banker's drafts;
- (EE) guarantees and commitments;
- (FF) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (aa) money market instruments (including checks, bills, certificates of deposits);
 - (bb) foreign exchange;
 - (cc) derivative products including, but not limited to, futures and options;
 - (dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (ee) transferable securities; and
 - (ff) other negotiable instruments and financial assets, including bullion;
- (GG) 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;
- (HH) money broking;
- (II) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
- (JJ) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

- (KK) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - (LL) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (AA) through (KK), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;
- (ii) "financial service supplier" means any natural person or juridical person of a Party that supplies a financial service, but does not include a public entity; and
 - (iii) "public entity" means:
 - (A) the Government, central bank or monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - (B) a private entity, performing functions normally performed by the central bank or monetary authority of a Party, when exercising those functions.
- (b) For the purposes of paragraph (n) of Article 58, the term "service supplied in the exercise of governmental authority" means the following:
 - (i) activities conducted by the central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (ii) activities forming part of a statutory system of social security or public retirement plans; and

- (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
- (c) For the purposes of paragraph (n) of Article 58, if a Party allows any of the activities referred to in subparagraph (b)(ii) or (iii) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, the term "service" shall include such activities.
- (d) Paragraph (q) of Article 58 shall not apply to services covered by this Annex.

Section 2 Domestic Regulation

1. Notwithstanding any provisions of Chapter 7, a Party shall not be prevented from taking measures for prudential reasons, including measures 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 with the provisions of Chapter 7, they shall not be used as a means of avoiding the Party's commitments or obligations under Chapter 7.

2. Nothing in Chapter 7 shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Section 3 Recognition

1. A Party may recognize the prudential measures of any international regulatory body or non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the international regulatory body or non-Party concerned or may be accorded autonomously.

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

Section 4 Dispute Settlement

Arbitral tribunals established under Article 119 for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

Section 5 Working Group on Financial Services

1. The working group on financial services (hereinafter referred to in this Section as "the Working Group") established pursuant to paragraph 4 of Article 71 shall exchange views on the following issues:

- (a) overall policy requirements to respond to the recent trends of uncertainties due to rapid expansion of cross-border financial transactions driven by technological advances in the financial sector;
- (b) supervision of financial service suppliers of a Party in the Area of the other Party;
- (c) financial market innovations of the Parties;
- (d) development of financial markets of the Parties;
and
- (e) other issues related to financial services.

2. The Working Group shall not negotiate commitments on financial services.

3. The Working Group shall report to the Sub-Committee on Trade in Services on its work.

4. The Working group shall not preclude the opportunities to exchange or share views and information between competent authorities of the Parties through present and future communication channels.
5. The Working Group shall meet at such time and venue as may be agreed by the Parties.
6. The Working Group shall be composed of the following:
 - (a) for Japan, senior officials from the Financial Services Agency and, where appropriate, the Ministry of Foreign Affairs; and
 - (b) for Viet Nam, representatives of the State Bank, the Ministry of Finance and, where appropriate, relevant ministries.