

CHAPTER 11

FINANCIAL SERVICES

*This Chapter is similar to that of TPP, together with note of freeze clause under CPTPP (according to WTO Center-VCCI)

Article 11.1: 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 a 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;
- (b) in the territory of a 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 an investment in that territory;

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

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), 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 transaction;
- (g) financial leasing;
- (h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques 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 cheques, 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, 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 provision of services related to such 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 9.1 (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 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 for the purposes of Chapter 9 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 9.1 (Definitions);

investor of a Party means a Party, or a person of a Party, that attempts to make¹, is making, or has made an investment in the territory of another Party;

¹ 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 channelling resources or capital in order to set up a business, or applying for permits or licenses.

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 1.3 (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 any financial institution that is owned or controlled by a Party; and

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

Article 11.2: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

- (a) financial institutions of another Party;
- (b) investors of another Party, and investments of those investors, in financial institutions in the Party's territory; and
- (c) cross-border trade in financial services.

2. Chapter 9 (Investment) and Chapter 10 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter.

- (a) Article 9.6 (Minimum Standard of Treatment), Article 9.7 (Treatment in the Case of Armed Conflict or Civil Strife), Article 9.8 (Expropriation and Compensation), Article 9.9 (Transfers), Article 9.14 (Special Formalities and Information Requirements), Article 9.15 (Denial of Benefits), Article 9.16 (Investment and Environmental, Health and other Regulatory Objectives) and Article 10.10 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

- (b) Section B of Chapter 9 (Investment) is hereby incorporated into and made a part of this Chapter² solely for claims that a Party has breached ~~Article 9.6 (Minimum Standard of Treatment)~~³, Article 9.7 (Treatment in the Case of Armed Conflict or Civil Strife), Article 9.8 (Expropriation and Compensation), Article 9.9 (Transfers), Article 9.14 (Special Formalities and Information Requirements) and Article 9.15 (Denial of Benefits) incorporated into this Chapter under subparagraph (a).⁴ *(This clause is freeze under CPTPP)
- (c) Article 10.12 (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 11.6 (Cross-Border Trade).

3. This Chapter shall 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 to the extent that a Party allows any of the activities or services 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 shall not apply to government procurement of financial services.

² For greater certainty, Section B of Chapter 9 (Investment) shall not apply to cross-border trade in financial services.

³ ~~With respect to Brunei Darussalam, Chile, Mexico and Peru, Annex 11-E applies.~~

⁴ For greater certainty, if an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment): (1) as referenced in Article 9.23.7 (Conduct of the Arbitration), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international investment arbitration; (2) pursuant to Article 9.23.4, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards); and (3) pursuant to Article 9.23.6, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection and, in determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous and shall provide the disputing parties a reasonable opportunity to comment.

5. This Chapter shall not apply to subsidies or grants with respect to the cross-border supply of financial services, including government-supported loans, guarantees and insurance.

Article 11.3: National Treatment⁵

1. Each Party shall accord to investors of another 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 another Party, and to investments of investors of another 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 greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, financial institutions and investments of investors in financial institutions, of the Party of which it forms a part.

4. For the purposes of the national treatment obligations in Article 11.6.1 (Cross-Border Trade), a Party shall accord to cross-border financial service suppliers of another Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 11.4: Most-Favoured-Nation Treatment

1. Each Party shall accord to:

- (a) investors of another Party, treatment no less favourable than that it accords to investors of any other Party or of a non-Party, in like circumstances;

⁵ For greater certainty, whether treatment is accorded in “like circumstances” under Article 11.3 (National Treatment) or Article 11.4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

- (b) financial institutions of another Party, treatment no less favourable 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 financial institutions, treatment no less favourable 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) cross-border financial service suppliers of another Party, treatment no less favourable than that it accords to cross-border financial service suppliers of any other Party or of a non-Party, in like circumstances.

2. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms such as those included in Article 11.2.2(b) (Scope).

Article 11.5: Market Access for Financial Institutions

No Party shall adopt or maintain with respect to financial institutions of another Party or investors of another Party seeking to establish those institutions, either on the basis of a regional subdivision 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 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;⁶ or
 - (iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial

⁶ Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

institution 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

- (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Article 11.6: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of another Party to supply the financial services specified in Annex 11-A (Cross-Border Trade).

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 another Party located in the territory of a Party other than the permitting Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory. A Party may define “doing business” and “solicitation” for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of another Party and of financial instruments.

Article 11.7: New Financial Services⁷

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.⁸ Notwithstanding Article 11.5(b) (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. If a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable period

⁷ The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to another Party to request that it authorise the supply of a financial service that is not supplied in the territory of any Party. That 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 this Article.

⁸ For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

of time whether to issue the authorisation and may refuse the authorisation only for prudential reasons.

Article 11.8: Treatment of Certain Information

Nothing in this Chapter shall require 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 information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 11.9: Senior Management and Boards of Directors

1. No Party shall require financial institutions of another Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. No Party shall require that more than a minority 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.

Article 11.10: Non-Conforming Measures

1. Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions), Article 11.6 (Cross-Border Trade) and Article 11.9 (Senior Management and Boards of Directors) 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 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 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:⁹
 - (i) immediately before the amendment, with Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions) or Article 11.9 (Senior Management and Boards of Directors); or
 - (ii) on the date of entry into force of the Agreement for the Party applying the non-conforming measure, with Article 11.6 (Cross-Border Trade).

2. Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions), Article 11.6 (Cross-Border Trade) and Article 11.9 (Senior Management and Boards of Directors) 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 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 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.11 (Senior Management and Boards of Directors), Article 10.3 (National Treatment) or Article 10.4 (Most-Favoured-Nation Treatment), shall be treated as a non-conforming measure not subject to Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment) or Article 11.9 (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 entry is covered by this Chapter.

- 4. (a) Article 11.3 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:
 - (i) Article 18.8 (National Treatment); or
 - (ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 18 (Intellectual Property).

⁹ With respect to Viet Nam, Annex 11-C (Non-Conforming Measures Ratchet Mechanism) applies.

- (b) Article 11.4 (Most-Favoured-Nation Treatment) shall not apply to any 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 18.8 (National Treatment); or
 - (ii) Article 4 of the TRIPS Agreement.

Article 11.11: Exceptions

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textiles and Apparel), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 6 (Trade Remedies), Chapter 7 (Sanitary and Phytosanitary Measures) and Chapter 8 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,^{10, 11} 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 these measures do not conform with the provisions of this 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.

2. Nothing in this Chapter, Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services), Chapter 13 (Telecommunications) including specifically Article 13.24 (Relation to Other Chapters), or Chapter 14 (Electronic Commerce), shall apply to non-discriminatory 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 9.10 (Performance Requirements) with respect to measures covered by Chapter 9 (Investment), under Article 9.9 (Transfers) or Article 10.12 (Payments and Transfers).

¹⁰ 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.

¹¹ For greater certainty, if a measure challenged under Section B of Chapter 9 (Investment) is determined to have been adopted or maintained by a Party for prudential reasons in accordance with procedures in Article 11.22 (Investment Disputes in Financial Services), a tribunal shall find that the measure is not inconsistent with the Party's obligations in the Agreement and accordingly shall not award any damages with respect to that measure.

3. Notwithstanding Article 9.9 (Transfers) and Article 10.12 (Payments and Transfers), 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 a Party from adopting or enforcing 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 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 11.12: Recognition

1. A Party may recognise prudential measures of another Party or a non-Party in the application of measures covered by this Chapter.¹² That recognition may be:

- (a) accorded autonomously;
- (b) achieved through harmonisation 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

¹² For greater certainty, nothing in Article 11.4 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord recognition to prudential measures of any other Party.

adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 11.13: Transparency and Administration of Certain Measures

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

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. Paragraphs 2, 3 and 4 of Article 26.2 (Publication), shall not apply to regulations of general application relating to the subject matter of this Chapter. Each Party shall, to the extent practicable:

- (a) publish in advance any such 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 with respect to the proposed regulation.¹³

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 ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

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

¹³ For greater certainty, a Party may address those comments collectively on an official government website.

8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing an application relating to the supply of financial services.

9. On request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a complete application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of another Party relating to the supply of a financial service, within 120 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. If it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.

11. 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 denial of the application.

Article 11.14: Self-Regulatory Organisations

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 organisation in order to provide a financial service in or into its territory, it shall ensure that the self-regulatory organisation observes the obligations contained in Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured-Nation Treatment).

Article 11.15: 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 is not intended to confer access to the Party's lender of last resort facilities.

Article 11.16: Expedited Availability of Insurance Services

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 period of time; not requiring product approval or authorisation 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 endeavour to maintain or improve those procedures.

Article 11.17: Performance of Back-Office Functions

1. The Parties recognise that the performance of the back-office functions of a financial institution in its territory by the head office or an affiliate of the financial institution, or by an unrelated service supplier, either inside or outside its territory, 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 territory to retain certain functions.

Article 11.18: Specific Commitments

Annex 11-B (Specific Commitments) sets out certain specific commitments by each Party.

Article 11.19: Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services (Committee). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 11-D (Authorities Responsible for Financial Services).

2. The Committee shall:

- (a) supervise the implementation of this Chapter and its further elaboration;
- (b) consider issues regarding financial services that are referred to it by a Party; and
- (c) participate in the dispute settlement procedures in accordance with Article 11.22 (Investment Disputes in Financial Services).

3. The Committee shall meet annually, or as it decides otherwise, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of any meeting.

Article 11.20: 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 the request to hold consultations. The consulting Parties shall report the results of their consultations to the Committee.

2. With regard to matters relating to existing non-conforming measures maintained by a Party at a regional level of government as referred to in Article 11.10.1(a)(ii) (Non-Conforming Measures):

(a) A Party may request information on any non-conforming measure at the regional level of government of another Party. Each Party shall establish a contact point to respond to those requests and to facilitate the exchange of information regarding the operation of measures covered by those requests.

(b) If a Party considers that a non-conforming measure applied by a regional level of government of another Party creates a material impediment to trade or investment by a financial institution, an investor, investments in a financial institution or a cross-border financial service supplier, the Party may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

3. Consultations under this Article shall include officials of the authorities specified in Annex 11-D (Authorities Responsible for Financial Services).

4. 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 regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

Article 11.21: Dispute Settlement

1. Chapter 28 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.
2. If a Party claims that a dispute arises under this Chapter, Article 28.9 (Composition of Panels) shall apply, except that:
 - (a) if the disputing Parties agree, each panellist shall meet the qualifications in paragraph 3; and
 - (b) in any other case:
 - (i) each disputing Party shall select panellists that meet the qualifications set out in either paragraph 3 or Article 28.10.1 (Qualifications of Panellists); and
 - (ii) if the responding Party invokes Article 11.11 (Exceptions), the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.
3. In addition to the requirements set out in Article 28.10.1(b) to (d) (Qualifications of Panellists), panellists in disputes arising under this Chapter shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.
4. A Party may request the establishment of a panel pursuant to Article 11.22.2(c) (Investment Disputes in Financial Services) to consider whether and to what extent Article 11.11 (Exceptions) is a valid defence to a claim without having to request consultations under Article 28.5 (Consultations). The panel shall endeavour to present its initial report pursuant to Article 28.17 (Initial Report) within 150 days after the last panellist is appointed.
5. 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 28.20.5 (Non-Implementation – Compensation and Suspension of Benefits), shall seek the views of financial services experts, as necessary.

Article 11.22: Investment Disputes in Financial Services

1. If an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment) challenging a measure relating to regulation or supervision of financial institutions, markets or instruments, the expertise or experience of any

particular candidate with respect to financial services law or practice shall be taken into account in the appointment of arbitrators to the tribunal.

2. If an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment), and the respondent invokes Article 11.11 (Exceptions) as a defence, the following provisions of this Article shall 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 Party of the claimant, as set out in Annex 11-D (Authorities Responsible for Financial Services), a request for a joint determination by the authorities of the respondent and the Party of the claimant on the issue of whether and to what extent Article 11.11 (Exceptions) is a valid defence to the claim. The respondent shall promptly provide the tribunal, if constituted, and the non-disputing Parties a copy of the request. The arbitration may proceed with respect to the claim only as provided in paragraph 4.¹⁴
- (b) The authorities of the respondent and the Party of the claimant shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties, the Committee and, if constituted, to the tribunal. The determination shall be binding on the tribunal and any decision or award issued by the tribunal must be consistent with that determination.
- (c) If the authorities referred to in subparagraphs (a) and (b) have not made a determination within 120 days of the date of receipt of the respondent's written request for a determination under subparagraph (a), the respondent or the Party of the claimant may request the establishment of a panel under Chapter 28 (Dispute Settlement) to consider whether and to what extent Article 11.11 (Exceptions) is a valid defence to the claim. The panel established under Article 28.7 (Establishment of a Panel) shall be constituted in accordance with Article 11.21 (Dispute Settlement). Further to

¹⁴ For the purposes of this Article, "joint determination" means a determination by the authorities responsible for financial services of the respondent and of the Party of the claimant, as set out in Annex 11-D (Authorities Responsible for Financial Services). If, within 14 days of the date of the receipt of a request for a joint determination, another Party provides a written notice to the respondent and the Party of the claimant indicating its substantial interest in the matter subject to the request, that other Party's authorities responsible for financial services may participate in discussions regarding the matter. The joint determination shall be made by the authorities responsible for financial services of the respondent and the Party of the claimant.

Article 28.18 (Final Report), the panel shall transmit its final report to the disputing Parties and to the tribunal.

3. The final report of a panel referred to in paragraph 2(c) shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with the final report.

4. If no request for the establishment of a panel pursuant to paragraph 2(c) has been made within 10 days of the expiration of the 120 day period referred to in paragraph 2(c), the tribunal established under Article 9.19 (Submission of a Claim to Arbitration) may proceed with respect to the claim.

(a) The tribunal shall draw no inference regarding the application of Article 11.11 (Exceptions) from the fact that the authorities have not made a determination as described in paragraphs 2(a), (b) and (c).

(b) The Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 11.11 (Exceptions) is a valid defence to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for the purposes of the arbitration, to take a position on Article 11.11 that is not inconsistent with that of the respondent.

5. For the purposes of this Article, the definitions of the following terms set out in Article 9.1 (Definitions) are incorporated, *mutatis mutandis*: “claimant”, “disputing parties”, “disputing party”, “non-disputing Party” and “respondent”.

ANNEX 11-A

CROSS-BORDER TRADE

Australia

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such 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;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance, such as consultancy, risk assessment, actuarial and claim settlement services; and
- (d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 11.1 (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. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) provision and transfer of financial information, and financial data processing and related software relating to banking and other financial services, as referred to in subparagraph (o) of the definition of “financial service” in Article 11.1 (Definitions); and

- (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 11.1 (Definitions).

Brunei Darussalam

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such 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;
- (b) reinsurance and retrocession; and
- (c) services auxiliary to insurance, such as consultancy, risk assessment, actuarial and claim settlement services.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply only with respect to:

- (a) provision and transfer of financial information; and
- (b) provision and transfer of financial data processing and related software relating to banking and other financial services, as referred to in subparagraph (o) of the definition of “financial service” in Article 11.1 (Definitions).

Canada¹⁵

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (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 11.1 (Definitions); and
- (d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 11.1 (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. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Cross-Border Trade), with respect to:

- (a) provision and transfer of financial information, and financial data processing, as referred to in subparagraph (o) of the definition of “financial service” in Article 11.1 (Definitions); and
- (b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and

¹⁵ For greater certainty, Canada requires that a cross-border financial services supplier maintain a local agent and records in Canada.

other financial services, as referred to in subparagraph (p) of the definition of “financial service” in Article 11.1 (Definitions).

Chile

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
 - (i) international maritime shipping and international 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 there from; and
 - (ii) goods in international transit;
- (b) brokerage of insurance of risks relating to subparagraphs (a)(i) and (a)(ii); and
- (c) reinsurance and retrocession; reinsurance brokerage; and consultancy, actuarial and risk assessment services.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply with respect to:

- (a) provision and transfer of financial information, as referred to in subparagraph (o) of the definition of “financial service” in Article 11.1 (Definitions);
- (b) financial data processing, as referred to in subparagraph (o) of the definition of “financial service” in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required;¹⁶ and
- (c) advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services, as referred to in subparagraph

¹⁶ The Parties understand that if the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Chilean law regulating the protection of such data.

(p) of the definition of “financial service” in Article 11.1 (Definitions).

3. It is understood that a Party’s commitments on cross-border investment advisory services shall not, in and of themselves, be construed to require the Party to permit the public offering of securities (as defined under its relevant law) in the territory of the Party by cross-border suppliers of the other Party who supply or seek to supply such investment advisory services. A Party may subject the cross-border suppliers of investment advisory services to regulatory and registration requirements.

Japan

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such 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;
- (b) reinsurance, retrocession, and services auxiliary to insurance as referred to in subparagraph (d) of the definition of “financial service” in Article 11.1 (Definitions); and
- (c) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 11.1 (Definitions), of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.¹⁷

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) securities-related transactions with financial institutions and other entities in Japan as prescribed by the relevant laws and regulations of Japan;
- (b) sales of a beneficiary certificate of an investment trust and an investment security, through securities firms in Japan;¹⁸

¹⁷ Insurance intermediation services may be supplied only for insurance contracts allowed to be supplied in Japan.

¹⁸ Solicitation must be conducted by securities firms in Japan.

- (c) 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 11.1 (Definitions); and
- (d) 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 11.1 (Definitions).

Malaysia

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such 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 comprising consultancy services, actuarial, risk assessment, risk management and maritime loss adjusting; and brokerage services for risks relating to subparagraph (a) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to the 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 11.1 (Definitions).

3. The commitment made by Malaysia under paragraph 2 does not extend to the supply of electronic payment services for payment card transactions¹⁹.

¹⁹ For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subcategory 71593 of the *United Nations Central Product Classification, Version 2.0*, and include only the processing of financial transactions such as verification of financial balances, authorisation of transactions, notification of banks (or credit card issuers) of individual transactions and the provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorised transactions.

Mexico

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such 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;
- (b) reinsurance and retrocession;
- (c) consultancy, actuarial services and risk assessment in connection with subparagraphs (a) and (b); and
- (d) brokerage of insurance of risks relating to subparagraphs (a) and (b).

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply only 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 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required;²⁰ and
- (b) advisory and other auxiliary financial services,²¹ excluding intermediation, and credit reference and analysis, relating to

²⁰ The Parties understand that if the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Mexican law regulating the protection of such data.

²¹ 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 11.1 (Definitions).

banking and other financial services as referred to in subparagraph (p) of the definition of “financial service” in Article 11.1 (Definitions).

New Zealand

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such 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;
- (b) reinsurance and retrocession, as referred to in subparagraph (b) of the definition of “financial service” in Article 11.1 (Definitions);
- (c) services auxiliary to insurance, as referred to in subparagraph (d) of the definition of “financial service” in Article 11.1 (Definitions); and
- (d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 11.1 (Definitions), of insurance risks relating to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) 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 11.1 (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 11.1 (Definitions); and
- (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 11.1 (Definitions).

Peru²²

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks related to:
 - (i) maritime shipping 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 arising there from; and
 - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) consultancy, actuarial, risk assessment and claim settlement services; and
- (d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 11.1 (Definitions), of insurance of risks relating to services listed in subparagraphs (a) and (b) in this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply only with respect to the 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 11.1 (Definitions)²³, subject to prior authorisation from the relevant regulator, as required, and advisory and other auxiliary financial

²² Peru reserves the right to apply this Annex under conditions of reciprocity.

²³ The Parties understand that, if the financial information or financial data processing referred to in paragraph 2 of this Annex involves personal data, the treatment of such personal data shall be in accordance with Peru’s law regulating the protection of such data and Section B of Annex 11-B (Specific Commitments).

services²⁴, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of “financial service” in Article 11.1 (Definitions).²⁵

²⁴ 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 11.1 (Definitions).

²⁵ The Parties understand that a trading platform, whether electronic or physical, does not fall within the range of services specified in this paragraph.

Singapore

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of “MAT” risks relating to:
 - (i) maritime shipping 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 arising there from; and
 - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance comprising actuarial, loss adjustors, average adjustors and consultancy services;
- (d) reinsurance intermediation by brokerages; and
- (e) MAT intermediation by brokerages.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) provision and transfer of financial information, as described in subparagraph (o) of the definition of “financial service” in Article 11.1 (Definitions); and
- (b) financial data processing and related software, as described in subparagraph (o) of the definition of “financial service” in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator,²⁶

²⁶ For greater certainty, if the financial information or financial data processing referred to in subparagraphs (a) and (b) pertain to outsourcing arrangements or involves personal data, the

United States

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such 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 11.1 (Definitions); and insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of “financial service” in Article 11.1 (Definitions).

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c) of the definition of “cross-border supply of financial services” in Article 11.1 (Definitions), with respect to insurance services.

Banking and other financial services (excluding insurance)

3. Article 11.6.1 shall apply only 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 11.1 (Definitions); and

outsourcing arrangements and treatment of personal data shall be in accordance with the Monetary Authority of Singapore’s regulatory requirements and guidelines on outsourcing and Singapore’s law regulating the protection of such data, respectively. These regulatory requirements and guidelines shall not derogate from the commitments undertaken by Singapore in paragraph 2 and Section B of Annex 11-B (Specific Commitments).

- (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 11.1 (Definitions).

Viet Nam

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) 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 11.1 (Definitions), with respect to:

- (a) insurance of risks relating to:
 - (i) international maritime shipping and international commercial aviation with such 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;
- (b) reinsurance and retrocession; and
- (c) brokerage services, and services auxiliary to insurance, as referred to in subparagraph (d) of the definition of “financial service” in Article 11.1 (Definitions).

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) 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 11.1 (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 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required;²⁷ and
- (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

²⁷ The Parties understand that if the financial information or financial data processing referred to in subparagraph (a) involve personal data, the treatment of such personal data shall be in accordance with Vietnamese laws regulating the protection of such data.

11.1 (Definitions), to the extent that such services are permitted in the future by Viet Nam.

ANNEX 11-B

SPECIFIC COMMITMENTS

Section A: Portfolio Management

1. A Party shall allow a financial institution organised in the territory of another Party to provide the following services to a collective investment scheme located in its territory²⁸:

- (a) investment advice; and
- (b) portfolio management services, excluding:
 - (i) trustee services; and
 - (ii) custodial services and execution services that are not related to managing a collective investment scheme.

2. Paragraph 1 is subject to Article 11.6.3 (Cross-Border Trade).

3. For the purposes of paragraph 1, **collective investment scheme** means:

- (a) For Australia, a “managed investment scheme” as defined under section 9 of the *Corporations Act 2001* (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the *Corporations Act 2001* (Cth), or an entity that:
 - (i) carries on a business of investment in securities, interests in land, or other investments; and
 - (ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the *Corporations Act 2001* (Cth)) made on terms that the funds subscribed would be invested.
- (b) For Brunei Darussalam:

²⁸ For greater certainty, a Party may require a collective investment scheme or a person of a Party involved in the operation of the scheme located in the Party’s territory to retain ultimate responsibility for the management of the collective investment scheme.

- (i) A “collective investment scheme”, defined under Section 203, of the *Securities Market Order, 2013* as any investment arrangements with respect to assets of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (ii) The arrangements must be such that:
 - (A) the persons who are to participate (participants) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions;
 - (B) the arrangements must also have either or both of the following characteristics:
 - (1) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and
 - (2) the property is managed as a whole, by or on behalf of the operator of the collective investment scheme; and
 - (C) the arrangements must satisfy the condition set out in subparagraph (iii).
- (iii) The condition referred to in subparagraph (ii)(B) is that the property belongs beneficially to, and is managed by or on behalf of, a company, the trustee of a trust or some other entity or arrangement having as its purpose the investment of its funds with the aim of spreading the investment risk and giving its members the benefit of the results of the management of those funds for or on behalf of that company, trust, entity or arrangement.
- (c) For Canada, an “investment fund” as defined under the relevant *Securities Act*.²⁹

²⁹ In Canada, a financial institution organised 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 CAD \$100 million.

- (d) For Chile, a “General Management Fund” (*Administradora General de Fondos*) as defined in *Law 20.712* which is subject to supervision by the Superintendence of Securities and Insurance (*Superintendencia de Valores y Seguros*), excluding the provision of custodial services that are related to managing a collective investment scheme.
- (e) For Japan, a “financial instruments business operator” engaged in investment management business under the *Financial Instruments and Exchange Law* (Law No. 25 of 1948).
- (f) For Malaysia, any arrangement where:
 - (i) the investment is made for the purpose, or having the effect, of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, futures contracts or any other property (referred to as “scheme’s assets”) or sums paid out of such profits or income;
 - (ii) the persons who participate in the arrangements do not have day-to-day control over the management of the scheme’s assets; and
 - (iii) the scheme’s assets are managed by an entity that is responsible for the management of the scheme’s assets and is approved, authorised or licensed by a relevant regulator to conduct fund management activities,and includes, among others, unit trust funds, real estate investment trusts, exchange-traded funds, restricted investment schemes and closed-end funds.
- (g) For Mexico, the “Managing Companies of Investment Funds” established under the Investment Funds Law (*Ley de Fondos de Inversión*). A financial institution organised in the territory of another Party will only be authorised 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.

- (h) For New Zealand, a “registered scheme” as defined under the *Financial Markets Conduct Act 2013*.³⁰
- (i) For Peru:
 - (i) mutual funds for investments and securities, pursuant to Single Ordered Text approved by Supreme Decree N° 093-2002-EF (*Texto Único Ordenado de la Ley de Mercado de Valores aprobado mediante Decreto Supremo N° 093-2002-EF*); or
 - (ii) investment funds, pursuant to Legislative Decree N° 862 (*Decreto Legislativo N° 862, Ley de Fondos de Inversión y sus Sociedades Administradoras*).
- (j) For Singapore, a “collective investment scheme” as defined under the *Securities and Futures Act* (Cap. 289), and includes the manager of the scheme, provided that the financial institution in paragraph 1 is authorised or regulated as a fund manager in the territory of the Party it is organised in and is not a trust company.
- (k) For the United States, an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*.³¹
- (l) For Viet Nam, a fund management company established and operated under the *Securities Law of Viet Nam*, and subject to regulation and supervision by the State Securities Commission of Viet Nam, in case the services in paragraph 1 are provided to manage an investment fund which invests in the assets located outside Viet Nam.

Section B: Transfer of Information

Each Party shall allow a financial institution of another Party to transfer information in electronic or other form, into and out of its territory, for data processing if such processing is required in the institution’s ordinary course of

³⁰ Custodial services are included in the scope of the specific commitment made by New Zealand under this Annex only with respect to investments for which the primary market is outside the territory of the Party.

³¹ Custodial services are included in the scope of the specific 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.

business. Nothing in this Section restricts the right of a Party to adopt or maintain measures to:

- (a) protect personal data, personal privacy and the confidentiality of individual records and accounts; or
- (b) require a financial institution to obtain prior authorisation from the relevant regulator to designate a particular enterprise as a recipient of such information, based on prudential considerations,³²

provided that this right is not used as a means of avoiding the Party's commitments or obligations under this Section.

Section C: Supply of Insurance by Postal Insurance Entities

1. This Section sets out additional disciplines that apply if a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this paragraph do not include the supply of insurance related to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.

2. No Party shall adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:

- (a) imposing more onerous conditions on a private supplier's licence to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or
- (b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.

3. With respect to the supply of insurance services described in paragraph 1 by a postal insurance entity, a Party shall apply the same regulations and enforcement activities that it applies to the supply of like insurance services by private suppliers.

4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services described in paragraph 1 to publish an annual financial statement with respect to the supply of those services.

³² For greater certainty, this requirement is without prejudice to other means of prudential regulation.

The statement shall provide the level of detail and meet the auditing standards required under the generally accepted accounting and auditing principles, or equivalent rules, applied in the Party's territory with respect to publicly traded private enterprises that supply like services.

5. If a panel under Chapter 28 (Dispute Settlement) finds that a Party is maintaining a measure that is inconsistent with any of the commitments in paragraphs 2, 3 and 4, the Party shall notify the complaining Party and provide an opportunity for consultations prior to allowing the postal insurance entity to:

- (a) issue a new insurance product, or modify an existing product in a manner equivalent to the creation of a new product, in competition with like insurance products supplied by a private supplier in the Party's market; or
- (b) increase any limitation on the value of insurance, either in total or with regard to any type of insurance product, that the entity may sell to a single policyholder.

6. This Section shall not apply to a postal insurance entity in the territory of a Party:

- (a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantages that modify the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or
- (b) if sales of direct life and non-life insurance underwritten by the postal insurance entity each account for no more than 10 per cent, respectively, of total annual premium income from direct life and non-life insurance in the Party's market as of January 1, 2013.

7. If a postal insurance entity in the territory of a Party exceeds the percentage threshold referred to in paragraph 6(b) after the date of signature of this Agreement by the Party, the Party shall ensure that the postal insurance entity is:

- (a) regulated and subject to enforcement by the same authorities that regulate and conduct enforcement activities with respect to the supply of insurance services by private suppliers; and
- (b) subject to the financial reporting requirements that apply to financial institutions supplying insurance services.

8. For the purposes of this Section, **postal insurance entity** means an entity that underwrites and sells insurance to the general public and that is owned or controlled, directly or indirectly, by a postal entity of the Party.

Section D: Electronic Payment Card Services

1. A Party shall allow the supply of electronic payment services for payment card transactions³³ into its territory from the territory of another 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 services supplier of another Party:

- (a) register with or be authorised³⁴ by relevant authorities;
- (b) be a supplier who supplies such services in the territory of the other Party; or
- (c) designate an agent office or maintain a representative or sales office in the Party's territory,

provided that such requirements are not used as a means to avoid a Party's obligation under this Section.

2. For the purposes of this Section, electronic payment services for payment card transactions does not include the transfer of funds to and from transactors' accounts. Furthermore, electronic payment services for payment card 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 Section 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 Section. For greater certainty, such measures may include:

³³ For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (h) of the definition of "financial service" in Article 11.1 (Definitions), and within subcategory 71593 of the *United Nations Central Product Classification, Version 2.0*, and include only the processing of financial transactions such as verification of financial balances, authorisation of transactions, notification of banks (or credit card issuers) of individual transactions and the provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorised transactions.

³⁴ Such registration, authorisation and continued operation, for new and existing suppliers can be conditioned, for example: (i) on supervisory cooperation with the home country supervisor; and (ii) the supplier in a timely manner providing a Party's relevant financial regulators with the ability to examine, including onsite, the systems, hardware, software and records specifically related to that supplier's cross-border supply of electronic payment services into the Party.

- (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 services supplier of another 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.
4. For the purposes of this Section, **payment card** means:
- (a) For Australia, a credit card, charge card, debit card, cheque card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing a similar function as such cards, and the unique account number associated with that card, product or service.
 - (b) For Brunei Darussalam, in accordance with its laws and regulations, a payment instrument, whether in physical or electronic format, that enables a person to obtain money, goods or services, or to otherwise make payment, including credit card, charge card, debit card, cheque, automated teller machine (ATM) card, prepaid card or other instruments widely used for performing a similar function.
 - (c) For Canada, a "payment card" as defined under the *Payment Card Networks Act* as of January 1, 2015. For greater certainty, both the physical and electronic forms of credit and debit cards are included in the definition. For greater certainty, credit cards include pre-paid cards.
 - (d) For Chile, a credit card, a debit card and a prepaid card in physical form or electronic format, as defined under Chilean law.
 - (i) In respect of such payment cards, in lieu of the scope of the cross-border electronic payment services referred to in this commitment, only the following cross-border financial services may be supplied:
 - (A) receiving and sending messages among acquirers and issuers or their agents and representatives through electronic or informatic channels for:

authorisation requests, authorisation responses (approvals or declines), stand-in authorisations, adjustments, refunds, returns, retrievals, charge backs and related administrative messages;

- (B) calculation of fees and balances derived from transactions of acquirers and issuers by means of automated or computerised systems, and receiving and sending messages related to this process to acquirers and issuers, and their agents and representatives, provided that those calculations are subject to approval, recognition or confirmation by the acquiring and issuing parties involved;
- (C) 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; and
- (D) value-added services related to the main processing activities in subparagraphs (d)(i)(A), (d)(i)(B) and (d)(i)(C), such as fraud prevention and mitigation activities, and administration of loyalty programmes.

Such cross-border financial services may only be supplied by a service supplier of another Party into the territory of Chile pursuant to this commitment, provided that such services are supplied to entities that are regulated by Chile in connection with their participation in card payment networks and that are contractually responsible for such services.

- (ii) Nothing in this commitment restricts the right of Chile to adopt or maintain measures, in addition to all other measures set forth in this Section, that condition the cross-border supply of such electronic payment services into Chile by a service supplier of another Party on a contractual relationship between that supplier and an affiliate of the supplier established, authorised and regulated as a payments network participant under Chilean law in the territory of Chile, provided that such right is not used as a means of avoiding Chile's commitments or obligations under this Section.

- (e) For Japan:

- (i) a credit card and a prepaid card in physical or electronic form as defined under the laws and regulations of Japan; and
 - (ii) a debit card in physical or electronic form, provided that such a card is allowed within the framework of the laws and regulations of Japan.
- (f) For Malaysia, a credit card, a debit card and a prepaid card as defined under Malaysian law.
- (g) For Mexico, a credit card and a debit card in physical form or electronic format, as defined under Mexican law.
- (i) In respect of such payment cards, in lieu of the scope of the cross-border electronic payment services set forth in paragraph 1, only the following cross-border services may be supplied:
 - (A) receiving and sending messages for: authorisation requests, authorisation responses (approvals or declines), stand-in authorisations, adjustments, refunds, returns, retrievals, charge backs and related administrative messages;
 - (B) 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;
 - (C) 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; and
 - (D) value-added services related to the main processing activities in subparagraphs (g)(i)(A), (g)(i)(B) and (g)(i)(C), such as fraud prevention and mitigation activities, and administration of loyalty programmes.
 - (ii) Such cross-border services may only be supplied by a service provider of another Party into the territory of Mexico pursuant to this commitment, provided that the services are supplied to entities that are regulated by Mexico in connection with their participation in card

payment networks and that are responsible for such services.

- (iii) Nothing in this commitment restricts the right of Mexico to adopt or maintain measures, in addition to all other measures set forth in this Section, that condition the cross-border supply of such electronic payment services into Mexico by a service supplier of another Party on a contractual relationship between that supplier and an affiliate of the supplier established and authorised as a payments network participant under Mexican law in the territory of Mexico, provided that such right is not used as a means of avoiding Mexico's commitments or obligations under this Section.
- (h) For New Zealand, a credit or debit card in physical or electronic form.
- (i) For Peru:
 - (i) credit and debit cards as defined under Peruvian laws and regulations; and
 - (ii) prepaid cards, as defined under Peruvian laws and regulations, that are issued by financial institutions.
- (j) For Singapore:
 - (i) a credit card as defined in the *Banking Act* (Cap. 19), a charge card as defined in the *Banking Act* and a stored value facility as defined in the *Payment Systems (Oversight) Act* (Cap. 222A); and
 - (ii) a debit card and an automated teller machine (ATM) card.

For greater certainty, both the physical and electronic forms of the cards or facility as listed in subparagraphs (j)(i) and (j)(ii) above would be included as a payment card.
- (k) For the United States, a credit card, charge card, debit card, cheque card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing a similar function as such cards, and the unique account number associated with that card, product or service.
- (l) For Viet Nam, a credit card, debit card or prepaid card, in physical form or electronic format, as defined under the laws and

regulations of Viet Nam for cards issued inside or outside the territory of Viet Nam using an international Issuer Identification Number or Bank Identification Number (international IIN or BIN).³⁵

- (i) Viet Nam shall allow the issuance of such cards using international IIN or BIN subject to conditions that are no more restrictive than the conditions applied to the issuance of such cards not using international IIN or BIN.
- (ii) For greater certainty, nothing in this commitment restricts the right of Viet Nam to adopt or maintain measures, in addition to the measures set out in this Section, that condition the cross-border supply of such electronic payment services into Viet Nam by a service supplier of another Party on the provision of information and data to the Government of Viet Nam, for public policy purposes, regarding transactions that the supplier processes, provided that such measures are not used as a means of avoiding Viet Nam's obligation under this Section.

Section E: Transparency Considerations

In developing a new regulation of general application to which this Chapter applies, a Party may consider, in a manner consistent with its laws and regulations, comments regarding how the proposed regulation may affect the operations of financial institutions, including financial institutions of the Party or other Parties. These comments may include:

- (a) submissions to a Party by another Party regarding its regulatory measures that are related to the objectives of the proposed regulation; or
- (b) submissions to a Party by interested persons, including other Parties or financial institutions of other Parties, with regard to the potential effects of the proposed regulation.

³⁵ For the purposes of this subparagraph, “international Issuer Identification Number or Bank Identification Number” and “international IIN or BIN” mean a number that is assigned to a service supplier of another Party pursuant to the relevant standards adopted by the International Organization for Standardization.

ANNEX 11-C

NON-CONFORMING MEASURES RATCHET MECHANISM

Notwithstanding Article 11.10.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

- (a) Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions) and Article 11.9 (Senior Management and Boards of Directors) shall not apply to an amendment to any non-conforming measure referred to in Article 11.10.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the time of entry into force of this Agreement for Viet Nam, with Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions) and Article 11.9 (Senior Management and Boards of Directors);
- (b) Viet Nam shall not withdraw a right or benefit from:
 - (i) a financial institution of another Party;
 - (ii) investors of another Party, and investments of such investors, in financial institutions in Viet Nam's territory;
or
 - (iii) cross-border financial service suppliers of another Party,in reliance on which the investor or covered investment has taken any concrete action,³⁶ through an amendment to any non-conforming measure referred to in Article 11.10.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and
- (c) Viet Nam shall provide to the other Parties the details of any amendment to any non-conforming measure referred to in Article 11.10.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

³⁶ Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licences.

ANNEX 11-D

AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES

The authorities for each Party responsible for financial services are:

- (a) for Australia, the Treasury and the Department of Foreign Affairs and Trade;
- (b) for Brunei Darussalam, the Monetary Authority of Brunei Darussalam (*Autoriti Monetari Brunei Darussalam*);
- (c) for Canada, the Department of Finance of Canada;
- (d) for Chile, the Ministry of Finance (*Ministerio de Hacienda*);
- (e) for Japan, the Ministry of Foreign Affairs and the Financial Services Agency, or their successors;
- (f) for Malaysia, Bank Negara Malaysia and the Securities Commission Malaysia;
- (g) for Mexico, the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*);
- (h) for New Zealand, the Ministry of Foreign Affairs and Trade, in coordination with financial services regulators;
- (i) for Peru, the Ministry of Economy and Finance (*Ministerio de Economía y Finanzas*), in coordination with financial regulators;
- (j) for Singapore, the Monetary Authority of Singapore;
- (k) for United States, the Department of the Treasury for purposes of Article 11.22 (Investment Disputes in Financial Services) and for all matters involving banking, securities, and financial services other than insurance, the Department of the Treasury, in cooperation with the Office of the U.S. Trade Representative, for insurance matters; and
- (l) for Viet Nam, the State Bank of Viet Nam and the Ministry of Finance.

ANNEX 11-E

~~1. Brunei Darussalam, Chile, Mexico and Peru do not consent to the submission of a claim to arbitration under Section B of Chapter 9 (Investment) for a breach of Article 9.6 (Minimum Standard of Treatment), as incorporated into this Chapter, in relation to any act or fact that took place or any situation that ceased to exist before:~~

- ~~(a) the fifth anniversary of the date of entry into force of this Agreement for Brunei Darussalam, Chile and Peru, respectively; and~~
- ~~(b) the seventh anniversary of the date of entry into force of this Agreement for Mexico.~~

~~2. If an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment) that Brunei Darussalam, Chile, Mexico or Peru has breached Article 9.6 (Minimum Standard of Treatment), as incorporated into this Chapter, it may not recover for loss or damage that it incurred before:~~

- ~~(a) the fifth anniversary of the date of entry into force of this Agreement for Brunei Darussalam, Chile and Peru, respectively; and~~
- ~~(b) the seventh anniversary of the date of entry into force of this Agreement for Mexico.~~

*(This clause is freeze under CPTPP)