

FINANCIAL SERVICES

1. Scope and Definition

- (a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in subparagraph (t) of Article 5.1.
- (b) For the purposes of subparagraph (a) of Article 5.1, "**a service supplied in the exercise of governmental authority**" means the following:
- (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (ii) activities forming part of a statutory system of social security or public retirement plans; and
 - (iii) activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
- (c) For the purposes of subparagraph (a) of Article 5.1, if a Party allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "**services**" shall include such activities.
- (d) Paragraphs (b), (d), (o) and (v) of Article 5.1 shall not apply to services covered by this Annex.
- (e) For the purpose of this Annex, references to "*service supplier of the other Party*" and "*service supplier*" in Chapter 5 (Trade in Services), shall mean "**financial service supplier of the other Party**" and "**financial service supplier**" respectively, as defined in paragraph 7 of this Annex.

2. Domestic Regulation

- (a) Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of Chapter 5 (Trade in

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Services), they shall not be used as a means of avoiding the Party's commitments or obligations under Chapter 5 (Trade in Services).

- (b) Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. Recognition

- (a) A Party may recognise prudential measures of any international standard setting body or non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international standard setting body or non-Party concerned or may be accorded autonomously.
- (b) A Party that is a party to such an agreement or arrangement referred to in subparagraph 3(a) of this paragraph, whether future or existing, shall afford adequate opportunity for the another Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement.
- (c) Where a Party accords recognition autonomously, it shall afford adequate opportunity for the another Party to demonstrate that such circumstances as referred to in subparagraph 3(b) exist.

4. New Financial Services

Each Party shall permit a financial service supplier of the another Party established in its territory to supply any new financial service of a type similar to those services that the it would permit its own financial service suppliers, in like circumstances, to supply under its domestic law. A Party may determine the institutional and juridical form through which the new financial services may be supplied and may require authorisation for the supply of the service. Where a Party requires such authorisation of the new financial services, it shall give its decision within a reasonable time and the authorisation may only be refused for prudential reasons.

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5. Transparency

- (a) For the purposes of this Annex, each Party shall, to the extent practicable:
 - (i) make available in advance any regulations of general application relating to the supply of financial services that it proposes to adopt; and
 - (ii) provide interested persons and another Party a reasonable opportunity to comment on such proposed regulations.
- (b) Each Party's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.
- (c) On the request of an applicant, the regulatory authority shall inform the applicant of the status of the application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.
- (d) A regulatory authority shall make an administrative decision on a completed application relating to the supply of a financial service within a reasonable period of time.
- (e) Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application, covered by this Annex.
- (f) Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.
- (g) To the extent practicable, each Party should allow reasonable time between the publication of final regulations and their effective date.
- (h) At the time it adopts final regulations, a Party shall endeavour, to the extent practicable, to address in writing substantive comments received from interested persons with respect to the proposed regulations.

6. Dispute Settlement

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Persons appointed to arbitration panels under Chapter 9 (Settlement of Disputes) for disputes on obligations in financial services matters under this Agreement shall have the necessary expertise relevant to the specific financial service under dispute.

7. Definitions

For the purposes of this Annex:

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

Insurance and insurance-related services

- (i) direct insurance (including co-insurance):
 - (A) life;
 - (B) non-life;
- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency;
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

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- (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities;
 - (F) other negotiable instruments and financial assets, including bullion;
- (xi) 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;
 - (xii) money broking;
 - (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) **financial service supplier** means any natural or juridical person of a Party wishing to supply or supplying financial services, but the term "financial service supplier" does not include a public entity.
- (c) **Juridical person** has the same meaning as subparagraph (f) of Article 5.1.
- (d) **Juridical person of a Party** means a juridical person which is either:

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- (i) constituted or otherwise organised under the law of the other Party;
or
- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of the other Party; or
 - (B) juridical persons of the other Party identified under subparagraph (d)(i) above.
- (e) **natural person of a Party** has the same meaning as subparagraph (l) of Article 5.1.
- (f) **Public entity** means:
 - (i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
- (g) **Self-regulatory organisation** means any non-governmental body, including any securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions, by statute or delegation from central, regional or local government or authorities.

8. Shariah-Compliant Financial Services

Each Party recognises that the term “financial service” is broadly defined for purposes of Chapter 5 (Trade in Services), and that numerous financial services are capable of being offered or supplied in various forms. The Parties note that the term “financial service” is comprehensive enough to include Shariah-compliant financial services compatible with the definition of subparagraph (a) of paragraph 7, and paragraphs 4 and 1 of this Annex. In accordance with their commitments and obligations under this Chapter, each Party will consider proposals by financial institutions of the other Party to offer such services in its territories on the same basis as any other proposal to offer similar financial services consistent with its laws, including any regulatory or supervisory requirements.