

## ANNEX 8A FINANCIAL SERVICES

### Article 8A.1 Definitions

For the purposes of this Annex:

- (a) **financial institution** means any financial intermediary or other juridical person that is authorised to do business and regulated or supervised as a financial institution, under the laws and regulations of the Party in whose territory it is located;
- (b) **financial service** means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

#### *Insurance and insurance-related services*

- (i) direct insurance (including co-insurance):
  - (A) life; and
  - (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:
    - (A) money market instruments (including cheques, bills, certificates of deposits);
    - (B) foreign exchange;
    - (C) derivative products including futures and options;
    - (D) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
    - (E) transferable securities; and
    - (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; and
  - (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;
- (c) **financial service supplier** means any natural person or juridical person of a Party seeking to supply or supplying financial services but the term “financial service supplier” does not include a public entity;
- (d) **FinTech** means the use of technology to improve and automate the delivery and use of financial services;

- (e) **new financial service** means any financial service which is not supplied in the territory of a Party but is supplied and regulated in the territory of the other Party. This may include a service related to current and new products, or the manner in which a product is delivered;
- (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; and
- (g) **self-regulatory organisation** means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by legislation or delegation from central, regional or local governments or authorities.<sup>1</sup>

## **Article 8A.2**

### **Scope**

1. This Annex shall apply to measures taken by a Party 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 (s) of Article 8.1 (Definitions – Trade in Services).
2. For the purposes of this Annex, “services supplied in the exercise of governmental authority” as referred to in subparagraph (p) of Article 8.1 (Definitions – Trade in Services) means the following:
  - (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;<sup>2</sup>
  - (b) activities forming part of a statutory system of social security or public retirement plans; or
  - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government.

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<sup>1</sup> For greater clarity, a Party may require a self-regulatory organisation to be recognised.

<sup>2</sup> Activities referred to in this subparagraph include any regulatory and enforcement activities conducted in pursuit of monetary or exchange rate policies.

If a Party allows any of the activities referred to in subparagraph (b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.

3. The definition of “service supplied in the exercise of government authority” in Article 8.1 (Definitions – Trade in Services) shall not apply to services covered by this Annex.
4. Article 8.7 (Local Presence – Trade in Services) shall not apply to services covered by this Annex.

### **Article 8A.3 Financial Services Exceptions**

For greater certainty, nothing in this Annex 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 Annex, 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 the Parties or between the Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or trade in financial services.

### **Article 8A.4 Prudential Measures**

Notwithstanding any other provision of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons<sup>3</sup>, including for the protection of investors, depositors, policyholders, 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 this Agreement, they shall not be used as a means of avoiding the Party’s commitments or obligations under this Agreement.

### **Article 8A.5 New Financial Services**

1. The host Party shall endeavour to permit financial institutions of the other Party established in the territory of the host Party to supply a new financial

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<sup>3</sup> The Parties understand that “prudential reasons” includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or financial service suppliers, as well as the safety and financial and operational integrity of payment and clearing systems.

service in the territory of the host Party that the host Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law.<sup>4</sup>

2. Where an application is approved, the supply of the new financial service is subject to relevant licensing, institutional or juridical form, or other requirements of the host Party.

### **Article 8A.6 Treatment of Financial Services Information**

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.

### **Article 8A.7 Recognition**

1. A Party may recognise prudential measures of any international standard setting body, the other Party, or a non-Party in determining how the Party's measures relating to financial services shall be applied.<sup>5</sup> Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international standard setting body, the other Party, or the non-Party concerned or may be accorded autonomously.
2. Where a Party is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, that Party shall provide adequate opportunity for the other Party to negotiate accession to such an agreement or arrangements, or to negotiate a comparable agreement or arrangement 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.
3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances as referred to in paragraph 2 exist.

### **Article 8A.8 Regulatory Transparency**

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<sup>4</sup> For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

<sup>5</sup> For greater certainty, nothing in Article 8.5 (Most-Favoured-Nation Treatment – Trade in Services) shall be construed to require the Party to accord such recognition to prudential measures of the other Party.

1. The Parties recognise that transparent measures governing the activities of 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 Annex applies are administered in a reasonable, objective, and impartial manner.
3. Each Party shall ensure that measures of general application that it adopts or maintains are promptly published, or otherwise made publicly available.<sup>6</sup>
4. To the extent practicable, each Party shall:
  - (a) publish or make available to interested persons<sup>7</sup> in advance any regulation of general application relating to this Annex that it proposes to adopt, and the purpose of such regulation; and
  - (b) provide interested persons and the other Party with a reasonable opportunity to comment on such proposed regulation.
5. To the extent practicable, each Party shall allow a reasonable period of time between the date of publication of any final regulation of general application and the date when it enters into effect.
6. Each Party shall take such reasonable measures as may be available to it to 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.<sup>8</sup>
7. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from interested persons of the other Party regarding measures of general application covered by this Annex.
8. Each Party's regulatory authority shall make available to interested persons of the other Party its requirements, including any documentation required, for completing applications relating to the supply of financial services.
9. On request of an applicant in writing, 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 a financial service supplier of the other Party relating

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<sup>6</sup> For greater certainty, each Party may, to the extent practical, publish information in English.

<sup>7</sup> For the purposes of this Article, the Parties confirm their shared understanding that "interested persons" are persons whose direct financial interest could potentially be affected by the adoption of the regulations of general application.

<sup>8</sup> For greater certainty, each Party may, to the extent practical, publish information in English.

to the supply of a financial service within 180 days, and shall notify the applicant of the decision without undue delay. An application shall not be considered complete until all relevant proceedings are conducted and all necessary information is received. Where it is not practicable for such a decision to be made within 180 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 in writing, a Party's regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for the denial of the application.

### **Article 8A.9**

#### **Transfers of Financial Information and Processing of Financial Information**

1. The Parties recognise that each Party may have its own regulatory requirements, including requirements set out in legislation, concerning the transfer of financial information and the processing of financial information.<sup>9,10</sup>
2. A Party shall not, other than in pursuance of the requirements mentioned in paragraph 1, take measures that prevent:
  - (a) transfers of financial information, including transfers of data by electronic or other means, necessary for the conduct of the ordinary business of a financial service supplier in its territory; or
  - (b) processing of financial information necessary for the conduct of the ordinary business of a financial service supplier in its territory.
3. Nothing in paragraph 2 prevents a regulatory authority of a Party, for regulatory or prudential reasons, from requiring a financial service supplier in its territory to comply with its laws and regulations in relation to data management and storage and system maintenance, as well as to retain within its territory copies of records,<sup>11</sup> provided that such requirements shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.
4. Nothing in paragraph 2 restricts the right of a Party to protect personal data, personal privacy, and the confidentiality of individual records and accounts

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<sup>9</sup> For greater certainty, a Party may adopt a different regulatory approach, and this paragraph does not affect and is without prejudice to a Party's rights and obligations under this Article.

<sup>10</sup> For greater certainty, "financial information" includes any number or other personal data used to identify an account opened by, or card or payment instruments issued by a financial institution to a data principal, or any personal data regarding the relationship between a financial institution and a data principal including financial status and credit history.

<sup>11</sup> When a Party's regulatory authority requires financial service suppliers to retain within its territory copies of records, that regulatory authority may mandate that financial services suppliers in its territory store such copies only in the territory of that Party.

including in accordance with its laws and regulations,<sup>12</sup> provided that such a right shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

5. Nothing in paragraph 2 shall be construed to require a Party to allow the cross-border supply or consumption abroad of services in relation to which it has not made commitments, including to allow non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing as referred to in subparagraph (b)(xv) of Article 8A.1 (Definitions).

#### **Article 8A.10 Self-Regulatory Organisations**

If a Party requires a financial institution of the other Party to be a member of, participate in, or have access to a self-regulatory organisation to provide a financial service in its territory, that Party shall ensure that the self-regulatory organisation observes that Party's obligations under Article 8.4 (National Treatment – Trade in Services).

#### **Article 8A.11 Payment and Clearing Systems**

Under the terms and conditions that accord national treatment, each Party shall grant financial institutions of the other 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.<sup>13</sup>

#### **Article 8A.12 Cross-Border Electronic Payments**

Both Parties shall support the development of efficient and secure cross-border electronic payments, including those provided by non-banks and FinTech entities, to foster the development and adoption of internationally accepted standards for electronic payments, and to promote innovation, competition and interoperability of electronic payment infrastructure. Each Party shall, to the extent practicable, make regulations on electronic payments, including in relation to regulatory approval, licensing requirements, procedures and technical standards, publicly available.

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<sup>12</sup> Australia is considered to be a country that provides adequate data protection.

<sup>13</sup> For greater certainty, a Party need not grant access under this Article to a financial institution of the other Party established in its territory if such access or treatment is not granted to its own like financial institutions.

**Article 8A.13**  
**Performance of Back-Office Functions**

1. Each Party recognises 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 can be important to the effective management and efficient operation of that financial institution.
2. A Party may require financial institutions to ensure core compliance and critical functions satisfy any domestic requirements, but recognises the importance of avoiding the imposition of arbitrary requirements on the performance of back-office functions.
3. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its territory to retain certain core functions.

**Article 8A.14**  
**Dispute Settlement**

Panels established pursuant to Chapter 13 (Dispute Settlement) to examine matters relating to disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

**Article 8A.15**  
**Credit Rating of Financial Services Suppliers**

In relation to the provision of a financial service in the territory of a Party (“the host Party”):

- (a) by a financial service supplier of the other Party, which is already licensed or authorised by the host Party to supply financial services in its territory, and
- (b) where the provision of financial services is wholly or partially contingent on an assessment by the host Party of the credit rating of the financial service supplier or the sovereign credit rating of the other Party,

the host Party shall, to the extent practicable, undertake its assessment in a reasonable manner.<sup>14</sup>

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<sup>14</sup> For greater certainty, this paragraph does not apply in relation to credit rating assessments undertaken by financial service suppliers.

**Article 8A.16**  
**Consultations Relating to Financial Services Issues**

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall consider such a request.
2. Consultations under this Article shall include the relevant representatives of the contact points specified in Article 8A.17 (Contact Points).

**Article 8A.17**  
**Contact Points**

1. For the purposes of this Annex, the contact points for financial services are:
  - (a) for Australia, the Department of the Treasury and the Department of Foreign Affairs and Trade and, as necessary, officials from the relevant regulatory authorities, including the Australian Prudential Regulation Authority, the Reserve Bank of Australia, and the Australian Securities and Investment Commission; and
  - (b) for India, the Department of Commerce.
2. A Party shall promptly notify the other Party of any change of its contact point.