

ANNEX 9C

Financial Services Regulatory Cooperation

Article 9C.1

Objectives of Regulatory Cooperation

1. The Parties recognise that promoting cooperation between the Parties and their financial regulatory authorities supports several objectives including:
 - (a) enhancing financial services trade and investment between the Parties;
 - (b) strengthening financial systems and promoting financial stability;
 - (c) improving market integrity and countering undesirable market fragmentation;
 - (d) promoting fair and competitive markets;
 - (e) promoting robust and efficient financial service suppliers, markets, and infrastructure;
 - (f) protecting consumers, investors, depositors, policy holders and persons to whom a fiduciary and / or statutory duty is owed by a financial service supplier; and
 - (g) providing a transparent and predictable environment for financial service suppliers.
2. The Parties shall wherever practicable work together bilaterally and in international bodies to achieve the objectives referred to in paragraph 1 (hereinafter referred to in this Annex as “regulatory cooperation”).
3. The Parties shall, wherever practicable, base their regulatory cooperation on the principles and prudential standards agreed at the international level where applicable¹ and follow the principles set out in Article 9C.3 (Principles of Regulatory Cooperation), as implemented in the framework developed in accordance with Article 9C.5 (Framework for Regulatory Cooperation).
4. This Annex is without prejudice to the right of a Party to determine its own appropriate level of prudential regulation, including the establishment and enforcement of measures that provide a higher level of prudential protection than those set out in internationally agreed standards.

¹ For greater certainty, for the purposes of this Annex, standards adopted by international standard-setting bodies to which both Parties' relevant competent authorities have agreed and in which both Parties participate may be considered as internationally agreed standards.

Article 9C.2
Scope of Regulatory Cooperation

1. Regulatory cooperation between the Parties shall cover all areas of financial services, as defined in Article 9.1 (Definitions), unless the Parties agree otherwise.
2. Article 26.2 (General Provision – Good Regulatory Practice), Article 26.6 (Public Consultation – Good Regulatory Practice), Article 26.10 (Regulatory Cooperation – Good Regulatory Practice) and Article 26.11 (Contact Points – Good Regulatory Practice) do not apply to any matter covered by this Annex.
3. The provisions of this Annex shall be without prejudice to the distribution and exercise of the duties of the regulatory and supervisory authorities of the Parties, in line with their statutory objectives. The Parties recognise that their regulatory cooperation in financial services should be based on due consideration of each Party’s legislative and regulatory autonomy and differences in legislative and regulatory frameworks, market structures and in the range of business models that may exist between the Parties.

Article 9C.3
Principles of Regulatory Cooperation

1. Mutual Compatibility of Regulatory and Supervisory Frameworks
 - (a) The Parties shall, wherever practicable, work to achieve mutual compatibility of their respective regulatory and supervisory frameworks for financial services in areas of common interest in a way that supports the objectives set out in Article 9C.1 (Objectives of Regulatory Cooperation). That work may include developing consistent regulatory approaches on an outcomes basis and reducing unnecessarily burdensome, duplicative or divergent regulatory requirements.
 - (b) As the basis for pursuing the mutual compatibility referred to in subparagraph (a), each Party shall use its best endeavours to ensure that internationally agreed standards for regulation and supervision in the area of financial services are implemented and applied in its territory.
 - (c) To support regulatory cooperation, the Parties shall, wherever practicable, work together in international standard-setting bodies to develop effective international standards and facilitate coherent implementation.

2. Regulatory Deference

The Parties shall, wherever agreeable and in accordance with their respective regulatory and supervisory frameworks, defer to the regulatory and supervisory frameworks of the other Party. The foregoing shall be without prejudice to each Party's legislative and regulatory autonomy and right to assess, on the basis of its own frameworks, the frameworks of the other Party, including the effective enforcement of those frameworks, with a view to establishing deference. For the purposes of any such assessment, a Party shall not require that the other Party's regulatory and supervisory frameworks are identical to its own frameworks but shall base its assessment on regulatory outcomes.

3. Sharing of Information

- (a) Without prejudice to its own domestic processes, each Party shall use its best endeavours to inform the other Party and provide the other Party with adequate opportunity for comment when it consults on new regulatory initiatives, proposed measures or actual measures in the area of financial services that may be of relevance to that other Party.
- (b) In the areas where one of the Parties defers to the regulatory and supervisory framework of the other Party, the Parties shall keep each other informed of how they provide for effective implementation and enforcement of regulatory and supervisory frameworks, consult on changes to the regulatory or supervisory framework, and ensure appropriate mechanisms are in place for the ongoing exchange of information on supervision and enforcement.
- (c) If a Party concludes negotiations for an agreement or arrangement as described in Article 9.20 (Recognition of Prudential Measures) with a non-party, the Party shall directly notify the other Party to this Agreement and, upon conclusion of the aforementioned negotiations, provide adequate opportunity to that Party to negotiate accession to the agreement or arrangement or to negotiate a comparable agreement or arrangement.

4. Review of Impact

- (a) A Party shall, in the process of formulating its planned regulatory or supervisory initiatives, in the areas of financial services where that Party defers to the regulatory and supervisory framework of the other Party, give due consideration to the impact of those initiatives on its decision to defer to the other Party's regulatory and supervisory frameworks.

- (b) Each Party shall review a measure which has been brought to its attention by a specific written request of the other Party which identifies the measure as having an impact on the ability of the other Party's financial service suppliers to provide financial services within the first Party's territory. Any requests for review shall only be made where the impact is material and shall include a clear explanation of the impact of the measure and its materiality. Any review shall consider whether and to what extent the measure may be rendered mutually compatible.
- (c) The Party shall respond to the request in writing, and within a reasonable period of time.

Article 9C.4

Joint Financial Regulatory Forum

1. The Parties hereby establish a Joint Financial Regulatory Forum (hereinafter referred to in this Annex as the "Forum").
2. The Forum shall serve as a platform to facilitate regulatory cooperation between the Parties so as to achieve the objectives set out in Article 9C.1 (Objectives of Regulatory Cooperation). The Forum shall observe the principles of regulatory cooperation laid out in Article 9C.3 (Principles of Regulatory Cooperation) and implemented in the framework referred to in Article 9C.5 (Framework for Regulatory Cooperation).
3. The meetings of the Forum shall be held annually, unless the Parties agree otherwise, and whenever the Parties consider it expedient or necessary giving consideration to existing regulatory relationships and communications.
4. The Forum shall be composed of representatives of Australia and the United Kingdom, including:
 - (a) for Australia, the Department of the Treasury, Australian Prudential Regulation Authority, Australian Securities and Investments Commission and the Reserve Bank of Australia and other agencies as relevant to the matters under discussion, and any of their successors, which have, at technical level, responsibility for financial services regulatory issues; and
 - (b) for the United Kingdom, Her Majesty's Treasury, the Bank of England and the Financial Conduct Authority, and any of their successors which have, at technical level, responsibility for financial services regulatory issues.
5. Without prejudice to the right of each Party to decide on the composition of its representation in the Forum, each Party may request that the other Party

invite representatives with relevant seniority or expertise from other financial regulatory or supervisory authorities. This is with a view to contributing to the Forum's discussions and preparatory work in matters related to the activity of those financial regulatory or supervisory authorities, or the objectives of regulatory cooperation, as set out in Article 9C.1 (Objectives of Regulatory Cooperation).

6. The meetings of the Forum will be co-chaired by senior officials from the Department of the Treasury of Australia and Her Majesty's Treasury of the United Kingdom, or their respective successors.
7. Each co-chair shall designate a specific contact point to facilitate the work of the Forum.
8. The Forum may establish expert sub-working groups to examine specific issues or explore cooperation in specific areas of financial services.

Article 9C.5 Framework for Regulatory Cooperation

1. The Forum shall develop a framework for improving regulatory cooperation. The framework will be guided by the principles set out in Article 9C.3 (Principles of Regulatory Cooperation).
2. The framework for regulatory cooperation shall include:
 - (a) without prejudice to each Party's own legislative and administrative processes, mechanisms for information exchange and consultation with the other Party, in appropriate forms giving consideration to existing communication processes;
 - (b) guidelines to enhance regulatory cooperation between the Parties including guidelines for any expert sub-working groups established under paragraph 8 of Article 9C.4 (Joint Financial Regulatory Forum). These guidelines may cover different forms of regulatory cooperation, including deference to each other's regulatory and supervisory frameworks or implementation of international standards in specific mutually agreed areas;
 - (c) a procedure for reviewing the measures referred to in subparagraph 4(b) of Article 9C.3 (Principles of Regulatory Cooperation);
 - (d) terms of reference and guidelines on the governance of the Forum; and
 - (e) if so agreed, any other arrangements to enhance regulatory cooperation.

3. The framework for regulatory cooperation may also envisage specific arrangements to facilitate cooperation in cross-border supervision and enforcement.

Article 9C.6 Mediation

1. The Parties shall act in good faith to try to resolve any disputes arising under this Annex.
2. The Parties shall make all reasonable efforts to resolve any disputes arising under this Annex at working-level.

Article 9C.7 Termination of Deference

1. A Party may rescind its decision to defer to the regulatory and supervisory frameworks of the other Party in a specific area of financial services and revert to the application and enforcement of its own regulatory and supervisory frameworks in circumstances such as, but not exclusively, where:
 - (a) the regulatory and supervisory frameworks of the other Party are no longer equivalent in outcome;
 - (b) the other Party fails to enforce its regulatory and supervisory frameworks effectively; or
 - (c) there is insufficient cooperation, including sharing of information, of the other Party in the areas set out under paragraph 3 of Article 9C.3 (Principles of Regulatory Cooperation).
2. Prior to taking a decision to rescind pursuant to paragraph 1, a Party shall give written notification of its intention to rescind to the other Party. Following receipt of the notification, the Parties shall consult with each other within a reasonable timeframe which shall not exceed six months, and which may include mediation pursuant to Article 9C.6 (Mediation).
3. Following publication of the decision by a Party to rescind deference, that Party shall accord the other Party a reasonable period of time prior to reverting to the application and enforcement of their own regulatory and supervisory frameworks, including sufficient time to:
 - (a) enable financial service suppliers to apply for, and have their application determined in respect of the necessary authorisations in the jurisdiction of the Party terminating deference; and

- (b) pass provisions protecting the acquired rights of financial service suppliers that entered into force prior to the decision to rescind deference.

Article 9C.8 Emerging Issues

1. To support innovation in the areas of financial services, the Parties shall:
 - (a) endeavour to collaborate, share knowledge, experiences and developments in financial services and facilitate the cross-border development of new financial services;
 - (b) promote and encourage cooperation relating to innovative financial services,² through their respective trade promotion agencies and regulators, and encourage enterprises undertaking innovative financial services to use facilities and assistance available in the other Party's territory to explore new business opportunities;
 - (c) encourage relevant competent authorities to cooperate in relevant international fora to improve opportunities for each Party's enterprises undertaking innovative financial services;
 - (d) endeavour to cooperate on the development of regulation and standards for open banking; and
 - (e) endeavour to cooperate on the development of underpinning technologies for innovative financial services.
2. The Parties may share best practices to promote diversity³ in financial services and recognise the importance of building a diverse, including gender-balanced, financial services industry, and the positive impact that diversity has on balanced decision-making, consumers, workplace culture, investment, and competitive markets.

Article 9C.9 Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 30 (Dispute Settlement) for any matter arising under this Annex.

² Innovative financial services includes FinTech and financial services-related RegTech activities which involve the improved use of technology across financial services.

³ Diversity includes gender, ethnicity, and professional and educational background.