

CHAPTER 12
FINANCIAL SERVICES

Article 12.1

Definitions

For the purposes of this Chapter:

commercial presence means any type of business or professional establishment, including through:

- (a) the constitution, acquisition or maintenance of a juridical person; or
- (b) the creation or maintenance of a branch or a representative office,

within the Area of a Party for the purpose of supplying a financial service;

financial service means any service of a financial nature offered by a financial service supplier of a Party. 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;
- (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 transactions;
- (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, but not limited to, futures and options;
 - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (v) transferable securities;
 - (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 means any person that seeks to supply or supplies financial services but the term "**financial service supplier**" does not include a public entity;

juridical person of a Party means a juridical person constituted or otherwise organised under the laws of Hong Kong, China or Chile. Should such a juridical person have only its registered office in the Area of Hong Kong, China or Chile, it shall not be considered as a Hong Kong, China or a Chilean juridical person respectively, unless it is engaged in substantive business operations in the Area of Hong Kong, China or Chile, respectively;

measure has the same meaning as in Article 11.1;

measures adopted or maintained by a Party has the same meaning as in Article 11.1;

person has the same meaning as in Article 11.1; and

public entity means:

- (a) 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
- (b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

Article 12.2

Scope

1. This Chapter shall apply to measures adopted or maintained by the Parties affecting trade in financial services.
2. For the purposes of this Chapter, trade in financial services is defined as the supply of a financial service through the following modes:
 - (a) from the Area of a Party into the Area of the other Party (Cross-border supply: Mode 1);
 - (b) in the Area of a Party to the financial service consumer of the other Party (Consumption abroad: Mode 2);
 - (c) by a financial service supplier of a Party, through commercial presence in the Area of the other Party (Commercial presence: Mode 3); and
 - (d) by a financial service supplier of a Party, through presence of natural persons in the Area of the other Party (Presence of natural persons: Mode 4).
3. Nothing in this Chapter shall be construed to impose any obligation with respect to:
 - (a) government procurement;
 - (b) subsidies, including grants, provided by a Party or a state enterprise thereof, including government-supported loans, guarantees, and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies, whether or not such subsidies are offered exclusively to domestic services, service consumers or service suppliers;
 - (c) measures affecting natural persons seeking access to the employment market of a Party; and
 - (d) measures regarding citizenship, nationality, residence or employment on a permanent basis.

4. This Chapter shall not apply to:
- (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (b) activities forming part of a statutory system of social security or public retirement plans; and
 - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
5. For greater certainty, this Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its Area, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms as set out in its Schedule to Annex 12.5.²²

Article 12.3

Market Access

1. With respect to market access through the modes of supply identified in Article 12.2, each Party shall accord financial services and financial service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule to Annex 12.5.
2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt, unless otherwise specified in its Schedule to Annex 12.5, are defined as:
- (a) limitations on the number of financial service suppliers whether in the form of numerical quotas, monopolies, exclusive financial service suppliers or the requirements of an economic needs test;

²² The sole fact of requiring a visa for natural persons of the other Party and not for those of a non-Party shall not be regarded as nullifying or impairing benefits accruing to the other Party under the terms of a specific commitment.

- (b) limitations on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of financial service operations or on the total quantity of financial service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;²³
- (d) limitations on the total number of natural persons that may be employed in a particular financial service sector or that a financial service supplier 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;
- (e) measures which restrict or require specific types of legal entities or joint ventures through which a financial service supplier may supply a financial service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 12.4

National Treatment

1. In the sectors inscribed in its Schedule to Annex 12.5 and subject to any conditions and qualifications set out therein, each Party shall accord to financial services and financial service suppliers of the other Party, in respect of all measures affecting the supply of financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers.²⁴

2. A Party may meet the requirement of paragraph 1 by according to financial services and financial service suppliers of the other Party, either

²³ Paragraph 2 (c) does not cover measures of a Party which limit inputs for the supply of financial services.

²⁴ Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant financial services or financial service suppliers.

formally identical treatment or formally different treatment to that it accords to its own like financial services and financial service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of financial services or financial service suppliers of the Party compared to like financial services or financial service suppliers of the other Party.

Article 12.5

Schedule of Specific Commitments

1. The specific commitments undertaken by each Party under Articles 12.3 and 12.4 are set out in its Schedule to Annex 12.5. With respect to sectors where such commitments are undertaken, each Schedule specifies:

- (a) terms, limitations and conditions on market access; and
- (b) conditions and qualifications on national treatment.

2. Measures inconsistent with both Articles 12.3 and 12.4 are inscribed in the column relating to Article 12.3. In this case, the inscription will be considered to provide a condition or qualification to Article 12.4 as well.

Article 12.6

Data Processing in the Financial Services Sector

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its Area, for data processing where such processing is required in the ordinary course of business of such financial service supplier.

2. Where the information referred to in paragraph 1 consists of or contains personal data, the transfer of such information from the Area of one Party to the Area of the other Party shall take place in accordance with the domestic laws and regulations regulating the protection of individuals with respect to the transferring and processing of personal data of the Party out of whose Area the information is transferred.

Article 12.7

Effective and Transparent Regulation in the Financial Services Sector

1. Each Party shall, to the extent practicable, provide in advance to all interested persons any measure of general application affecting financial services that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

- (a) by means of an official publication; or
- (b) in other written or electronic form.

2. Each Party's appropriate financial authority shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

3. At the request of an applicant, the appropriate financial authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

4. Each Party shall make its best endeavours to implement and apply in its Area internationally agreed standards for regulation and supervision in the financial services sector and for the fight against money laundering. For this purpose, the Parties shall cooperate and exchange information and experience within the Committee on Financial Services referred to in Article 12.11.

Article 12.8

Confidential Information

Nothing in this Chapter:

- (a) shall be construed as requiring a Party to furnish or allow access to information the disclosure of which would impede law enforcement or violate its domestic laws and regulations or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private, or at the time of the disclosure of the information, would be for the purpose of judicial proceedings of the other Party; and

- (b) shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers of financial service suppliers, or any confidential or proprietary information in the possession of public entities.

Article 12.9

Prudential Carve Out

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:
 - (a) the protection of investors, depositors, financial market participants, policy-holders, or persons to whom a fiduciary duty is owed by a financial service supplier;
 - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service suppliers; and
 - (c) ensuring the integrity and stability of a Party's financial system.
2. Where such measures do not conform with this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Article 12.10

Recognition

1. A Party may recognise prudential measures of the other 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 or may be accorded autonomously.
2. A Party that is a party to an agreement or arrangement with a third party such as those referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other 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. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

Article 12.11

Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services, comprising representatives of each Party. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 12.11.
2. The functions of the Committee shall include supervising the implementation of this Chapter and considering issues regarding financial services that are referred to it by a Party.
3. The Committee shall meet at the request of a Party on a date and with an agenda agreed in advance by the Parties. The office of chairperson of the Committee shall be held alternately by each Party. The Committee shall report to the Commission the results of its meetings.

Article 12.12

Consultations

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter. The requesting Party shall deliver a written request to the other Party setting out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint. The other Party shall give sympathetic consideration to the request and shall enter into consultations in good faith, with a view to reaching a mutually satisfactory resolution, within a period of no more than 15 days after the date of receipt of the request. The Parties shall report the results of their consultations to the Committee on Financial Services.
2. Consultations under this Article shall include officials of the authorities of both Parties set out in Annex 12.11.
3. Nothing in this Article shall be construed to require financial authorities participating in consultations to disclose information or take any action that would

interfere with individual regulatory, supervisory, administrative or enforcement matters.

4. Where a financial authority of a Party requires information for supervisory purposes concerning a financial service supplier in the Area of the other Party, such financial authority may approach the competent financial authority in the Area of the other Party to seek the information. The provision of such information may be subject to the terms, conditions and limitations contained in the other Party's relevant laws and regulations or to the requirement of a prior agreement or arrangement between the respective financial authorities.

Article 12.13

Specific Provisions on Dispute Settlement

1. Except as otherwise provided in this Article, any disputes arising under this Chapter shall be settled in accordance with Chapter 17 (Dispute Settlement).

2. For the purposes of Article 17.5.1, consultations held under Article 12.12 shall be deemed to constitute the consultations under Article 17.3, unless the Parties otherwise agree. Upon initiation of consultations under Article 12.12, the Parties shall provide information to enable the examination of how a measure of a Party or any other matter may affect the operation and application of this Chapter, and give confidential treatment to the information exchanged during consultations. If the matter has not been resolved within 45 days after holding the consultations under Article 12.12 or 90 days after the delivery of the request for consultations under Article 12.12.1, whichever is earlier, the complaining Party may request in writing the establishment of an arbitral panel. The Parties shall report the results of their consultations directly to the Commission.

3. For the purposes of Article 17.7, panelists of the arbitral panel constituted for disputes arising under this Chapter shall meet the requirements set out in Article 17.7 and shall also have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

4. Consistent with Article 17.12, in any dispute where an arbitral panel finds a measure to be inconsistent with the obligations of this Agreement or finds other nullification or impairment and the measure or nullification or impairment affects:

- (a) only the financial services sector, the complaining Party may suspend concessions or other obligations only in the financial services sector;

- (b) the financial services sector and any other sector, the complaining Party may suspend its concessions or other obligations in the financial services sector that have an effect equivalent to the effect of the measure in the financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party shall not suspend concessions or other obligations in the financial services sector.