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CHAPTER 9

SERVICES AND INVESTMENT

SECTION E

REGULATORY FRAMEWORK

SUB-SECTION 5

FINANCIAL SERVICES

ARTICLE 9.67

Scope

1. In addition to Chapters II (Investment Liberalisation) and III (Cross-Border Trade in Services), this Section shall apply to measures of a Party affecting the supply of financial services.
2. For the purposes of point [e] of Article 1.1 [General Definitions – Scope], the term "activities performed in the exercise of governmental authority" means, in respect of a financial service:
 - (a) activities conducted by a central bank or a 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 Party or its public entities.

3. If a Party allows any of the activities referred to in [points] 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “activities performed in the exercise of governmental authority” shall not include those activities.
4. Point [APEGA definition] of Article 1.2 shall not apply to services covered by this Section.

ARTICLE 9.68

Definitions

For the purposes of this Section and of Chapters II, III and IV of this Title:

- (a) “financial service” means any service of a financial nature. Financial services include the following activities:
 - (i) insurance and insurance-related services
 - (A) direct insurance (including co-insurance):
 - (aa) life;
 - (bb) 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.
 - (ii) banking and other financial services (excluding insurance):
 - (A) acceptance of deposits and other repayable funds from the public;
 - (B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - (C) financial leasing;
 - (D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 - (E) guarantees and commitments;
 - (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

- (aa) money market instruments (including cheques, bills, certificates of deposits);
 - (bb) foreign exchange;
 - (cc) derivative products including, but not limited to, futures and options;
 - (dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (ee) transferable securities;
 - (ff) other negotiable instruments and financial assets, including bullion;
 - (G) 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;
 - (H) money broking;
 - (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (K) provision and transfer of financial information, and financial data processing and related software; and
 - (L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) through (K), 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 a natural or juridical person that seeks to supply or supplies financial services but does not include a public entity;
 - (c) “financial service supplier of a Party” means a natural or juridical person of a Party that seeks to supply or supplies financial services but does not include a public entity;
 - (d) “FinTech” means technologically enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on financial markets and institutions and the provision of financial services;
 - (e) “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;
- (f) “new financial service” means a service of a financial nature including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party; and
- (g) “self-regulatory organisation” means any non-governmental body, including a securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from a Party.

ARTICLE 9.69

Measures for Prudential Reasons

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons,¹ such as:
 - (a) protecting investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
 - (b) ensuring the integrity and stability of a Party’s financial system.
2. Where the measures referred to in paragraph 1 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 the Agreement.

ARTICLE 9.70

Disclosure of Confidential Information

Nothing in this Agreement 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 9.71

International Standards

¹ The Parties understand that the term “prudential reasons” includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers.

Each Party shall endeavour to ensure that, if practicable, internationally agreed standards for regulation and supervision in the area of financial services are implemented and applied in its territory. Those internationally agreed standards are the standards and principles issued by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Organization of Securities Commissions, and the Financial Stability Board. Such standards may also include those agreed to by the Parties in other international fora, such as the Financial Action Task Force (FATF) and the Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organisation for Economic Cooperation and Development (OECD).

ARTICLE 9.72

Financial Services new to the Territory of a Party

Each Party shall permit financial service suppliers of the other Party established in its territory to supply any new financial service that it would permit its own financial service suppliers in like situations to supply without additional legislative action.² Notwithstanding [*Market Access*], a Party may determine the institutional and juridical form through which the service may be supplied and may require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

ARTICLE 9.73

Self-regulatory Organisations

If a Party requires membership of, participation in, or access to, any self-regulatory organisation in order for financial service suppliers of the other Party to supply financial services in or into the territory of the first Party, the Party shall ensure that:

- (a) the self-regulatory organisation observes the obligations of Articles 2.3 (Investment Liberalisation – National Treatment), 2.4 (Investment Liberalisation – Most-Favoured-Nation Treatment) and Articles 3.3 (Cross-Border Trade in Services – National Treatment) [and 3.4 (Cross-Border Trade in Services – Most-Favoured-Nation Treatment)]; and
- (b) a rule of general application adopted or maintained by a self-regulatory organisation of the Party is promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with it.

ARTICLE 9.74

Clearing and Payment Systems

² For greater certainty, this Article shall not apply to branches of the other Party established in the territory of a Party.

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers 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.

ARTICLE 9.75

Recognition

1. A Party may recognise prudential measures of the other Party or a non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition may be accorded autonomously, achieved through harmonisation, or based upon an agreement or other arrangement.
2. When a Party has accorded recognition of a prudential measure of a non-Party in accordance with paragraph 1, that Party shall afford adequate opportunity to the other Party to demonstrate that the circumstances exist in which the Party recognised the prudential measure of a non-Party and that under such circumstances there are or would be equivalent regulation, oversight, implementation and, if appropriate, procedures concerning the sharing of information between the Parties.
3. When a Party has accorded recognition of a prudential measure of a non-Party through an agreement or other arrangements, the Party shall afford adequate opportunity to the other Party to negotiate its accession to such agreements or arrangements or negotiate comparable ones under the circumstances described in paragraph 2.
4. Nothing in this agreement shall be construed as to require a Party to accord recognition to a prudential measure of the other Party.

ARTICLE 9.76

Dialogue on Financial Services

1. The Parties, represented by the European Commission and the Government of Australia, shall establish a dialogue on the regulation of the financial services sector with a view to:
 - (a) improving mutual knowledge of the Parties' respective regulatory systems;
 - (b) promoting further integration between the Parties' financial services markets;
 - (c) cooperating in the field of financial services, including Innovative Financial Services and FinTech, and Green and Sustainable Finance; and
 - (d) cooperating in the development of international standards.

The Parties may consider issues regarding financial services that are referred to by one of them.

2. For that purpose, the Parties shall meet as agreed by mutual consent. If one Party requests to meet, the other Party shall give sympathetic consideration to that request.
3. In-person meetings may be held, including in the margins of international multilateral meetings, or via any technological means available to the Parties, such as videoconference or teleconference.
4. Participants in the regulatory dialogue shall be financial services experts and representatives of authorities in charge of financial services policy.

ARTICLE 9.77

Cooperation on Innovative Financial Services and FinTech

The Parties recognise that innovative financial services and financial technology (hereinafter referred to as “FinTech”) can foster greater economic and social inclusion, promote sustainable development, support Small and Medium-sized Enterprises, and advance women’s economic empowerment.

Further to Article 5.36 “Dialogue on Financial Services”, to promote the further development of and trade in innovative financial services and FinTech, the Parties shall:

- (a) encourage cooperation on innovative financial services and FinTech through their respective policy and regulators;
- (b) promote closer and stronger cooperation between their respective financial services and FinTech enterprises and industry bodies;
- (c) encourage their respective financial services and FinTech enterprises to use facilities and assistance, where available, in the other Party’s territory to explore new business opportunities; and
- (d) cooperate in relevant international fora, and where agreeable, in the development and promotion of internationally recognised standards with respect to innovative financial services and FinTech.

ARTICLE 9.78

Cooperation on Green and Sustainable Finance

The Parties acknowledge the importance of encouraging financial service suppliers to develop and deliver financial services which support investment and other business activities that:

- (a) promote sustainable production, consumption and growth, a circular economy, the importance of conserving and sustainably managing marine biological resources and marine ecosystems, the conservation and sustainable use of

biological diversity, and to minimise the generation of waste and abating pollution; and

- (b) combat climate change and its impacts and manage climate-related financial risks.

Further to Article 5.36 “Dialogue on Financial Services”, to promote the further development of and trade in green and sustainable financial services, the Parties shall:

- (a) encourage cooperation on green and sustainable finance through their respective policy and regulators;
- (b) encourage the uptake of climate-related financial disclosures for financial service suppliers with material exposure to climate change, informed by initiatives in international fora and international standard setters.
- (c) cooperate in relevant international fora, and where agreeable, in the development and promotion of internationally recognised standards for the inclusion of environmental, social, and governance considerations in investment decision-making and other business activities.

Article 9.79

Review of Commitments

1. The Trade Committee shall undertake a review of the implementation and operation of this Section in the fifth year after the date of entry into force of this Agreement, unless otherwise agreed by the Parties, and thereafter as agreed by the Parties.
2. A review pursuant to paragraph 1 shall be undertaken with a view to updating and enhancing the Section, to ensure that the commitments and obligations contained in this Section remain relevant to the trade and investment issues and challenges confronting the Parties.
3. A review pursuant to paragraph 1 shall take into account, *inter alia*:
 - (a) technological developments and innovation; and
 - (b) relevant developments in international fora or relating to a Party’s laws and regulations.