

TRANS-PACIFIC PARTNERSHIP AGREEMENT

CHAPTER SUMMARY: FINANCIAL SERVICES

The Financial Services Chapter establishes rules and obligations on the supply of financial services between Parties, including banking, insurance and securities services.

The Chapter contains provisions on the treatment afforded to financial institutions and establishes a number of protections for investors in financial institutions. TPP Parties commit to provide an open and stable environment for the supply of cross-border financial services by ensuring, among other things, that local and foreign financial service suppliers, investors and financial institutions are treated fairly and equally.

These commitments will help create market opportunities for financial service suppliers and benefit consumers of financial products. They will also protect the rights of financial regulators to take action to ensure the integrity and stability of financial markets, including in the event of a financial crisis.

Australia has a dynamic and growing financial services export market, with exports of financial services rising to \$3.7 billion in 2015-16. The TPP presents an important opportunity to increase these exports further, particularly to Asian partners where Australian financial institutions are already active market participants.

TPP Parties have made a number of specific commitments, including commitments to allow the cross-border supply of portfolio management services and certain insurance services, providing Australian consumers with enhanced choice and access to the latest and most innovative financial products.

In addition, TPP Parties recognise the importance of financial institutions being able to outsource their back-office functions (such as IT and human resources), balanced against the need for Parties to require financial institutions to perform certain functions on-shore. TPP Parties also agree to allow foreign financial institutions to transfer information into and out of their country for data processing, subject to privacy and confidentiality requirements.

MORE INFORMATION ON THE CHAPTER

The TPP Financial Services Chapter applies to a TPP Party's measures relating to:

- financial institutions of another TPP Party;
- investors of another TPP Party, and their investments in financial institutions; and
- the trade in financial services between TPP Parties.

The Chapter does not apply to government actions in relation to public retirement plans or statutory systems of social security, financial services performed by, or on behalf of, the government (except where



such activities are provided in competition with other financial service suppliers or financial services procured by the government.)

A number of obligations from the Investment and Cross-Border Trade in Services Chapters, such as those relating to Transfers and Expropriation and Compensation, will apply to the Financial Services Chapter.

Key Obligations

The Financial Services Chapter establishes non-discrimination obligations. Under the national treatment obligation, a TPP Party must not treat foreign investors, financial institutions, investments or financial suppliers less favourably than like domestic investors, financial institutions, investments or financial suppliers. TPP Parties agree to permit the cross-border supply of certain financial services into their territory, on terms that accord national treatment. Each TPP Party has specified in an Annex to the Chapter the relevant financial services that are to be captured by this obligation.

Under the most-favoured-nation obligation, a TPP Party must not treat investors, financial institutions, investments or financial suppliers from another TPP party less favourably than like investors, financial institutions, investments or financial suppliers from any other country.

The Chapter also imposes an obligation on TPP Parties not to impose restrictions or conditions which make it more difficult for foreign service suppliers to gain market access in their respective countries, including limitations on the number of financial institutions that can operate in a country or the form of enterprise that can provide financial services (e.g. subsidiary, branch, joint venture).

Each TPP Party is required to permit financial institutions of other TPP Parties to supply new financial services in its territory, provided that it would permit its own financial institutions in like circumstances, to supply the new services without adopting or modifying an existing law.

A TPP Party cannot require a financial institution of another Party to appoint individuals of any particular nationality to be senior managers or essential personnel of the institution. Furthermore, a Party cannot require that more than a minority of the board of directors of a financial institution be their citizens and/or residents living in their country.

The Chapter contains a so-called "ratchet" mechanism. This means that where a TPP Party eases or lifts certain existing restrictions, the liberalised measure becomes "bound" as part of the TPP party's treaty commitments.

Carve-outs and exceptions

Under the Agreement, TPP Parties have the ability to identify existing measures that are inconsistent with certain obligations in the TPP Financial Services Chapter or areas where they would like to retain the flexibility to adopt inconsistent measures.

There are a number of exceptions that apply to the Financial Services Chapter, including the 'prudential exception', under which TPP Parties retain the ability to adopt measures for prudential reasons, including for the protection of investors or depositors, or to ensure the integrity and stability of the financial system. TPP Parties also retain the ability to adopt non-discriminatory measures in pursuit of monetary or exchange rate policies.

Mutual recognition and regulatory transparency

The prudential measures taken by countries differ around the world. Under the TPP, if a TPP Party recognises the prudential measures of another country, it must offer TPP Parties the opportunity to enter into similar mutual recognition arrangements, where a TPP Party can demonstrate that it has equivalent regulation and oversight.

Recognising the importance of transparent regulations and policies governing financial institutions and service suppliers, each TPP Party commits to promoting regulatory transparency in financial services and to ensuring that all measures of general application are administered in a reasonable, objective and impartial manner. The rules around transparency in the Financial Services Chapter build on the general transparency provisions and require, for example, that TPP Parties publish regulations in advance and provide interested persons with an opportunity to comment on proposed regulations, to the extent it is practicable to do so.

The Chapter establishes a Financial Services Committee to, among other things, supervise the implementation of the Chapter and consider financial services issues referred to it by a TPP Party. The Chapter will also include a consultation provision to facilitate dialogue between the TPP Parties.

Dispute Settlement

The TPP Dispute Settlement Chapter applies to the Financial Services Chapter. In addition, the Investor-State Dispute Settlement (ISDS) provisions from the Investment Chapter are incorporated into the Chapter to allow investors to bring claims alleging breaches of certain investment-related obligations in the Financial Services Chapter. The ISDS provisions are summarised in the Investment Chapter summary.