

## **09 FINANCIAL SERVICES**

### **ARTICLE 1**

#### ***Definitions***

For the purposes of this Chapter:

- (a) “Chapter 16 arbitral tribunal” means an arbitral tribunal appointed under Chapter 16 (Dispute Settlement);
- (b) “cross-border financial service supplier of a Party” means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such a service;
- (c) “cross-border trade in financial services or cross-border supply of financial services” means the supply of a financial service:
  - (i) from the territory of a Party into the territory of the other Party;
  - (ii) in the territory of a Party to a person of the other Party; or
  - (iii) by a national of a Party in the territory of the other Party,but does not include the supply of a financial service in the territory of a Party by an investment in that territory;
- (d) “enterprise” means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;
- (e) “financial institution” means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;
- (f) “financial institution of the other Party” means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;
- (g) “financial service” means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

*Insurance and insurance-related services*

- (i) direct insurance (including co-insurance):
  - (A) life;
  - (B) non-life;
- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency; and
- (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, 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 (g)(v) to (g)(xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (h) “financial service supplier of a Party” means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;
- (i) “investment” means “investment” as defined in Article 1 (Definitions) of Chapter 8 (Investment), except that, with respect to “loans” and “debt instruments” referred to in that Article:
- (i) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
  - (ii) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (i)(i), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 8 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 1 (Definitions) of Chapter 8 (Investment);

- (j) “investor of a Party” means a Party, or a person of a Party, that attempts to make,<sup>1</sup> is making, or has made an investment in the territory of the other Party;
- (k) “measure” includes any law, regulation, procedure, requirement or practice;
- (l) “national” means:
  - (i) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007* as amended from time to time, or any successor legislation;
  - (ii) for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; or
  - (iii) a permanent resident of either Party;
- (m) “new financial service” means a financial service not supplied in the Party’s territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party’s territory;
- (n) “person” means a natural person or an enterprise;
- (o) “person of a Party” means a national or an enterprise of a Party and, for greater certainty, does not include a branch of an enterprise of a non-Party;
- (p) “public entity” means a central bank or monetary authority of a Party, or any financial institution that is owned or controlled by a Party;
- (q) “self-regulatory organisation” means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central or regional government;
- (r) “Tribunal” means the tribunal established under Article 24 (Submission of a Claim to Arbitration) of Chapter 8 (Investment); and

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<sup>1</sup> For greater certainty, the Parties understand that an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licences.

- (s) “TRIPS Agreement” means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out in Annex 1C to the WTO Agreement.<sup>2</sup>

## ARTICLE 2

### *Scope*

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) financial institutions of the other Party;
  - (b) investors of the other Party, and investments of those investors, in financial institutions in the Party’s territory; and
  - (c) cross-border trade in financial services.
2. Chapter 7 (Cross-Border Trade in Services) and Chapter 8 (Investment) shall apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter.
  - (a) Articles 15 (Denial of Benefits) and 16 (General Exceptions) of Chapter 7 (Cross-Border Trade in Services), and Articles 6 (Minimum Standard of Treatment), 9 (Special Formalities and Information Requirements), 13 (Expropriation and Nationalisation), 14 (Treatment in Cases of Armed Conflict or Civil Strife), 15 (Transfers), 18 (Denial of Benefits), 19 (General Exceptions) and 20 (Investment and Environmental, Health and other Regulatory Objectives) of Chapter 8 (Investment) are hereby incorporated into and made a part of this Chapter.
  - (b) Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment) is hereby incorporated into and made a part of this Chapter<sup>3</sup> solely for claims that a Party has breached Articles 6 (Minimum Standard of Treatment), 9 (Special Formalities and Information Requirements), 13 (Expropriation and Nationalisation), 14 (Treatment in Cases of Armed Conflict or Civil Strife), 15 (Transfers), or 18 (Denial of Benefits) of Chapter 8 (Investment) incorporated into this Chapter under subparagraph (a).<sup>4</sup>

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<sup>2</sup> For greater certainty, a reference in this Agreement to the TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

<sup>3</sup> For greater certainty, Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment) shall not apply to cross-border trade in financial services.

<sup>4</sup> For greater certainty, if an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment):

- (c) Article 14 (Payments and Transfers) of Chapter 7 (Cross-Border Trade in Services) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 6 (Cross-Border Trade).
- 3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:
  - (a) activities or services forming part of a public retirement plan or statutory system of social security; or
  - (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,
 except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or subparagraph (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.
- 4. This Chapter shall not apply to government procurement of financial services.
- 5. This Chapter shall not apply to subsidies or grants with respect to the cross-border supply of financial services, including government-supported loans, guarantees and insurance.

## ARTICLE 3

### *National Treatment*<sup>5</sup>

- 1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect

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- (1) as referenced in Article 28.7 (Conduct of the Arbitration) of Chapter 8 (Investment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international investment arbitration;
  - (2) pursuant to Article 28.4 (Conduct of the Arbitration) of Chapter 8 (Investment), a Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 33 (Awards) of Chapter 8 (Investment); and
  - (3) pursuant to Article 28.6 (Conduct of the Arbitration) of Chapter 8 (Investment), the Tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection and, in determining whether such an award is warranted, the Tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous and shall provide the disputing parties a reasonable opportunity to comment.

<sup>5</sup> For greater certainty, whether treatment is accorded in "like circumstances" under Articles 3 (National Treatment) or 4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party, and to investments of investors of the other Party in financial institutions, treatment no less favourable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For greater certainty, the treatment to be accorded by a Party under paragraph 1 and paragraph 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, financial institutions and investments of investors in financial institutions, of the Party of which it forms a part.

4. For the purposes of the national treatment obligations in Article 6.1 (Cross-Border Trade), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

## ARTICLE 4

### *Most-Favoured-Nation Treatment*

1. Each Party shall accord to:

- (a) investors of the other Party, treatment no less favourable than that it accords to investors of a non-Party, in like circumstances;
- (b) financial institutions of the other Party, treatment no less favourable than that it accords to financial institutions of a non-Party, in like circumstances;
- (c) investments of investors of the other Party in financial institutions, treatment no less favourable than that it accords to investments of investors of a non-Party in financial institutions, in like circumstances; and
- (d) cross-border financial service suppliers of the other Party, treatment no less favourable than that it accords to cross-border financial service suppliers of a non-Party, in like circumstances.

2. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms such as those included in Article 2.2(b) (Scope).

## ARTICLE 5

### *Market Access for Financial Institutions*

Neither Party shall adopt or maintain with respect to financial institutions of the other Party or investors of the other Party seeking to establish those institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
  - (i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
  - (ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>6</sup> or
  - (iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution 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; or
- (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

## ARTICLE 6

### *Cross-Border Trade*

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 9-A (Cross-Border Trade).

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory.

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<sup>6</sup> Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.



A Party may define “doing business” and “solicitation” for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of the other Party and of financial instruments.

## ARTICLE 7

### *New Financial Services*<sup>7</sup>

Each Party shall permit a financial institution of the other Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law.<sup>8</sup> Notwithstanding Article 5(b) (Market Access for Financial Institutions), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorisation and may refuse the authorisation only for prudential reasons.

## ARTICLE 8

### *Treatment of Certain Information*

Nothing in this Chapter shall require a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

## ARTICLE 9

### *Senior Management and Boards of Directors*

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<sup>7</sup> The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to the other Party to request that it authorise the supply of a financial service that is not supplied in the territory of either Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

<sup>8</sup> For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

1. Neither Party shall require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. Neither Party shall require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

## ARTICLE 10

### *Non-Conforming Measures*

1. Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment), 5 (Market Access for Financial Institutions), 6 (Cross-Border Trade) and 9 (Senior Management and Boards of Directors) shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
  - (i) the central level of government, as set out by that Party in Section A of its Schedule to Annex 6;
  - (ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex 6; or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed:
  - (i) immediately before the amendment, with Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment), 5 (Market Access for Financial Institutions) or 9 (Senior Management and Boards of Directors); or
  - (ii) on the date of entry into force of the Agreement for the Party applying the non-conforming measure, with Article 6 (Cross-Border Trade).

2. Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment), 5 (Market Access for Financial Institutions), 6 (Cross-Border Trade) and 9 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in Section B of its Schedule to Annex 6.

3. A non-conforming measure, set out in a Party's Schedule to Annex 4-I or 4-II as not subject to Articles 4 (National Treatment) or 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services) or Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) or 8 (Senior Management and Boards of Directors) of Chapter 8 (Investment) shall be treated as a non-conforming measure not subject to Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment) or 9 (Senior Management and Boards of Directors), as the case may be, to the extent that the measure, sector, subsector or activity set out in the entry is covered by this Chapter.

4. (a) Article 3 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by Article 3 of the TRIPS Agreement.
- (b) Article 4 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by Article 4 of the TRIPS Agreement.

## ARTICLE 11

### *Exceptions*

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapters 2 (Trade in Goods), 3 (Rules of Origin), 4 (Customs Procedures) and 5 (Technical Regulations and Sanitary and Phytosanitary Measures), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>9</sup> including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. If these measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapters 7 (Cross-Border Trade in Services), 8 (Investment), 10 (Telecommunications Services), or 14 (Digital Economy) shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 7 (Prohibition of Performance Requirements) of Chapter 8 (Investment) with respect to measures covered by Chapter 8 (Investment), under Article 15 (Transfers) of Chapter 8 (Investment) or Article 14 (Payments and Transfers) of Chapter 7 (Cross-Border Trade in Services).

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<sup>9</sup> The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

3. Notwithstanding Article 15 (Transfers) of Chapter 8 (Investment) and Article 14 (Payments and Transfers) of Chapter 7 (Cross-Border Trade in Services), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter 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 Chapter, 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 Parties or between Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

## ARTICLE 12

### *Recognition*

1. A Party may recognise prudential measures of the other Party or a non-Party in the application of measures covered by this Chapter.<sup>10</sup> That recognition may be:

- (a) accorded autonomously;
- (b) achieved through harmonisation or other means; or
- (c) based upon an agreement or arrangement with the other Party or a non-Party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the Parties.

3. If a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

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<sup>10</sup> For greater certainty, nothing in Article 4 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord recognition to prudential measures of the other Party.

## ARTICLE 13

### *Transparency and Administration of Certain Measures*

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border 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 Chapter applies are administered in a reasonable, objective and impartial manner.
3. Each Party shall, to the extent practicable:
  - (a) publish in advance any such regulation that it proposes to adopt and the purpose of the regulation; and
  - (b) provide interested persons and the other Party with a reasonable opportunity to comment on that proposed regulation.
4. At the time that it adopts a final regulation, a Party should, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed regulation.<sup>11</sup>
5. To the extent practicable, each Party should allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.
6. Each Party shall 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 in a manner that enables interested persons to become acquainted with them.
7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.
8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing an application relating to the supply of financial services.
9. On request of an applicant, 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 an investor in a financial institution, a financial institution or a

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<sup>11</sup> For greater certainty, a Party may address those comments collectively on an official government website.

cross-border financial service supplier of the other Party relating to the supply of a financial service, within 120 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. If it is not practicable for a decision to be made within 120 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, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

## ARTICLE 14

### *Self-Regulatory Organisations*

If a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation in order to provide a financial service in or into its territory, it shall ensure that the self-regulatory organisation observes the obligations contained in Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment).

## ARTICLE 15

### *Payment and Clearing Systems*

Under 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.

## ARTICLE 16

### *Expedited Availability of Insurance Services*

The Parties recognise the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorisation of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavour to maintain or improve those procedures.

## ARTICLE 17

### ***Performance of Back-Office Functions***

1. The Parties recognise 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, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that financial institution. While a Party may require financial institutions to ensure compliance with any domestic requirements applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.
2. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its territory to retain certain functions.

## ARTICLE 18

### ***Specific Commitments***

Annex 9-B (Specific Commitments) sets out certain specific commitments by each Party.

## ARTICLE 19

### ***Committee on Financial Services***

1. The Parties hereby establish a Committee on Financial Services (Committee). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 9-C (Authorities Responsible for Financial Services).
2. The Committee shall:
  - (a) supervise the implementation of this Chapter and its further elaboration;
  - (b) consider issues regarding financial services that are referred to it by a Party; and
  - (c) participate in the dispute settlement procedures in accordance with Article 22 (Investment Disputes in Financial Services).
3. The Committee shall meet annually, or as it decides otherwise, to assess the functioning of this Agreement as it applies to financial services.

## ARTICLE 20

### *Consultations*

1. A Party may request, in writing, consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request to hold consultations. The Parties shall report the results of their consultations to the Committee.
2. Consultations under this Article shall include officials of the authorities specified in Annex 9-C (Authorities Responsible for Financial Services).
3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

## ARTICLE 21

### *Dispute Settlement*

1. Chapter 16 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising:
  - (a) under this Chapter; or
  - (b) in relation to Article 23 (Cross-Border Transfer of Information by Electronic Means) or Article 25 (Location of Computing Facilities for Financial Services) of Chapter 14 (Digital Economy), to the extent that the dispute relates to financial services.
2. If a Party claims that a dispute referred to in paragraph 1 arises, Article 5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement) shall apply, except that:
  - (a) if the Parties agree, each arbitrator shall meet the qualifications in paragraph 3; and
  - (b) in any other case:
    - (i) each disputing Party shall select arbitrators that meet the qualifications set out in either paragraph 3 or Article 5.5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement); and
    - (ii) if the responding Party indicates an intention to invoke or invokes Article 11 (Exceptions) prior to a Party's request for the establishment of a Chapter 16 arbitral tribunal, the chair of the



Chapter 16 arbitral tribunal shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.

3. In addition to the requirements set out in Article 5.5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement), arbitrators in disputes arising under this Chapter or Article 23 (Cross-Border Transfer of Information by Electronic Means), or Article 25 (Location of Computing Facilities for Financial Services) of Chapter 14 (Digital Economy), to the extent that those provisions relate to financial services, shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

4. Pursuant to Article 22.2(c) (Investment Disputes in Financial Services), a Party may request the establishment of a Chapter 16 arbitral tribunal to consider whether and to what extent Article 11 (Exceptions) is a valid defence to a claim without having to request consultations under Article 2 (Consultations) of Chapter 16 (Dispute Settlement).

5. If a Party seeks to suspend benefits in the financial services sector, a Chapter 16 arbitral tribunal that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 10 (Compensation and Suspension of Benefits) of Chapter 16 (Dispute Settlement), shall seek the views of financial services experts, as necessary.

## ARTICLE 22

### *Investment Disputes in Financial Services*

1. If an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment) challenging a measure relating to regulation or supervision of financial institutions, markets or instruments, the expertise or experience of any particular candidate with respect to financial services law or practice shall be taken into account in the appointment of arbitrators to the Tribunal.

2. If an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment), and the respondent invokes Article 11 (Exceptions) as a defence, the following provisions of this Article shall apply.

- (a) The respondent shall, no later than the date the Tribunal fixes for the respondent to submit its counter-memorial, or in the case of an amendment to the notice of arbitration, the date the Tribunal fixes for the respondent to submit its response to the amendment, submit in writing to the authorities responsible for financial services of the Party of the claimant, as set out in Annex 9-C (Authorities Responsible for Financial Services), a request for a joint determination by the authorities of the respondent and the Party of the claimant on the issue of whether and to what extent Article 11 (Exceptions) is a valid defence to the claim. The respondent shall promptly provide the Tribunal, if constituted, a copy of the request. The arbitration may proceed with respect to the claim only as provided in paragraph 4.

- (b) The authorities of the respondent and the Party of the claimant shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties, the Committee and, if constituted, to the Tribunal. The determination shall be binding on the Tribunal and any decision or award issued by the Tribunal must be consistent with that determination.
  - (c) If the authorities referred to in subparagraph (a) and subparagraph (b) have not made a determination within 120 days of the date of receipt of the respondent's written request for a determination under subparagraph (a), the respondent or the Party of the claimant may request the establishment of a Chapter 16 arbitral tribunal to consider whether and to what extent Article 11 (Exceptions) is a valid defence to the claim. A Chapter 16 arbitral tribunal established under Article 4 (Appointment of Arbitral Tribunals) of Chapter 16 (Dispute Settlement) shall be constituted in accordance with Article 21 (Dispute Settlement). The Chapter 16 arbitral tribunal shall transmit its final report to the disputing Parties and to the Tribunal.
3. The final report of a Chapter 16 arbitral tribunal referred to in paragraph 2(c) shall be binding on the Tribunal, and any decision or award issued by the Tribunal must be consistent with the final report.
4. If no request for the appointment of a Chapter 16 arbitral tribunal pursuant to paragraph 2(c) has been made within 10 days of the expiration of the 120 day period referred to in paragraph 2(c), the Tribunal may proceed with respect to the claim.
- (a) The Tribunal shall draw no inference regarding the application of Article 11 (Exceptions) from the fact that the authorities have not made a determination as described in paragraph 2(a), paragraph 2(b) and paragraph 2(c).
  - (b) The Party of the claimant may make oral and written submissions to the Tribunal regarding the issue of whether and to what extent Article 11 (Exceptions) is a valid defence to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for the purposes of the arbitration, to take a position on Article 11 (Exceptions) that is not inconsistent with that of the respondent.
5. For the purposes of this Article, the definitions of the following terms set out in Article 1 (Definitions) of Chapter 8 (Investment) are incorporated, *mutatis mutandis*: "claimant", "disputing parties", "disputing party" and "respondent".

## ANNEX 9-A

### CROSS-BORDER TRADE

#### Australia

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

1. Article 6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c)(i) of the definition of “cross-border supply of financial services” in Article 1 (Definitions), with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance, such as consultancy, risk assessment, actuarial and claim settlement services; and
- (d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (g)(iii) of the definition of “financial service” in Article 1 (Definitions), of insurance of risks related to services listed in subparagraph (a) and subparagraph (b).

##### *Banking and other financial services (excluding insurance)*

2. Article 6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c)(i) of the definition of “cross-border supply of financial services” in Article 1 (Definitions), with respect to:

- (a) provision and transfer of financial information, and financial data processing and related software relating to banking and other financial services, as referred to in subparagraph (g)(xv) of the definition of “financial service” in Article 1 (Definitions); and
- (b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (g)(xvi) of the definition of “financial service” in Article 1 (Definitions).

## Singapore

### *Insurance and insurance-related services*

1. Article 6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c)(i) of the definition of “cross-border supply of financial services” in Article 1 (Definitions), with respect to:

- (a) insurance of “MAT” risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising there from; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance comprising actuarial, loss adjustors, average adjustors and consultancy services;
- (d) reinsurance intermediation by brokerages; and
- (e) MAT intermediation by brokerages.

### *Banking and other financial services (excluding insurance)*

2. Article 6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c)(i) of the definition of “cross-border supply of financial services” in Article 1 (Definitions), with respect to:

- (a) provision and transfer of financial information, as described in subparagraph (g)(xv) of the definition of “financial service” in Article 1 (Definitions); and
- (b) financial data processing and related software, as described in subparagraph (g)(xv) of the definition of “financial service” in Article 1 (Definitions), subject to prior authorisation from the relevant regulator, as required.<sup>12</sup>

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<sup>12</sup> For greater certainty, if the financial information or financial data processing referred to in subparagraph (a) and subparagraph (b) pertain to outsourcing arrangements or involves personal data, the outsourcing arrangements and treatment of personal data shall be in accordance with the Monetary Authority of Singapore’s regulatory requirements and guidelines on outsourcing and Singapore’s law regulating the protection of such data, respectively. These regulatory requirements and guidelines shall not derogate from the commitments undertaken by Singapore in paragraph 2 and Article 23 (Cross-Border Transfer of Information by Electronic Means) of Chapter 14 (Digital Economy).

## ANNEX 9-B

### SPECIFIC COMMITMENTS

#### Section A: Portfolio Management

1. A Party shall allow a financial institution organised in the territory of the other Party to provide the following services to a collective investment scheme located in its territory:<sup>13</sup>

- (a) investment advice; and
- (b) portfolio management services, excluding:
  - (i) trustee services; and
  - (ii) custodial services and execution services that are not related to managing a collective investment scheme.

2. Paragraph 1 is subject to Article 6.3 (Cross-Border Trade).

3. For the purposes of paragraph 1, “collective investment scheme” means:

- (a) For Australia, a “managed investment scheme” as defined under section 9 of the *Corporations Act 2001* (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the *Corporations Act 2001* (Cth), or an entity that:
  - (i) carries on a business of investment in securities, interests in land, or other investments; and
  - (ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the *Corporations Act 2001* (Cth)) made on terms that the funds subscribed would be invested.
- (b) For Singapore, a “collective investment scheme” as defined under the *Securities and Futures Act* (Cap. 289), and includes the manager of the scheme, provided that the financial institution in paragraph 1 is authorised or regulated as a fund manager in the territory of the Party it is organised in and is not a trust company.

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<sup>13</sup> For greater certainty, a Party may require a collective investment scheme or a person of a Party involved in the operation of the scheme located in the Party’s territory to retain ultimate responsibility for the management of the collective investment scheme.

## **Section B: Supply of Insurance by Postal Insurance Entities**

1. This Section sets out additional disciplines that apply if a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this paragraph do not include the supply of insurance related to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.
2. Neither Party shall adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:
  - (a) imposing more onerous conditions on a private supplier's licence to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or
  - (b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.
3. With respect to the supply of insurance services described in paragraph 1 by a postal insurance entity, a Party shall apply the same regulations and enforcement activities that it applies to the supply of like insurance services by private suppliers.
4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services described in paragraph 1 to publish an annual financial statement with respect to the supply of those services. The statement shall provide the level of detail and meet the auditing standards required under the generally accepted accounting and auditing principles, or equivalent rules, applied in the Party's territory with respect to publicly traded private enterprises that supply like services.
5. If a Chapter 16 arbitral tribunal finds that a Party is maintaining a measure that is inconsistent with any of the commitments in paragraph 2, paragraph 3 and paragraph 4, the Party shall notify the complaining Party and provide an opportunity for consultations prior to allowing the postal insurance entity to:
  - (a) issue a new insurance product, or modify an existing product in a manner equivalent to the creation of a new product, in competition with like insurance products supplied by a private supplier in the Party's market; or
  - (b) increase any limitation on the value of insurance, either in total or with regard to any type of insurance product, that the entity may sell to a single policyholder.
6. This Section shall not apply to a postal insurance entity in the territory of a Party:

- (a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantages that modify the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or
- (b) if sales of direct life and non-life insurance underwritten by the postal insurance entity each account for no more than 10 per cent, respectively, of total annual premium income from direct life and non-life insurance in the Party's market as of January 1, 2013.

7. If a postal insurance entity in the territory of a Party exceeds the percentage threshold referred to in paragraph 6(b) after the date of signature of this Agreement by the Party, the Party shall ensure that the postal insurance entity is:

- (a) regulated and subject to enforcement by the same authorities that regulate and conduct enforcement activities with respect to the supply of insurance services by private suppliers; and
- (b) subject to the financial reporting requirements that apply to financial institutions supplying insurance services.

8. For the purposes of this Section, "postal insurance entity" means an entity that underwrites and sells insurance to the general public and that is owned or controlled, directly or indirectly, by a postal entity of the Party.

### **Section C: Electronic Payment Card Services**

1. A Party shall allow the supply of electronic payment services for payment card transactions<sup>14</sup> into its territory from the territory of the other Party by a person of that other Party. A Party may condition the cross-border supply of such electronic payment services on one or more of these requirements that a services supplier of the other Party:

- (a) register with or be authorised<sup>15</sup> by relevant authorities;

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<sup>14</sup> For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (g)(viii) of the definition of "financial service" in Article 1 (Definitions), and within subcategory 71593 of the *United Nations Central Product Classification, Version 2.0*, and include only the processing of financial transactions such as verification of financial balances, authorisation of transactions, notification of banks (or credit card issuers) of individual transactions and the provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorised transactions.

<sup>15</sup> Such registration, authorisation and continued operation, for new and existing suppliers can be conditioned, for example: (i) on supervisory cooperation with the home country supervisor; and (ii) the supplier in a timely manner providing a Party's relevant financial regulators with the ability to examine, including onsite, the systems, hardware, software and records specifically related to that supplier's cross-border supply of electronic payment services into the Party.

- (b) be a supplier who supplies such services in the territory of the other Party; or
- (c) designate an agent office or maintain a representative or sales office in the Party's territory,

provided that such requirements are not used as a means to avoid a Party's obligation under this Section.

2. For the purposes of this Section, electronic payment services for payment card transactions does not include the transfer of funds to and from transactors' accounts. Furthermore, electronic payment services for payment card transactions include only those payment network services that use proprietary networks to process payment transactions. These services are provided on a business to business basis.

3. Nothing in this Section shall be construed to prevent a Party from adopting or maintaining measures for public policy purposes, provided that these measures are not used as a means to avoid the Party's obligation under this Section. For greater certainty, such measures may include:

- (a) measures to protect personal data, personal privacy and the confidentiality of individual records, transactions and accounts, such as restricting the collection by, or transfer to, the cross-border services supplier of the other Party, of information concerning cardholder names;
- (b) the regulation of fees, such as interchange or switching fees; and
- (c) the imposition of fees as may be determined by a Party's authority, such as those to cover the costs associated with supervision or regulation or to facilitate the development of the Party's payment system infrastructure.

4. For the purposes of this Section, "payment card" means:

- (a) For Australia, a credit card, charge card, debit card, cheque card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing a similar function as such cards, and any unique account number associated with that card, product or service.
- (b) For Singapore:
  - (i) a credit card as defined in the *Banking Act* (Cap. 19), a charge card as defined in the *Banking Act* and a stored value facility as defined in the *Payment Systems (Oversight) Act* (Cap. 222A); and
  - (ii) a debit card and an automated teller machine (ATM) card.



For greater certainty, both the physical and electronic forms of the cards or facility as listed in subparagraph (b)(i) and subparagraph (b)(ii) would be included as a payment card.

#### **Section D: Transparency Considerations**

In developing a new regulation of general application to which this Chapter applies, a Party may consider, in a manner consistent with its laws and regulations, comments regarding how the proposed regulation may affect the operations of financial institutions, including financial institutions of the Party or the other Party. These comments may include:

- (a) submissions to a Party by the other Party regarding its regulatory measures that are related to the objectives of the proposed regulation; or
- (b) submissions to a Party by interested persons, including the other Party or financial institutions of the other Party, with regard to the potential effects of the proposed regulation.

## **ANNEX 9-C**

### **AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES**

The authorities for each Party responsible for financial services are:

- (a) for Australia, the Treasury and the Department of Foreign Affairs and Trade; and
- (b) for Singapore, the Monetary Authority of Singapore.