

ANNEX XI

REFERRED TO IN ARTICLE 3.19

FINANCIAL SERVICES



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FINANCIAL SERVICES

Article 1

Scope and Definitions

1. This Annex applies to measures by Parties affecting trade in financial services.¹
2. For the purpose of this Annex:
 - (a) “Financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). 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;
- (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;

¹ “Trade in financial services” shall be understood in accordance with the definition contained in subparagraph (a)(i) of Article 3.3 of this Agreement.

- (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 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, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities;
 - (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;
- (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), 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 any natural or juridical person of a Party wishing to supply or supplying financial services but does not include a public entity.
- (c) “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.
- (d) For the purpose of subparagraph (a)(ii) of Article 3.3 of this Agreement, “services supplied in the exercise of governmental authority” means the following:
 - (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (ii) activities forming part of a statutory system of social security or public retirement plans; and
 - (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
- (e) For the purpose of subparagraph (a)(ii) of Article 3.3 of this Agreement, if a Party allows any of the activities referred to in subparagraphs (d)(ii) or (d)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.
- (f) Subparagraph (a)(iii) of Article 3.3 of this Agreement shall not apply to services covered by this Annex.

Article 2

Shariah-compliant Financial Services

The Parties recognise that the term “financial service” is comprehensive enough to include Shariah-compliant financial services compatible with the definition in subparagraph 2(a) of Article 1. Accordingly, each Party will consider applications by financial service suppliers of any other Party to supply such services in its territory on an equal basis as any other application to supply financial services, consistent with its

laws, including any regulatory or supervisory requirements, and in accordance with its commitments and obligations under this Chapter.

Article 3

National Treatment

1. Under terms and conditions that accord national treatment, each Party shall strive to grant to financial service suppliers of another 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 paragraph is not intended to confer access to a Party's lender of last resort facilities.

2. Where membership or participation in, or access to, a self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association, is required by a Party in order for financial service suppliers of any other Party to supply financial services on an equal basis with financial service suppliers of the Party, or where the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall strive to ensure that such entities accord national treatment to financial service suppliers of any other Party established in its territory.

Article 4

Transparency

1. Each Party shall promote regulatory transparency in financial services. Accordingly, the Parties undertake to consult to implement objective and transparent regulatory processes in each Party, taking into account:

- (a) the work undertaken by the Parties in the GATS and in other fora relating to trade in financial services; and
- (b) the importance of regulatory transparency, identifiable policy objectives and clear and consistently applied regulatory processes that are communicated or otherwise made publicly available.

2. The competent authorities of each Party shall make available to interested persons domestic requirements and procedures for completing applications relating to the supply of financial services.

3. Where a licence is required for the supply of a financial service, the competent authorities of a Party shall make the requirements for such a licence publicly available. The period of time normally required to reach a decision concerning an application for a licence shall either:

- (a) be made publicly available; or

(b) be made available to the extent possible to any applicant upon request, or a combination thereof.

Article 5

Expeditious Application Procedures

1. The competent authorities of each Party shall expeditiously process applications related to the supply of financial services submitted by service suppliers of other Parties.
2. If the competent authorities of a Party require additional information from the applicant in order to process its application, they shall notify the applicant without undue delay.
3. Upon request by the applicant, the competent authorities of a Party shall provide, without undue delay, information concerning the status of its application.
4. The competent authorities of each Party shall notify the applicant of the outcome of its application promptly after a decision has been taken. If a decision is taken to deny an application, the reason for the denial shall, to the extent possible, be made known to the applicant upon request.
5. Where a licence is required for the supply of a financial service, and if the applicable requirements are fulfilled, the competent authorities of a Party shall grant the applicant a licence within a reasonable period of time after the submission of its application is considered complete under that Party's domestic laws and regulations.

Article 6

Domestic Regulation

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from adopting or maintaining reasonable measures for prudential reasons, including for:
 - (a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or
 - (b) ensuring the integrity and stability of a Party's financial system.

Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding that Party's commitments or obligations under this Chapter. Such measures shall not be more burdensome than necessary to achieve their aim or constitute a disguised restriction on trade in services.

2. Each Party shall make its best endeavours to ensure that the Basel Committee's "Core Principles for Effective Banking Supervision", the standards and principles of the International Association of Insurance Supervisors and the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation" are implemented and applied in its territory.

3. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 7

Recognition of Prudential Measures

Where a Party recognises, by agreement or arrangement, prudential measures of a non-party in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for another Party to negotiate its accession to such an agreement or arrangement, or to negotiate a comparable agreement or arrangement 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 such recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

Article 8

Transfers of Information and Processing of Information

1. Without prejudice to its commitments under this Agreement, a Party shall not take measures that prevent transfers of information into or out of its territory or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements to which all Parties are parties, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier of another Party.

2. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Chapter.
