**ANNEX 9A**

**FINANCIAL SERVICES**

## Article 9A.1 Definitions

For the purposes of this Annex:

(a) **financial service** means any service of a financial nature, including all insurance and insurance-related services, all banking and other financial services (excluding insurance), and 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; and

(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 transactions;

(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 and forward rate agreements;

(E) transferable securities; or

(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 (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 person or juridical person of a Party seeking to supply or supplying financial services but the term “financial service supplier” does not include a public entity;

(c) **new financial service** means a financial service, 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;

(d) **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; and

(e) **self-regulatory organisation** means any non-governmental body, including any securities or futures exchange or market, clearing or settlement agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by legislation or delegation from central, regional or local governments or authorities.[[1]](#footnote-2)

## Article 9A.2 Scope

1. This Annex shall apply to measures taken by a Party affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in subparagraph (x) of Article 9.1 (Definitions – Trade in Services).

2. For the purposes of this Annex, “services supplied in the exercise of governmental authority” as referred to in subparagraph (r) of Article 9.1 (Definitions – Trade in Services) means the following:

(a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;[[2]](#footnote-3)

(b) activities forming part of a statutory system of social security or public retirement plans; or

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government.

3. If a Party allows any of the activities referred to in subparagraph (b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.

4. The definition of “service supplied in the exercise of government authority” in subparagraph (v) of Article 9.1 (Definitions – Trade in Services) shall not apply to services covered by this Annex.

5. Article 9.7 (Local Presence – Trade in Services) shall not apply to services covered by this Annex.

6. In the event of any inconsistency between this Annex and any other provision in this Agreement, this Annex shall prevail to the extent of the inconsistency.

## Article 9A.3 Financial Services Exceptions

1. For greater certainty, nothing in this Annex 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 Annex, 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 the Parties or between the Parties and non-Parties where like conditions prevail, or a disguised restriction on trade in financial services.

2. For greater certainty, in accordance with Article 9A.2 (Scope) of this Annex, Chapter 9 (Trade in Services) shall not apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies within the territory of each Party.

3. Chapter 9 (Trade in Services) shall not apply to non-discriminatory measures of general application taken by any public entity in pursuit of related credit policies. This paragraph shall not affect a Party’s obligations under Article 9.16 (Payments and Transfers – Trade in Services).

4. Notwithstanding Article 9.16 (Payments and Transfers – Trade in Services) a Party may prevent or limit transfers by a 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 service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

## Article 9A.4 Prudential Measures

Notwithstanding any other provision of this Agreement except for Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures), and Chapter 8 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,[[3]](#footnote-4) including for the protection of investors, depositors, policy-holders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such 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.

## Article 9A.5 Financial Services New to the Territory of a Party

Each Party shall permit a financial service supplier of the other Party established in its territory, to supply a new financial service of a type similar to those services it would permit its own financial service suppliers to supply, in like circumstances, subject to its applicable laws and regulations. A Party may determine the institutional or juridical form through which the new financial services may be supplied and may require authorisation for the supply of such services. Where a Party requires such authorisation of the new financial services, it shall provide its decision within a reasonable time.

## Article 9A.6 Treatment of Financial Services Information

Nothing in this Agreement 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 9A.7 Recognition of Prudential Measures

1. A Party may recognise prudential measures of any international standard setting body,[[4]](#footnote-5) the other Party, or a non-party in determining how the Party’s measures relating to financial services shall be applied.[[5]](#footnote-6) Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international standard setting body, the other Party, or the non-party concerned, or may be accorded autonomously.

2. Where a Party is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, that Party, shall provide adequate opportunity for the other Party to negotiate accession to such an agreement or arrangements, 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.

3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances as referred to in paragraph 2 exist.

## Article 9A.8 Self-Regulatory Organisations

If a Party requires a financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to supply a financial service in or into the territory of that Party, or when the Party provides privileges or advantages directly or indirectly to financial service suppliers supplying financial services through a self-regulatory organisation, then the requiring Party shall ensure that the self-regulatory organisation observes the obligations contained in Article 9.4 (National Treatment – Trade in Services) and Article 9.5 (Most-Favoured-Nation Treatment – Trade in Services).

## Article 9A.9 Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial service suppliers of the other Party, established in its territory through commercial presence as defined in subparagraph (c) of Article 9.1 (Definitions – Trade in Services), 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.[[6]](#footnote-7)

## Article 9A.10 Shariah-Compliant Financial Services

The Parties recognise that a Shariah-compliant financial service is a financial service for the purposes of Article 9A.1 (Definitions). Accordingly, each Party shall consider applications by financial service suppliers of the other Party established in its territory through commercial presence as defined in subparagraph (c) of Article 9.1 (Definitions – Trade in Services) to supply such services in its territory, on an equal basis as any other application to supply financial services, consistent with its laws and regulations including any regulatory or supervisory requirements, and in accordance with its commitments and obligations under this Annex.

## Article 9A.11 Sustainable Finance

1. The Parties recognise the importance of international cooperation to facilitate the inclusion of environmental, social, and governance considerations in investment decision-making and other business activities, in order, thereby, to increase investment in sustainable activities.

2. The inclusion of environmental considerations in investment decision-making and other business activities involves, *inter alia*, the assessment and pricing of climate-related risks and opportunities, and the exploration of environmental and sustainable projects and infrastructure.

3. The Parties acknowledge the importance of encouraging financial service suppliers to develop an approach to managing climate-related financial risks. Specifically, the Parties recognise the importance of encouraging the uptake of climate-related financial disclosures for financial service suppliers with material exposure to climate change, including forward-looking information, informed by initiatives in international fora.

4. The Parties shall cooperate in relevant international fora, and where agreeable, in the development and adoption of internationally recognised standards for the inclusion of environmental, social, and governance considerations in investment decision-making and other business activities.

## Article 9A.12 Dispute Settlement

Panels established pursuant to Chapter 25 (Dispute Settlement) to examine matters relating to disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service in dispute.

1. For greater certainty, a Party may require a self-regulatory organisation to be recognised [↑](#footnote-ref-2)
2. Activities referred to in this subparagraph include any regulatory and enforcement activities conducted in pursuit of monetary or exchange rate policies. [↑](#footnote-ref-3)
3. The Parties understand that “prudential reasons” includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers, as well as the safety and financial and operational integrity of clearing and settlement systems. [↑](#footnote-ref-4)
4. “International standard setting body” refers to international standard setting bodies whose membership is open to the relevant bodies of at least both Parties. [↑](#footnote-ref-5)
5. For greater certainty, nothing in Article 9.5 (Most-Favoured-Nation Treatment – Trade in Services) shall be construed to require the Party to accord such recognition to prudential measures of the other Party. [↑](#footnote-ref-6)
6. For greater certainty, a Party need not grant access under this Article to a financial service supplier of the other Party established in its territory through commercial presence as defined in subparagraph (c) of Article 9.1 (Definitions – Trade in Services) if such access or treatment is not granted to its own like financial service suppliers. [↑](#footnote-ref-7)