

Annex 5 referred to in Chapter 8
Financial Services

Section 1
Scope and Definitions

1. This Annex applies to measures 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 paragraph (v) of Article 95.

2. (a) For the purposes of this Annex:

(i) the term "financial service" means any service of a financial nature offered by a financial service supplier of a Country. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(A) Insurance and Insurance-Related Services

(AA) direct insurance (including co-insurance):

(aa) life; and

(bb) non-life;

(BB) reinsurance and retrocession;

(CC) insurance intermediation, such as brokerage and agency; and

(DD) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and

(B) Banking and Other Financial Services (Excluding Insurance)

(AA) acceptance of deposits and other repayable funds from the public;

(BB) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(CC) financial leasing;

- (DD) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (EE) guarantees and commitments;
- (FF) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (aa) money market instruments (including cheques, bills, certificates of deposits);
 - (bb) foreign exchange;
 - (cc) derivative products including, but not limited to, futures and options;
 - (dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (ee) transferable securities; and
 - (ff) other negotiable instruments and financial assets, including bullion;
- (GG) 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;
- (HH) money broking;
- (II) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (JJ) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

- (KK) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - (LL) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs 2(a)(i)(B)(AA) through (KK) of this Section, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (ii) the term "financial service supplier" means any natural person or juridical person of a Country wishing to supply or supplying financial services, but the term "financial service supplier" does not include a public entity; and
- (iii) the term "public entity" means:
- (A) a Government, a central bank or a monetary authority of a Country, or an entity owned or controlled by a Country, 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
 - (B) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and
- (iv) for the purposes of paragraph (p) of Article 95, the term "services supplied in the exercise of governmental authority" 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;
 - (B) activities forming part of a statutory system of social security or public retirement plans; and

- (C) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of a Government.
- (b) For the purposes of paragraph (p) of Article 95, if a Country allows any of the activities referred to in subparagraph 2(a)(iv)(B) or (C) of this Section to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, the term "services" shall include such activities.
- (c) Paragraph (q) of Article 95 shall not apply to services covered by this Annex.

Section 2 Domestic Regulation

1. Notwithstanding any provisions of Chapter 8, a Country shall not be prevented from taking measures for prudential reasons, including measures 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 Chapter 8, they shall not be used as a means of avoiding the Country's commitments or obligations under Chapter 8.
2. Nothing in Chapter 8 shall be construed to require a Country to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Section 3 Recognition

1. A Country may recognise the prudential measures of any international regulatory body or third State in determining how the Country's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international regulatory body or third State concerned or may be accorded autonomously.

2. A Country that is a party to such an agreement or arrangement referred to in paragraph 1 of this Section, whether future or existing, shall afford adequate opportunity for the other Country to negotiate its accession to such an agreement or arrangement, or to negotiate comparable ones 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 Country accords recognition autonomously, it shall afford adequate opportunity for the other Country to demonstrate that such circumstances exist.

Section 4 Dispute Settlement

Arbitral tribunals established under Article 148 for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

Section 5 New Financial Services

1. Each Country shall examine objectively applications by financial service suppliers of the other Country to offer in the examining Country any new financial service. The provision of the new financial service is subject to approval, on a non-discriminatory basis, of the examining Country in accordance with relevant licensing requirements, institutional and juridical form requirements and other requirements of the examining Country.

2. For the purposes of paragraph 1 of this Section, the term "new financial service" is a new service of a financial nature and shall include services related to existing and new products or services, or the manner in which such products or services are delivered, that are not supplied in the examining Country but are supplied in the other Country.

Section 6 Working Group on Financial Services

1. Pursuant to paragraph 4 of Article 110, a working group on financial services (hereinafter referred to in this Section as "the Working Group") shall be established under the Sub-Committee on Trade in Services (hereinafter referred to in this Section as "the Sub-Committee").

2. The functions of the Working Group shall be limited to exchanging views on the following issues:

- (a) prudential policies and supervision of financial institutions of a Country operating in the other Country;
 - (b) financial market innovations of the Countries;
 - (c) development of financial markets of the Countries; and
 - (d) other issues related to financial services which the Countries mutually deem important.
3. The Working Group shall not negotiate commitments on financial services.
4. The Working Group shall report to the Sub-Committee on the work of the Working Group.
5. The Working Group shall not preclude the opportunities to exchange or share views and information between competent authorities of the respective Countries through present and future communication channels.
6. The Working Group shall meet at least once a year.
7. The Working Group shall be composed of the following:
- (a) for Japan, senior officials from the Financial Services Agency and, where appropriate, the Ministry of Foreign Affairs; and
 - (b) for Malaysia, representatives of Bank Negara Malaysia and the Securities Commission.