

**CHAPTER 9**  
**FINANCIAL SERVICES**

**Article 9.1**  
**Definitions**

For the purposes of this Chapter:

“cross-border financial service supplier” 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 that service;

“cross-border trade in financial services” or “cross-border supply of financial services” means the supply of a financial service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party to a person of the other Party; or
- (c) 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;

“commercial presence” means any type of business or professional establishment, including through:

- (a) the constitution, acquisition or maintenance of an enterprise;  
or
- (b) the creation or maintenance of a branch or representative office,

within the territory of a Party for the purposes of supplying a service, including a financial service;

“electronic payments” means the payer’s transfer of a monetary claim acceptable to the payee made through electronic means;

“enterprise of a Party” means:

- (a) an enterprise constituted or organised under the law of that Party and carrying out substantial business activities in the territory of that Party; or

- (b) an enterprise that is constituted or organised under the law of that Party and is directly or indirectly owned or controlled by a national of that Party or by an enterprise referred to in subparagraph (a);

“established financial service supplier” means a financial service supplier that supplies a financial service through commercial presence;

“established financial service supplier of the other Party” means an established financial service supplier located in the territory of a Party that is controlled by a person of the other Party;

“financial service supplier” means any person of a Party seeking to supply or supplying financial services, but does not include a public entity;

“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*

- (a) direct insurance (including co-insurance):
  - (i) life;
  - (ii) non-life;
- (b) reinsurance and retrocession;
- (c) insurance intermediation, such as brokerage and agency; and
- (d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

*Banking and other financial services (excluding insurance)*

- (e) acceptance of deposits and other repayable funds from the public;
- (f) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;
- (g) financial leasing;

- (h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques, and bankers drafts;
- (i) guarantees and commitments;
- (j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (i) money market instruments (including cheques, bills or certificates of deposits);
  - (ii) foreign exchange;
  - (iii) derivative products including futures and options;
  - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (v) transferable securities; or
  - (vi) other negotiable instruments and financial assets, including bullion;
- (k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately), and provision of services related to those issues;
- (l) money broking;
- (m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
- (n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;

"financial service computing facility" means a computer server or storage device for the processing or storage of information for commercial use but does not include computer servers or storage devices of, or used to operate, financial market infrastructures;

"financial market infrastructures" means systems in which financial service suppliers participate with other financial service suppliers, including the operator of the system, used for the purposes of clearing, settling, or recording of payments, securities, derivatives, or other financial transactions;

"investment" means "investment" as defined in Article 13.1 (Definitions - Investment),<sup>1</sup> except that for the purposes of this Chapter, with respect to "loans" and "debt instruments" referred to in that Article:

- (a) a loan to or debt instrument issued by an established financial service supplier is an investment only if it is treated as regulatory capital by the Party in whose territory the established financial service supplier is located; and
- (b) a loan granted by or debt instrument owned by an established financial service supplier, other than a loan to or debt instrument issued by an established financial service supplier referred to in subparagraph (a), is not an investment;

"investor" means a Party, or a person of a Party, that attempts to make,<sup>2</sup> is making, or has made an investment in the territory of the other Party;

"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;

"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;

"public entity" means:

- (a) a government, a central bank or a monetary authority of a Party or any entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or

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<sup>1</sup> 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 an established financial service supplier, is an investment for the purposes of Chapter 13 (Investment), if that loan or debt instrument meets the criteria for "investment" set out in Article 13.1 (Definitions - Investment).

<sup>2</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.

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

“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 by statute or delegation from central or regional government.

## **Article 9.2**

### **Scope**

1. This Chapter applies to any measure adopted or maintained by a Party affecting trade in financial services with respect to:
  - (a) an established financial service supplier of the other Party;
  - (b) an investor of the other Party, and an investment of that investor, in an established financial service supplier in the Party’s territory; and
  - (c) cross-border financial service suppliers.
2. Chapter 8 (Cross-Border Trade in Services) and Chapter 13 (Investment) 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) Article 8.10 (Denial of Benefits – Cross-Border Trade in Services), Article 13.7 (Minimum Standard of Treatment – Investment), Article 13.8 (Treatment in Case of Armed Conflict or Civil Strife – Investment), Article 13.9 (Expropriation and Compensation – Investment), Article 13.10 (Transfers – Investment), Article 13.14 (Subrogation – Investment), Article 13.15 (Special Formalities and Information Requirements – Investment), Article 13.16 (Denial of Benefits – Investment), Article 13.17 (Investment and Environmental, Health and other Regulatory Objectives – Investment), Article 13.18 (Investment and the Environment – Investment), and Article 13.19 (Corporate Social Responsibility – Investment) are incorporated into and made a part of this Chapter; and
  - (b) Article 8.12 (Payments and Transfers – 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 paragraph 3 of Article 9.5 (National Treatment) and subparagraph 1(c) of Article 9.6 (Market Access).

3. This Chapter does not apply to a measure 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 applies to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.
4. This Chapter does not apply to government procurement of financial services.
5. This Chapter does not apply to subsidies or grants provided by a Party with respect to the supply of financial services, including government-supported loans, guarantees and insurance.
6. This Chapter does not impose any obligation on a Party with respect to a national of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment. For greater certainty, this Chapter does not apply to measures regarding citizenship, nationality or residence on a permanent basis.

### **Article 9.3 Prudential Exception**

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (Trade in Goods), Chapter 4 (Rules of Origin and Origin Procedures), Chapter 5 (Customs Procedures and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures), and Chapter 7 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>3</sup> including:
  - (a) the protection of investors, depositors, policy holders, or persons to whom a financial service supplier owes a fiduciary duty;

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<sup>3</sup> The Parties understand that the term 'prudential reasons' includes the maintenance of the safety, soundness, integrity, or financial responsibility of payment, settlement and clearing systems.

- (b) the maintenance of the safety, soundness, integrity, or financial responsibility of an established financial service supplier or, a cross-border financial service supplier; or
  - (c) ensuring the integrity and stability of a Party's financial system.
- 2. Where those 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 9.4 Specific Exceptions**

- 1. Nothing in this Chapter, Chapter 8 (Cross-Border Trade in Services), Chapter 12 (Telecommunications), Chapter 13 (Investment) or Chapter 14 (Digital Trade), shall apply to measures taken or activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary policies and related credit policies, or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 13.11 (Performance Requirements – Investment) with respect to measures covered by Chapter 13 (Investment), under Article 13.10 (Transfers – Investment) or Article 8.12 (Payments and Transfers – Cross-Border Trade in Services).
- 2. Nothing in this Chapter shall require a Party to:
  - (a) furnish or allow access to information relating to the financial affairs and accounts of individual customers of financial service suppliers or to any confidential or proprietary information which, if disclosed, would impede law enforcement, interfere with specific regulatory or supervisory matters, or would otherwise be contrary to public interest or prejudice legitimate commercial interests of particular enterprises; or
  - (b) disclose confidential or proprietary information in the possession of public entities.

## **Article 9.5 National Treatment<sup>4</sup>**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of established financial service suppliers, and investments in established financial service suppliers in its territory.
2. Each Party shall accord to established financial service suppliers of the other Party, and to investments of investors of the other Party in established financial service suppliers, treatment no less favourable than that it accords, in like circumstances, to its own established financial service suppliers, and to investments of its own investors in established financial service suppliers with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of established financial service suppliers and investments.
3. Each Party shall accord to:
  - (a) financial services as specified by the Party in Annex 9A (Cross-Border Trade in Financial Services) or cross-border financial service suppliers of the other Party seeking to supply or supplying those financial services; and
  - (b) cross-border financial service suppliers of the other Party seeking to supply or supplying financial services as defined in subparagraph (b) or subparagraph (c) of the definition of “cross-border trade in financial services” or financial services supplied through that cross-border trade,treatment no less favourable than that it accords, in like circumstances, to its own financial services and financial service suppliers.
4. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 through 3 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 established financial service suppliers, investors, and investments of those investors in established financial service suppliers, or financial services or financial service suppliers, of the Party of which it forms a part.

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<sup>4</sup> For greater certainty, whether treatment is accorded in “like circumstances” under Article 9.5 (National Treatment) or Article 9.8 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, established financial service suppliers or financial service suppliers on the basis of legitimate public welfare objectives.



**Article 9.6**  
**Market Access**

1. A Party shall not adopt or maintain, with respect to:
- (a) an established financial service supplier of the other Party;
  - (b) an investor or an investment of an investor of the other Party in an established financial service supplier in the Party's territory; or
  - (c) a cross-border financial service supplier of the other Party:
    - (i) seeking to supply or supplying the financial services as specified by the Party in Annex 9A (Cross-Border Trade in Financial Services); or
    - (ii) seeking to supply or supplying financial services as defined in subparagraph (b) or subparagraph (c) of the definition of "cross-border trade in financial services",

either on the basis of its entire territory or on the basis of the territory of a central, regional, or local level of government, a measure that:

- (d) imposes limitations on:
  - (i) the number of established financial service suppliers or cross-border financial service suppliers, 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>5</sup>
  - (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding in established financial service suppliers or the total value of individual or aggregate foreign investment in established financial service suppliers;

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<sup>5</sup> Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

- (v) the total number of natural persons that may be employed in a particular financial services sector or that an established financial service supplier or cross-border financial service supplier 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
  - (e) restricts or requires specific types of legal entity or joint venture through which an established financial service supplier or cross-border financial service supplier may supply a service.
- 2. For greater certainty, this Article does not prevent a Party imposing terms, conditions, and procedures for the authorisation of the establishment and expansion of a commercial presence in so far as they do not circumvent the Party's obligation under paragraph 1 and are consistent with the other provisions of this Chapter.

#### **Article 9.7 Local Presence**

Neither Party shall require a cross-border financial service supplier of the other Party to establish or maintain a representative office, or an enterprise or a branch of an enterprise, or to be resident in its territory, as a condition for the cross-border supply of a financial service. With respect to cross-border supply as defined in subparagraph (a) of the definition of "cross-border trade in financial services", this Article only applies to the financial services specified by the Party in Annex 9A (Cross-Border Trade in Financial Services).

#### **Article 9.8 Most-Favoured-Nation Treatment**

- 1. Each Party shall accord to:
  - (a) investors and investments of investors of the other Party in established financial service suppliers, treatment no less favourable than that it accords, in like circumstances, to investors and investments of investors of a non-party in established financial service suppliers;
  - (b) established financial service suppliers of the other Party, treatment no less favourable than that it accords, in like circumstances, to established financial service suppliers of a non-party;
  - (c) financial services or cross-border financial service suppliers of the other Party, treatment no less favourable than that it accords, in like

circumstances, to financial services and cross-border financial service suppliers of a non-party.<sup>6</sup>

2. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms.

### **Article 9.9** **Senior Management and Boards of Directors**

1. Neither Party shall require established financial service suppliers of the other Party, to engage natural persons of any particular nationality as members of the board of directors, senior managerial or other essential personnel.
2. Neither Party shall require that more than a minority of the board of directors of established financial service suppliers of the other Party be composed of persons residing in the territory of the Party.

### **Article 9.10** **Non-Conforming Measures**

1. Article 9.5 (National Treatment), Article 9.6 (Market Access), Article 9.7 (Local Presence), Article 9.8 (Most-Favoured-Nation Treatment) and Article 9.9 (Senior Management and Boards of Directors) do 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 in Section A of its Schedule to Annex III (Schedules of Non-Conforming Measures for Financial Services);
    - (ii) a regional level of government, as set out in Section A of its Schedule to Annex III (Schedules of Non-Conforming Measures for Financial Services); or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);

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<sup>6</sup> For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to investors and investments of investors in established financial services suppliers, established financial service suppliers, financial services or cross-border financial service suppliers of territories for whose international relations the United Kingdom is responsible.

- (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 immediately before the amendment, with Article 9.5 (National Treatment), Article 9.6 (Market Access), Article 9.7 (Local Presence), Article 9.8 (Most-Favoured-Nation Treatment), or Article 9.9 (Senior Management and Boards of Directors); or
  - (d) any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in Section B of its Schedule to Annex III (Schedules of Non-Conforming Measure for Financial Services).
2. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
3. Where Article 8.3 (National Treatment – Cross-Border Trade in Services), Article 8.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services), Article 8.5 (Market Access – Cross-Border Trade in Services), Article 8.6 (Local Presence – Cross-Border Trade in Services), Article 13.4 (Market Access – Investment), Article 13.5 (National Treatment - Investment), Article 13.6 (Most-Favoured-Nation Treatment – Investment), or Article 13.12 (Senior Management and Boards of Directors - Investment) do not apply to a measure due to that measure being:
- (a) set out by a Party as a non-conforming measure in its Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment); or
  - (b) a measure which a Party may adopt or maintain under an entry set out by a Party in its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment),

that measure shall be treated as a non-conforming measure not subject to Article 9.5 (National Treatment), Article 9.6 (Market Access), Article 9.7 (Local Presence), Article 9.8 (Most-Favoured-Nation Treatment), or Article 9.9 (Senior Management and Boards of Directors), as the case may be, to the extent that the measure is covered by this Chapter.

4. Article 9.5 (National Treatment) and Article 9.8 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception to, or derogation from, the obligations imposed by Article 15.8 (National Treatment – Intellectual Property), or by Article 3 or Article 4 of the TRIPS Agreement.

## **Article 9.11 Transparency**

1. Articles 26.2 (General Provisions – Good Regulatory Practice), 26.6 (Public Consultation – Good Regulatory Practice), 26.10 (Regulatory Cooperation – Good Regulatory Practice), and 26.11 (Contact Points – Good Regulatory Practice) and Articles 28.2 (Publication – Transparency and Anti-Corruption), 28.3 (Administrative Proceedings – Transparency and Anti-Corruption), and 28.5 (Provision of Information – Transparency and Anti-Corruption) do not apply to a measure covered by this Chapter.
2. The Parties recognise that transparent measures governing the activities of 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.
3. Each Party shall:
  - (a) ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner;
  - (b) ensure that its laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies are promptly published or made available in a manner that enables an interested person and the other Party to become acquainted with them;
  - (c) to the extent practicable, ensure advance publication of any laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies that it proposes to adopt and their purpose, and provide an interested person and the other Party a reasonable opportunity to comment on them;
  - (d) maintain or establish appropriate mechanisms to respond, within a reasonable period of time, to an inquiry or a request for information from an interested person and the other Party regarding measures of general application to which this Chapter applies;
  - (e) allow, to the extent practicable, a reasonable period of time between the publication of a final law or regulation of general application to which this Chapter applies and the date when it enters into effect; and
  - (f) ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party, to which this Chapter applies, are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

4. In developing a new law or regulation of general application to which this Chapter applies, a Party may consider, in a manner consistent with its law and regulations, comments regarding how the proposed law or regulation of general application may affect the operations of financial service suppliers, including financial service suppliers 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 law or regulation of general application; or
  - (b) submissions to a Party by interested persons, including the other Party or financial service suppliers of the other Party, with regard to the potential effects of the proposed law or regulation of general application.
5. Before the competent authority of a Party adopts a final law or regulation of general application, a Party shall, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed law or regulation of general application.<sup>7</sup>
6. If a Party adopts or maintains measures relating to authorisation for the supply of a service, the Party shall ensure that:
  - (a) the competent authority reaches and administers its decisions in a manner independent from any supplier of the services for which authorisation is required;<sup>8</sup>
  - (b) those measures are based on objective and transparent criteria;<sup>9</sup>
  - (c) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if those requirements exist;
  - (d) the procedures do not in themselves unjustifiably prevent fulfilment of requirements; and
  - (e) those measures do not discriminate on the basis of gender.<sup>10</sup>

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<sup>7</sup> For greater certainty, a Party may address those comments collectively on an official website.

<sup>8</sup> For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

<sup>9</sup> Those criteria may include competence and the ability to supply a service, including to do so in a manner consistent with a Party's regulatory requirements. Competent authorities may assess the weight to be given to each criterion.

<sup>10</sup> Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and a adoption by Parties of temporary special measures aimed at accelerating de facto equality across all genders, shall not be considered discrimination for the purposes of this provision.

7. If a Party requires authorisation for the supply of a financial service, the competent authorities of the Party shall:

- (a) make publicly available the information necessary for financial service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending, and renewing that authorisation.

Where it exists, that information shall include:

- (i) fees;
  - (ii) contact information of competent authorities;
  - (iii) procedures for appeal or review of decisions concerning applications;
  - (iv) procedures for monitoring or enforcing compliance with the terms and conditions of licences;
  - (v) opportunities for public involvement, such as through hearings or comments;
  - (vi) indicative timeframes for processing of an application; and
  - (vii) any other relevant requirements and procedures;
- (b) avoid, to the extent practicable, requiring an applicant to approach more than one competent authority for each application for authorisation. If a service is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required;
  - (c) permit, to the extent practicable, submission of an application at any time throughout the year.<sup>11</sup> If a specific time period for applying exists, the Party shall ensure that the regulatory authorities allow a reasonable period for the submission of an application;
  - (d) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;
  - (e) accept copies of documents, that are authenticated in accordance with the Party's laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process;

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<sup>11</sup> Competent authorities are not required to start considering applications outside of their official working hours and working days.

- (f) ensure that the authorisation fees charged by its competent authorities are reasonable, transparent and do not in themselves restrict the supply of the relevant service;
- (g) make an administrative decision on a complete application of a financial service supplier of the other Party, relating to the supply of a financial service within a reasonable period of time, in line with each Party's law. An application is not considered complete until the competent authority has received all necessary information and all relevant hearings, if any, have been held;
- (h) on request of an applicant, inform the applicant of the status of their application without undue delay;
- (i) if they require additional information from the applicant, notify the applicant without undue delay;<sup>12</sup>
- (j) promptly notify the applicant of the outcome of their application,<sup>13</sup> to the extent possible, in writing;<sup>14</sup>
- (k) before rejecting an application for authorisation, notify the applicant with the relevant reasons and give the applicant the opportunity to make representations in support of the application;
- (l) on request of an unsuccessful applicant, to the extent possible, inform the applicant of the reasons for denial of the application and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application<sup>15</sup> solely on the basis that an application had been previously rejected; and
- (m) ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.<sup>16</sup>

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<sup>12</sup> Competent authorities are not required to provide an extension of the deadline where an applicant is provided with the opportunity to provide additional information.

<sup>13</sup> Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application or rejection of the application.

<sup>14</sup> "In writing" may include in electronic form.

<sup>15</sup> Competent authorities may require that the content of that application has been revised.

<sup>16</sup> Competent authorities are not responsible for delays due to reasons outside their competence.



**Article 9.12**  
**Financial Data and Information<sup>17</sup>**

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means and the use of financial service computing facilities, including requirements that seek to ensure the security and confidentiality of communications.
2. Neither Party shall prohibit or restrict a financial service supplier of the other Party from transferring, including by electronic means, information including personal information, where those transfers are necessary for the conduct of the ordinary business of the financial service supplier.
3. Subject to paragraphs 4 and 5, it is prohibited for a Party to require, as a condition for conducting business in the Party's territory, a financial service supplier of the other Party to use or locate financial service computing facilities, in the former Party's territory.<sup>18</sup>
4. Each Party has the right to require a financial service supplier of the other Party to use or locate financial service computing facilities in the former Party's territory, where it is not able to ensure appropriate<sup>19</sup> access to information required for the purposes of financial regulation and supervision, provided that the following conditions are met:
  - (a) to the extent practicable, the Party provides a financial service supplier of the other Party with a reasonable opportunity to remediate any lack of access to information; and
  - (b) the Party or its regulatory authorities inform the other Party or its regulatory authorities before imposing any requirements to a financial service supplier of the other Party to use or locate financial service computing facilities in the former Party's territory.
5. Nothing shall restrict the right of a Party to adopt or maintain measures inconsistent with paragraph 2 or paragraph 3 to achieve a legitimate public policy objective such as the protection of personal information, personal privacy, and the confidentiality of individual records and accounts, provided that the measure:

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<sup>17</sup> For Australia, Article 9.12 (Financial Data and Information) does not apply to Australia's Foreign Investment Framework, which comprises *Australia's Foreign Investment Policy, Foreign Acquisitions and Takeovers Act 1975 (Cth), Foreign Acquisitions and Takeovers Regulation 2015 (Cth), Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth), Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Cth), Financial Sector (Shareholdings) Act 1998 (Cth)* and Ministerial Statements.

<sup>18</sup> For greater certainty, this prohibition also applies to circumstances in which a financial service supplier of the other Party uses the services of an external business for such use, storage or processing of information.

<sup>19</sup> For greater certainty, "appropriate" access may include sufficient, direct, regular or timely access that is provided without undue delay.

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
  - (b) does not impose restrictions on transfers of information or on the use or location of computing facilities greater than are required to achieve the objective.
7. This Article does not apply to information held or processed by or on behalf of a Party, or measures related to that information, including measures related to its collection.
8. This Article does not apply to credit information, or related personal information, of a natural person.

### **Article 9.13 Payment and Clearing**

Under terms and conditions that accord national treatment, each Party shall grant to established financial service suppliers of the other Party in the Party's 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 9.14 Performance of Back-Office Functions**

1. Each Party recognises that the performance of the back-office functions of an established financial service supplier in its territory by the head office or an affiliate of the established financial service supplier, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that established financial service supplier. Subject to paragraph 3, to the extent practicable, each Party shall allow the performance of those functions by the head office or affiliate of an established financial service supplier in its territory or by an unrelated service supplier.
2. While a Party may require established financial service suppliers 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.
3. For greater certainty, nothing in paragraph 1 prevents a Party from requiring an established financial service supplier in its territory to retain certain functions.

**Article 9.15**  
**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, directly or indirectly, privileges or advantages 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 9.5 (National Treatment) and Article 9.8 (Most-Favoured-Nation Treatment).

**Article 9.16**  
**Electronic Payments**

1. Noting the rapid growth of electronic payments, in particular, those provided by non-banks and FinTech enterprises, the Parties shall endeavour to support, subject to maintaining resilience, the development of efficient, safe, and secure cross-border electronic payments by:
  - (a) fostering the adoption and use of internationally accepted standards for electronic payments;
  - (b) promoting interoperability and the interlinking of electronic payment infrastructures; and
  - (c) encouraging innovation and competition in electronic payments.
2. To this end, each Party shall, subject to maintaining resilience, endeavour to:
  - (a) for the electronic payment systems solely operated by a Party, publicly disclose objective and risk-based criteria for participation which permit fair and open access;
  - (b) not require all payment card transactions to be routed through a national or single electronic payment gateway;
  - (c) adopt, for relevant electronic payment systems, international standards for electronic payment messaging for electronic data exchange between payment service providers and services suppliers to enable greater interoperability between electronic payment systems;
  - (d) facilitate the use of open platforms and architectures and encourage payment service providers to safely and securely make available new technologies and standards for their financial products and services to

third parties, where possible, to facilitate greater interoperability and innovation in electronic payments; and

- (e) facilitate innovation and competition and the introduction of new financial and electronic payment products and services in a timely manner such as through adopting regulatory and industry sandboxes and cooperation at international fora.
3. In view of paragraph 1, the Parties recognise the importance of upholding safety, efficiency, trust and security in electronic payment systems through regulations, and that the adoption and enforcement of regulations and policies should be proportionate to the risks undertaken by the payment service providers.

#### **Article 9.17**

##### **Financial Services New to the Territory of a Party**

1. Each Party shall permit financial service suppliers of the other Party to supply a new financial service that the first Party would permit its own financial service suppliers to supply, in like circumstances, without adopting a law or modifying an existing law.<sup>20</sup> For cross-border financial service suppliers, this Article only applies to the financial services specified in Annex 9A (Cross-Border Trade in Financial Services).
2. Notwithstanding subparagraph 1(e) of Article 9.6 (Market Access), 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. Where that authorisation is required, a decision shall be made within a reasonable time, and the authorisation may only be refused for prudential reasons.

#### **Article 9.18**

##### **Financial Services New to the Territories of both Parties**

1. Subject to paragraph 2, each Party may permit financial service suppliers of the other Party to supply a financial service new to the territories of both Parties. For cross-border financial service suppliers, this article only applies to the financial services specified in Annex 9A (Cross-Border Trade in Financial Services).
2. Notwithstanding subparagraph 1(e) of Article 9.6 (Market Access), a Party may determine the institutional and juridical form through which that financial service may be supplied and may require authorisation for the supply of the service.

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<sup>20</sup> For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

3. For the purposes of this Article, a financial service new to the territory of both Parties is a financial service, including services related to existing and new products or the manner in which a product is delivered, that is not supplied in a Party's territory.

### **Article 9.19 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, such as the Task Force on Climate-Related Financial Disclosures.
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 9.20 Recognition of Prudential Measures**

1. A Party may recognise a prudential measure of a non-party in the application of a measure covered by this Chapter.<sup>21</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 non-party.

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<sup>21</sup> For greater certainty, nothing in Article 9.8 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord recognition to prudential measures of the other Party.

2. A Party that accords recognition of a prudential measure under paragraph 1 to a non-party, 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 a prudential measure 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.

**Article 9.21**  
**Institutional Provisions**

1. The Committee on Services and Investment established pursuant to Article 8.13 (Committee on Services and Investment - Cross-Border Trade in Services) shall be responsible for the effective implementation and operation of this Chapter.
2. The authorities responsible for financial services for each Party are set out in Annex 9B (Authorities Responsible for Financial Services).

**Article 9.22**  
**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 on Services and Investment.
2. With regard to matters relating to existing non-conforming measures maintained by a Party at a regional level of government as referred to in subparagraph 1(a)(ii) of Article 9.10 (Non-Conforming Measures):
  - (a) a Party may request information on any non-conforming measure at the regional level of government of the other Party. Each Party's authorities responsible for financial services as specified in Annex 9B (Authorities Responsible for Financial Services) shall establish a contact point to respond to those requests and to facilitate the exchange of information regarding the operation of measures covered by those requests; and

- (b) if a Party considers that a non-conforming measure applied by a regional level of government of the other Party creates a material impediment to trade or investment by an established financial service supplier, an investor, investments in an established financial service supplier or a cross-border financial service supplier, the Party may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and considering whether further steps are necessary and appropriate.
3. Each Party shall ensure that when there are consultations pursuant to paragraphs 1 and 2, its delegation includes officials with the relevant expertise in the area covered by this Chapter from the authorities responsible for financial services as specified in Annex 9B (Authorities Responsible for Financial Services).
4. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between regulatory authorities, 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 9.23** **Dispute Settlement**

1. Chapter 30 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.
2. The Parties shall ensure for disputes arising under this Chapter that in addition to the requirements set out in subparagraph 1(a) of Article 30.10 (Qualifications of Panellists – Dispute Settlement) all panellists appointed in disputes arising under this Chapter shall have the necessary expertise relevant to financial services, which may include the regulation of financial service suppliers.
3. If the Director-General of the WTO or the Secretary General of the Permanent Court of Arbitration is responsible for appointing a panellist pursuant to paragraph 7 or paragraph 8 of Article 30.9 (Establishment and Reconvening of Panels – Dispute Settlement), the Parties shall request that the appointing authority appoint a panellist who meets the requirements set out in paragraph 2.
4. Further to paragraph 5 of Article 30.16 (Temporary Remedies for Non-Compliance – Dispute Settlement), in considering what obligations to suspend the complaining Party shall apply the following principles. If the measure affects:

- (a) the financial services sector and any other sector, the complaining Party may suspend obligations in the financial services sector that do not exceed a level equivalent to the level of nullification or impairment in the complaining Party's financial services sector; or
- (b) only a sector other than the financial services sector, the complaining Party shall not suspend obligations in the financial services sector.

**Article 9.24**  
**Financial Services Regulatory Cooperation**

The Parties shall promote and seek to further develop regulatory cooperation in financial services in accordance with Annex 9C (Financial Services Regulatory Cooperation).