

**TRADE IN SERVICES AGREEMENT**

**Annex [X]: Financial Services**

*This draft is without prejudice to further proposals or positions of the proponents.*

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27 June 2016

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### **Article X.1: Scope [CH alternative to the group] and definition]**

1. This section/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 2 of Article I-1 of the Agreement.
2. For the purposes of subparagraph 3(b) of Article I-1 of the Agreement, "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 the Party or its public entities.
3. For the purposes of subparagraph 3(b) of Article I-1 of the Agreement, if a Party allows any of the activities referred to in subparagraphs (b) or (c) of paragraph 2 of this Article 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. Subparagraph 3(c) of Article I-1 of the Agreement shall not apply to services covered by this Annex.

### **Article X.2: Definitions**

For purposes of this Annex/section:

- (a) A financial service is 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;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travelers 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, 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, depositary 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) A "**financial service supplier**" means any natural or juridical person of a Party seeking<sup>1</sup> to supply or supplying financial services but the term "financial service supplier" 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.

*Article X.2(c) is stabilized only for purposes of Article X.1 (Scope). The use of the term "public entities" for purposes of Article X.6 (Financial Services purchased by Public Entities) is not agreed.*

- (d) A **new financial service** is a service of a financial nature, 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 another Party.
- (e) **self-regulatory organization** means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party

### Article X.3: Market Access Commitments

1. The schedule of each Party includes commitments pursuant to Article I-3 (Market Access), subject to **[any]** terms, conditions, and limitations set out therein, with respect to:
  - (a) the supply by a financial service supplier of one Party, through commercial

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<sup>1</sup> [CH propose: It is understood that seeking has the same meaning as wishing for the purpose of this paragraph.]

presence as defined in Article I-2(d), in the territory of any other Party of all financial services referred to in Article X.2(a);

- (b) the supply by a financial service supplier of one Party, from the territory of that Party into the territory of any other Party of the following financial services:
- (i) insurance of risks relating to:
    - (A) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the **[NO propose; CA/CH/HK/LI/PK/TW/US considering; AU/CO/CL/CR/EU/IL/IS/JP/KR/MU/MX/NZ/PA/PE/TR oppose: liability for passengers,] goods being transported, the vehicle transporting the [NO propose; CA/CH/HK/LI /PK/TW/US considering; AU/CO/CL/CR/EU/IL/IS/JP/KR/MU/MX/NZ/PA/PE/TR oppose: passengers or] goods and any liability arising therefrom;**
    - (B) **[NO propose; CA/CH/HK/LI/PK/TW/US considering; AU/CO/CL/CR/EU/IL/IS/JP/KR/MU/MX/NZ/PA/PE/TR oppose: fishing vessels of a size and engine capacity to operate beyond "200 nautical miles from the port];**
    - (C) **[NO propose; CA/CH/HK/LI/PK/US considering, AU/CO/CL/CR/EU/IL/IS/JP/KR/MU/MX/NZ/PA/PE/TR/TW oppose: exploration, development, production activities, and properties in the offshore energy sector by large customers<sup>2</sup>]; and**
    - (D) goods in international transit;
  - (ii) reinsurance and retrocession;
  - (iii) insurance intermediation, as referred to in subparagraph (a)(iii) of Article 2 of the Annex, related to the services listed in subparagraphs 1(b)(i) and 1(b)(ii);
  - (iv) services auxiliary to insurance as referred to in subparagraph (a)(iv) of Article 2 of the Annex;
  - (v) provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (a)(xv) and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (a) (xvi), both of Article X.2 of the Annex.
  - (vi) **[AU/CA/CH/CO/PA/PE/JP/KR/MU/MX/TW/US propose;**

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<sup>2</sup> **[NO propose:** with an activity of at least 10 man-years or annual sales of above USD 10 million]

**CL/NO/IL/PK/NZ considering; CR/EU/HK/TR/LI/IS oppose:** investment advice to a collective investment scheme located in the Party's territory;]

(vii) **[AU/CA/CH/CO/JP/MU/MX/PA/PE/TW/US propose; CL/KR/NO/NZ/PK considering; CR/EU/HK/IS/IL/LI/TR oppose:** portfolio management services to a collective investment scheme located in the Party's territory, excluding

(A) trustee services;

(B) custodial services and execution services that are not related to managing a collective investment scheme;<sup>3]</sup>

*Note: "Collective investment scheme" is a country-specific defined term. As such it will require an appendix where each Party identifies the coverage.*

*Example: In the United States, a collective investment scheme means [an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940. Custodial services are included in the scope of the specific commitment made by the United States under this annex only with respect to investments for which the primary market is outside the territory of the Party.*

(viii) **[US propose; CA/PA considering; AU/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/NZ/PE/PK/TR/TW oppose:** electronic payment services for payment card transactions<sup>4</sup> into its territory from the territory of another Party by a person of that Party. For the purposes of this subparagraph, "electronic payment services for payment card transactions":

(A) does not include the transfer of funds to and from transactors' accounts; and

(B) includes only those payment network services that use proprietary networks to process payment transactions.]

<sup>3</sup> Custodial services are included in paragraph (f) only with respect to investments for which the primary market is outside of the territory of the party.

<sup>4</sup> For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (viii) of the definition of "financial service" in Article 2, 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, authorization of transactions, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions.

**US proposes capturing Party-specific practices with respect to subparagraphs (vi), (vii), and (viii) in an annex as follows:**

**[Appendix X to Annex [X]: Financial Services]**

1. For the purposes of Articles X.3(1)(b)(vi) and (vii), "collective investment scheme" means:

(a) in 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

meaning

funds

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.

(x) in the United States, an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940;

2. For the purposes of Article X.3(1)(b)(viii), "payment card" means:

[...]

(x) in the United States, a credit card, charge card, debit card, check card, automated teller machine ("ATM") card, prepaid card, and other physical or electronic products or services for performing similar functions as such cards, and the unique account number associated with that card, product, or service;

(c) the purchase by its residents in the territory of any other Party of the financial services indicated in:

- (i) paragraph 1(b)(i), (ii), (iii) and (iv); and

- (ii) subparagraphs (a)(v) to (xvi) of Article X.2.]

***The participants, when revising their offers, will include the following Standard Scheduling Proposal for NT Mode 1 and 2 in FS***

[Sections A]

*Financial Services*

Except as otherwise provided in {Country A's} schedule:

- a. 1), 2) {Country A} reserves the right to adopt or maintain any measures with respect to all financial services as referred to in [Article X.2 of Annex [X] on Financial Services of the Agreement] other than the financial services referred to in subparagraphs 1 (b) and (c) of Article X.3 of Annex [X] on Financial Services of the Agreement; and
- b. 1), 2) Paragraph 3 of Article II-2 of the Agreement [the ratchet] shall not apply to financial services referred to in subparagraphs 1 (b) and (c) of Article X.3 of Annex [X] on Financial Services of the Agreement [short list]

**Should all participants not be satisfied with the outcome of this approach, Article X.4 will continue to be discussed as below:**

**[AU/CA/CL/CO/CR/KR/MX/PE/US propose; IL/JP/MU/PK considering; CH/EU/HK/IS /LI/NO/PA/TR oppose: Article X.4 National Treatment Commitments**

With respect to the supply of a financial service from the territory of one Party into the territory of any other Party, [supplied as a principal, through an intermediary or as an intermediary,] or in the territory of one Party to the service consumer of any other Party,

- (a) Article I-4 (National Treatment) of the Agreement shall apply to only the supply of financial services listed in subparagraphs 1 (b) and (c) of Article X.3, unless a Party otherwise specifies in its Schedule; and
- (b) paragraph 3 of Article II-2 of the Agreement shall not apply.]

**Article X.5: Monopoly Rights**

In addition to (Article XX/monopolies and exclusive services suppliers) of the Agreement, the following shall apply:

- (a) For transparency purposes, each Party shall list in an appendix to its schedule [C any monopoly rights existing at the [date of entry into force of the Agreement it has not otherwise set out in its schedule.



- (b) Notwithstanding paragraph 2 of Article 1 of this Annex/section, this Article applies to the activities referred to in paragraph 2(c) of Article 1 of this Annex/section.

**[AU/CA/EU/IS/JP/LI/MU/NO/TR/US propose; TW/ NZ considering;  
CL/CO/CR/HK/KR/MX/PA/PE/PK oppose:**

**Article X.6: Financial Services purchased by Public Entities**

Notwithstanding (Section/Article X) of the Agreement (on government procurement) and [subject to any conditions, limitations and qualifications that a Party shall set out in its schedule], each Party shall ensure that financial service suppliers of any other Party established in its territory are accorded most-favored-nation treatment and national treatment as regards the **[EU/HK proposal alt.: government procurement of financial services by the Party in its territory]** purchase or acquisition of financial services by public entities of the Party in its territory.]

*EU propose: This provision may need to be adapted subject to the discussion on the horizontal Annex on Government Procurement.*

**[CH propose; EU/MU/NO considering; CA/CR/IL/TW/US oppose:**

**Article X.7: National Treatment Limitations Concerning Localization**

[Subject to any terms, conditions and limitations], if a Party considers collateral requirements as a necessary measure to regulate the provision of reinsurance services by suppliers of other Parties in or into its territory, it shall not require the localization of such collateral in a specific territory.

**[AU/EU/JP propose; MU considering:**

**Article X.8: Temporary Entry of Personnel (to be adapted to horizontal M4 provisions)**

1. [Subject to any **[AU propose: terms,]** conditions, reservations and qualifications that a Party shall set out in its schedule] each Party shall permit temporary entry into its territory of the following personnel of a financial service supplier of any other Party that is establishing or has established a commercial presence in the territory of the Party:
  - (a) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and

- (b) specialists in the operation of the financial service supplier.
2. [Subject to **[AU propose: terms,]** conditions, reservations and qualifications that a Party shall set out in its schedule] each Party shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other Party:
- (a) specialists in computer services, telecommunication services and accounts of the financial service supplier; and
  - (b) actuarial and legal specialists.]

### Article X.9: Financial Services New to the Territory of a Party

Each Party shall permit financial service suppliers of any other Party established in its territory to supply any new financial service that the Party would permit its own like financial services supplier to supply [CL/CH/HK/MU **propose:** within the scope of the sub-sectors and financial services committed in its Schedule and [NZ\* **propose:** subject to the terms, limitations, conditions and qualifications established in that Schedule,]] without adopting a law or modifying an existing law.<sup>5</sup> Notwithstanding (Market Access, paragraph on juridical form), a Party may determine the institutional and juridical form through which the service may be supplied and may require authorization for the supply of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may be refused only for prudential reasons.

*Note: MU proposes moving the clause "without adopting a law or modifying an existing law" to the beginning of the paragraph, and revising footnote 5 to read:*

"For greater certainty, a Party may issue a new law, regulation or subordinate measure in permitting the supply of the new financial service. It is understood that this provision is intended to give effect to national treatment in respect of new financial services without limiting the legislative powers of a Party under its Constitution."

### Article X.10: Transfer of Information

[AU/CA/CH/CL/CO/CR/EU/IL/IS/JP/KR/LI/MU/MX/NO/NZ/PA/PE/PK/TR/TW **propose;** HK/US **considering;** [CL/HK/PE/PK **propose;** MX **considering;** AU/CH/EU/JP/MU/NO/US **oppose:** Subject to prior authorization by the regulator,] [HK/TR **propose;** CH/CO **considering;** AU/EU/JP/NO/US **oppose:** Subject to any conditions, limitations and qualifications that a Party shall set out in its schedule,] Each Party shall allow a financial service supplier of another Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the financial service supplier's ordinary course of business. Nothing in this paragraph restricts the right of a Party to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts, [provided that such measures are not used as a means of avoiding a Party's obligations under the provisions of this Article]. [HK **alt. proposal for the bracketed clause:** so long as such measures are not used to circumvent the provisions of this Article.]

### Article X.11: Payment and Clearing Systems

[NZ\* **propose:** Subject to any conditions, limitations and qualifications that a Party shall set out in its schedule], under terms and conditions that accord national treatment, each Party shall

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<sup>5</sup> For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

grant to financial service suppliers of any 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 paragraph is not intended to confer access to the Party's lender of last resort facilities.

*CH is ready to support the proposal by NZ if it is maintained.*

#### Article X.12 [Self-Regulatory Organizations]

When membership or participation in, or access to, a self-regulatory organization is required by a Party in order for financial service suppliers of any other Party to supply financial services in [AU/CA/CL/CO/CR/EU/HK/IL/JP/KR/LI/MX/MU/NO/NZ/PA/PE/PK/TR/US **propose: TW considering; CH opposing;** or into] the territory of that Party, the Party shall ensure that:

- (a) the self-regulatory organization observes [AU/CA/CH/LI/PK/US **propose:** in the exercise of its delegated authority,] the obligations of Articles I-4 (National Treatment) and I-[X] (MFN) with respect to financial service suppliers of any other Party [CH **propose;** AU/CA/CL/CO/CR/HK/IL/JP/KR/MX/MU/NO/NZ/PA/PE/US **oppose:** resident in the territory of the Party] [CH/NZ\* **propose:** , subject to any conditions, reservations, and qualifications inscribed in its schedule of specific commitments]; and

*CH's position with respect to MFN is subject to horizontal discussions on MFN.*

- (b) a rule of general application adopted or maintained by a self-regulatory organization of the Party is promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with it.

[AU/CA/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MX/MU/NO/PA/PE/PK/TR/TW/US **propose;** NZ **considering; CH oppose:**

#### Article X.13: Senior Management and Boards of Directors

[AU/CA/CL/CO/CR/EU/HK/IL/IS/KR/LI/JP/MX/MU/NO/NZ/PA/PE/PK/TR/TW/US **propose:** Subject to any [AU **propose:** terms] conditions, limitations and qualifications that a Party shall set out in its schedule:]

1. A Party may not require a financial service supplier of another Party with commercial presence in its territory to engage natural persons of any particular nationality as senior managerial or other essential personnel.
2. A Party may not require that [EU/HK/LI/NO **propose:** any member of] [EU/HK/LI/NO **oppose:** more than a minority of] the board of directors of a financial service supplier of

another Party with commercial presence in its territory be [EU/HK/LI/NO **oppose:** composed of nationals] [EU/HK/LI/NO **propose:** a national] of the Party or [EU/HK/LI/NO **propose:** a] natural [EU/HK/LI/NO **oppose:** persons] [EU/HK/LI/NO **propose:** person] residing in the territory of the Party or a combination thereof.]

*HK proposed para 3 (not subject to scheduling chapeau):*

[HK **propose;** EU **considering;** AU/CA/CL/CO/CR/IS/IL/LI/MU/MX/NO/PA/PE/US **oppose:**

3. Notwithstanding paragraph 2, a Party may not require that more than a minority of the board of directors of a financial service supplier of another Party with commercial presence in its territory be composed of nationals of the Party or natural persons residing in the territory of the Party or a combination thereof.]

*X.14 has been removed*

### Article X.15: Transparency- Consolidated version

#### CONCEPT PAPER - ALTERNATIVE APPROACH

(Original X.15, below)

1. [AU/CA/CR/IL/JP/MU/PA/PE/US **propose;** CL/CO/EU/IS/KR/LI/MU/MX/NO/NZ/PK/TR/TW **considering;** HK **Oppose:** Annex [XX] (Domestic Regulation) shall not apply to measures within the scope of this Annex.]
2. The Parties recognize that transparent regulations and policies governing the activities of financial services suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each party commits to promote such regulatory transparency in trade in financial services.

*CH/JP proposes to move this paragraph to the Transparency text, mutatis mutandis.*

3. [MU/PE/US **considering;** AU/HK **oppose:** Article [X.2] of Annex [XX] (Transparency - Notice and Comment) shall not apply to procedures and administrative rulings of general application within the scope of this Annex. [6] ]
4. Each Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.

<sup>6</sup> [For greater certainty, with respect to Article X.2(c), a Party may consider comments received under Article X.2(b) and this paragraph by addressing such comments at the time the Party adopts a law or regulation.]

*The inclusion of the paragraph above in this Article may not be necessary depending on how the text of the equivalent obligation in the Core Text article on domestic regulation is resolved. NZ's view is that stabilization of the above text is contingent on the equivalent obligation in the core text article on domestic regulation. NZ supports this standard applying to financial services on the basis it applies to all other sectors through the equivalent obligation in the core text.*

5. **[AU/EU/IS/JP/MU/NO/PE propose; CA/CO/CR/IL/KR/LI/MU/MX/NZ/PE/PK/TR/TW/US considering; HK Oppose:** Where a Party requires authorization for the supply of a financial service, the Party shall:
- (a) provide the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization;
  - (b) to the extent practicable, provide an indicative time-frame for processing of an application where domestic laws and regulations provide such a time frame;
  - (c) **[PK oppose:** endeavor to accept:
    - (i) **[PE considering; IL/TR oppose:** applications in electronic format; and]
    - (ii) copies of documents, **[AU/EU/NO/NZ/PE propose:** which are authenticated in accordance with a Party's domestic law,] in place of original documents, unless the Party requires original documents to protect the integrity of the authorization process;]
  - (d) **[TR propose:** endeavor to,] at the request of the applicant, provide without undue delay information concerning the status of the application;
  - (e) in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable:
    - (i) inform the applicant that the application is incomplete;
    - (ii) at the request of the applicant provide guidance on why the application is considered incomplete;
    - (iii) provide the applicant with the opportunity<sup>7</sup> to provide the additional information that is required to complete the application, andwhere none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;
  - (f) in the case of an application considered complete **[EU/NO propose:** for

<sup>7</sup> For greater certainty, such opportunity does not require a competent authority to provide extensions of deadlines.

processing] under domestic laws and regulations, within a reasonable period of time after the submission of the application, ensure that the processing of an application is completed, and that the applicant is informed of the decision concerning the application, **[CR considering:** to the extent possible in writing];<sup>8</sup> and

- (g) in the case of a rejected application, to the extent practicable, either on its own initiative or upon the request of the applicant, inform the applicant of the reasons for rejection and, where applicable under domestic laws and regulations, the procedures for resubmission of an application.]

6. **[CH/EU/IS/LI/MU/NO/PK propose; JP/KR considering; AU/CO/CR/HK/PA/TR/US oppose:** Each Party shall make its best endeavor to ensure that internationally agreed standards for regulation and supervision in the financial services sector **[JP considering:** and for the fight against tax evasion and avoidance] are implemented and applied in its territory. **[PK oppose:** *[The following section can alternatively be added to Article X.18 Recognition:]* Each Party shall consider the possibility of relying on other Parties' regulations when it finds that those offer an equivalent level of protection for the financial system and the stability and resilience of financial markets.]]

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<sup>8</sup> Competent authorities can 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 the application indicates either acceptance or rejection of the application. For greater certainty, "in writing" may include in electronic form.

**[EU/NO propose:**

After §4, a new §5:

5. **[AU/EU/KR/NO/NZ/PK considering; HK oppose:** Where a Party maintains measures relating to licensing requirements and procedures, qualification requirements and procedures affecting trade in financial services, the Party shall:
- (a) ensure that such measures are based on objective and transparent criteria<sup>9</sup>
  - (b) ensure that the competent authority reaches and administers its decisions in an independent manner;
  - (c) [In furtherance of] [Further to] [Domestic Regulation Art. 2 in the core text] ensure that the procedures are impartial, and ensure that the procedures are adequate for applicants to demonstrate whether they meet the requirements, where such requirements exist;
  - (d) to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorization<sup>10</sup>;

In §5, the following additional sub-paragraphs:

- x-1. **[AU/EU/NO propose; IL/NZ/TW considering:** to the extent practicable, permit an applicant to submit an application at any time;]
- x-2. **[AU/EU/NO propose; IL/NZ/TW considering:** allow a reasonable period for the submission of an application where specific time periods for applications exist;]
- x-3. **[AU/EU/IL/NO/NZ/TW considering:** ensure that the authorization fees<sup>11</sup> charged by the competent authority, meet each of the following criteria:
- (i) be reasonable
  - (ii) be transparent, and
  - (iii) do not in themselves restrict the supply of the relevant service;]
- x-4. **[AU/EU/NO propose; IL/NZ/TW considering:** ensure that authorization, once granted, enters into effect without undue delay subject to the applicable terms and conditions.]

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9 **[AU/CA/CO/CH/EU/IL/IS/NO/PE/PK/TW/US propose:** For greater certainty, such criteria may include, inter alia, competence, ability to supply a service, **[CH oppose; MU considering:** or potential health or environmental impacts of an authorization decision, and competent authorities may assess the weight to be given to such criteria.]]

10 For greater certainty, a Party may require multiple applications for authorization where a service is within the jurisdiction of multiple competent authorities.

11 Authorization fees include licensing fees and fees relating to qualification procedures; they do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.



In §5a, after "...such authorization":

**[EU/NO propose; AU/IS/NZ/TW considering:** Such information shall include, *inter alia*, where it exists:

1. fees;
2. contact information of relevant competent authorities;
3. procedures for appeal or review of decisions concerning applications;
4. procedures for monitoring or enforcing compliance with the terms and conditions of licenses;
5. opportunities for public involvement, such as through hearings or comments;
6. indicative time-frames for processing of an application;
7. the requirements and procedures;
8. technical standards.]]

**[AU/CH/MU/NZ propose; EU/PK considering; HK Oppose:**

x- Paragraph 8 of the Domestic Regulation Annex shall apply to this Article.]

#### **Article X.16: Prudential Measures**

1. Notwithstanding any other provision of the Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>12</sup> including for:
  - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
  - (b) to ensure the integrity and stability of a Party's financial system.
2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

#### **Article X.17: Treatment of Information**

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<sup>12</sup> [CL/CR/KR/MU/MU/MX/PA/PE/PK/TR propose; CA/US considering; AU/HK/IL/JP/NO oppose: [EU/LI considering: It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers] [EU oppose: as well as the safety and financial and operational integrity of payment and clearing systems.]

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 X.18: Recognition**

1. A Party may recognize a prudential measure of any other country in determining how the Party's measure relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their accession to such agreements or arrangements, 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 Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that such circumstances exist.
3. Where a Party is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article 1-6 shall not apply.

**[CA/CL/CO/EU/MX/NO/PE/US propose; MU considering:**

### **Article X.19: Dispute Settlement**

**[AU/CH/CL/EU/IL/IS/JP/NO/NZ/TR propose: *may need to be adapted to DS section*]**

1. **[AU/CA/CH/CO/CR/EU/HK/IL/IS/JP/KR/LIMX/NO/NZ/PA/TR/TW/US propose; CL considering:** A Panel for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.]
2. **[CA/IL/JP/KR/MX/TW/US propose; AU/HK/NO/PE considering; CH oppose:** Where a [Panel] finds a measure to be inconsistent with this Agreement and the measure affects:
  - (a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or
  - (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.]

*MU considers para 2 is of a cross-cutting nature and should be reflected as such in the Annex on dispute resolution*

### **Article X.20: Expedited Availability of Insurance**

The Parties recognize 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 time; not requiring product approval or authorization 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 related to the offering of products within the scope of an insurance license, the Party shall endeavor to maintain or improve these existing procedures.

**[AU/CA/EU/US propose; MU considering; CO/CR/JP/KR/PA/PK oppose:**

### **Article X.21: Supply of Insurance by Postal Insurance Entities**

1. The disciplines set out in this section apply where 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. No Party shall adopt or maintain a measure that creates conditions of competition that are more favorable 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 license 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 favorable 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 as apply 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 such 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 supplying like services.

5. **[EU oppose:** If a Panel under [Dispute Settlement] finds that a Party is maintaining a measure inconsistent with any of the commitments in paragraphs 2 through 4, the Party shall notify the complaining Party or Parties 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 does 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 advantage that modifies the conditions of competition in favor 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 neither the sale of direct life nor non-life insurance underwritten by the postal insurance entity accounts for more than ten percent of total annual premium income in the relevant segment of the Party's market as of [1 January 2015].
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 the Party signs the Agreement, the Party shall ensure that the postal insurance entity is:
  - (a) regulated by and subject to the enforcement of 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 applying to financial services suppliers supplying insurance services.
8. For purposes of this section, postal insurance entity means an entity that underwrites and sells insurance to the general public and is owned or controlled, directly or indirectly, by a postal entity of the Party.]

**[EU/US propose; MU/PK considering; AU/CO/CR/JP/KR/PA oppose:**

#### **Article X.22: Supply of Insurance by Cooperatives**

1. To the extent practicable, a Party should apply the same rules and enforcement activities to insurance services supplied by cooperatives that it applies to like services supplied by other private insurers in the Party's territory. To this end, insurance services supplied by cooperatives should be regulated by the same authorities that regulate other private suppliers of like insurance services in the Party's territory.

2. At a minimum, a Party shall provide that solvency matters related to the sale of insurance by cooperatives shall be subject to regulation by the authorities described in paragraph 1.
3. To the extent that a Party does not follow the principles set out in paragraph 1, its regulation of insurance services supplied by a cooperative should not provide the cooperative a competitive advantage over other private suppliers of like insurance services in the Party's territory.
4. For the purposes of this Article, a "cooperative" means an entity in a Party's territory that:
  - (a) underwrites and sells insurance only to its members and is owned in whole or in part by its members, or an organization consisting of multiple such entities; and
  - (b) is among the largest suppliers of either life insurance or of non-life insurance, as measured by premium income, that account for 75 percent of total premium income from life insurance or of non-life insurance in a Party's territory.

*US proposed alternative to subparagraph 4(b):*

Has premium income from either life insurance or non-life insurance that ranks the supplier among the suppliers whose premium incomes from such insurance in a Party's territory are the largest, and together account for 75 percent of the total premium income from such insurance in a Party's territory.

5. This Article does not apply to taxation measures.]

*\* New Zealand's attribution to "subject to scheduling" language in Articles X.9, X.11 and X.12 is pending satisfactory horizontal resolution of its concerns around the reservation of policy space for the Treaty of Waitangi/treatment of indigenous persons.*

**See Art X.15, above**

**Article X.15: Transparency- Consolidated version {April 8, 2016}**

1. **[CA/CL/CO/MX/PE/US propose; AU/CH/EU/HK/JP/NO/NZ/TR oppose:** Articles [XX] of Annex [XX] (Domestic Regulation and/or transparency) shall not apply to measures within the scope of this Annex.]
2. The Parties recognize that transparent regulations and policies governing the activities of financial services suppliers are important in facilitating their ability to gain access to and operate in each other's markets. **[CA/CL/CO/EU/JP/KR/MU/MX/PA/PE/TR/TW/US propose:** Each party commits to promote regulatory transparency in trade in financial services]

*CH proposes to move this paragraph to the Transparency text, mutatis mutandis.*

*MU to seek clarification about regulatory transparency.*

3. **[CA/CL/CO/PE/TW/US propose:** Each Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.]
4. **[CA/CO/CR/MX/PE/TR/TW/US propose:** Each Party shall, to the extent practicable,
  - (a) **[CA/CO/CL/CR/MX/PE/TR/US propose:** publish in advance any regulations of general application relating to the subject matter of this Annex that it proposes to adopt **[CR considering:** and the purpose of the regulation]];
  - (b) provide interested persons and Parties a reasonable opportunity to comment on such proposed regulations.]
5. **[CA/CL/CO/CR/MX/PE/TR/TW/US propose; MU/PK considering:** At the time it adopts a final regulation, a Party should, to the extent practicable, **[MU/TR propose:** and in accordance with its domestic law,] address in writing substantive comments received from interested persons with respect to the proposed regulation. **[PE propose:** <sup>13</sup>]

*Instead of paragraphs 4 and 5 the EU wants to mirror the language of paragraph 2 of the horizontal Transparency Annex.*

6. **[CA/CO/MU/MX/PE/TW/US propose; CR considering:** Each Party should, to the extent practicable, allow reasonable time between publication of a final regulation of general application and its effective date.]
7. **[AU/CA/CL/CO/CR/EU/HK/IS/IL/JP/KR/LI/MU/MX/NO/NZ/PA/PE/TR/TW/US propose; CH/PK considering:** Each Party shall **[EU/JP/MU/TR propose; AU/CA/US propose:** endeavor to] ensure that a rule of general application adopted or maintained by self-regulatory organizations of the Party is promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with it.]
8. **[CA/CO/PE/MU/TW/US propose:** Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding a measure of general application covered by this Annex.]
9. **[AU/CA/CO/EU/MU/MX/PA/PE/TW/US propose:** Each **[EU/PA propose:** Party] **[CA/CO/MX/PE/US propose:** Party's regulatory authorities] shall make **[CA/CO/MX/PE/US propose:** publicly] available to interested persons **[MU Propose:** <sup>14</sup> ] **[CA/CO/MX/PE/US propose:** the] **[AU/PA propose:** domestic] **[EU propose:** its] requirements **[AU/PA propose:** and applicable procedures] **[CA/CO/MX/PE/US propose:** , including any documentation required], for completing **[CA/CO/MX/PE/US**

<sup>13</sup> **[PE/MU propose:** For greater certainty, a Party may address those comments collectively on an official government website.]

<sup>14</sup> **[MU propose:** interested persons mean persons having sufficient interest in a measure covered by this Annex.]

**propose:** an application] [AU/HK **propose:** applications] relating to the supply of financial services.]

10. [AU/PA **propose;** CA/US **oppose:** Where a license or an authorization is required for the supply of a financial service, the competent authorities of a Party shall make the requirements for such a license or authorization publicly available. The period of time normally required to reach a decision concerning an application for a license or an authorization shall:
  - (a) be made available to the applicant upon request;
  - (b) be made publicly available; or
  - (c) be made available by a combination of both.[AU/PA **propose:** Upon] [CA/EU/TW/US **propose:** On the] request of an applicant, [AU/EU/PA **propose:** the Party concerned/concerned Party] [CA/TW/US **propose:** a Party's regulatory authority] shall inform the applicant of the status of its application. If the [AU/EU/PA **propose:** Party concerned/concerned party] [CA/TW/US **propose:** authority] requires additional information from the applicant, it shall notify the applicant without undue delay.]
11. [AU/CA/CO/CL/CR/MU/MX/PA/PE/PK/TW/US **propose;** LI **considering;** CH/EU/HK/IL/IS/JP/NO/NZ **oppose:** A Party's regulatory authority shall make an administrative decision on a completed application of a financial service supplier of another 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 are held and all necessary information is received. Where 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 endeavor to make the decision within a reasonable time thereafter.]
12. [CA/CO/MU/MX/PE/TW/US **propose:** On the 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.]
13. [EU/NO **propose;** JP **considering;** PA/US **oppose:** Each Party shall make its best endeavor to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. *[The following section can alternatively be added to Article X.18 Recognition:]* Each Party shall consider the possibility of relying on other Parties' regulations when it finds that those offer an equivalent level of protection for the financial system and the stability and resilience of financial markets.]

***EU/IL/NZ/TR: stabilization of this Article is contingent on the outcome of horizontal DR and transparency discussions, as well as paragraph 1 of this Article***

*Without prejudice – For TiSA participants only*

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