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Annex [X]: Financial Services

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

Article X.1: Scope

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-

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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, travellers cheques and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including, 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;

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- (xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (xii) money broking;
 - (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (xiv) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
 - (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice; advice on acquisitions and on corporate restructuring and strategy.
- (b) A **“financial service supplier”** means any natural or juridical person of a Party seeking to supply or supplying financial services but the term **“financial service supplier”** does not include a public entity.
- (c) **“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

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association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party

[US Propose; AU/JP considering; adding new definitions to Article X.2:

- (f) **covered person** means:
 - (i) a financial institution of another Party; or
 - (ii) a financial service supplier of another Party that supplies a financial service, from the territory of that Party into the territory of the Party, that the Party requires to be supplied by a financial institution when supplied by a juridical person located in its territory;
- (g) **computing facilities** means computer servers and storage devices for the processing or storage of information for the conduct of business within the scope of the license, authorization, or registration of a covered person, but does not include computer servers or storage devices of or used to access:
 - (i) financial market infrastructures;
 - (ii) exchanges or markets for securities or for derivatives such as futures, options, and swaps; or
 - (iii) non-governmental bodies that exercise regulatory or supervisory authority over covered persons;
- (h) **financial institution** means a financial intermediary or other juridical person that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;
- (i) **financial institution of another Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;
- (j) **financial market infrastructures** means systems in which covered persons participate with other financial service suppliers, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions;]

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Article X.3: Market Access Commitments

I. 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 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 customers¹]; and
 - (D) goods in international transit;
 - (ii) reinsurance and retrocession;

¹ [NO propose: with an activity of at least 10 man-years or annual sales of above USD 10 million]

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- (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/CL/CO/IL/PA/PE/JP/KR/MU/MX/TW/US propose; NO/PK considering; CR/EU/HK/TR/LI/IS/NZ oppose: investment advice to a collective investment scheme located in the Party's territory;]
- (vii) [AU/CA/CH/CL/CO/IL/JP/KR/MU/MX/PA/PE/TR/TW/US propose; NO/PK considering; CR/EU/HK/IS/LI/NZ 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;²]

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

² Custodial services are included in paragraph (vii) only with respect to investments for which the primary market is outside of the territory of the party.

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electronic payment services for payment card transactions³ into its territory from the territory of another Party by a person of that Party. Articles I-3 (Market Access) and I-4 (National Treatment) shall not apply to measures affecting the supply of these services maintained on [DATE CERTAIN - November 1, 2016], or the continuation or prompt renewal of any such measures. 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.]

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

[CH Opposes this approach]

[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) for **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 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;
 - (b) for **Canada**, an “investment fund” as defined under the relevant Securities Act;

³ For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (vii) of the definition of “financial service” in Article 2, and within subcategory 71393 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.

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(c) for Colombia;

(i) A fondo de inversion colectiva organized in accordance with article 3.1.1.2.1 of the Decree 2555 of 2010 as amended from time to time; and

(ii) A fondo voluntario de pensiones de jubilación e invalidez, organized in accordance with the provisions of Article 168 and subsequent articles of the Estatuto Orgánico del Sistema Financiero;

(d) for Israel, "mutual funds" established under the Joint Investment Trust Law, 1994;

(e) for Japan, a "financial instruments business operator" engaged in investment management business under the Financial Instruments and Exchange Law (Law No. 25 of 1948);

(f) for Korea, any of the schemes established for making collective investment as defined under article 9.18.1 through 9.18.6 of the Financial Investment Services and Capital Markets Act. With regard to Korean won-denominated assets, the supply of portfolio management services applies only to the extent that Korea allows the supply of these services with respect to such assets.

(f) for Mauritius, a scheme authorised and regulated under the Securities Act (as amended) and subsidiary enactments made thereunder;

(g) for Mexico, the "Managing Companies of Investment Funds" established under the Investment Funds Law (Ley de Fondos de Inversión). A financial institution organised in the territory of another Party will only be authorised to provide portfolio management services to a collective investment scheme located in Mexico if it provides the same services in the territory of the Party where it is established; [footnote]

[footnote] For greater certainty, México may require a collective investment scheme or a person of a Party involved in the operation of the scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme and footnote 3 of the Financial Services Annex does not apply.

(h) for Pakistan, any arrangement whose sole purpose is the collective investment of funds in a portfolio of securities, or other financial assets for profits, income or other returns, and where the participants, who have pooled in the funds, do not have any day to day control over the management of the scheme, whether or not they have the right to be consulted or to give direction in respect of such management; provided that the following shall not be considered as a Collective Investment Scheme:

- (a) employee welfare trusts or gratuity trusts or employees' provident funds or employees' pension funds setup for the benefit of employees by companies; and
 - (b) any such pool of funds which is separately regulated by the Securities and Exchange Commission of Pakistan or which is already established under any specific law;
- (i) for Peru:
- (a) mutual funds for investments and securities, in accordance with Consolidated Text of the Securities Market Law (Texto Único Ordenado de la Ley del Mercado de Valores), approved by Supreme Decree N° 093-2002-EF (Decreto Supremo N° 093-2002-EF); and
 - (b) investment funds in accordance with Legislative Decree N° 862 (Decreto Legislativo N° 862);
- (j) For 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:
- ...
- (a) for Mauritius, "payment card" means any card or other device, including a code or any other means of access to an account, that may be used from time to time to obtain money or to make payment, and includes debit, credit or stored-value card;
 - (x) for 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

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

<p><u>The participants, when revising their offers, will include the following Standard Scheduling Proposal for NT [I/LP] Mode 1 and 2 in FS “Supreme Understanding”</u></p>
<p>[Section A]</p> <p>I-4 National Treatment [I-X Local Presence]</p> <p>All Financial Services as referred to in [Article X.2 of Annex [X] on Financial Services of the Agreement]</p> <p>a. 1) Any measure with respect to all financial services other than the financial services referred to in subparagraph 1 (b) of Article X.3 of Annex [X] on Financial Services of the Agreement;</p> <p>b. 2) Any measure with respect to all financial services other than the financial services referred to in subparagraph 1 (c) of Article X.3 of Annex [X] on Financial Services of the Agreement; and</p> <p>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]</p> <p>1), 2) Any amendment to a measure that does not increase the inconsistency of that measure with the treatment provided for in Article I-4 (National Treatment) [or Article I-X (Local Presence)] as it existed on the date of entry into force of this Agreement.</p>
<p><u>Should all participants not be satisfied with the outcome of this approach, Article X.4 will continue to be discussed as below:</u></p>
<p>[AU/CA/CL/CO/CR/KR/MU/MX/PE/US propose; IL/JP/PK considering; CH/EU/HK/IS /LI/NO/PA/TR oppose: Article X.4 National Treatment Commitments</p>

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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 1-4 (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.

X.6 has been removed.

[CH/EU/NO propose; CL/CO/LI/MX/PA/PK/TR considering;
AU/CA/CR/IL/KR/MU/NZ/PE/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.

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X.8 has been removed.

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/ propose: within the scope of the subsectors and financial services committed in its Schedule and [NZ* propose: subject to the terms, limitations, conditions and qualifications established in that Schedule,]] without additional legislative action by the Party. 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 authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may be refused only for prudential reasons.

Article X.10: Transfer of Information]

[AU/CA/CH/CL/CO/CR/HK/IL/IS/JP/KR/LI/MU/MX/NO/NZ/PA/PE/PK/TR/TW propose; EU/US considering; [PK propose; MX considering; AU/CH/EU/JP/MU/NO/US oppose: Subject to prior authorization by the regulator,] [TR propose; CH considering; CO/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, [US propose/AU oppose: including human resources information or other personal information,] into and out of its territory[AU/US Oppose:, for data processing] [US propose/ AU considering: when this activity is for the conduct of business within the scope of the license, authorization, or registration of that financial service supplier] [US oppose: 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, [CL/MX/PE propose: or [MU propose: where applicable] to require a financial service supplier to obtain prior authorization from the relevant regulator to designate a particular juridical person as a recipient of such information, based on prudential

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considerations⁴] so long as such measures are not used to circumvent the provisions of this Article.]

Possible landing zone: (November 2016)

[AU/CA/CO/HK/JP/TR/US propose; AU/EU/KR/MU/CH considering: 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 when this activity is for the conduct of business within the scope of the license, authorization, or registration of that financial service supplier. 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, so long as such measures are not used to circumvent the provisions of this Article.]

[US propose *alt X.10* (July 2016):

No Party shall prevent a covered person from transferring information, including human resources information or other personal information, into or out of the Party's territory by electronic or other means when this activity is for the conduct of business within the scope of the license, authorization, or registration of that covered person.]

[US propose; JP considering: new Article 10*bis*:

Article X.10*bis*: Location of Computing Facilities

- [1. Recognizing that immediate, direct, complete, and ongoing access by a Party's financial regulatory authorities to information of covered persons, including information underlying the transactions and operations of such persons, processed or stored on computing facilities that covered persons use or locate in or outside the Party's territory, is critical to appropriate and effective financial regulation and supervision, and recognizing the need to eliminate any potential limitations on such access, including restrictions on the cross-border transfer of information and the location of computing facilities, the Parties undertake the obligations in this Article.

⁴ [PE propose: for greater certainty, this requirement is without prejudice to other means of prudential regulation.]

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- [2. IAU considering: No Party shall require a covered person to use or locate computing facilities in the Party's territory as a condition for conducting business in that territory, so long as the Party's financial regulatory authorities, for regulatory and supervisory purposes, have immediate, direct, complete, and ongoing access to information processed or stored on computing facilities that the covered person uses or locates outside the Party's territory.]
- [3. IAU considering: A Party shall, to the extent practicable, provide a covered person with a reasonable opportunity to remediate a lack of access to information as described in paragraph 2 before the Party requires the covered person to use or locate computing facilities in the Party's territory or the territory of another jurisdiction.⁵]]
- [4. AU propose: This Article shall not apply to:
- (a) government procurement.]
 - (b) information held or processed by, or on behalf of, a Party or measures related to such information, including measures related to its collection.]

AU propose: Parties to consider language linking this provision and X.10 (if expanded scope agreed) to existing measures and horizontal policy space reservations in parties' schedules so as to ensure that these provisions do not undercut the level of commitment that Parties have taken on. Parties to adapt language from the E-commerce Annex once agreed.

The other proposed exceptions from the E-commerce Annex, including those relating to essential security and legitimate public policy objectives, should be included in this provision.

Article X.11: Payment and Clearing Systems

⁵ [US propose: For greater certainty, so long as a Party's financial regulatory authorities do not have access to information as described in paragraph 2, the Party may: (a) subject to paragraph 3, require a covered person to use or locate computing facilities either in the territory of the Party or the territory of another jurisdiction where the Party has such access; and (b) adopt or maintain any other measure not inconsistent with the Agreement, including any measure consistent with Article X.16 (Prudential Measures).]

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[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 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.

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 or into the territory of that Party, the Party shall ensure that:

- (a) the self-regulatory organization observes the obligations of Articles I-4 (National Treatment) and I-[X] (MFN) with respect to financial service suppliers of any other Party [NZ* propose: , subject to any conditions, reservations, and qualifications inscribed in its schedule of specific commitments]; and
- (b) a rule of general application adopted or maintained by a self-regulatory organisation of the Party is promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with it.

Article X.13: Senior Management and Boards of Directors

Subject to any 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. [NZ/CH considering: 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 notes that there should be a top-up over the horizontal rule for financial services if there is to be a stand-alone article on senior management and boards of directors in this Annex.

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X.14 has been removed

Article X.15: Transparency

NZ/CH considering; HK opposing to not apply the Annex on Domestic Regulation to Financial Services.

1. Annex [XX] (Domestic Regulation), except for {x- Paragraph 8}, shall not apply to measures within the scope of this Annex.
42. Each Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.
53. 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 timeframe for processing of an application;
 - c. [MX/TR opposing: taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;]
 - d. [CR oppose: accept copies of documents, which are authenticated in accordance with the Party's domestic law, in place of original documents, unless they require original documents to protect the integrity of the authorisation process;]
 - e. at the request of the applicant, provide without undue delay information concerning the status of the application;

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- f. 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 opportunity⁶ to provide the additional information that is required to complete the application, and
- where 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;
- g. in the case of an application considered complete [for 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, to the extent possible in writing;⁷
- h. 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, the procedures for resubmission of an application;

Drafters' note: use of the word "practicable" is intended to have a different meaning from the parallel provision in the horizontal Domestic Regulation annex.

- κ-1. to the extent practicable, permit an applicant to submit an application at any time;

⁶ For greater certainty, such opportunity does not require a competent authority to provide extensions of deadlines.

⁷ 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.

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⌘-2j. allow a reasonable period for the submission of an application where specific time periods for applications exist;

⌘-3k. [US oppose: ensure that the authorization fees⁸ 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;]

Alternative language:

k. [US propose: with respect to authorization fees ^[set in FN 8] charged by financial regulatory authorities and self-regulatory organizations, ensure that:

(i) applicants are provided with a schedule of fees or information on how fee amounts are calculated; and

(ii) the fees are not used as a means of avoiding the Party's commitments or obligations under this Annex.]

FN8: 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.

⌘-4l. [CR oppose: ensure that authorization, once granted, enters into effect without undue delay subject to the applicable terms and conditions.]

5-3 bis. [AU/CL/IL/KR/MX/TR/US oppose: Where a Party maintains measures relating to licensing requirements and procedures, qualification requirements and procedures affecting trade in financial services, the Party shall:

⁸ 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.

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- a. ensure that such measures are based on objective and transparent criteria⁹
 - b. [CR oppose: ensure that the competent authority reaches and administers its decisions in an independent manner;]
 - c. [CR oppose: [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. [PE oppose: to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation¹⁰;]
64. [CH/CR/EU/HK/IL/IS/KR/LI/MU/NO/PE/PK/TW propose; CA/IL/JP/NZ considering; AU/CL/CO/CR/MX/PA/PE/TR/US oppose: Each Party shall make its best endeavour to ensure that internationally recognized standards for regulation and supervision in the financial services sector to which the Party has agreed are implemented and applied in its territory.

Chapter (XX) Dispute settlement shall not apply to this paragraph.

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,¹¹ 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.

⁹ For greater certainty, such criteria may include, inter alia, competence and ability to supply a service.

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

¹¹ It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers.

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Article X.17: Treatment of Information

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

Article 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.

Article X.19: Dispute Settlement

1. 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/CO/IL/JP/KR/MX/PA/PE/TW/US propose; AU/CL/CR/EU/HK/MU/PK considering; NZ/NO/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

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- (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.]

This provision may need to be adapted subject to discussions in the horizontal Annex on Dispute Settlement. A cross-reference to the Dispute Settlement Annex may be necessary.

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 licence, the Party shall endeavour to maintain or improve these existing procedures.

[AU/CA/EU/LI/MU/NO/US propose; IS/CL/MX/PE/TR 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 favourable 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

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- (b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable 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 considering:** 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 favour 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 sales of direct life and non-life insurance underwritten by the postal insurance entity each account for no more than 10 per cent, respectively, of total annual premium income from direct life and non-life insurance in the Party's market as of 1 January 2015.

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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; L/PE/US considering; AU/CO/CR/JP/KR/MU/MX/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

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- (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.*

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