

ANNEX 8A

FINANCIAL SERVICES

Article 8A.1

Definitions

For the purposes of this Annex:

- (a) **“financial service”** means 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; and
 - (B) non-life;
- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency;
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

Banking and other financial services (excluding insurance)

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial 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 and forward rate agreements;
 - (E) transferable securities; and
 - (F) other negotiable instruments and financial assets, including bullion;
- (xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (xii) money broking;
 - (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
 - (xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (b) **“financial service supplier”** means any natural person or juridical person of a Party seeking to supply or supplying financial services but the term “financial service supplier” does not include a public entity;¹

¹ Where the financial service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the financial service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for financial service suppliers under this Annex. Such treatment shall be extended to the presence through which the financial service is supplied and need not be extended to any other parts of the financial service supplier located outside the territory where the financial service is supplied.

- (c) **“new financial service”** means a financial service, including services related to existing and new financial products or the manner in which a financial product is delivered, that is not supplied by any financial service supplier in the territory of one Party, but which is supplied and regulated in the territory of the other Party;
- (d) **“public entity”** means:
- (i) a government, a central bank, or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;
- (e) **“self-regulatory organisation”** means a non-governmental body, including any securities or futures exchange or market clearing or payment settlement agency, or other organisation or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers which it receives through legislation or delegation from central or regional governments or authorities;²
- (f) **“commercial presence”** means any type of business or professional establishment, including through:
- (i) the constitution, acquisition or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or representative office, within the territory of a Party for the purpose of supplying a financial service;³
- (g) **“trade in financial services”** means the supply of a financial service:
- (i) from the territory of a Party into the territory of the other Party;
 - (ii) in the territory of a Party to a person of the other Party;
 - (iii) by a financial service supplier of a Party, through commercial presence in the territory of the other Party; or

² For greater certainty, a Party may require a self-regulatory organisation to be recognised under that Party's law.

³ For greater certainty, commercial presence may be established for the purpose of supplying services other than financial services, provided that at least one financial service is supplied through such commercial presence.

- (iv) by a financial service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party; and
- (h) **“electronic payments”** means an acceptable transfer of monetary value from a payer to a payee through electronic means.

Article 8A.2 Scope

1. This Annex shall apply to measures adopted or maintained by a Party affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in subparagraph (s) of Article 8.1 (Definitions).
2. For the purposes of this Annex, “services supplied in the exercise of governmental authority” as referred to in subparagraph (p) of Article 8.1 (Definitions) means the following:
 - (a) measures taken or activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary and related credit or exchange rate policies;
 - (b) activities forming part of a statutory system of social security or public retirement plans; or
 - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government.
3. If a Party allows any of the activities referred to in subparagraph 2(b) or 2(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.
4. The definition of “service supplied in the exercise of government authority” in Article 8.1 (Definitions) shall not apply to services covered by this Annex.

Article 8A.3 Prudential Measures

1. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for:

- (a) the protection of investors, depositors, policyholders, or persons to whom a financial service supplier owes a fiduciary duty;
 - (b) the maintenance of the safety, soundness, integrity, or financial responsibility of a financial service supplier;
 - (c) ensuring the integrity and stability of a Party's financial system; or
 - (d) maintenance of the safety and financial and operational integrity, of payment, settlement and clearing systems or financial responsibility of a financial service supplier.
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 this Agreement.

Article 8A.4
Financial Services New to the Territory of a Party

1. Each host Party shall endeavour to permit a financial service supplier of the other Party, established and supplying a new financial service in the territory of the other Party, to supply such new financial service, through commercial presence, in the territory of the host Party that the host Party would permit its own financial service suppliers, in like circumstances, to supply without adopting a law or modifying an existing law.⁴
2. Each Party may:
- (a) notwithstanding subparagraph 2(e) of Article 8.5 (Market Access), determine the institutional and juridical form through which the new financial service may be supplied;
 - (b) require authorisation, regulation or supervision from the relevant regulator for the supply of the new financial service; and
 - (c) require the financial service supplier of the other Party to become authorised to do business and to be regulated or supervised by the relevant regulator under the law of the Party.
3. Where a Party requires authorisation to supply the new financial service, a decision by the relevant regulator as to whether to grant authorisation shall be made within a reasonable time.

⁴ For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

4. To support innovation in financial services, the Parties shall endeavour to collaborate, and share knowledge, experiences and developments in financial services, to advance financial integrity, consumer protection, financial inclusion, competition and financial stability.

Article 8A.5
Treatment of Financial Services Information

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

Article 8A.6
Recognition

1. A Party may recognise prudential measures of the other Party or a non-party, which may be based on relevant standards of any international standard setting body, in determining how the Party's measures relating to financial services shall be applied.⁵ Such recognition may be:
 - (a) accorded autonomously;
 - (b) achieved through harmonisation or other means; or
 - (c) based upon an agreement or arrangement with the international standard setting body, other Party or the non-Party.
2. Where a Party is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, that Party shall provide adequate opportunity for the other Party to negotiate accession to such an agreement or arrangements, or to negotiate a comparable agreement or arrangement with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement.
3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances as referred to in paragraph 2 exist.

⁵ For greater certainty, nothing in Article 8.6 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord such recognition to prudential measures of any other Party.

Article 8A.7 Transparency

1. Chapter 16 (Transparency) and Article 8.13 (Domestic Regulation) do not apply to a measure covered by this Annex.
2. The Parties recognise that transparent measures of general application governing the activities of financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.
3. Each Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.
4. Each Party shall, to the extent practicable and in a manner consistent with its legal system for adopting measures:
 - (a) ensure that all measures of general application to which this Annex applies are promptly published or otherwise made available to an interested person and the other Party;
 - (b) ensure advance publication of any measures of general application to which this Annex applies that it proposes to adopt and provide an interested person and the other Party a reasonable opportunity to comment on those proposed measures;
 - (c) maintain or establish enquiry points and appropriate mechanisms to respond, within a reasonable period of time, to an inquiry or a request for information from an interested person regarding measures of general application to which this Annex applies;
 - (d) allow, a reasonable period of time between the final publication of a measure of general application to which this Annex applies and the date when it enters into effect; and
 - (e) ensure that measures of general application adopted or maintained by a self-regulatory organisation of the Party, to which this Annex applies, are promptly published or otherwise made available to an interested person and the other Party.
5. If a Party adopts or maintains measures relating to authorisation for the supply of a financial service, the Party shall ensure that:

- (a) such measures are based on objective and transparent criteria;⁶ and
 - (b) the procedures are impartial, not more burdensome than necessary to ensure the quality of the financial service and do not in themselves constitute a restriction on the supply of the financial service.
6. If a Party requires authorisation for the supply of a financial service, the financial regulatory authorities of the Party shall:
- (a) promptly publish⁷ the information necessary for financial service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. That information:
 - (i) shall include the contact information of relevant competent authorities; and
 - (ii) may include:
 - (A) any requirements or procedures,
 - (B) any procedures for appeal or review of a decision concerning an application,
 - (C) any procedures for monitoring or enforcing compliance with the terms and conditions of authorisation;
 - (b) to the extent practicable, not require an applicant to approach more than one financial regulatory authority for each application for authorisation. If a service is within the jurisdiction of multiple financial regulatory authorities, multiple applications for authorisation may be required;
 - (c) allow a reasonable period of time for the submission of an application;
 - (d) to the extent possible, accept applications in electronic format;
 - (e) accept copies, including electronic copies, of documents, that are authenticated in accordance with the Party's domestic law, in place of original documents, unless the financial regulatory

⁶ Such criteria may include competence and the ability to supply a financial service, including to do so in a manner consistent with a Party's regulatory requirements. Financial regulatory authorities may assess the weight to be given to each criterion.

⁷ For the purposes of these disciplines, "publish" means to include in an official publication or on an official website.

authorities require original documents to protect the integrity of the authorisation process;

- (f) ensure that any authorisation fees⁸ charged by financial regulatory authorities are reasonable, transparent and do not in themselves restrict the supply of the relevant service. Each Party shall endeavour to accept the payment of those authorisation fees by electronic means;
- (g) confirm in writing⁹ that an application has been received and, at the request of the applicant, provide without undue delay¹⁰ information concerning the status of the application;
- (h) in the case of an application considered complete for processing under the Party's law, make a decision on the application within a reasonable period of time and notify the applicant of the decision without undue delay. An application shall not be considered complete until all relevant proceedings are conducted and all necessary information is received. Where it is not practicable for a decision to be made within a reasonable period of time, the financial regulatory authorities shall notify the applicant of this without undue delay and shall endeavour to make the decision as soon as practicable;
- (i) in the case of an application considered incomplete under the Party's law, within a reasonable period of time, to the extent practicable:
 - (A) inform the applicant that the application is incomplete;
 - (B) at the request of the applicant, provide guidance on why the application is considered incomplete; and
 - (C) provide the applicant with the opportunity¹¹ to provide the additional information that is required to complete the application, and ensure that any deadlines for the additional information required are made clear to the applicant;

however, if none of the actions in subparagraphs (i)(A) through (i)(C) are practicable, and the application is rejected due to

⁸ For the purposes of this paragraph, authorisation fees do not include payment for auction, fees for tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision.

⁹ References to "in writing" include in an electronic format.

¹⁰ Financial regulatory authorities are not responsible for delays due to reasons outside their competence.

¹¹ Such opportunity does not require a financial regulatory authority to provide extensions of deadlines.

incompleteness, ensure that the applicant is informed within a reasonable period of time;

- (j) if an application is rejected then, either upon the request of an unsuccessful applicant in writing, or upon their own initiative, to the extent practicable, inform the applicant of the reasons for denial of the application;
- (k) not prevent an applicant, subject to its laws and regulations, from submitting another revised application solely on the basis that an application had been previously rejected; and
- (l) ensure that authorisation, once granted, may enter into effect without undue delay, subject to the applicable terms and conditions.

Article 8A.8

Transfers of Financial Information and Processing of Financial Information

1. The Parties recognise that each Party may have its own legislative and regulatory requirements concerning the transfer of financial information, processing of financial information, storage of financial information and the use or location of financial services computing facilities^{12 13} in respect of any financial service supplier of the other party conducting business in the Party's territory.
2. A Party shall not take measures other than in pursuance of the requirements mentioned in paragraph 1, that:
 - (a) prevent transfers of financial information, including transfers of data by electronic or other means, necessary for the conduct of the ordinary business of a financial service supplier in its territory;
 - (b) prevent processing of financial information necessary for the conduct of the ordinary business of a financial service supplier in its territory; or
 - (c) require the use or location of financial services computing facilities or the storage of financial information in the territory of

¹² For greater certainty, a Party may adopt a different regulatory approach, and this paragraph does not affect and is without prejudice to a Party's rights and obligations under this Article.

¹³ For greater certainty, "financial information" includes among others, any number or other personal data used to identify an account opened by, or card or payment instruments issued by a financial institution to a data principal, or data related to any payment transaction, or any personal data regarding the relationship between a financial institution and a data principal including financial status and credit history.

the Party as a condition for the conduct of the ordinary business of a financial service supplier of the other Party in its territory.

3. Nothing in paragraph 2 shall:
- (a) prevent a regulatory authority of a Party, for regulatory or prudential reasons, from requiring a financial service supplier in its territory to comply with its laws and regulations in relation to data management and storage and system maintenance, as well as to retain within its territory copies of records¹⁴, provided that such requirements shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement;
 - (b) restrict the right of a Party to protect personal data, personal privacy, and the confidentiality of individual records and accounts including in accordance with its laws and regulations;
 - (c) be construed to require a Party to allow the cross-border supply or consumption abroad of services in relation to which it has not made commitments, including to allow non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing as referred to in subparagraph (a)(xv) of Article 8A.1 (Definitions); or
 - (d) prevent New Zealand from adopting or maintaining measures that it deems necessary to protect or promote Māori rights, interests, duties and responsibilities¹⁵ in respect of matters covered by this Article, including in fulfilment of New Zealand's obligations under te Tiriti o Waitangi/ the Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other party or a disguised restriction on trade in goods, trade in services and investment. Chapter 19 (Dispute Settlement) does not apply to the interpretation of te Tiriti o Waitangi/ the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it. Chapter 19 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 19.7 (Request for Establishment of a Panel) may be requested to determine only whether any measure referred to in this sub paragraph is inconsistent with a Party's rights under this Agreement.

¹⁴ Where a Party's regulatory authority requires financial service suppliers to retain within its territory copies of records, that regulatory authority may mandate for regulatory or prudential reasons that financial service suppliers in its territory store such copies only in the territory of that Party.

¹⁵ For greater certainty, Māori rights, interests, duties and responsibilities include those relating to mātauranga Māori.

Article 8A.9 Self-Regulatory Organisations

If a Party requires a financial service supplier¹⁶ of another Party to be a member of, participate in, or have access to a self-regulatory organisation to provide a financial service in its territory, that Party shall ensure that the self-regulatory organisation observes that Party's obligations under Article 8.4 (National Treatment).

Article 8A.10 Payment and Clearing Systems

Under the terms and conditions that accord national treatment, each Party shall grant financial service suppliers¹⁷ of another 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 Article is not intended to confer access to the Party's lender of last resort facilities.¹⁸

Article 8A.11 Electronic Payments

1. Recognising the rapid growth of electronic payments, the Parties shall, while maintaining resilience, endeavour to work together to support the development of efficient, safe, affordable and secure cross-border electronic payments, including through:
 - (a) encouraging mutual cooperation and sharing information about each other's experience, technical expertise and innovations in the area of digital payment infrastructure and products;
 - (b) encouraging the adoption and use of internationally accepted standards or domestic payment standards;

¹⁶ For greater certainty, this Article does not prevent a Party from requiring a financial services supplier to be authorised, regulated or supervised, in its own as well as the other Party's territory, provided that this does not circumvent the Party's obligation under this Article.

¹⁷ For greater certainty, this Article does not prevent a Party from requiring a financial services supplier to be authorised, regulated or supervised, in its own as well as the other Party's territory, provided that this does not circumvent the Party's obligation under this Article.

¹⁸ For greater certainty, a Party need not grant access under this Article to a financial service supplier of another Party established in its territory if such access or treatment is not granted to its own like financial service supplier.

- (c) promoting interoperability and interlinkages of electronic payment infrastructures including payment systems; and
 - (d) encouraging innovation and competition in electronic payments services.
2. To this end, each Party shall, subject to maintaining the integrity and stability of the financial system, endeavour to:
- (a) make publicly available their respective regulations on electronic payments, including those pertaining to regulatory approval, licensing requirements, procedures, and make available technical standards when requested by the Parties' respective authorities;
 - (b) finalise decisions on regulatory or licensing approvals in a timely manner;
 - (c) encourage payment service providers to safely and securely make available new technologies and standards for their financial products and services, and facilitate greater interoperability;
 - (d) facilitate innovation and competition and the introduction of new electronic payment products and services; and
 - (e) maintain the confidentiality of information received under this article, except for publicly available information and data.
3. In view of paragraph 1, the Parties recognise the importance of enabling the introduction of cross-border electronic payment products and services in a timely manner, the importance of upholding safety, efficiency, trust and security in electronic payment systems through laws and regulatory measures, and that the adoption and enforcement of laws, regulatory measures and policies should take into account the risks undertaken by the payment service providers.
4. To enhance the accessibility and convenience of cross-border payments between India and New Zealand, the Parties shall collaborate towards the:
- (a) development of Real Time Payments ("RTP") infrastructure to facilitate domestic payments interoperability as well as support real-time cross-border remittances and cross-border merchant payments in a reasonable time; and
 - (b) integration of Fast Payment Systems ("FPS") to enable real-time cross-border remittances and cross-border merchant payments through respective infrastructure.

5. Notwithstanding the other provisions of this Article, the Parties are not obliged to share information, the disclosure of which would prejudice the safety, security, confidentiality, and competitiveness of their respective payment systems.

Article 8A.12
Performance of Back-Office Functions

1. Each Party recognises that the performance of the back-office functions of a financial service supplier, established through commercial presence in its territory, by the head office or an affiliate of the established financial service supplier, inside its territory, is important to the effective management and efficient operation of that established financial service supplier.
2. While a Party may require established financial service suppliers that supply or seek to supply a financial service through commercial presence in its territory to ensure compliance with its domestic law applicable to those functions, including in relation to its core and critical functions, both Parties recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.
3. To the extent practicable, and subject to paragraph 2, each Party shall permit the performance of such back-office functions by such a head office or affiliate as is referred to in paragraph 1. For greater certainty, nothing in this Article prevents a Party from requiring a financial service supplier that supplies or seeks to supply a financial service through commercial presence in its territory to retain certain functions, including core and critical functions.

Article 8A.13
Credit Rating of Financial Services Suppliers

In relation to the provision of a financial service in the territory of a Party:

- (a) by a financial service supplier of the other Party, which is already authorised by the Party to supply financial services through commercial presence in its territory; and
- (b) where the provision of financial services is wholly or partially contingent on an assessment by the Party of the credit rating of that financial service supplier or the sovereign credit rating of the other Party;

the host Party shall, to the extent practicable, undertake its assessment in a reasonable manner.¹⁹

Article 8A.14

Cooperation and Exchange of Views on Financial Services including Financial Technology

The Parties shall strengthen cooperation efforts in the financial services sector and support the development of Financial Technology (“FinTech”) initiatives, acknowledging the increasing role of technology in financial services. The Parties recognise that these efforts support objectives which include the following:

- (a) enhancing financial services trade between the Parties, by promoting robust and efficient financial service suppliers, markets, and infrastructure;
- (b) strengthening financial systems and promoting financial stability;
- (c) promoting fair and competitive markets;
- (d) protecting consumers, depositors, policy holders and persons to whom a fiduciary or statutory duty is owed by a financial service supplier;
- (e) Application of emerging technologies in the field of financial services including but not limited to distributed ledger technology;
- (f) use of supervisory technology and regulatory technology in financial services for enhancing regulatory monitoring, reporting, and compliance;
- (g) learn from experiences of each other’s regulatory sandbox including digital sandbox development for cross-border use;
- (h) exchange experience in innovation facilitation, start-up incubation, acceleration, FinTech regulation, open finance;
- (i) mutually learn and improve capabilities by collaborating on emerging technologies; and
- (j) engage in an in-depth study, design and implementation of central bank digital currency (CBDC) in both retail and cross-border payments area.

¹⁹ For greater certainty, this paragraph does not apply in relation to credit rating assessments undertaken by financial service suppliers.

Article 8A.15
Contact Points

1. For the purposes of this Annex, the contact points for financial services are:
 - (a) for India, Department of Financial Services, Department of Economic Affairs and Department of Commerce; and
 - (b) for New Zealand, the Ministry of Foreign Affairs and Trade, in coordination with financial services regulators.
2. A Party shall promptly notify the other Party of any change of its contact point.

Article 8A.16
Consultations Relating to Financial Services Issues

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall consider such a request.
2. Consultations under this Article shall include the relevant representatives of the contact points specified in Article 8A.15 (Contact Points).

Article 8A.17
Dispute Settlement

A panel established pursuant to Chapter 19 (Dispute Settlement) to examine matters relating to disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.