CHAPTER 11

FINANCIAL SERVICES

Article 11.1
Definitions

For the purposes of this Chapter:

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

(a) the constitution, acquisition, or maintenance of an enterprise; or

(b) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service including, but not limited to, supplying a financial service;

"cross-border financial service supplier of a Party" means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of that service;

"cross-border trade in financial services" or **"cross-border supply of financial services"** means the supply of a financial service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party to a person of the other Party; or

(c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

"enterprise of a Party" means an enterprise as defined in Article 1.3 (General Definitions – Initial Provisions and General Definitions) constituted or organised under the law in force in any part of the territory of a Party and that carries out substantial business activities in the territory of that Party;[1]

[1] An enterprise shall be deemed to carry out substantial business activities in the territory of a Party if it has a genuine link to the economy of that Party. As to whether an enterprise has a genuine link to the economy of a Party should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the enterprise:

(a) has a continuous physical presence, including though ownership or rental of premises, in the territory of that Party;

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

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

"financial service" means any service of a financial nature, including insurance and insurance related services, banking and other financial services (excluding insurance), and services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

(a) 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; and

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

(b) banking and other financial services (excluding insurance):

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

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

(iii) financial leasing;

(iv) all payment and money transmission services, including credit, charge and debit cards, travellers' cheques, and bankers' drafts;

(v) guarantees and commitments;

(b) has its central administration in the territory of that Party;
(c) employs staff in the territory of that Party; and
(d) generates turnover and pays taxes in the territory of that Party.

(vi) 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, or certificates of deposits);

(B) foreign exchange;

(C) derivative products including 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;

(vii) 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;

(viii) money broking;

(ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

(x) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xi) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(xii) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (i) to (xi), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions, and on corporate restructuring and strategy;

"financial service supplier" means a person of a Party that supplies, or seeks to supply, a financial service, but does not include a public entity;

"investment" means "investment" as defined in Article 14.1 (Definitions – Investment),[2] except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by an established financial service supplier is an investment only if it is treated as regulatory capital by the Party in whose territory the established financial service supplier is located; and

(b) a loan granted by or debt instrument owned by an established financial service supplier, other than a loan to or debt instrument issued by an established financial service supplier referred to in subparagraph (a), is not an investment;

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

"new financial service" means a financial service, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of one Party, but which is supplied in the territory of the other Party;

"person of a Party" means a national or an enterprise of a Party and, for greater certainty, does not include a branch of an enterprise of a non-party;

"public entity" means:

(a) a government, a central bank or a monetary authority of a Party or any entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(b) a private entity performing functions normally performed by a central bank or monetary authority when exercising those functions; and

"self-regulatory organisation" means a non-governmental body, including any securities or futures exchange or market clearing agency, or other organisation or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers.

[2] For greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by an established financial service supplier, is an investment for the purposes of Chapter 14 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 14.1 (Definitions – Investment).

Article 11.2
Scope

1. This Chapter shall apply to any measure adopted or maintained by a Party affecting trade in financial services with respect to:

   (a) an established financial service supplier of the other Party;

   (b) an investor of the other Party, and an investment of that investor, in an established financial service supplier in the Party's territory; and

   (c) cross-border trade in financial services.

2. Chapter 14 (Investment) and Chapter 9 (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter:

   (a) Articles 14.11 (Minimum Standard of Treatment – Investment) to Article 14.19 (Corporate Social Responsibility – Investment) and Article 9.11 (Denial of Benefits – Cross-Border Trade in Services) are incorporated into and made a part of this Chapter.

   (b) Article 9.9 (Payments and Transfers – Cross-Border Trade in Services) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to subparagraphs 1(c) and 1(d) of Article 11.5 (National Treatment) and subparagraph 1(c) of Article 11.6 (Market Access).

3. This Chapter shall not apply to a measure adopted or maintained by a Party relating to:

   (a) activities or services forming part of a public retirement plan or statutory system of social security; or

   (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

   except that this Chapter applies to the extent that a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.

4. This Chapter shall not apply to government procurement of financial services.

5. This Chapter shall not apply to subsidies or grants with respect to the cross-border supply of financial services, including government-supported loans, guarantees, and insurance.

6. This Chapter does not impose any obligation on a Party with respect to a national of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

Article 11.3
Specific Exceptions

1. This Agreement does not apply to measures taken or activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary policies and related credit policies, or exchange rate policies.

2. This Agreement does not require a Party to furnish or allow access to information relating to the affairs and accounts of individual consumers, financial service suppliers or to any confidential information which, if disclosed, would interfere with specific regulatory, supervisory, or law enforcement matters, or would otherwise be contrary to public interest or prejudice legitimate commercial interests of particular enterprises.

Article 11.4
Prudential Exception

1. This Agreement does not prevent a Party from adopting or maintaining measures for prudential reasons,[3] including:

   (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 an established financial service supplier, cross-border financial service supplier, or a financial service supplier; or

   (c) ensuring 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 this Agreement.

[3] The Parties understand that this includes the maintenance of the safety, soundness, integrity, or financial responsibility of payment, settlement, and clearing systems.

Article 11.5
National Treatment

1. Each Party shall accord to:

   (a) established financial service suppliers of the other Party, treatment no less favourable than that it accords, in like situations, to its own established financial service suppliers;

   (b) investors and investments of investors of the other Party in established financial service suppliers, treatment no less favourable than that it accords, in like situations, to its own investors and to investments of its own investors in established financial service suppliers;

   (c) financial services as specified by the Party in Annex 11A (Cross-Border Trade in Financial Services) or cross-border financial service suppliers of the other Party seeking to supply or supplying such financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers; and

   (d) cross-border financial service suppliers of the other Party seeking to supply or supplying financial services as defined in subparagraph (b) or subparagraph (c) of the definition of "cross-border trade in financial services" or financial services supplied through such cross-border trade, treatment no less favourable than that it accords to its own like financial services and financial service suppliers.

2. A Party may meet the requirement of paragraph 1 by according to:

   (a) established financial service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords, in like situations, to its own established financial service suppliers;

   (b) investors and investments of investors of the other Party in established financial service suppliers, either formally identical treatment or formally different treatment to that it accords, in like situations, to its own investors and investments of its own investors in established financial service suppliers; or

   (c) financial services and cross-border financial service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like financial services and financial service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of:

(a) established financial service suppliers of the Party compared to established financial service suppliers of the other Party, in like situations;

(b) investors and investments of investors of the Party in established financial service suppliers compared to investors and investments of investors of the other Party in established financial service suppliers, in like situations; or

(c) financial services or financial service suppliers of the Party compared to like financial services or cross-border financial service suppliers of the other Party.

4. Nothing in this Article shall be construed to require a Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant financial services or financial service suppliers.

Article 11.6
Market Access

1. A Party shall not adopt or maintain, with respect to:

(a) an established financial service supplier of the other Party;

(b) an investor or an investment of an investor of the other Party in an established financial service supplier in the Party's territory; or

(c) a cross-border financial service supplier of the other Party:

(i) seeking to supply or supplying the financial services as specified by the Party in Annex 11A (Cross-Border Trade in Financial Services); or

(ii) engaged in the cross-border trade in financial services or seeking to supply such services as defined in subparagraph (b) or subparagraph (c) of the definition of "cross-border trade in financial services",

on the basis of its entire territory a measure that:

(d) imposes limitations on:

(i) the number of established financial service suppliers or cross-border financial service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding in established financial service suppliers or the total value of individual or aggregate foreign investment in established financial service suppliers; or

(v) the total number of natural persons that may be employed in a particular financial services sector or that an established financial service supplier or cross-border financial service supplier may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(e) restricts or requires specific types of legal entity or joint venture through which an established financial service supplier or cross-border financial service supplier may supply a financial service.

2. This Article does not prevent a Party imposing terms, conditions, and procedures for the authorisation of the establishment and expansion of a commercial presence provided that they do not circumvent the Party's obligation under paragraph 1 and are consistent with the other provisions of this Chapter.

Article 11.7
Financial Data and Information[4]

1. Neither Party shall restrict a financial service supplier of the other Party from transferring information, including transfers of data by electronic means, where such transfers are necessary for the conduct of the ordinary business of the financial service supplier.

[4] For New Zealand, this Article does not apply to:

(a) New Zealand's overseas investment approval framework, including decisions under it, as set out in the *Overseas Investment Act 2005*, *Overseas Investment Regulations 2005*, and *Fisheries Act 1996*; and

(b) New Zealand's disaster and compulsory insurance schemes, as set out in the *Accident Compensation Act 2001* and *Earthquake Commission Act 1993*.

2. Subject to paragraphs 3 and 4, it is prohibited for a Party to require, as a condition for conducting business in the Party's territory, a financial service supplier of the other Party to use, store, or process information in the Party's territory. This prohibition also applies to circumstances in which a financial service supplier of the other Party uses the services of an external business for such use, storage, or processing of information.

3. Each Party has the right to require that information of a financial service supplier of the other Party is used, stored, or processed in its territory, where it is not able to ensure access to information required for the purposes of financial regulation and supervision, provided that the following conditions are met:

   (a) to the extent practicable, the Party provides a financial service supplier of the other Party with a reasonable opportunity to remediate any lack of access to information; and

   (b) the Party or its regulatory authorities consult the other Party or its regulatory authorities before imposing any requirements to a financial service supplier of the other Party to use, store, or process information in its territory.

4. Nothing in this Article shall restrict the right of a Party to adopt or maintain measures inconsistent with paragraph 1 or paragraph 2 to achieve a legitimate public policy objective, such as the protection of personal data, personal privacy, and the confidentiality of individual records and accounts, provided that such measures:

   (a) are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

   (b) do not impose restrictions on transfers of information greater than are required to achieve the objective.

Article 11.8
Payment and Clearing

Under terms and conditions that accord national treatment, each Party shall grant to established financial service suppliers of the other Party in 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 does not confer access to the Party's lender of last resort facilities.

Article 11.9
Self-Regulatory Organisations

If a Party requires a financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to supply a financial service in or into the territory of that Party, or grants a privilege or advantage when supplying a financial service through a self-regulatory organisation, then the requiring Party shall ensure that the self-regulatory organisation observes the obligations contained in Article 11.5 (National Treatment).

Article 11.10
Senior Management and Boards of Directors

1. Neither Party shall require established financial service suppliers of the other Party to engage natural persons of any particular nationality as members of the board of directors, senior managerial, or other essential personnel.

2. Neither Party shall require that more than a simple majority of the board of directors of established financial service suppliers of the other Party be composed of persons residing in the territory of the Party.

Article 11.11
Transparency

1. 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.

2. Each Party shall:

   (a) ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner;

   (b) to the extent practicable and in a manner consistent with its legal system ensure that its laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies are promptly published or made available in such a manner as to enable an interested person and the other Party to become acquainted with them;

   (c) to the extent practicable, ensure advance publication of any laws, regulations, procedures, and administrative rulings of general application to which this Chapter applies that it proposes to adopt and

provide an interested person and the other Party a reasonable opportunity to comment on these proposed measures;

(d) maintain or establish appropriate mechanisms to respond, within a reasonable period of time, to an inquiry or a request for information from an interested person regarding measures of general application to which this Chapter applies;

(e) allow, to the extent practicable, a reasonable period of time between the final publication of a law or regulation of general application to which this Chapter applies and the date when it enters into effect; and

(f) ensure that measures of general application adopted or maintained by a self-regulatory organisation of the Party, to which this Chapter applies, are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

3. If a Party adopts or maintains measures relating to authorisation for the supply of a service, the Party shall ensure that:

(a) the regulatory authority reaches and administers its decisions in a manner independent from any supplier of the services for which authorisation is required;[5]

(b) such measures are based on objective and transparent criteria;[6]

(c) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist;

(d) the procedures do not in themselves unjustifiably prevent fulfilment of requirements; and

(e) such measures do not discriminate between men and women.[7]

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

(a) make publicly available the information necessary for financial service suppliers to comply with the requirements and procedures for

[5] This provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

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

[7] Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Parties of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this subparagraph.

obtaining, maintaining, amending, and renewing such authorisation. Such information shall include, amongst other things, as applicable:

(i) fees;

(ii) contact information of regulatory authorities;

(iii) procedures for appeal or review of decisions concerning applications;

(iv) procedures for monitoring or enforcing compliance with the terms and conditions of licences;

(v) opportunities for public involvement, such as through hearings or comments;

(vi) indicative timeframes for processing of an application;

(vii) any other relevant requirements and procedures; and

(viii) technical standards;

(b) avoid, to the extent practicable, requiring an applicant to approach more than one competent authority for each application for authorisation. If a service is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required;

(c) permit, to the extent practicable, submission of an application at any time throughout the year.[8] If a specific time period for applying exists, the Party shall ensure that the regulatory authorities allow a reasonable period for the submission of an application;

(d) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;

(e) accept copies of documents, that are authenticated in accordance with the Party's domestic law, in place of original documents, unless the regulatory authorities require original documents to protect the integrity of the authorisation process;

(f) ensure that the authorisation fees charged by regulatory authorities are reasonable, transparent, and do not in themselves constitute a restriction on the supply of the relevant service;

[8] Competent authorities are not required to start considering applications outside of their official working hours and working days.

(g) if they consider an application complete for processing under the Party's domestic laws and regulations,[9] within a reasonable period of time after the submission of the application ensure that:

(i) the processing of the application is completed; and

(ii) the applicant is informed of the decision concerning the application, to the extent possible in writing;[10]

(h) on request of an applicant, inform the applicant of the status of their application for authorisation within a reasonable period of time;

(i) if they consider an application incomplete for processing under the Party's 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, identify the additional information required to complete the application, or otherwise provide guidance on why the application is incomplete; and

(iii) provide the applicant with the opportunity[11] to provide the additional information 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 above is practicable, and the application is rejected due to incompleteness, ensure that they so inform the applicant within a reasonable period of time;

(j) before rejecting an application for authorisation, notify the applicant with the relevant reasons and give the applicant the opportunity to make written or oral representations in support of the application;

(k) on request of an unsuccessful applicant, to the extent possible, inform the applicant of the reasons for rejection of the application and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another revised application solely on the basis that an application had been previously rejected; and

[9] Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".
[10] "in writing" may include electronic form.
[11] Such opportunity does not require a competent authority to provide extension of deadlines.

(l) ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions.[12]

5. Before the regulatory authority of a Party adopts a final law or regulation of general application, it shall endeavour, to the extent practicable, to address in writing the substantive comments received from interested persons with respect to the proposed measure.[13]

6. Chapter 21 (Good Regulatory Practice and Regulatory Cooperation) and Chapter 29 (Transparency) do not apply to a measure covered by this Chapter.

Article 11.12
Financial Services New to the Territory of a Party

1. Each Party shall permit financial service suppliers of the other Party to supply a new financial service that the first Party would permit its own financial services suppliers to supply domestically, in like situations. For cross-border financial service suppliers, this Article only applies to the financial services specified in Annex 11A (Cross-Border Trade in Financial Services).

2. Notwithstanding subparagraph 1(e) of Article 11.6 (Market Access), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time, and the authorisation may only be refused for prudential reasons.

3. To support innovation in financial services, the Parties shall endeavour to collaborate, share knowledge, experiences and developments in financial services, to advance financial integrity, consumer wellbeing and protection, financial inclusion, competition, financial stability, and facilitate cross-border development of new financial services.

4. The Parties understand that nothing in this Article prevents a financial service supplier of a Party from applying to the other Party to request that it authorises the supply of a financial service that is not supplied in the territory of a Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

[12] Competent authorities are not responsible for delays due to reasons outside their competence.
[13] For greater certainty, a Party may address those comments collectively on an official website.

Article 11.13
Diversity in Finance

1. The Parties recognise the importance of building a diverse, including gender-balanced, financial services industry, and the positive impact such diversity has on balanced decision-making, consumers, workplace culture, investment, and competitive markets.

2. Each Party shall endeavour to share best practices to promote diversity in financial services. Diversity includes, but is not limited to, gender, ethnicity, and professional and educational background.

3. Each Party shall endeavour to promote diversity and inclusion in financial services by encouraging financial service suppliers to develop objectives and strategies that promote diversity and inclusion, including, but not limited to, remuneration policies on management bodies and governing bodies that implement the principle of equal pay for work of equal value.

Article 11.14
Sustainable Finance

1. The Parties recognise the importance of international cooperation to facilitate the inclusion of environmental, social, and governance considerations in investment decision-making and other business activities, in order, thereby, to increase investment in sustainable activities.

2. The inclusion of environmental considerations in investment decision-making and other business activities involves, inter alia, the assessment and pricing of climate-related risks and opportunities, and the exploration of environmental and sustainable projects and infrastructure.

3. The Parties acknowledge the importance of encouraging financial services suppliers to develop an approach to managing climate-related financial risks. Specifically, the Parties recognise the importance of encouraging the uptake of climate-related financial disclosures for financial service suppliers, including forward-looking information, in line with initiatives in international fora, such as the Task Force on Climate-Related Financial Disclosures.

4. The Parties shall cooperate in relevant international fora, and where agreeable, in the development and adoption of internationally recognised standards for the inclusion of environmental, social, and governance considerations in investment decision-making and other business activities.

Article 11.15
Financial Services Dispute Settlement

1. Chapter 31 (Dispute Settlement) applies, as modified by this Article, to the settlement of disputes arising under this Chapter.

2. The Parties shall ensure for disputes arising under this Chapter that in addition to the requirements set out in Article 31.8 (Qualifications of Arbitrators – Dispute Settlement):

   (a) the Panel shall have the necessary expertise[14] relevant to financial services, which may include the regulation of financial service suppliers; and

   (b) the appointed arbitrator acting as chair shall, where possible, have prior experience as counsel or arbitrator in dispute settlement proceedings.

3. If the Secretary-General of the Permanent Court of Arbitration is responsible for appointing an arbitrator pursuant to paragraph 5 of Article 31.7 (Composition of a Panel – Dispute Settlement), the Parties shall request that the Secretary-General appoint an arbitrator in accordance with the principles in subparagraphs 2(a) and 2(b).

4. Notwithstanding paragraph 4 of Article 31.15 (Temporary Remedies in Case of Non-Compliance – Dispute Settlement), in considering what concessions or other obligations to suspend where a panel has found that the measure of the responding Party is inconsistent with its obligations under this Agreement or that it has otherwise failed to carry out its obligations under this Agreement and the inconsistency affects:

   (a) the financial services sector and any other sector, the complaining Party may suspend obligations in the financial services sector that have an effect that does not exceed the level of nullification or impairment in the complaining Party's financial services sector; or

   (b) only a sector other than the financial services sector, the complaining Party may not suspend obligations in the financial services sector.

Article 11.16
Institutional

1. The Financial Services Working Group established under Article 30.10 (Working Groups – Institutional Provisions) ("the Working Group") shall include a principal representative of each Party who shall be an official of the

[14] For greater certainty, this requirement may be satisfied by a majority of arbitrators having the necessary expertise relevant to financial services.

Party's authority responsible for financial services. For the United Kingdom, the Working Group representative shall be an official from HM Treasury or its successor. For New Zealand, the Working Group representatives shall include an official from the Ministry of Foreign Affairs and Trade, in coordination with financial services regulators.

2. The Working Group shall:

   (a) provide a forum to discuss and review the implementation of the Chapter;

   (b) consider financial services matters arising from the implementation of the Agreement; and

   (c) provide reports on the request of the Services and Investment Sub-Committee regarding implementation of this Chapter.

3. The Working Group may meet, by agreement of the Parties, and such meetings may be physical or virtual, as mutually agreed.

4. The Parties may invite, if they consider it appropriate, representatives of their domestic financial regulatory authorities to attend meetings of the Working Group.

Article 11.17
Consultation

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 give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Working Group.

2. Each Party shall ensure that when there are consultations pursuant to paragraph 1, its delegation includes officials with the relevant expertise in the area covered by this Chapter. For the United Kingdom, this includes officials of HM Treasury or its successor. For New Zealand, this includes officials from the Ministry of Foreign Affairs and Trade, in coordination with financial services regulators.

3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between regulatory authorities, or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

Article 11.18
Recognition of Prudential Measures

1. A Party may recognise a prudential measure of a non-party in the application of a measure covered by this Chapter. That recognition may be:

   (a) accorded unilaterally;

   (b) achieved through harmonisation or other means; or

   (c) based upon an agreement or arrangement with the non-party.

2. A Party according recognition of a prudential measure under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the Parties.

3. If a Party recognises a prudential measure under subparagraph 1(c) and the circumstances described in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 11.19
Non-Conforming Measures

1. Article 11.5 (National Treatment), Article 11.6 (Market Access), and Article 11.10 (Senior Management and Boards of Directors) shall not apply to:

   (a) any existing non-conforming measure that is maintained by a Party at:

      (i) the central level of government, as set out by that Party in Section A of its Schedule in Annex III (Financial Services Non-Conforming Measures);

      (ii) a regional level of government, as set out by that Party in Section A of its Schedule in Annex III (Financial Services Non-Conforming Measures); or

      (iii) a local level of government;

   (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure as it existed:

(i) immediately before the amendment, with subparagraphs 1(a) and 1(b) of Article 11.5 (National Treatment), subparagraphs 1(a) and 1(b) of Article 11.6 (Market Access), or Article 11.10 (Senior Management and Boards of Directors); or

(ii) on the date of entry into force of this Agreement for the Party applying the non-conforming measure, with subparagraph 1(c) of Article 11.5 (National Treatment) or subparagraph 1(c) of Article 11.6 (Market Access); or

(d) any non-conforming measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in Section B of its Schedule in Annex III (Financial Services Non-Conforming Measures).

2. A non-conforming measure, set out in a Party's schedule to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures) or Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures) as not subject to Article 14.6 (National Treatment – Investment), Article 14.5 (Market Access – Investment), Article 14.9 (Senior Management and Boards of Directors – Investment), Article 9.5 (National Treatment – Cross-Border Trade in Services), or Article 9.4 (Market Access – Cross-Border Trade in Services), shall be treated as a non-conforming measure not subject to Article 11.5 (National Treatment), Article 11.6 (Market Access), or Article 11.10 (Senior Management and Boards of Directors), as the case may be, to the extent that the non-conforming measure is covered by this Chapter.

3. A Party shall not adopt any measure or series of measures after the date of entry into force of this Agreement that are covered by Annex III (Financial Services Non-Conforming Measures) of each Party and that require, directly or indirectly, an investor of the other Party, by reason of nationality, to sell or otherwise dispose of an investment existing at the time the measure or series of measures became effective.

4. Article 11.5 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(a) Article 17.7 (National Treatment – Intellectual Property); or

(b) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 17 (Intellectual Property).

Article 11.20
Provision of Back-Office Functions

1. Each Party recognises that the performance of the back-office functions of an established financial service supplier in its territory by the head office or an affiliate of the established financial service supplier, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that established financial service supplier.

2. While a Party may require established financial service suppliers to ensure compliance with its domestic law applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

3. Nothing in paragraph 1 prevents a Party from requiring an established financial service supplier in its territory to retain certain functions.