

## **Chapter 12**

### **Financial Services**

#### **Article 12.1: Definitions**

For the purposes of this Chapter:

- (a) **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 such services;
- (b) **cross-border trade in financial services** or **cross-border supply of financial services** means the supply of a financial service:
  - (i) from the territory of one Party into the territory of the other Party;
  - (ii) in the territory of a Party by a person of that Party to a person of the other Party; or
  - (iii) by a national of a Party in the territory of the other Party;

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

- (c) **financial institution** means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;
- (d) **financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;
- (e) **financial service** means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. 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) service 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 transactions;
- (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, futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (E) transferable securities;
  - (F) other negotiable instruments and financial assets, including bullion;
- (xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (xii) money broking;
- (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, 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) to (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (f) **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 that Party;
- (g) **investment** means “investment” as defined in Article 10.1(j) (Definitions – Investment Chapter), except that, with respect to “loans” and “debt instruments” referred to in that Article:
- (i) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
  - (ii) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument of a financial institution referred to in subparagraph (i), is not an investment;
- for greater certainty:
- (iii) a loan to, or debt instrument issued by, a Party or a state enterprise is not an investment; and
  - (iv) 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 a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 10.1(j) (Definitions – Investment Chapter);
- (h) **investor of a Party** means an “investor of a Party” as defined in Article 2.1(o) (Definitions of General Application – General Definitions Chapter);
- (i) **new financial service** means a financial service not supplied in the Party’s territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party’s territory;
- (j) **person of a Party** means “person of a Party” as defined in Article 2.1(t) (Definitions of General Application – General Definitions Chapter) and, for greater certainty, does not include a branch of an enterprise of a non-Party;
- (k) **public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

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

### **Article 12.2: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:

- (a) financial institutions of the other Party;
- (b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
- (c) cross-border trade in financial services.

2. Articles 9.10 (Denial of Benefits – Cross-Border Trade in Services Chapter), 10.10 (Transfers – Investment Chapter), 10.11 (Expropriation and Compensation – Investment Chapter), 10.12 (Special Formalities and Information Requirements – Investment Chapter) and 10.13 (Denial of Benefits – Investment Chapter) are hereby incorporated into and made a part of this Chapter *mutatis mutandis*<sup>12-1</sup>. Section B of Chapter 10 (Investment) is hereby incorporated into and made a part of this Chapter solely for breaches by a Party of Articles 10.10 to 10.13, as incorporated in this Chapter. No other provision of Chapter 9 (Cross-Border Trade in Services) or Chapter 10 (Investment) shall apply to a measure described in paragraph 1.

3. This Chapter does not apply to measures 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 shall apply if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

### **Article 12.3: National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and

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<sup>12-1</sup>The Parties understand that the provisions of Chapter 10 (Investment) hereby incorporated include, are subject to and shall be interpreted in conformity with Annexes 10-A to 10-F of that Chapter, as applicable.

sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For purposes of the national treatment obligations in Article 12.6.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

#### **Article 12.4: Most-Favoured-Nation Treatment**

Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions, and cross-border financial service suppliers of a non-Party, in like circumstances.

#### **Article 12.5: Market Access for Financial Institutions**

A Party shall not adopt or maintain, with respect to investors of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations:
  - (i) on the number of financial institutions, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;
  - (ii) on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) on the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>12-2</sup> or

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<sup>12-2</sup>This subparagraph does not cover measures of a Party which limit inputs for the supply of financial services.

- (iv) on the total number of natural persons that may be employed in a particular financial service sector or that a financial institution 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
- (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

### **Article 12.6: Cross-Border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 12-A.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for purposes of this Article as long as such definitions are not inconsistent with the obligations of paragraph 1.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

### **Article 12.7: New Financial Services<sup>12-3</sup>**

1. Each Party shall permit a financial institution of the other Party, on request or notification to the relevant regulator, where required, to supply any new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law, provided that the introduction of the financial service does not require the Party to adopt a new law or modify an existing law.
2. Notwithstanding Article 12.5(b), 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 a Party requires authorisation to supply a new financial service, the decision shall be made within a reasonable time and authorisation may only be refused for prudential reasons.

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<sup>12-3</sup>For greater certainty, a Party may, consistent with Article 12.3, prohibit a particular new financial service.

### **Article 12.8: Treatment of Certain Information**

Nothing in this Chapter requires a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

### **Article 12.9: Senior Management and Boards of Directors**

1. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

### **Article 12.10: Non-Conforming Measures**

1. Articles 12.3, 12.4, 12.5, 12.6 and 12.9 do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:
    - (i) the central level of government, as set out by that Party in Section 1 of its Schedule to Annex III of non-conforming measures;
    - (ii) a regional level of government, as set out by that Party in Section 1 of its Schedule to Annex III of 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); or
  - (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 Articles 12.3, 12.4 and 12.9; or

- (ii) on the date of entry into force of the Agreement, with Articles 12.5 and 12.6.

2. Articles 12.3 to 12.6 and Article 12.9 do not apply to any non-conforming measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, in accordance with Section 2 of its Schedule to Annex III of non-conforming measures.

3. Annex 12-B sets out certain specific commitments by each Party.

4. Where a Party has set out a non-conforming measure to Articles 9.3 (National Treatment – Cross-Border-Trade in Services Chapter), 9.4 (Most-Favoured-Nation Treatment – Cross-Border Trade in Services Chapter), 9.5 (Market Access – Cross-Border Trade in Services Chapter), 10.3 (National Treatment – Investment Chapter), 10.4 (Most-Favoured-Nation Treatment – Investment Chapter), or 10.8 (Senior Management and Boards of Directors – Investment Chapter) in its Schedule to Annex I or Annex II, the non-conforming measure shall be deemed to constitute a non-conforming measure to Articles 12.3, 12.4, 12.5, 12.6 or 12.9, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the non-conforming measure is covered by this Chapter.

#### **Article 12.11: Exceptions**

1. Nothing in this Chapter or Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Investment), Chapter 11 (Telecommunications), including specifically Article 11.2.2 (Scope and Coverage – Telecommunications Chapter), Chapter 14 (Competition Policy) or Chapter 16 (Electronic Commerce) of this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons<sup>12-4</sup>, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's obligations under such provisions.<sup>12-5</sup>

2. Nothing in this Chapter or, Chapter 9 (Cross-Border Trade in Services), Chapter 10 (Investment), Chapter 11 (Telecommunications), including specifically Article 11.2.2 (Scope and Coverage – Telecommunications Chapter), Chapter 14 (Competition Policy) or Chapter 16 (Electronic Commerce) of this Agreement applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 10.7 (Performance

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<sup>12-4</sup>It is understood that the term “prudential reasons” includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

<sup>12-5</sup>The Parties understand that a Party may take measures for prudential reasons through regulatory or administrative authorities, such as ministries or departments of labour, in addition to those who have regulatory responsibilities with respect to financial institutions.

Requirements – Investment Chapter) with respect to measures covered by Chapter 10 (Investment), or under Article 10.10 (Transfers – Investment Chapter).

3. Notwithstanding Article 10.10 (Transfers – Investment Chapter), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

#### **Article 12.12: Recognition**

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

- (a) accorded autonomously;
- (b) achieved through harmonisation or other means; or
- (c) based upon an agreement or arrangement with the non-Party.

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

3. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out 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 12.13: Transparency**

1. The Parties recognise that transparent regulations and policies and reasonable, objective and impartial administration governing the activities of financial institutions

and financial service suppliers are important in facilitating both access of financial institutions and financial service suppliers to, and their operations in, each other's markets.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. In lieu of Article 19.3 (Publication – Transparency Chapter), each Party shall, to the extent practicable:

- (a) publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt; and
- (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations.

4. Each Party's regulatory authorities shall make publicly available their requirements, including any documentation required, for completing applications relating to the supply of financial services.

5. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

6. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

7. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application in writing.

8. Each Party shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Chapter.

9. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

10. To the extent practicable, each Party should allow reasonable time between publication of final regulations and their effective date.

11. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

#### **Article 12.14: Self-Regulatory Organisations**

Where a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such self-regulatory organisation.

#### **Article 12.15: Payment and Clearing Systems**

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

#### **Article 12.16: Financial Services Committee**

1. The Parties hereby establish a Financial Services Committee.
2. The Committee may meet at the request of either Party to discuss any matter arising under this Agreement that affects financial services.
3. The Committee shall be headed by officials of the authorities specified in Annex 12-C.

#### **Article 12.17: Dispute Settlement**

1. Chapter 21 (Dispute Settlement Chapter) applies as modified by this Article to the settlement of disputes arising under this Chapter.
2. A Party may request in writing consultations with the other Party regarding any matter on the implementation, interpretation, application or operation of this Chapter.
3. Consultations under this Article shall be headed by officials of the authorities specified in Annex 12-C.
4. Upon initiation of consultations, the Parties shall provide information and give confidential treatment to the information exchanged in accordance with Article 22.5 (Disclosure of Information – General Provisions and Exceptions Chapter).

5. Nothing in this Article shall be construed to require regulatory authorities participating in consultations to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

6. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

7. Panelists on panels constituted for disputes arising under this Chapter shall meet the requirements set out in Article 21.7 (Compositions of Arbitral Panels – Dispute Settlement Chapter) and shall also have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

8. Consistent with Article 21.12 (Non-Implementation – Compensation and Suspension of Concessions or other Obligations – Dispute Settlement Chapter), in any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (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 measures in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

#### **Article 12.18: Investment Disputes in Financial Services**

1. Where an investor of one Party submits a claim under Article 10.16 (Submission of a Claim to Arbitration – Investment Chapter) to arbitration under Section B of Chapter 10 (Investment) against the other Party and the respondent invokes Article 12.11, on the request of the respondent, the tribunal shall refer the matter in writing to the Parties for discussions under Article 12.16. Subject to paragraph 4, the tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Parties shall decide whether reliance on Article 12.11 is justified. The Parties shall transmit a copy of their decision to the tribunal. The decision shall be binding on the tribunal.

3. Where the Parties have not decided the issue within 60 days of the receipt of the referral under paragraph 1, either Party may institute dispute settlement proceedings under Article 12.17. The panel shall be constituted in accordance with Article 12.17.

4. Where no request for dispute settlement proceedings has been made within 10 days of the expiration of the 60 day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

5. Where the parties resolve or seek resolution of the issues through dispute settlement proceedings, the decision of the arbitral panel shall be binding on the tribunal.

## **Annex 12-A**

### **Cross-Border Trade**

#### ***Insurance and insurance-related services***

1. For Australia, Article 12.6.1 applies to the cross-border supply of or trade in financial services as defined in Article 12.1(b)(i) with respect to:
  - (a) insurance of risks relating to:
    - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising there from; and
    - (ii) goods in international transit;
  - (b) reinsurance and retrocession, and services auxiliary to insurance as referred to in Article 12.1(e)(ii) and (iv); and
  - (c) insurance intermediation, such as brokerage and agency as referred to in Article 12.1(e)(iii) in relation to the services in subparagraphs (a) and (b).
  
2. For Chile, Article 12.6.1 applies to the cross-border supply of or trade in financial services as defined in Article 12.1(b)(i) with respect to:
  - (a) insurance of risk relating to:
    - (i) international maritime transport and international commercial aviation, with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving there from; and
    - (ii) goods in international transit;
  - (b) brokerage of insurance of risks relating to subparagraph (a)(i) and (a)(ii); and
  - (c) reinsurance and retrocession; reinsurance brokerage; and consultancy, actuarial, and risk assessment.

#### ***Banking and other financial services (excluding insurance)***

3. For Australia, Article 12.6.1 applies with respect to the provision and transfer of financial information and financial data processing and related software as referred to in Article 12.1(e)(xv), and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in Article 12.1(e)(xvi).

4. For Chile, Article 12.6.1 applies with respect to:
- (a) provision and transfer of financial information as described in Article 12.1(e)(xv);
  - (b) financial data processing as described in Article 12.1(e)(xv), subject to prior authorisation from the relevant regulator, as required;<sup>12-6</sup> and
  - (c) advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in Article 12.1(e)(xvi).
5. Notwithstanding subparagraph 4(c), in the event that after the date of entry into force of this Agreement Chile allows credit reference and analysis to be supplied by cross-border financial service suppliers, it shall accord national treatment (as specified in Article 12.3.3) to cross-border financial service suppliers of Australia. Nothing in this commitment shall be construed to prevent Chile from subsequently restricting or prohibiting the supply of credit reference and analysis services by cross-border financial service suppliers.
6. It is understood that Chile's commitments on cross-border investment advisory services shall not, in and of themselves, be construed to require Chile to permit the public offering of securities (as defined under its relevant law) in its territory by cross-border suppliers of Australia who supply or seek to supply such investment advisory services. Chile may subject the cross-border suppliers of investment advisory services to regulatory and registration requirements.

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<sup>12-6</sup>It is understood that where the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Chilean law regulating the protection of such data.

## **Annex 12-B**

### **Annex on Specific Commitments**

#### *Section A Pension Funds Management*

1. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section 2, referring to social services, Chile, with respect to the establishment by an investor of Australia:
  - (a) shall permit such an investor that does not own or control an *Administradora de Fondos de Pensiones* under *Decreto Ley 3.500* to establish or acquire in Chile an *Administradora de Fondos de Pensiones* to supply the financial services that such an institution may supply under Chile's domestic law at the time of establishment, without the imposition of numerical restrictions or of an economic needs test; and
  - (b) as required by its domestic law, shall not establish arbitrary differences with respect to such an investor in *Administradora de Fondos de Pensiones* under *Decreto Ley 3.500*.
2. No other modification of the effect of the non-conforming measures referring to social services is intended or shall be construed under this paragraph.
3. The specific commitments of Chile under paragraph 1 are subject to the headnotes and non-conforming measures set forth in Annex III of Chile with respect to financial services.
4. For the purposes of this Annex:
  - (a) an "investor of Australia" means an investor of Australia engaged in the business of providing banking and other financial services (excluding insurance) in Australia; and
  - (b) "numerical restrictions" means limitations imposed, either on the basis of a regional subdivision or on the basis of the entire territory, on the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.

#### *Section B: Voluntary Savings Plans; Non-Discriminatory Treatment of Australian Investors*

1. Notwithstanding the inclusion of the non-conforming measures of Chile in Annex III, Section 2, referring to social services, with respect to voluntary savings pension plans established under *Ley 19.768*, Chile shall extend the obligations of Article 12.3.1 and 12.3.2 and of Article 12.4 to financial institutions of Australia,

investors of Australia, and investments of such investors in financial institutions established in Chile.

2. Notwithstanding the inclusion of the nonconforming measures of Chile in Annex III, Section 2, referring to social services, Chile, as required by its domestic law, shall not establish arbitrary differences with respect to Australian investors in *Administradoras de Fondos de Pensiones* under *Decreto Ley 3.500*.

*Section C: Portfolio Management*

1. A Party shall allow a financial institution (other than a trust company or insurance company) organised outside its territory to provide investment advice and portfolio management services, excluding (1) custodial services, (2) trustee services and (3) execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Article 12.2 and to Article 12.6.3, regarding the right to require registration, without prejudice to other means of prudential regulation.

2. Notwithstanding paragraph 1, a Party may require the collective investment scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme or the funds it manages.

3. For the purposes of paragraph 1 and 2, a collective investment scheme means:

(a) in Australia, a managed investment scheme as defined under section 9 of the *Corporations Act 2001* (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the *Corporations Act 2001* (Cth), or an entity that:

(i) carries on a business of investment in securities, interests in land, or other investments; and

(ii) in the course of carrying on that business, invests funds subscribed, whether 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; and

(b) in Chile, the following fund management companies subject to supervision by the *Superintendencia de Valores y Seguros*:

(i) *Compañías Administradoras de Fondos Mutuos* (Decreto Ley 1.328 de 1976);

(ii) *Compañías Administradoras de Fondos de Inversión* (Ley 18.815 de 1989);

(iii) *Compañías Administradoras de Fondos de Inversión de Capital Extranjero* (Ley 18.657 de 1987);

- (iv) *Compañías Administradoras de Fondos para la Vivienda (Ley 18.281 de 1993); and*
- (v) *Compañías Administradoras Generales de Fondos (Ley 18.045 de 1981).*

**Annex 12-C**  
**Authorities Responsible for Financial Services**

The authority of each Party responsible for financial services shall be:

- (a) for Australia, the Department of the Treasury, or its successor.
- (b) for Chile, the *Ministerio de Hacienda*.