

CHAPTER 4 FINANCIAL SERVICES

ARTICLE 4.1

Scope and Coverage

1. This Chapter applies to measures affecting trade in financial services taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.
2. Articles 4.4, 4.5 and 4.6 shall not apply to laws, regulations or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not for commercial resale or for use in the supply of services for commercial sale.
3. Chapter 3 applies to measures described in paragraph 1 where this is specifically provided for by this Chapter.

ARTICLE 4.2

Incorporation of Provisions from the GATS

Article 3.2 shall apply to this Chapter.

ARTICLE 4.3

Definitions

1. Except for its paragraph 1(c), Article 3.3 shall apply to this Chapter.
2. The following definitions of the GATS Annex on Financial Services are incorporated into and made part of this Chapter:
 - (a) “services supplied in the exercise of governmental authority” (paragraphs 1 (b) and (c) of the Annex);
 - (b) “a financial service” (paragraph 5 (a) of the Annex);
 - (c) “financial service supplier” (paragraph 5 (b) of the Annex); and
 - (d) “public entity” (paragraph 5 (c) of the Annex).

ARTICLE 4.4

Most Favoured Nation Treatment

Article 3.4 shall apply to this Chapter.

ARTICLE 4.5

Market Access

Commitments on market access shall be governed by Article XVI of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 4.6

National Treatment

1. Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Chapter.
2. In addition, under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers 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 paragraph is not intended to confer access to a Party's lender of last resort facilities.
3. Where membership or participation in, or access to, a self-regulatory body, securities or futures exchange or market, clearing agency, or any other organisation or association is required by a Party in order for financial service suppliers of any other Party to supply financial services on an equal basis with financial service suppliers of the Party, or where the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, the Party shall ensure that such entities accord national treatment to financial service suppliers of any other Party established in its territory.

ARTICLE 4.7

Additional Commitments

Additional commitments shall be governed by Article XVIII of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 4.8

Domestic Regulation

1. The rights and obligations of the Parties in respect of domestic regulation shall be governed by Article VI of the GATS, which is hereby incorporated into and made part of this Chapter.
2. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, including for:
 - (a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or
 - (b) ensuring the integrity and stability of a Party's financial system.

Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions. Such measures shall not be more burdensome than necessary to achieve their aim.

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

ARTICLE 4.9

Recognition

1. Article 3.9 shall apply to this Chapter.
2. In addition, where a Party recognises prudential measures of a non-Party in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for another Party to negotiate its accession to such agreement or arrangement, 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. Where a Party accords such recognition autonomously, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

ARTICLE 4.10

Movement of Natural Persons

The rights and obligations of the Parties in respect of the movement of natural persons of a Party supplying services shall be governed by the GATS Annex on Movement of Natural Persons Supplying Services, which is hereby incorporated into and made part of this Chapter.

ARTICLE 4.11

Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2 and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Chapter.

ARTICLE 4.12

Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Chapter.

ARTICLE 4.13

Payments and Transfers

Article 3.13 shall apply to this Chapter.

ARTICLE 4.14

Restrictions to Safeguard the Balance of Payments

Article 3.14 shall apply to this Chapter.

ARTICLE 4.15

Exceptions

The rights and obligations of the Parties in respect of general and security exceptions shall be governed by Articles XIV and XIV *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.

ARTICLE 4.16

Schedules of Specific Commitments

Each Party shall set out in its schedule referred to in Article 3.16 the specific commitments it undertakes for services defined under paragraph 2(b) of Article 4.3 in accordance with the provisions of paragraphs 1 to 3 of Article 3.16.

ARTICLE 4.17

Modification of Schedules

Article 3.17 shall apply to this Chapter.

ARTICLE 4.18

Transparency

1. The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1 and 2 of Article III and by Article III *bis* of the GATS, which are hereby incorporated into and made part of this Chapter.

2. In addition, each Party commits to promote regulatory transparency in financial services. Accordingly, the Parties undertake to consult, as appropriate, with the goal of promoting objective and transparent regulatory processes in each Party, taking into account:

- (a) the work undertaken by the Parties in the GATS and the Parties' work in other fora relating to trade in financial services; and
- (b) the importance of regulatory transparency of identifiable policy objectives and clear and consistently applied regulatory processes that are communicated or otherwise made available to the public.

ARTICLE 4.19

Review

Article 3.19 shall apply to this Chapter.

ARTICLE 4.20

Sub-Committee on Financial Services

1. A Sub-Committee on Financial Services (hereinafter referred to as “the Sub-Committee”) is to be set up under the Joint Committee. The principal representative of each Party shall be from an authority competent for this Agreement or from a financial authority.

2. The mandate of the Sub-Committee shall be:

to supervise the implementation of this Chapter, assess its functioning, and oversee its further elaboration; and

to consider issues regarding financial services that are referred to it by a Party.

3. The Sub-Committee shall meet in conjunction with Joint Committee meetings, or as otherwise agreed upon between the Parties.

4. The Sub-Committee shall be chaired jointly by Korea and one of the EFTA States. It shall act by consensus.

ARTICLE 4.21

Dispute Settlement

1. Relevant Articles in Chapter 9 shall apply to the settlement of disputes arising under this Chapter as modified by this Article.

2. Consultations regarding financial services held pursuant to Chapter 9 shall include officials from an authority competent for this Agreement or from a financial authority. The Parties shall report the results of their consultations to the Sub-Committee.

3. Article 9.4 shall apply, with the following modifications:

(a) where the Parties to the disputes so agree, the arbitration panel shall be composed entirely of individuals meeting the qualifications in paragraph 4; and

(b) in any other case,

(i) each Party to the dispute may select individuals meeting the qualifications set out in paragraph 7 of Article 9.5; and

(ii) if the Party complained against invokes Article 4.8, the chair of the panel shall meet the qualifications set out in paragraph 4, unless the Parties to the dispute agree otherwise.

4. Unless otherwise provided for in this Chapter, financial services panellists shall:

- (a) meet the qualifications set out in Article 9.5; and
- (b) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. With regard to paragraph 5 of Article 9.10, the following shall apply wherever practical. Where the measure under dispute affects:

- (a) only the financial services sector, the complaining Party shall first seek to suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party shall first seek to suspend benefits in the respective sectors and with an effect equivalent to the effect of the measure complained against in each sector; or
- (c) only a sector other than the financial services sector, the complaining Party shall seek to avoid suspending benefits in the financial services sector.