

EU-CHILE ADVANCED FRAMEWORK AGREEMENT

CHAPTER 18

FINANCIAL SERVICES

Article 18.1

Scope

1. This Chapter applies to a measure 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. For greater certainty, the provisions of Chapter 10 (Investment) apply to:
 - (a) a measure relating to an investor of a Party, and an investment of that investor, in a financial service supplier that is not a financial institution; and
 - (b) a measure, other than a measure relating to the supply of financial services, relating to an investor of a Party or an investment of that investor in a financial institution.

3. Chapter 10 (Investment) and Chapter 11 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into and made part of this Chapter.

4. Article 10.14 (Investment and Regulatory Measures), Article 10.15 (Treatment of Investors and Covered Investments), Article 10.16 (Treatment in Case of Strife), Article 10.17 (Expropriation), Article 10.18 (Transfers), Article 10.19 (Subrogation), Article 10.20 (Denial of Benefits), Article 10.21 (Termination), Article 10.22 (Relationship with Other Agreements), and Article 11.10 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

5. Section D (Settlement of disputes between a Party and an investor of the other Party) of Chapter 10 (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 10.14 (Investment and Regulatory Measures), Article 10.15 (Treatment of Investors and Covered Investments), Article 10.16 (Treatment in Case of Strife), Article 10.17 (Expropriation), Article 10.18 (Transfers), Article 10.19 (Subrogation), Article 10.20 (Denial of Benefits), paragraph 2 of Article 10.7 (National Treatment), and paragraph 2 of Article 10.9 (Most Favoured Nation Treatment) .

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

- (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (b) activities or services forming part of a public retirement plan or statutory system of social security; or
- (c) activities or services conducted for the account of the Party, with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

7. The provisions of Articles 18.3 (National Treatment), 18.5 (Most-Favoured-Nation Treatment), 18.6 (Market Access), 18.7 (Cross-border trade in services), 18.8 (Senior Management and Boards of Directors) and 18.9 (Performance Requirements), shall not apply with respect to government procurement.

8. The provisions of Articles 18.3 (National Treatment), 18.5 (Most-Favoured-Nation Treatment), 18.6 (Market Access), 18.7 (Cross-border trade in services), and 18.8 (Senior Management and Boards of Directors), shall not apply with respect to subsidies granted by the Parties, including government-supported loans, guarantees and insurances.

Article 18.2

Definitions

For the purposes of this Chapter:

(a) “financial service” means a service of a financial nature, including insurance and insurance-related services, banking and other financial services (excluding insurance). Financial services include the following activities:

(i) insurance and insurance-related services

(A) direct insurance (including co-insurance):

(aa) life;

(bb) non-life;

(B) reinsurance and retrocession;

(C) insurance inter-mediation, such as brokerage and agency; and

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

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

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

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

- (C) financial leasing;
- (D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (E) guarantees and commitments;
- (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (aa) money market instruments (including cheques, bills, certificates of deposits);
 - (bb) foreign exchange;
 - (cc) derivative products including, but not limited to, futures and options;
 - (dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (ee) transferable securities;
 - (ff) other negotiable instruments and financial assets, including bullion;

- (G) 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;
- (H) money broking;
- (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (K) provision and transfer of financial information, and financial data processing and related software;
- (L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) through (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

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 service;

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

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

- (b) in the territory of a Party by a person of that Party to a services consumer of the other Party;

financial institution means a supplier that supplies one or more of the services defined as being financial services in this Article, if the supplier is regulated or supervised in respect of the supply of those services as a financial institution under the law of the Party in whose territory it is located, including a branch in the territory of the Party of that financial service supplier whose head offices are located in the territory of the other Party;

- (b) “financial service supplier of a Party” means any natural or juridical person of a Party that seeks to supply or supplies a financial service but does not include a public entity.

investment means "investment" as defined in Article 10.1 (Definitions), except that for the purposes of this Chapter, with respect to "loans" and "debt instruments" referred to in that Article:

- (a) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

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 a financial institution, is an investment for the purposes of Chapter 10 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 10.1 (Definitions);

investor of a Party means a natural person or a juridical person of such Party that seeks to make, is making or has made an investment in the territory of the other Party.

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

“public entity” means:

- (i) 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, but does not include an entity principally engaged in supplying financial services on commercial terms; or
- (ii) a private entity, that performs functions normally performed by a central bank or monetary authority, when exercising those functions.

“self-regulatory organisation” means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central, regional or local governments or authorities, where applicable.

Article 18.3

National treatment

1. Article 10.7 (National treatment) is incorporated into and made a part of this Chapter and applies to treatment of investors of the other Party and their investments in financial institutions.

2. The treatment accorded by a Party to its own investors and investments of its own investors under Article 10.7 (National treatment) means treatment accorded to its own investors and their investments in financial institutions.

Article 18.4

Public Procurement

1. Each Party shall ensure that financial institutions of the other Party established in its territory are accorded treatment no less favourable than that accorded, in like situations, to its own financial institutions with respect to any measure regarding the purchase of goods or services by a procuring entity for governmental purposes.

2. The application of the national treatment obligation provided for in this Article remains subject to the security and general exceptions defined in Article III of the GP Chapter of this Agreement.

Article 18.5

Most Favoured Nation Treatment

1. Article 10.9 (Most Favoured Nation Treatment) is incorporated into and made a part of this Chapter and applies to treatment of investors of a non-Party and their investments in financial institutions.

2. The treatment accorded by a Party to investors of a non-Party and investments of such investors under Article 10.9 (Most Favoured Nation Treatment) means treatment accorded to investors of a non-Party and their investments in financial institutions.

Article 18.6

Market access

1. In the sectors or subsectors listed in Annex X (Market Access) where market access commitments are undertaken, neither Party shall adopt or maintain, with respect to market access through establishment or operation of financial institutions, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure that:

(a) imposes limitations on:

- (i) 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) 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; or
 - (iv) the total number of natural persons that may be employed in a particular financial services 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) restricts or requires specific types of legal entity or joint venture through which a financial institution may supply a service.

Drafters Note: Parties to ensure consistency with wording of the Market Access article agreed in the investment chapter

2. For greater certainty, this Article does not prevent a Party from requiring a financial institution to supply certain financial services through separate legal entities if, under the law of the Party, the range of financial services supplied by the financial institution may not be supplied through a single entity.

Article 18.7

Cross-border supply of financial services

1. Articles 11.5 (National Treatment), 11.6 (Most Favoured Nation), 11.8 (Market Access), 11.7 (Local Presence) are incorporated into and made part of this Chapter and apply to measures affecting cross-border financial service suppliers supplying the financial services specified in Section A of its Schedule in Annex XX (Financial Services Non-Conforming Measures).

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 another Party located in the territory of a Party other than the permitting Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory. A Party may define “doing business” and “solicitation” for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of another Party and of financial instruments.

Article 18.8

Senior management and boards of directors

A Party shall not require that a financial institution of the other Party, which is established in the first Party, appoints natural persons of a particular nationality as members of boards of directors or to a senior management position, such as executives or managers.

[Drafters note: review drafting.]

Article 18.9

Performance Requirements

1. Neither Party may, in connection with the establishment or operation of any financial institution of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking to:

- (a) export a given level or percentage of goods or services;
- (b) achieve a given level or percentage of domestic content;
- (c) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;
- (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such financial institution;
- (e) restrict sales of goods or services in its territory that such financial institution produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) transfer technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory;
- (g) supply exclusively from the territory of the Party the goods it produces or the services it supplies to a specific regional or world market;
- (h) locate the headquarters of that financial institution for a specific region of the world, which is broader than the territory of the Party or of the world market in its territory;
- (i) hire a given number or percentage of its nationals;
- (j) restrict the exportation or sale for export.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment or the operation of a financial institution in its territory, of a Party or of a non-Party, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such financial institution;
- (d) to restrict sales of goods or services in its territory that such financial institution produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings or
- (e) to restrict the exportation or sale for export.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or the operation of financial institutions in its territory by an investor of a Party or a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.

4. Paragraph 1 (f) does not apply

- (a) if a Party authorises use of an intellectual property right in accordance with Article 31 or article 31 bis of the TRIPS Agreement or adopts or maintains measures requiring the disclosure of data or propriety information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement; or

- (b) if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be a violation of the Party's competition laws.

6. Paragraphs 1 (a), 1 (b), 1 (c), 2 (a) and 2 (b) do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes;

7. Paragraphs 2 (a) and 2 (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

8. For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annex XXX (annexes with non-conforming measures or MA restrictions).

[DN: "Within 30 days following the political conclusion of this agreement, Chile may amend its schedule as required. Any amendment must be limited to the listing of reservations that do not conform with the performance requirements obligation under this Chapter, in Section C [existing measures] of Annex XXX [FFSS]. In addition, the schedule sent by CL the 25 of October does not include a reservation covering performance requirements on social welfare, which will nonetheless be considered as making part of the current schedule.]

9. This Article is without prejudice to commitments of a Party made under the WTO Agreement.

Article 18.10

Non-conforming Measures

1. Article 18.3 (National Treatment)¹, Article 18.5 (MFN), Article 18.7 (Cross-Border Trade in Financial Services) and Article 18.8 (Senior Management and Boards of Directors), Article 18.9 (Performance Requirements) do not apply to:

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

For the European Union:

- (i) the European Union as set out [in its Schedule in Annex XX (Financial Services Non-Conforming Measures)];
- (ii) a central government of a Member State of the European Union, as set out in [Section A of its Schedule in Annex XX (Financial Services Non-Conforming Measures)];
- (iii) a regional level of government of a Member State of the European Union, as set out in [Section C of its Schedule in Annex XX (Financial Services Non-Conforming Measures)]; or
- (iv) a local of government; and

For Chile:

- (ii) the central government or a regional level of government, as set out in [Section C of its Schedule in Annex XX (Financial Services Non-Conforming Measures)];
 - (iv) 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 immediately before the amendment, with Article 18.3

¹ Drafters Note: the EU considers that this reference should be revised to take into account the final content of the investment chapter. The NCM should apply (with regard to investment) as they apply in the investment chapter.

(National Treatment), Article 18.5 (Most Favored Nation Treatment), Article 18.8 (Senior Management and Boards of Directors) , Article 18.7 (Cross-Border Trade in Financial Services) or Article 18.9 (Performance Requirements); or

2. Article 18.3 (National Treatment), Article 18.5 (Cross-Border Trade in Financial Services) and Article 18.8 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in Section D of its Schedule in Annex XX (Financial Services Non-Conforming Measures).

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by D of its Schedule in Annex XX (Financial Services Non-Conforming Measures), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of its financial institution existing at the time the measure becomes effective.

4. Article 18.6 (Market Access) does not apply to any measure of a Party which is consistent with a reservation set out in Section D of its Schedule in Annex XX (Financial Services Non-Conforming Measures).

5. Where a Party has set out a reservation to Article 10.7 (National Treatment), Article 10.11 (Senior Management and Boards of Directors), Article 11.5 (National Treatment), or Article 10.10 (Performance requirements) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article 18.3 (National Treatment), Article 18.5 (Cross-Border Trade in Financial Services), Article 18.8 (Senior Management and Boards of Directors) , or Article 18.9 (Performance requirements), as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

[Drafters note: Article (not only paras 2 and 3) must be consistent with Investment and CBTS Chapter.]

Article 18.11

Prudential Carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
- (b) to ensure the integrity and stability of a Party's financial system.

2. Where such measures do not conform to the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

Article 18.12

Treatment of information

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

Article 18.13

Domestic regulation and transparency

1. Chapter 13 (Domestic Regulation) of Chapter V (Regulatory Framework) and chapter 29 (Good Regulatory Practices) shall not apply to measures relating to the subject matter of this Chapter.

[Drafters' note: the Parties will assess the need to replicate or refer to the definitions included in the horizontal disciplines on domestic regulation]

2. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall :

- (a) publish in advance
 - (i) the laws and regulations of general application it proposes to adopt in relation to matters falling within the scope of this Chapter; or
 - (ii) documents that provide sufficient details about such a possible new law or regulation to allow interested persons and the other Party to assess whether and how their interests might be significantly affected.
- (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures or documents published under (a);
- (c) consider comments received under (b); and
- (d) allow a reasonable time between the publication of the measures referred to in (a)(i) and the date on which service suppliers must comply with them.

3. This article shall apply to measures relating to licensing requirements, licensing procedures, and qualification requirements and qualification procedures in sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply.

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

- (a) such measures are based on objective and transparent criteria²;
- (b) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist; and
- (c) the procedures do not in themselves unjustifiably prevent fulfilment of the requirements.

5. Where authorisation³ is required each Party shall promptly publish or otherwise make publicly available the information necessary for the applicant to comply with the

² Such criteria may include inter alia 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.

³ For the purposes of this Chapter, 'authorisation' means the permission to supply a financial service, resulting from a procedure to which an applicant must adhere in order to demonstrate compliance with licensing requirements or qualification requirements.

requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, inter alia, where it exists:

- (a) the requirements and procedures;
- (b) contact information of relevant competent authorities;
- (c) procedures for appeal or review of decisions concerning applications;
- (d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses and qualifications; or
- (e) opportunities for public involvement, such as through hearings or comments.

6. If a Party requires authorization for the supply of a financial service, the competent authorities of a Party shall:

- (a) to the extent practicable, permit an applicant to submit an application at any time throughout the year⁴;
- (b) allow a reasonable period for the submission of an application if specific time periods for applications exist;
- (c) initiate the processing of the application without undue delay;
- (d) endeavour to accept applications in electronic format under the same conditions of authenticity as paper submissions; and
- (e) accept copies of documents, which are authenticated in accordance with the Party's domestic law, in place of original documents, unless they require original documents to protect the integrity of the authorisation process.

7. Each Party shall endeavour to make authorisation procedures and formalities as simple as possible and shall not unduly complicate or delay the provision of the service.

⁴ For greater certainty, competent authorities are not required to start considering applications outside of their official working hours and working days.

8. Each Party shall endeavour to establish the indicative timeframe for processing of an application and shall, at the request of the applicant and without undue delay, provide information concerning the status of the application.

X If the competent authorities 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 considered incomplete; and

(iii) provide the applicant with the opportunity⁵ to provide the additional information that is required to complete the application;

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.

9. Each Party shall ensure that its competent authorities, with respect to authorisation fees⁶ that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.

10. The competent authority should reach its decision in an independent manner and not be accountable to any person supplying the services for which the licence or authorisation is required.

11. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe after the date of submission of a complete application and that the applicant is informed of the decision concerning the application, to the extent possible, in writing.

⁵ Such opportunity does not require a competent authority to provide extensions of deadlines.

⁶ Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

12. If an application is rejected by the competent authority, the applicant shall be informed, either at its own request or upon the competent authority's initiative, in writing and without undue delay. To the extent practicable, the applicant shall be informed of the reasons for rejection of the application and of the timeframe for an appeal against this decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

13. Where examinations are required for an authorisation, the regulatory authority shall ensure such examinations at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination.

14. Each Party shall ensure that an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

Article 18.14

Financial Services new to the Territory of a Party

1. Each Party shall permit a financial institution of the other Party, other than a branch, to supply any new financial service that the former Party would permit its own financial institutions to supply in accordance with its domestic law, in like situations, provided that the introduction of the new financial services does not require a new law or modification of an existing law.

2. 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 period of time and the authorisation may only be refused for prudential reasons.

3. This Article does not prevent a financial institution of a Party from applying to the other Party to consider authorising the supply of a financial service that is not supplied within either Party's territory. That application is subject to the law of the Party receiving the application and is not subject to the obligations of this Article.

Article 18.15

Self-regulatory Organisations

When 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 organization in order to provide a financial service in or into the territory of the first Party, it shall ensure that the self-regulatory organization observes the obligations of Articles 10.7 (National Treatment) and 10.9 (Most Favored Nation Treatment) of the Investment Chapter and Article 11.5 (National Treatment) and 11.6 (Most Favored Nation Treatment) of the Cross Border Trade in Services Chapter.

[Drafters note 2: references to articles will be define once the Chapter structure is agreed]

Article 18.16

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 18.17

Financial Services Committee

1. The Parties hereby establish the Financial Services Committee (the Committee).

The Committee shall be composed of representatives of the Parties as set out in Annex XX (Authorities responsible for Financial Services).

2. The Committee shall:

- (a) supervise the implementation of this Chapter;
- (b) consider issues regarding financial services that are referred to it by a Party;
- (c) carry out a dialogue on the regulation of the financial services sector with a view to improving mutual knowledge of the Parties' respective regulatory systems and to cooperate in the development of international standards; and
- (d) participate in the dispute settlement procedures in accordance with Article 18.20 (Investment Disputes in Financial Services).

3. The Committee shall meet as agreed to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Joint Council of the results of any meeting. Meetings may be held by any technological means available to the Parties.

Article 18.18

Consultations

1. A Party may request, in writing, 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 to hold consultations. The consulting Parties shall report the results of their consultations to the Committee.

2. Each Party shall ensure that when there are consultations pursuant to paragraph 1, its delegation shall include officials with the relevant expertise in the area covered by this Chapter as set out in Annex XX (Authorities responsible for Financial Services).

3. For greater certainty, 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, or require regulatory authorities to take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to impede that where a Party requires information for supervisory purposes concerning a financial institution in the other Party's territory or a cross-border financial service supplier in the other Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

Article 18.19

Dispute settlement

1. Chapter 31 (Dispute Settlement), including Annexes X (Rules of Procedure) and XX (Code of Conduct), applies as modified by this Article to the settlement of disputes concerning the application or interpretation of the provisions of this Chapter.

2. In addition to the requirements set out in Article 31.7 (Requirements for Panellists – Dispute Settlement Chapter), panellists shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, unless the Parties agree otherwise.

3. The Financial Services Committee shall recommend to the Joint Council the adoption of a list of at least 15 individuals, fulfilling the requirements set out in paragraph 2, who are willing and able to serve as panellists. The Joint Council shall adopt such list no later than six months after the date of entry into force of this Agreement. The list shall be composed of three sub-lists:

- (a) one sub-list of individuals established on the basis of proposals by the European Union;
- (b) one sub-list of individuals established on the basis of proposals by the Republic of Chile; and

- (c) one sub-list of individuals that are not nationals of either Party and who shall serve as chairperson to the panel.

4. Each sub-list shall include at least five individuals. The Joint Council shall ensure that the list is always maintained at this minimum number of individuals.

5. For the purposes of this Chapter, the sub-lists referred to in paragraph 3 shall, after adoption, replace the sub-lists set out in paragraph 1 of Article 31.7 (List of Panellists – Dispute Settlement Chapter).

Article 18.20

Resolution of Investment Disputes in Financial Services

1. Section D (Resolution of Investment Disputes and Investment Court System) of Chapter 10 (Investment) applies, as modified by this Article, to:

- (a) investment disputes pertaining to measures adopted or maintained by a Party relating to investors and their investments in financial institutions to which this Agreement applies and in which an investor claims that a Party has breached Article 18.3 (National Treatment), Article 18.5 (Most-Favoured-Nation Treatment), Articles 10.15 (Treatment of Investors and of Covered Investments), 10.18 (Transfers), Article 10.16 (Treatment in Case of Strife), or Article 10.17 (Expropriation); or
- (b) investment disputes commenced pursuant to Chapter 10 (Investment) of this Agreement, in which Article 18.11 (Prudential Carve-Out) has been invoked.

2. In the case of an investment dispute pursuant to subparagraph 1(a), or if the respondent invokes Article 18.11 (Prudential Carve-Out) pursuant to subparagraph 1(b) within 60 days of the submission of a claim to the Tribunal in accordance with Article xxxx (Submission of a Claim to the Tribunal), the division of the Tribunal hearing the case may appoint, after consulting the disputing parties and pursuant to Article xxxx (Expert Reports), one or more experts from the list in Article 18.19 (SSDS in FS) to report to it on any factual issue concerning financial services matters raised by a disputing party in the proceedings.

3. In view of the importance of the right of a Party to adopt or maintain measures for prudential reasons, where such measures fall within the scope of the Article 18.11 (Prudential Carve-Out) shall apply as a valid defence to a claim based on any of the other provisions of this Agreement, including Article 10.15 (Treatment of Investors and of Covered Investments) of Chapter 10 (Investment). Following a request for consultations pursuant to Article [...], the respondent may request in writing to the [Committee] that it determines whether and, if so, to what extent the measure which is the subject of the request for consultations is justified under Article 18.11 (Prudential Carve-Out). This referral shall be made as soon as possible after the reception of the request for consultations. Upon the referral to the [Committee] the periods of time referred to in Articles xxxx (Consultations), xxxx (Determination of the respondent) and xxxx (Timelines to file a claim)] shall be suspended.

4. In a referral pursuant to paragraph 3, the [Committee] shall attempt in good faith to make a determination. Any such determination shall be transmitted promptly to the disputing parties.

5. To the extent that the Committee determines that the measure is justified under Article 18.11 (Prudential Carve-Out), no claim may be submitted before the investment tribunal pursuant to Article [...].

6. If the [Committee] has not made a determination within three months after the referral of the matter, the suspension of the periods of time referred to in paragraph 3 ceases to apply.

7. Failure of the respondent to make that request is without prejudice to the right of the respondent to assert Article 18.11 (Prudential Carve-Out) as a defence in a later phase of the proceedings. The Tribunal shall draw no adverse inference from the fact that the [Committee] has not agreed on a joint determination.

ANNEX XX

AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES

The authorities for each Party responsible for financial services are:

- (a) for EU, [...]
- (b) for Chile, the Ministry of Finance (Ministerio de Hacienda);]

