

**ANNEX 5**

**FINANCIAL SERVICES**

**PREAMBLE**

The State Parties:

**PURSUANT** to Article 26 of the Protocol on Trade in Services allowing State Parties to develop Annexes for the implementation of the said Protocol;

**HAVING REGARD** to the provisions of the Protocol on Trade in Services and of the Protocol on Finance and Investment;

**RECOGNISING** the importance of building a common approach and shared understanding in the sector of financial services in the context of the Protocol on Finance and Investment;

**REAFFIRMING** State Parties' rights and obligations under the Protocol on Trade in Services and the Protocol on Finance and Investment;

**RECOGNISING** the importance of the development and strengthening of financial markets, and the role played by investment and the private sector in productive capacity and increased economic growth and sustainable development;

**RECOGNISING** the importance of having a stable financial sector and the right of Member States to introduce or maintain measures for prudential reasons in order to protect investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system;

**RECOGNISING** the importance of having sound banking and non-banking financial institutions and services; the increased need for internationalisation, harmonisation of financial institutions, and the interdependence of the activities of financial institutions due to the use of modern technology and closer cooperation between financial institutions;

**RECOGNISING** that payment systems are critical to the financial infrastructure and the circulation of money, and are integral to economic activity;

**SEEKING** to elaborate upon the provisions of their commitments to liberalisation in trade in services with respect to measures affecting access to and use of financial services;

**HEREBY AGREE** as follows:

**Article 1**

**Scope and definitions**

1. This Annex applies to measures affecting the supply of financial services.
2. For the purposes of this Annex:

## SADC/CMT/30/2018/3.2.2B.4

- (a) A financial service is any service of a financial nature offered by a financial service supplier of a State Party. Financial services include the following activities:

### *Insurance and insurance-related services*

- (a) Life, accident and health insurance services;
- (b) Non-life insurance services;
- (c) Reinsurance and retrocession;
- (d) Services auxiliary to insurance, including broking and agency services.

### *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:
  - money market instruments (including cheques, bills, certificates of deposits);
  - foreign exchange;
  - derivative products including, but not limited to, futures and options;
  - exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - transferable securities;
  - 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 by suppliers of other financial services;
  - (l) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (a) to (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) A financial service supplier means any natural or juridical person of a State Party wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.
- (c) "Public entity" means:
- (i) a government, a central bank or a monetary authority, of a State Party, or an entity owned or controlled by a State Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
  - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
3. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article 3 of the Protocol on Trade in Services.
4. For the purposes of subparagraph 5(a) of Article 3 of the Protocol on Trade in Services, "services supplied in the exercise of governmental authority" means the following:
- (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 forming part of a statutory system of social security or public retirement plans; and
  - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
5. For the purposes of subparagraph 5(a) of Article 3 of the Protocol on Trade in Services, if a State Party allows any of the activities referred to in paragraph 4 (b) or (c) of this Article to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.
6. Subparagraph 5(b) of Article 3 of the Protocol on Trade in Services shall not apply to services covered by this Annex.

## **Article 2**

### **Domestic regulation ("prudential carve-out")**

1. Notwithstanding any other provisions of the Protocol on Trade in Services, a State Party shall not be prevented from taking measures for prudential reasons, including

for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform to the provisions of the Protocol on Trade in Services, they shall not be used as a means of avoiding the State Party's commitments or obligations under the Protocol.

2. Nothing in the Protocol on Trade in Services shall be construed to require a State 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 3**

#### **Recognition**

1. A State Party may recognise prudential measures of any other State Party in determining how the State Party's measures relating to financial services shall be applied. Such recognition may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the State Party concerned or may be accorded autonomously.
2. A State Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for other interested State Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones 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 State Party accords recognition autonomously, it shall afford adequate opportunity for any other State Party to demonstrate that such circumstances exist.

### **Article 4**

#### **Harmonisation and standardisation of prudential supervision**

In order to improve understanding on regulatory and supervisory matters to facilitate regional trade in financial services, State Parties agree, subject to their applicable domestic regulation, to mutual exchange of information in relation to the harmonisation and standardisation of prudential supervision of both banking and non-bank financial institutions, in line with international standards and best practices.

### **Article 5**

#### **Transfers of information and processing of Information**

1. No State Party shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier.

2. Nothing in this Annex restricts the right of a State Party to protect data, privacy and the confidentiality of records and accounts so long as such right is not used to circumvent the provisions of the Protocol on Trade in Services or the Protocol on Finance and Investment.

#### **Article 6**

##### **Payment, clearing and settlement systems**

1. Each State Party shall grant to duly licensed or authorised financial service suppliers access, on a non-discriminatory basis, to the relevant payment, clearing and settlement systems within the State Party.
2. Non-discriminatory access under paragraph 1 shall be understood to grant to services and service suppliers of another State Party access no less favourable than it accords to its own like services and service suppliers within the meaning of Article 15 of the Protocol.
3. Nothing in this Article shall prevent a State Party from taking measures relating to national payment, clearing and settlement systems for prudential reasons such as to protect against systemic risks including the financial and operational stability of the payment system, or from limiting access, as provided for in paragraph 1, to a particular form of financial service supplier.

#### **Article 7**

##### **Official funding and refinancing**

Nothing in this Annex shall prevent a State Party from limiting access either to official funding and refinancing facilities available in the normal course of ordinary business or a State Party's lender of last resort facilities.

#### **Article 8**

##### **Amendment of the Annex**

In view of the evolving regulation of the financial services sector, State Parties agree to review this Annex periodically and make such modifications as they deem necessary.