Financial Services Chapter

Submitted by: Peru
FINANCIAL SERVICES CHAPTER

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FINANCIAL SERVICES

When Economies decide to include a Cross-Border Trade in Services Chapter, they will have to decide what to do with the Financial Services sector:

**Option 1:**
To exclude the financial services from the CBTS Chapter and address them in a separate chapter with specific provisions (self-contained chapter)

**Option 2:**
To not exclude the financial services from the CBTS Chapter and (maybe) to include a Financial Services Annex

Peru has followed both approaches in FTAs, but most of its FTAs follow Option 1 (FTA Peru-US, Canada, Korea, Panama, Mexico, TPP, Pacific Alliance)
SCOPE OF A FINANCIAL SERVICES CHAPTER (1)

A Financial Services Chapter normally applies to measures relating to:

- Financial institutions of the other Party (Mode 3)
- Investors of the other Party, and its investments in financial institutions
- Cross-border trade in financial services (Modes 1, 2 and 4)

SCOPE OF A FINANCIAL SERVICES CHAPTER (2)

Key detail: Definition of “Financial Institution”

“...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;.”

In consequence:

- The type of institutions covered by the FS chapter depend on the FS regulation of each Party.
- Non regulated financial institutions are covered by the Investment and Cross Border Trade in Services Chapters.
SCOPE OF A FINANCIAL SERVICES CHAPTER [2]

A Financial Services Chapter usually do not apply to:

- Activities or services forming part of a public retirement plan or statutory system of social security (except when they are performed in competition)
- Activities or services conducted for the account or with the guarantee or using the financial resources of the Party (except when they are performed in competition)
- Government procurement of financial services (some FTAs may not have an explicit exclusion) [Depend on each negotiation]
- Subsidies or grants with respect to the cross-border supply of financial services ... (some FTAs may not have an explicit exclusion) [Depend on each negotiation]

MAIN PROVISIONS [1]

These main provisions do not have the same scope of application...
MAIN PROVISIONS [2]

National Treatment
Most-Favoured-Nation Treatment

Market Access
Senior Management and Board of Directors

Investors in Financial Institutions
Financial institutions
Investments of investors in Financial Institutions
Cross-border financial service suppliers
Financial Institutions

MAIN PROVISIONS [3]

- The Cross Border Trade article implies:

  - To accord national treatment to cross-border financial service suppliers

    Mode 1

    Specific Annex on Cross Border Trade

    Subject to Non-Conforming Measures

  - To permit its nationals to purchase financial service suppliers located in the other/another Party

    Mode 2

    Subject to Non-Conforming Measures
NON-CONFORMING MEASURES (1)
National Treatment, Most-Favoured-Nation Treatment, Market Access, Cross-Border Trade and Senior Management and Boards of Directors shall not apply to:

Any existing (Stand still) non-conforming measure maintained at:

- the central level of government → Section A – Annex III
- a regional level of government → Section A – Annex III
- a local level of government → No need to list them

NON-CONFORMING MEASURES (2)

Measures inconsistent with:

- National Treatment
- MFN
- Market Access
- Cross Border Trade
- Senior Management and Boards of Directors

→ Application of ratchet

- Cross Border Trade

→ Non application of ratchet
NON-CONFORMING MEASURES [3]

Reservations in the financial services sector – not subject to stand-still or ratchet

RELATION WITH OTHER CHAPTERS [1]

Post-Establishment:
The Chapter incorporates Post-establishment provisions from the Investment Chapter into the Scope of the Financial Services Chapter:

- Treatment in the Case of Armed Conflict or Civil Strife
- Expropriation and Compensation
- Transfers
- Special Formalities and Information Requirements

Note: TPP incorporates also Minimum Standard of Treatment

Protection:
The Chapter also incorporates the ISDS mechanism from the Investment Chapter ONLY for certain provisions explicitly mentioned in the scope.
RELATION WITH OTHER CHAPTERS

Non-Conforming Measures:

- NCMs from Annex I or II – related to NT, MFN or SMBD
  - Will be treated as a Financial Services NCM related to NT, MFN or SMBD

For example:
Peru maintains a NCM Annex I related to the hiring of foreign workers. This NCM is not included in the FS NCM but it applies to the Financial Services Sector.

OTHER PROVISIONS - EXCEPTIONS

Prudential measures:

“... a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, (...) or to ensure the integrity and stability of the financial system.”

Monetary exception:

“... non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies.”
OTHER PROVISIONS – DISPUTE SETTLEMENT

State-State Dispute Settlement:
The provision seeks to ensure that any panel will be composed by financial services experts.

Investor-State Dispute Settlement:
The provision seeks to establish specific mechanisms or procedures when the Exceptions article is invoked. For example: if a Party invokes the exception for prudential reasons.

Example from FTA Peru-Canada – Financial Services Chapter

- Investor submits a claim to arbitration
- Respondent Party invokes the Exception article
- Tribunal refers the issue to the Financial Services Committee (FSC)
- FSC decides if its a valid defense
- FSC does not reach a decision in 60 days
- The decision is binding to the tribunal
- A Party may request a Panel (State-State) within 10 days
- The report of Panel is submitted to the FSC and Tribunal
- After 10 days, the Tribunal proceeds
SPECIFIC ANNEXES \[1\]

A Financial Services Chapter may include specific Annexes that seek to set commitments on specific subsectors or activities.

A. Cross Border Trade Annex:

Defines the sectors committed for Mode 1

Normally includes:

**Insurance:**
- Relating to maritime shipping and commercial aviation and space launching and freight
- Reinsurance and retrocession
- Services auxiliary to insurance (i.e. consultancy, risk assessment)
- Insurance intermediation (i.e. brokerage)

**Banking:**
- Provision and transfer of financial information, and financial data processing
- Advisory and other auxiliary services

SPECIFIC COMMITMENTS \[1\]

B. Portfolio Management:

- Ensures the provision of:
  (a) Investment advice; and
  (b) Portfolio management to collective investment schemes.
- Normally, each Economy can define the term "collective investment scheme" according to its legislation.

C. Transfer of Information

- Ensures the transfer of information in electronic form, for data processing.

D. Other Annexes:

- Electronic Payment Services
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