

## CHAPTER TEN

### FINANCIAL SERVICES

#### Article 10.1: 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, or investments of those investors, in financial institutions in the Party's territory; and
  - (c) cross-border trade in financial services.
  
2. Chapters Eight (Investment) and Nine (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter.
  - (a) Articles 8.10 (Investment and Environment), 8.11 (Expropriation and Compensation), 8.12 (Transfers), 8.14 (Denial of Benefits), 8.15(Special Formalities and Information Requirements) and 9.10 (Denial of Benefits) are incorporated into and made a part of this Chapter.
  - (b) Section B of Chapter Eight (Investor-State Dispute Settlement) is incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 8.11 (Expropriation and Compensation), 8.12 (Transfers), and 8.14 (Denial of Benefits) as incorporated into this Chapter.
  - (c) Article 9.11 (Payments and Transfers) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 10.5.
  
3. This Chapter is not to be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:
  - (a) activities or services forming part of a public retirement plan or statutory system of social security; or

- (b) activities or services for the account, with the guarantee or using the financial resources of the Party, including its public entities.

4. This Chapter does not apply to domestic laws, regulations, or requirements governing the procurement by government entities of financial services purchased for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

## **Article 10.2: 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 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 the purposes of the national treatment obligations in Article 10.5.1, 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.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors in financial institutions, financial institutions, investments of investors in financial institutions, and financial service suppliers of the Party of which it forms a part.

### **Article 10.3: Most-Favoured-Nation Treatment**

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

### **Article 10.4: Market Access for Financial Institutions**

A Party shall not adopt or maintain, with respect to financial institutions of the other Party, or investors of the other Party seeking to establish such institutions, either on the basis of its entire territory or on the basis of a sub-national government, a measure that:

- (a) imposes limitations on:
  - (i) the number of financial institutions 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<sup>1</sup>; or
  - (iv) 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

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<sup>1</sup> This sub-subparagraph does not apply to measures of a Party which limit inputs for the supply of financial services.

- (b) restricts or requires specific types of legal entity or joint venture through which a financial institution may supply a service.

#### **Article 10.5: Cross-Border Trade<sup>2</sup>**

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 services specified in Annex 10-A.
2. Each Party shall permit persons located in its territory, and its nationals, wherever they are 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. Subject to paragraph 1, each Party may define “doing business” and “solicitation” for the purposes of this obligation.
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.

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<sup>2</sup> A Party may require a cross-border financial service supplier of the other Party to provide information, solely for informational or statistical purposes, on the financial services it has supplied within the territory of the Party. The Party shall protect confidential business information from disclosure that would prejudice the competitive position of the supplier.

### **Article 10.6: New Financial Services<sup>3</sup>**

A Party shall permit a financial institution of the other Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 10.4(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. If a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorisation and the authorisation may only be refused for prudential reasons.

### **Article 10.7: Treatment of Certain Information**

This Chapter does not require 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) 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 10.8: Senior Management and Boards of Directors<sup>4</sup>**

1. A Party shall not require financial institutions of the other Party to engage natural persons of a particular nationality as senior managerial or other essential personnel.

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<sup>3</sup> The Parties understand that 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 supplied in neither Party's territory. Such application is subject to the domestic law of the Party to which the application is made and, for greater certainty, is not subject to the obligations of this Article.

<sup>4</sup> For greater certainty, this Article does not limit a Party's ability to require the chief executive officer of a financial institution established under its law to reside within its territory.

2. A Party shall not require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, or natural persons residing in the territory of the Party.

### **Article 10.9: Non-Conforming Measures**

1. Articles 10.2 through 10.5 and Article 10.8 do not apply to:

- (a) an existing non-conforming measure that is maintained by:
  - (i) the national government of a Party, as set out in Section A of its Schedule to Annex III;
  - (ii) a sub-national government<sup>5</sup> of a Party as set out by that Party in Section A of its Schedule to Annex III; or
  - (iii) a local government<sup>6</sup> of a Party;
- (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to a 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 Articles 10.2, 10.3, 10.4, and 10.8.<sup>7</sup>

2. Articles 10.2 through 10.5 and Article 10.8 do not apply to a measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-conforming measure set out in a Party's Schedule to Annex I or II as not subject to Article 8.3 (National Treatment), 8.4 (Most-Favoured-Nation Treatment), 9.2 (National Treatment), or 9.3 (Most-Favoured-Nation Treatment) shall be treated as a non-conforming measure not subject to Article 10.2 or 10.3, 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.

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<sup>5</sup> For the purposes of this Article, sub-national government does not include local government.

<sup>6</sup> For Korea, local government means a local government as defined in the *Local Autonomy Act*.

<sup>7</sup> For greater certainty, Article 10.5 applies to an amendment to any non-conforming measure referred to in subparagraph (a) only to the extent that the amendment decreases the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 10.5.

## **Article 10.10: Exceptions**

1. This Chapter, or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Eleven (Telecommunications), Chapter Twelve (Temporary Entry for Business Persons), Chapter Thirteen (Electronic Commerce), Chapter Fourteen (Government Procurement), or Chapter Fifteen (Competition Policy, Monopolies and State Enterprises), are not to be construed to prevent a Party from adopting or maintaining measures for prudential reasons<sup>8</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. If such measures do not conform to the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.
2. This Chapter, or Chapter Eight (Investment), Chapter Nine (Cross-Border Trade in Services), Chapter Eleven (Telecommunications), Chapter Thirteen (Electronic Commerce), or Chapter Fifteen (Competition Policy, Monopolies and State Enterprises), do not apply to non-discriminatory measures of general application taken by a 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 8.8 (Performance Requirements), with respect to measures covered by Chapter Eight (Investment) or under Articles 8.12 (Transfers) and 9.11 (Payments and Transfers).
3. Notwithstanding Articles 8.12 (Transfers) and 9.11 (Payments and Transfers), 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 that 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.

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<sup>8</sup> The Parties understand 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.

4. For greater certainty, this Chapter is not to be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with its domestic 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 those 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.

5. The Parties recognise the importance of accommodating new financial services in their markets consistent with prudential requirements. The Parties confirm that Article 10.6 does not apply to cross-border trade in financial services or any new financial service that the Party would not permit its own financial institutions, in like circumstances, to supply. The Parties further confirm that a Party may apply prudential regulations to new financial services.

#### **Article 10.11: Transparency**

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating access of foreign financial institutions and foreign cross-border financial service suppliers to, and their operations in, each other's market. Each Party commits to promote regulatory transparency in financial services.

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 19.1 (Publication), each Party shall, to the extent practicable:

- (a) publish in advance regulations of general application relating to the subject matter of this Chapter that it proposes to adopt;
- (b) provide interested persons and the other Party with a reasonable opportunity to comment on those proposed regulations; and
- (c) allow reasonable time between the publication of final regulations and their effective date.



4. Each Party should, at the time it adopts final regulations and to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.
5. 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 a manner as to enable interested persons to become acquainted with them.
6. Each Party shall maintain or establish appropriate mechanisms that will, as soon as practicable, respond to inquiries from interested persons regarding measures of general application relating to the subject matter covered by this Chapter.
7. Each Party's regulatory authorities shall make available to interested persons the requirements, including any documentation required, for completing applications relating to the supply of financial services.
8. At the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.
9. A Party's 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. If 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.
10. At 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.

### **Article 10.12: Self-Regulatory Organisations**

If 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 its territory, the Party shall ensure that the self-regulatory organisation observes the obligations of Articles 10.2 and 10.3.

### **Article 10.13: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party access to payment and clearing systems operated by public entities, or to payment and clearing systems operated by any entity exercising any governmental authority delegated to it by a Party, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not to be construed to confer access to the Party's lender of last resort facilities.

### **Article 10.14: Recognition**

1. A Party may recognise prudential measures of a non-party in the application of measures covered by this Chapter. This recognition may be:
  - (a) accorded unilaterally;
  - (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 pursuant to 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. If a Party accords recognition of prudential measures pursuant to 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 10.15: Specific Commitments**

Annex 10-B sets out certain specific commitments by each Party.

### **Article 10.16: Financial Services Committee**

1. The Parties hereby establish a Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 10-C.
2. The Committee shall:
  - (a) supervise the implementation of this Chapter and its further elaboration;
  - (b) consider issues regarding financial services that are referred to it by a Party; and
  - (c) participate in dispute settlement procedures pursuant to Article 10.19.
3. The Committee shall meet annually, or as it otherwise decides, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

### **Article 10.17: Consultations**

1. A Party may request consultations with the other Party regarding a matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request and any request to include regulatory authorities of the other Party in these consultations. The Parties shall report the results of their consultations to the Committee.
2. Consultations pursuant to this Article shall include officials of the authorities specified in Annex 10-C.

3. For greater certainty, this Article is not to be construed to require a Party to derogate from its relevant domestic 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 an action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

#### **Article 10.18: Dispute Settlement**

1. Chapter Twenty-One (Dispute Settlement), as modified by this Article, applies to the settlement of disputes arising under this Chapter.

2. If a Party claims that a dispute arises under this Chapter, Article 21.7 (Panel Composition) shall apply, except that:

- (a) if the Parties so agree, the panel must be composed entirely of panellists meeting the qualifications in paragraph 3; and
- (b) in any other case:
  - (i) each Party may select panellists meeting the qualifications set out in paragraph 3 or in Article 21.7 (Panel Composition), except that each panellist may be a national of either Party; and
  - (ii) the chair of the panel must meet the qualifications set out in paragraph 3, unless the Parties agree otherwise.

3. Financial services panellists must:

- (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions; and
- (b) meet the qualifications set out in Article 21.7 (Panel Composition) except that, other than the chair of the panel, each panellist may be a national of either Party.

4. Notwithstanding Article 21.11 (Non-Implementation – Suspension of Benefits), if a panel finds a measure to be inconsistent with 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 measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party shall not suspend benefits in the financial services sector.

**Article 10.19: Investor-State Dispute Settlement in Financial Services**

1. If an investor of a Party submits a claim under Article 8.18 (Claim by an Investor of a Party on Its Own Behalf) or 8.19 (Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section B of Chapter Eight (Investor-State Dispute Settlement) and the disputing Party invokes an exception pursuant to Article 10.10, the Tribunal shall, at the request of the disputing Party, refer the matter in writing to the Committee for a decision. The Tribunal shall not proceed until it receives the decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide whether and to what extent Article 10.10 is a valid defence to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. If the Committee has not decided the issue within 60 days of the receipt of the referral pursuant to paragraph 1, either Party may request the establishment of a panel pursuant to Article 21.6 (Establishment of a Panel). The panel shall be constituted in accordance with Article 10.18 and shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. If a Party does not request the establishment of a panel pursuant to paragraph 3 within 10 days after the expiration of the 60-day period, the Tribunal may proceed to decide the matter.

#### **Article 10.20: Definitions**

For the purposes of this Chapter:

**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 those services;

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

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

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

**financial institution** means a financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the domestic law of the Party in whose territory it is located;

**financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by a person of the other Party;

**financial service** means a 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*

- (a) direct insurance (including co-insurance):
  - (i) life; or
  - (ii) non-life;
- (b) reinsurance and retrocession;
- (c) insurance intermediation, such as brokerage and agency;
- (d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

*Banking and other financial services (excluding insurance)*

- (e) acceptance of deposits and other repayable funds from the public;
- (f) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;
- (g) financial leasing;
- (h) payment and money transmission services, including credit, charge and debit cards, travellers checks, and bankers drafts;
- (i) guarantees and commitments;
- (j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (i) money market instruments, including checks, bills, and certificates of deposits;
  - (ii) foreign exchange;

- (iii) derivative products, including futures and options;
- (iv) exchange rate and interest rate instruments, including products such as swaps, and forward rate agreements;
- (v) transferable securities; or
- (vi) other negotiable instruments and financial assets, including bullion;
  
- (k) 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;
- (l) money broking;
- (m) asset management such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) provision and transfer of financial information, financial data processing and related software by suppliers of other financial services; and
- (p) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;

**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;



**investment** means “investment” as defined in Article 8.45 (Definitions), except that, 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 where 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 of 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 if such loan or debt instrument meets the criteria for investments set out in Article 8.45 (Definitions);

**investor of a Party**<sup>9</sup> means a Party or state enterprise thereof, or a person of a Party, that seeks to make, is making, or has made an investment in the territory of the other Party. A natural person who is a dual citizen is deemed to be exclusively a national of a State of his or her dominant and effective citizenship. A natural person who is a citizen of a Party and a permanent resident of the other Party is deemed to be exclusively a national of the Party of which he or she is a citizen;

**new financial service** means a financial service not supplied in a Party’s territory that is supplied within the territory of the other Party, and includes a new form of delivery of a financial service or the sale of a financial product that is not sold in the Party’s territory;

**person of a Party** means “person of a Party” as defined in Article 1.8 (Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-party;

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<sup>9</sup> It is understood that an investor of a Party “seeks” to make an investment in the territory of the other Party only if the investor has taken concrete steps necessary to make said investment, such as when the investor has made an application for a permit or license authorising the establishment of an investment.

**public entity** means a central bank or monetary authority of a Party, or a financial institution owned or controlled by a Party. A central bank or monetary authority of a Party, or a financial institution that performs a financial regulatory function and is owned or controlled by a Party is not considered a designated monopoly or a state enterprise for the purposes of Chapter Fifteen (Competition Policy, Monopolies and State Enterprises); and

**self-regulatory organisation** means a non-governmental body, including 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 national, sub-national, or local governments or authorities. A self-regulatory organisation is not considered a designated monopoly or a state enterprise for the purposes of Chapter Fifteen (Competition Policy, Monopolies and State Enterprises).

## **Annex 10-A**

### **Cross-Border Trade**

#### **Canada**

##### *Insurance and Insurance-Related Services*

1. For Canada, Article 10.5.1 applies to the cross-border trade in, or supply of, financial services, as defined in subparagraph (a) of the definition of cross-border trade in financial services or cross-border supply of financial services in Article 10.20, with respect to:

- (a) insurance of risks relating to:
  - (i) maritime transport, commercial aviation, and space launching and freight (including satellites), when that insurance covers any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance as described in subparagraph (d) of the definition of financial service; and
- (d) insurance intermediation such as brokerage and agency as described in subparagraph (c) of the definition of financial service of insurance of risks related to services listed in subparagraphs (a) and (b).

2. Paragraph 1 applies only if an entity is not in itself or through an agent insuring in Canada a risk.

*Banking and Other Financial Services (excluding insurance)*

3. For Canada, Article 10.5.1 applies to the cross-border trade in, or supply of, financial services, as defined in subparagraph (a) of the definition of cross-border trade in financial services or cross-border supply of financial services in Article 10.20, with respect to:

- (a) the provision and transfer of financial information and financial data processing as described in subparagraph (o) of the definition of financial service; and
- (b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

4. Paragraph 3 applies only if neither the foreign bank nor one of its affiliates, if subject to the *Bank Act*, 1991, c. 46, maintains a financial establishment in Canada.

**Korea**

*Insurance and Insurance-Related Services*

5. For Korea, Article 10.5.1 applies to the cross-border trade in, or supply of, financial services as defined in subparagraph (a) of the definition of cross-border trade in financial services and cross-border supply of financial services in Article 10.20 with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping, commercial aviation and space launching and freight, (including satellites), when that insurance covers any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;

- (c) services auxiliary to insurance, such as consultancy<sup>10</sup>, risk assessment<sup>11</sup>, actuarial and claim settlement services; and
- (d) insurance intermediation, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service of insurance of risks related to services listed in subparagraphs (a) and (b).

6. Paragraph 5 applies only if an entity is not in itself or through an agent insuring in Korea a risk.

*Banking and other Financial Services (excluding insurance)*

7. For Korea, Article 10.5.1 applies only with respect to:

- (a) the provision and transfer of financial information<sup>12</sup>;
- (b) the provision and transfer of financial data processing and related software relating to banking and other financial services as referred to in subparagraph (o) of the definition of financial service in Article 10.20; and
- (c) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service in Article 10.20. This commitment applies to the supply of credit rating, credit reference and investigation, general fund administration, indirect investment vehicle appraisal, and bond appraisal only to the extent that Korea allows the supply of these services. Once Korea allows the supply of certain of these services, it may not subsequently prohibit or limit the supply of such services.

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<sup>10</sup> “Consultancy” means activities such as providing advice on corporate strategy formulation, marketing strategy, or product development strategy.

<sup>11</sup> “Risk assessment” means activities such as risk analysis, risk prevention, or expert advice related to difficult or unusual risks.

<sup>12</sup> “Financial information” referred to in paragraph 7(a) does not include general financial or business information that is included within a general circulation publication or provided for a general audience.

## **Annex 10-B**

### **Specific Commitments**

#### **Section A – Portfolio Management**

##### **Canada**

1. Subject to paragraph 2, Canada shall allow a financial institution organised outside its territory to provide the following services to a collective investment scheme located in its territory:
  - (a) investment advice; and
  - (b) portfolio management services, excluding:
    - (i) custodial services, unless they are related to managing a collective investment scheme;
    - (ii) trustee services, but not excluding the holding in trust of investments by a collective investment scheme established as a trust; and
    - (iii) execution services, unless they are related to managing a collective investment scheme.
2. This commitment is subject to Articles 10.1 and 10.5.3.
3. This commitment does not apply to an existing non-conforming measure that is maintained at the sub-national government, the continuation or prompt renewal of a such measure, or an amendment to a such measure to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Agreement, with the commitment.
4. Notwithstanding paragraph 1, Canada may require a collective investment scheme located in Canada to retain ultimate responsibility for the management of the collective investment scheme or the funds that it manages.
5. For purposes of this commitment, in Canada collective investment scheme means investment funds or fund management enterprises regulated or registered under relevant securities laws and regulations.

## **Korea**

6. Korea shall allow a financial institution, other than a trust company, organised outside its territory, to provide investment advice and portfolio management services, excluding custodial services, trustee services, and 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 Articles 10.1 and 10.5.3.

7. For the purposes of paragraph 1, with regard to Korean won-denominated assets, the supply of investment advice or portfolio management services applies only to the extent that Korea allows the supply of these services with respect to such assets. Once Korea allows the supply of these services with regard to Korean won-denominated assets, it may not subsequently prohibit or limit the supply of such services.

8. For the purposes of paragraph 1, in Korea “collective investment scheme” means any of the schemes established for making collective investment as defined under article 9.18.1 through 9.18.6 of the *Financial Investment Services and Capital Markets Act*.

## **Section B – Supervisory Cooperation**

9. The Parties support the efforts of their respective financial regulators to provide assistance to the regulators of the other Party to enhance consumer protection and each regulators’ ability to prevent, detect and prosecute unfair and deceptive practices. The Parties confirm that their financial regulators have the legal authority to exchange information in support of those efforts. The Parties shall encourage financial regulators to continue their on-going efforts to strengthen this cooperation through bilateral consultations or bilateral or multilateral international cooperative mechanisms, such as memoranda of understanding or *ad hoc* undertakings.

## Section C – Transfer of Information

10. The Parties shall allow a financial institution of the other Party to transfer information in electronic or other form, into and out of their territories, for data processing if such processing is required in the institution's ordinary course of business.

This Section does not restrict the right of a Party to adopt or maintain measures:

- (a) to protect personal data, personal privacy and the confidentiality of individual records and accounts; or
- (b) to require a financial institution to obtain prior authorisation from the relevant regulator to designate a particular enterprise as a recipient of that information, based on prudential considerations<sup>13</sup>;

provided that such right is not used as a means of avoiding the Party's commitments or obligations under this Section.

For greater certainty, considerations under subparagraph (a) include protection of sensitive information of consumers and prohibitions on unauthorised reuse of the sensitive information. This Section does not restrict the Parties' ability to have access to records of financial institutions relating to the handling of such information and to maintain requirements for the location of technology facilities.

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<sup>13</sup> For greater certainty, this requirement is without prejudice to other means of prudential regulation.



## **Section D – Certain Government Entities**

11. The Parties confirm that the following entities, as currently structured, are covered by this Chapter, but are not considered financial institutions for the purposes of this Chapter: the Korea Deposit Insurance Corporation, Export-Import Bank of Korea, Korea Trade Insurance Corporation, Korea Technology Credit Guarantee Fund, Credit Guarantee Fund, Korea Asset Management Corporation, Korea Finance Corporation and Korea Investment Corporation. The Parties further recognise that Korea Post is currently a government agency and it offers financial services that are regulated by regulatory authorities of Korea.

## **Annex 10-C**

### **Authorities Responsible for Financial Services**

Authorities responsible for Financial Services are:

- (a) for Canada, the Department of Finance Canada; and
- (b) for Korea, the Financial Services Commission and the Ministry of Strategy and Finance,

or their respective successors.