

CHAPTER 8 FINANCIAL SERVICES

ARTICLE 8.1: SCOPE

1. This Chapter shall apply to measures 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. Chapters 7 (Cross-Border Trade in Services) and 11 (Investment) shall apply to measures described in paragraph 1 only to the extent that these Chapters or Articles of these Chapters are incorporated into this Chapter:
 - (a) Articles 7.11 (Denial of Benefits), 11.7 (Expropriation and Compensation), 11.8 (Transfers), 11.11 (Denial of Benefits), and 11.13 (Special Formalities and Information Requirements), are incorporated into and made part of this Chapter;
 - (b) Section B (Investor-State Dispute Settlement) of Chapter 11 (Investment) is incorporated into and made part of this Chapter solely for claims that a Party has breached Article 11.7 (Expropriation and Compensation), 11.8 (Transfers), 11.11 (Denial of Benefits), or 11.13 (Special Formalities and Information Requirements) as incorporated into this Chapter; and
 - (c) Article 7.10 (Payments and Transfers) is incorporated into and made part of this Chapter to the extent that cross-border trade in financial services is subject to obligations under Article 8.5.
3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:
 - (a) activities or services forming part of a public retirement plan or statutory system of social security; or
 - (b) activities or services conducted for the account or 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.

4. This Chapter shall not apply to laws, regulations, or requirements governing the procurement by government agencies 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 8.2: 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 8.5.1, 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.

ARTICLE 8.3: MOST-FAVOURED-NATION TREATMENT¹³

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

ARTICLE 8.4: 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 a regional subdivision or on the basis of its entire territory, measures that:

- (a) impose limitations on:
 - (i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test;

¹³ For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms such as those included in Section B of Chapter 11 (Investment).

- (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 test¹⁴; 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
- (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

ARTICLE 8.5: CROSS-BORDER TRADE

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 8-A.
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 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. Each 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 the other Party and of financial instruments.

ARTICLE 8.6: NEW FINANCIAL SERVICES¹⁵

Each Party shall permit a financial institution of the other Party to supply any 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 8.4(b), a Party may determine the institutional and juridical form through which the new financial

¹⁴ Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

¹⁵ The Parties understand that nothing in this Article shall prevent a financial institution of a Party from applying to the other Party to request that it authorise the supply of a financial service that is supplied in neither Party's territory. Such application shall be subject to the laws and regulations of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of this Article.

service may be supplied and may require authorisation for the supply of the service. Where 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 be refused only for prudential reasons.

ARTICLE 8.7: TREATMENT OF CERTAIN INFORMATION

Further to Article 22.4(Disclosure of Information), nothing in this Chapter requires a Party to furnish or allow access to information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers.

ARTICLE 8.8: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. Neither Party shall require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. Neither Party shall require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

ARTICLE 8.9: NON-CONFORMING MEASURES

1. Articles 8.2 through 8.5 and Article 8.8 shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III;
 - (ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III; or
 - (iii) 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:
 - (i) immediately before the amendment, with Article 8.2, 8.3, 8.4, or 8.8; or
 - (ii) on the date of entry into force of the Agreement, with Article 8.5.

2. Articles 8.2 through 8.5 and Article 8.8 shall not apply to any 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, to which Article 7.2 (National Treatment), 7.3 (Most-Favoured-Nation Treatment), 11.3 (National Treatment), 11.4 (Most-Favoured-Nation Treatment), or 11.10 (Senior Management and Boards of Directors) shall not apply, shall be treated as a non-conforming measure to which Article 8.2, 8.3, 8.5.1, or 8.8.2 shall not apply, as the case may be, to the extent that the measure, sector, sub-sector, or activity set out in the entry is covered by this Chapter.

ARTICLE 8.10: EXCEPTIONS

1. Notwithstanding any other provision of this Chapter or Chapter 9 (Telecommunications), including specifically Article 9.2 (Relation to Other Chapters), Chapter 11 (Investment) or 15 (Electronic Commerce) and, in addition, Article 7.1.3, with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reason¹⁶, 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. Where 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. Nothing in this Chapter or Chapter 9 (Telecommunications), including specifically Article 9.2 (Relation to Other Chapters), Chapter 11 (Investment), or 15 (Electronic Commerce), and, in addition, Article 7.1.3, with respect to the supply of financial services in the territory of a Party by an investor of the other Party or a covered investment, shall apply to non-discriminatory measures of general application taken by any 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 11.9 (Performance Requirements) with respect to measures covered by Chapter 11 (Investment) or under Article 7.10 (Payments and Transfers) or 11.8 (Transfers).

3. Notwithstanding Articles 7.10 (Payments and Transfers) and 11.8 (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 such 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.

¹⁶ It is understood 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, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with 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 such 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.

ARTICLE 8.11: 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 to, and their operations in, each other's markets. 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 shall apply are administered in a reasonable, objective, and impartial manner.

3. In lieu of Article 19.1.2, each Party, to the extent possible:

- (a) shall publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulation;
- (b) shall provide interested persons and the other Party a reasonable opportunity to comment on such proposed regulations; and
- (c) should at the time it adopts final regulations, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent possible, each Party shall allow reasonable time between publication of final regulations of general application and their effective date.

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 such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from interested persons regarding measures of general application covered by this Chapter.

7. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.

8. On 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. Where 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 thereafter.

10. On request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent possible, inform the applicant of the reasons for denial of the application.

ARTICLE 8.12: SELF-REGULATORY ORGANISATIONS

Where 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 the territory of that Party, the Party shall ensure that the self-regulatory organisation observes the obligations of Articles 8.2 and 8.3.

ARTICLE 8.13: PAYMENT AND CLEARING SYSTEMS

Under terms and conditions that accord national treatment, each Party shall grant 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 8.14: RECOGNITION

1. A Party may recognise prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded autonomously;
- (b) achieved through harmonisation or other means; or
- (c) based on an agreement or arrangement with the non-Party.

2. A Party according recognition of prudential measures under 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. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances described 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 8.15: SPECIFIC COMMITMENTS

Annex 8-B sets out certain specific commitments by each Party.

ARTICLE 8.16: COMMITTEE ON FINANCIAL SERVICES

1. The Committee on Financial Services established in accordance with Article 21.4 (Committees and Working Groups) shall comprise officials of each Party from authorities responsible for financial services. The authorities responsible for financial services are:

- (a) for Korea, the Ministry of Strategy and Finance and the Financial Services Commission; and
- (b) for Australia, the Department of the Treasury and the Department of Foreign Affairs and Trade.

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, including ways for the Parties to cooperate more effectively in the financial services sector; and
- (c) participate in investment disputes in accordance with Article 8.19.

3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services.

ARTICLE 8.17: CONSULTATIONS

1. A Party may request 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. The Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities set out in Article 8.16.1.

ARTICLE 8.18: DISPUTE SETTLEMENT

1. Chapter 20 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.
2. Where a Party claims that a dispute arises under this Chapter, Article 20.8(Establishment of Panel) shall apply, except that:
 - (a) where the Parties so agree, the panel shall 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 Article 20.8.5; and
 - (ii) if the Party complained against invokes Article 8.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties otherwise agree.
3. Financial services panellists shall:
 - (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 20.8.5.
4. Notwithstanding Article 20.14 (Non-Implementation), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute 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 may not suspend benefits in the financial services sector.

ARTICLE 8.19: INVESTMENT DISPUTES IN FINANCIAL SERVICES

1. Where an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 11 (Investment), and the respondent invokes Article 8.10 as a defence, the following provisions shall apply:

- (a) the respondent shall, within 120 days of the date the claim is submitted to arbitration under Section B of Chapter 11 (Investment), submit a written request to the Committee on Financial Services for a joint determination on the issue of whether and to what extent Article 8.10 is a valid defence to the claim. The respondent shall promptly provide the tribunal, if constituted, a copy of such request. The arbitration may proceed with respect to the claim only as provided in subparagraph (d);
- (b) the Committee shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties and, if constituted, to the tribunal. The determination shall be binding on the tribunal;
- (c) if the Committee, within 60 days of the date by which it has received the respondent's written request for a determination under subparagraph (a), has not made a determination as described in that subparagraph, the tribunal shall decide the issue left unresolved by the Committee. The provisions of Section B of Chapter 11 (Investment) shall apply, except as modified by this subparagraph:
 - (i) in the appointment of all arbitrators not yet appointed to the tribunal, each disputing party shall take appropriate steps to ensure that the tribunal has expertise or experience as described in Article 8.19.3(a). The expertise or experience of particular candidates with respect to financial services shall be taken into account to the greatest extent possible in the appointment of the presiding arbitrator;
 - (ii) if, prior to the submission of the request for a determination in accordance with subparagraph (a), the presiding arbitrator has been appointed in accordance with Section B of Chapter 11 (Investment), such arbitrator shall be replaced on request of either disputing party and the tribunal shall be reconstituted in accordance with subparagraph (c)(i). If, within 30 days of the date the arbitration proceedings are resumed under subparagraph (d), the disputing parties have not agreed on the appointment of a new presiding arbitrator, the Secretary-General, on request of a disputing party, shall appoint the presiding arbitrator consistent with subparagraph (c)(i); and
 - (iii) the Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 8.10 is a valid defence to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for the purposes of the arbitration, to take a position on Article 8.10 not inconsistent with that of the respondent; and
- (d) the arbitration referred to in subparagraph (a) may proceed with respect to the claim;

- (i) 10 days after the date the determination of the Committee has been received by the disputing parties and, if constituted, the tribunal; or
- (ii) 10 days after the expiration of the 60-day period extended to the Committee in subparagraph (c).

2. The definitions of the following terms set out in Article 11.28 (Definitions) are incorporated into this Article, *mutatis mutandis*: claimant, disputing parties, disputing party, respondent, and Secretary-General.

ARTICLE 8.20: 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 such 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 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;

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

financial service means any 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; and
- (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) all payment and money transmission services, including credit, charge and debit cards, traveller's cheques 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 cheques, bills, certificates of deposits);
 - (ii) foreign exchange;
 - (iii) derivative products including, but not limited to, futures and options;
 - (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (v) transferable securities; and
 - (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, and 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, 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 11.28 (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 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 11 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 11.28 (Definitions);

investor of a Party means a Party, or a national or an enterprise of a Party, that seeks to make, is making, or has made an investment in the territory of the other Party, provided, however, that a national who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

new financial service means a financial service not supplied in the Party’s territory that is supplied within the territory of the other Party, and includes any 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 1.4 (Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; a central bank or monetary authority of a Party, or any financial institution that performs a financial regulatory function and is owned or controlled by a Party¹⁷, shall not be considered a state enterprise/state-owned enterprise for the purposes of Article 14.4 (Competitive Neutrality); and

self-regulatory organisation means any non-governmental body, including any 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. A self-regulatory organisation shall not be considered a state enterprise/state-owned enterprise for the purposes of Article 14.4 (Competitive Neutrality).

¹⁷ The Korea Deposit Insurance Corporation of Korea shall be deemed to be within the definition of public entity for the purposes of Chapter 14 (Competition Policy).

ANNEX 8-A
CROSS-BORDER TRADE

Korea

Insurance and insurance-related services

1. Article 8.5.1 shall apply to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 8.20 with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover 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 consultancy¹⁸, risk assessment¹⁹, 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 in Article 8.20 of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

2. Article 8.5.1 shall apply to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 8.20 with respect to services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

3. Article 8.5.1 shall apply only with respect to:

- (a) the provision and transfer of financial information²⁰;

¹⁸“Consultancy” means activities such as providing advice on corporate strategy formulation, marketing strategy, or product development strategy.

¹⁹“Risk assessment” means activities such as risk analysis, risk prevention, or expert advice related to difficult or unusual risks.

²⁰ For greater certainty, “financial information” referred to in paragraph 5(a) does not include general financial or business information that is included within a general circulation publication or provided for a general audience.

- (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 8.20, by no later than two years from the date of entry into force of this Agreement²¹; 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 8.20. This commitment applies to the supply of credit rating, credit reference and investigation, general fund administration, indirect investment vehicle appraisal, and bond appraisal with regard to securities issued in Korea²² only to the extent that Korea allows the supply of these services with respect to such assets. This commitment does not apply to:
 - (i) credit rating of enterprises in Korea; or
 - (ii) credit reference and investigation undertaken for purposes of lending and other financial transactions in Korea with respect to individuals or companies in Korea.

Australia

Insurance and insurance-related services

4. Article 8.5.1 shall apply to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 8.20 with respect to:

- (a) insurance of risks relating to:
 - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover 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, risk assessment, actuarial and claim settlement services; and

²¹ It may be subject to prior authorisation from the relevant regulator.

²² At the time of signature of this Agreement, securities issued in the territory of Korea are denominated solely in Korean won, except in extraordinary circumstances. Where bonds issued outside the territory of Korea are held by a Korean collective investment scheme registered with the Financial Services Commission, appraisal of the bond must be undertaken by a bond appraisal company in the territory of Korea.

- (d) insurance intermediation, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 8.20 of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

5. Article 8.5.1 shall apply only with respect to:

- (a) the provision and transfer of financial information;
- (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 8.20; 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 8.20.

ANNEX 8-B
SPECIFIC COMMITMENTS

Section A: Transfer of Information

1. Each Party shall allow a financial institution of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the institution's ordinary course of business. Korea shall give effect to this commitment no later than two years after the date of entry into force of this Agreement, and in no case later than the effective date of similar commitments stemming from other international trade agreements.
2. Nothing in paragraph 1 shall restrict the right of a Party to protect sensitive information of consumers and to prohibit unauthorised reuse of such information so long as such right is not used as a means of avoiding the Party's commitments or obligations under this Agreement. The Parties reserve the right of their financial regulators to have access to records of financial services suppliers relating to the handling of such information and to require for the location of technology facilities.

Section B: Performance of Functions

1. The Parties recognise the benefits of allowing a financial institution in a Party's territory to perform certain functions at its head office or affiliates located inside or outside the Party's territory²³. To the extent possible, each Party shall allow such an office or affiliate to perform these functions. These functions generally include, but are not limited to:
 - (a) trade and transaction processing functions, including confirmation and statement production;
 - (b) technology-related functions, such as data processing²⁴, programming, and system development;
 - (c) administrative services, including procurement, travel arrangements, mailing services, physical security, office space management, and secretarial services;
 - (d) human resource activities, including training and education;
 - (e) accounting functions, including bank reconciliation, budgeting, payroll, tax, account reconciliation, and customer and proprietary accounting; and

²³ For greater certainty, a financial institution located in the territory of a Party retains ultimate responsibility for compliance with requirements applicable to those functions performed by its head office or affiliate.

²⁴ To the extent that a Party is obligated under Section B of Annex 8-B to allow the transfer of information outside its territory, that Party shall also allow data processing of that information after the transfer.

(f) legal functions, including the provision of advice and litigation strategy.

2. Nothing in paragraph 1 shall prevent a Party from requiring a financial institution located in its territory to retain certain functions.

Section C: Supervisory Cooperation

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 those regulators' ability to prevent, detect, and prosecute unfair and deceptive practices. Each Party confirms that its financial regulators have the legal authority to exchange information in support of those efforts. The Parties shall encourage financial regulators to continue their ongoing 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 D: Certain Government Entities

The Parties confirm that the following entities shall not be considered financial institutions for the purposes of this Chapter: the Korea Deposit Insurance Corporation (KDIC); Export-Import Bank of Korea; Korea Trade Insurance Corporation; Korea Technology Credit Guarantee Fund; Credit Guarantee Fund; Korea Asset Management Corporation (KAMCO); Korea Finance Corporation (KoFC); and Korea Investment Corporation (KIC). The Parties further recognise that Korea Post is currently a government agency that is not regulated as a financial institution.

Section E: Cross-Border Trade

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 such business information that is confidential from any disclosure that would prejudice the competitive position of the supplier.

Section F: Chief Executive Officer

For greater certainty, nothing in Article 8.8 shall limit a Party's ability to require the chief executive officer of a financial institution established under its laws to reside within its territory.

Section G: Portfolio Management

1. A Party 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 8.1 and 8.5.3.
2. 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.
3. For the purposes of paragraph 1, “collective investment scheme” means:
 - (a) for Korea, any of the schemes established for making collective investment as defined under articles 9.18.1 through 9.18.6 of the Financial Investment Services and Capital Markets Act (FSCMA); and
 - (b) for Australia:
 - (i) a managed investment scheme as defined under section 9 of the *Corporations Act 2001*, other than a managed investment scheme operated in contravention of subsection 601ED(5) of the *Corporations Act 2001*; or
 - (ii) an entity that:
 - (A) carries on a business of investment in securities, interests in land, or other investments; and
 - (B) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the *Corporations Act 2001*) made on terms that the funds subscribed would be invested.

Section H: Government Procurement

1. Notwithstanding Article 8.1.4, each Party shall apply Articles 8.2 and 8.3 with respect to the acquisition or procurement of the following services to the extent this Chapter shall apply to measures adopted or maintained by the Party relating to activities or services set out in Article 8.1.3(a) and (b):
 - (a) services related to the sale, redemption, and distribution of central government debt;

- (b) services related to the holding of central government fiscal and depository accounts; and
- (c) services related to the management of the following assets:
 - (i) for Korea, assets of the Korea Investment Corporation; and
 - (ii) for Australia, assets of the Future Fund.