

## **CHAPTER THIRTEEN FINANCIAL SERVICES**

### ARTICLE 13.1: 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, and investments of such investors, in financial institutions in the Party's territory; and
  - (c) cross-border trade in financial services.
  
2. Chapters Eleven (Investment) and Twelve (Cross-Border Trade in Services) 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 11.6 (Expropriation and Compensation), 11.7 (Transfers), 11.10 (Investment and Environment), 11.11 (Denial of Benefits), 11.13 (Special Formalities and Information Requirements), and 12.11 (Denial of Benefits) are hereby incorporated into and made part of this Chapter.
  - (b) Section B (Investor-State Dispute Settlement) of Chapter Eleven (Investment) is hereby incorporated into and made part of this Chapter solely for claims that a Party has breached Article 11.6, 11.7, 11.11, or 11.13 as incorporated into this Chapter.
  - (c) Article 12.10 (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 13.5.
  
3. This Chapter does 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 does 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 13.2: NATIONAL TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable 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 favorable 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 purposes of the national treatment obligations in Article 13.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

## ARTICLE 13.3: MOST-FAVORED-NATION TREATMENT

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 favorable 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 13.4: 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;
  - (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 on 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

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<sup>1</sup> Clause (iii) does not cover measures of a Party which limit inputs for the supply of financial services.

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 13.5: 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 13-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 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 of cross-border financial service suppliers of the other Party and of financial instruments.

#### ARTICLE 13.6: NEW FINANCIAL SERVICES<sup>2</sup>

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 13.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires a financial institution to obtain authorization to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorization and the authorization may be refused only for prudential reasons.

#### ARTICLE 13.7: TREATMENT OF CERTAIN INFORMATION

Nothing in this Chapter requires 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) any 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.

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<sup>2</sup> The Parties understand that nothing in Article 13.6 prevents a financial institution of a Party from applying to the other Party to request that it authorize the supply of a financial service that is supplied in neither Party's territory. Such application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 13.6.

#### ARTICLE 13.8: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. A Party may not require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. A Party may not 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 13.9: NON-CONFORMING MEASURES

1. Articles 13.2 through 13.5 and Article 13.8 do 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;<sup>3</sup>
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 13.2, 13.3, 13.4, or 13.8.<sup>4</sup>
2. Articles 13.2 through 13.5 and Article 13.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in Section B of its Schedule to Annex III.
3. A non-conforming measure set out in an entry in a Party's Schedule to Annex I or II as not subject to Article 11.3 (National Treatment), 11.4 (Most-Favored-Nation Treatment), 12.2 (National Treatment), or 12.3 (Most-Favored-Nation Treatment), shall be treated as a non-conforming measure not subject to Article 13.2 or 13.3, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the entry is covered by this Chapter.

#### ARTICLE 13.10: EXCEPTIONS

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<sup>3</sup> For Korea, **local level of government** means a local government as defined in the *Local Autonomy Act*.

<sup>4</sup> For greater certainty, Article 13.5 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 13.5.

1. Notwithstanding any other provision of this Chapter or Chapter Eleven (Investment), Fourteen (Telecommunications), including specifically Article 14.23 (Relation to Other Chapters), or Fifteen (Electronic Commerce), and, in addition, Article 12.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>5</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. Where such measures do not conform with 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 Eleven (Investment), Fourteen (Telecommunications), including specifically Article 14.23 (Relation to Other Chapters), or Fifteen (Electronic Commerce), and, in addition, Article 12.1.3 (Scope and Coverage) with respect to the supply of financial services in the territory of a Party by a covered investment, applies 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 11.8 (Performance Requirements) with respect to measures covered by Chapter Eleven or under Article 11.7 (Transfers) or 12.10 (Payments and Transfers).

3. Notwithstanding Articles 11.7 (Transfers) and 12.10 (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 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.

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 13.11: TRANSPARENCY

1. The Parties recognize 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 markets. Each Party commits to promote regulatory transparency in financial services.

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<sup>5</sup> 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.

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 paragraphs 2 through 4 of Article 21.1 (Publication), each Party, to the extent practicable:
  - (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<sup>6</sup> on such proposed regulations;<sup>7</sup> 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 practicable, each Party should 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 organizations 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 maintain or establish appropriate mechanisms for responding to inquiries 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 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. Where it is not practicable for a decision to be made

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<sup>6</sup> For greater certainty, when a Party publishes regulations in advance as described in subparagraph (a), the Party shall provide an address, whether electronic or otherwise, to which interested persons and the other Party may send their comments.

<sup>7</sup> Further to subparagraph (b), the FSS shall continue its current practice of providing a period for interested persons and the other Party to comment on its proposed measures of general application, including the *Detailed Enforcement Rules*, that is at least as long as the period for commenting on proposed regulations under Korea's *Administrative Procedures Act* and related regulations.

within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

10. On 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 13.12: SELF-REGULATORY ORGANIZATIONS<sup>8</sup>

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 organization to provide a financial service in or into the territory of that Party, the Party shall ensure that the self-regulatory organization observes the obligations of Articles 13.2 and 13.3.

#### ARTICLE 13.13: 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 13.14: RECOGNITION

1. A Party may recognize 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 harmonization 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 13.15: SPECIFIC COMMITMENTS

Annex 13-B sets out certain specific commitments by each Party.

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<sup>8</sup> For greater certainty, an organization is subject to Article 13.12 to the extent that membership or participation in or access to the organization is required to supply a financial service.

#### ARTICLE 13.16: 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 13-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 the dispute settlement procedures in accordance with Article 13.19.
3. The Committee shall meet annually, or as otherwise agreed, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Joint Committee of the results of each of its meetings.

#### ARTICLE 13.17: 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 specified in Annex 13-C.

#### ARTICLE 13.18: DISPUTE SETTLEMENT

1. Section B (Dispute Settlement Proceedings) of Chapter Twenty-Two (Institutional Provisions and Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.
2. When a Party claims that a dispute arises under this Chapter, Article 22.9 (Establishment of Panel) shall apply, except that:
  - (a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and
  - (b) in any other case,
    - (i) each Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 22.9.4, and
    - (ii) if the Party complained against invokes Article 13.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless

the Parties otherwise agree.

3. Financial services panelists shall:
  - (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
  - (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
  - (c) be independent of, and not be affiliated with or take instructions from, a disputing Party; and
  - (d) comply with the code of conduct to be established by the Joint Committee.
4. Notwithstanding Article 22.13 (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 13.19: 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 Eleven (Investment), and the respondent invokes Article 13.10 as a defense, 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 Eleven, submit in writing to the Financial Services Committee a request for a joint determination on the issue of whether and to what extent Article 13.10 is a valid defense 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 Eleven 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 13.18.3(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 conformance with subparagraph (a), the presiding arbitrator has been appointed pursuant to Article 11.19.3 (Selection of Arbitrators), such arbitrator shall be replaced upon the request of either disputing party and the tribunal shall be reconstituted consistent with clause (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 the request of a disputing party, shall appoint the presiding arbitrator consistent with clause (i).
  - (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 13.10 is a valid defense to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for purposes of the arbitration, to take a position on Article 13.10 not inconsistent with that of the respondent.
- (d) The arbitration referred to in subparagraph (a) may proceed with respect to the claim:
- (i) ten days after the date the determination of the Committee has been received by the disputing parties and, if constituted, the tribunal; or
  - (ii) ten 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 13.20: DEFINITIONS

For 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 one Party into the territory of the other Party;
- (b) in the territory of one Party by a person of that Party to a person of the other Party; or
- (c) by a national of one 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 authorized 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,
  - (ii) non-life;
- (b) Reinsurance and retrocession;
- (c) Insurance intermediation, such as brokerage and agency; and
- (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, travelers 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, 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;
  - (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;

**FSS** means the Financial Supervisory Service<sup>9</sup> established under Korea's *Act on the*

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<sup>9</sup> For greater certainty, Korea shall ensure that the FSS complies with Korea's obligations under this Agreement.

*Establishment, etc. of Financial Supervisory Organizations;*

**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 purposes of Chapter Eleven (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 state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person 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; for purposes of Chapter Sixteen (Competition-Related Matters), 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 Party,<sup>10</sup> shall not be considered a designated monopoly or a state enterprise; and

**self-regulatory organization** means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization 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; for purposes of Chapter Sixteen (Competition-Related Matters), a self-regulatory organization shall not be considered a designated monopoly.

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<sup>10</sup> The Korea Deposit Insurance Corporation of Korea and the Federal Deposit Insurance Corporation of the United States shall be deemed to be within the definition of public entity for purposes of Chapter Sixteen (Competition-Related Matters).

**ANNEX 13-A**  
**CROSS-BORDER TRADE**

**UNITED STATES**

*Insurance and insurance-related services*

1. Article 13.5.1 applies 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 13.20 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; and
- (b) reinsurance and retrocession, services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service in Article 13.20, and insurance intermediation such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 13.20.

2. Article 13.5.1 applies 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 13.20 with respect to insurance services.

*Banking and other financial services (excluding insurance)*

3. Article 13.5.1 applies only with respect to:

- (a) the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service in Article 13.20; and
- (b) 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 13.20.

**KOREA**

*Insurance and insurance-related services*

4. Article 13.5.1 applies 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 13.20 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,<sup>11</sup> risk assessment,<sup>12</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 in Article 13.20, of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

5. Article 13.5.1 applies 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 13.20 with respect to services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

*Banking and other financial services (excluding insurance)*

6. Article 13.5.1 applies only with respect to:
- (a) the provision and transfer of financial information;<sup>13</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 13.20, by no later than two years from the date this Agreement enters into force; 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 13.20. 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 Korea<sup>14</sup> only to the extent

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<sup>11</sup> **Consultancy** means activities such as providing advice on corporate strategy formulation, marketing strategy, or product development strategy.

<sup>12</sup> **Risk assessment** means activities such as risk analysis, risk prevention, or expert advice related to difficult or unusual risks.

<sup>13</sup> For greater certainty, “financial information” referred to in paragraph 6(a) does not include general financial or business information that is included within a general circulation publication or provided for a general audience.

<sup>14</sup> As of March 2007, 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

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. Once Korea allows the supply of certain of these services, it may not subsequently prohibit or limit the supply of such services.

**ANNEX 13-B**  
**SPECIFIC COMMITMENTS**

SECTION A: PORTFOLIO MANAGEMENT

*United States*

1. The United States shall allow a financial institution organized 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) trustee services; and
  - (ii) custodial services<sup>15</sup> and execution services, that are not related to managing a collective investment scheme.

2. For greater certainty, paragraph 1 is subject to Articles 13.1 and 13.5.3.

3. For purposes of paragraph 1, **collective investment scheme** means an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*.

*Korea*

4. Korea shall allow a financial institution organized outside its territory to provide investment advice and portfolio management services to the manager of a collective investment scheme located in its territory, provided that the scope of the services does not include:

- (a) trustee services;
- (b) custodial services; and
- (c) execution services that are not related to managing a collective investment scheme.

This paragraph applies to the supply of investment advice or portfolio management services with regard to won-denominated assets only to the extent that Korea allows the supply of these services with respect to such assets. Once Korea allows the supply of certain of these services with regard to Korean won-denominated assets, it may not subsequently prohibit or limit the supply of such services. Korea will consult with the United States with respect to the liberalization of these services no later than two years after the date this Agreement enters into force.

5. For greater certainty, paragraph 4 is subject to Articles 13.1 and 13.5.3.

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<sup>15</sup> Custodial services are included in paragraph 1 only with respect to investments for which the primary market is outside the territory of the United States.

6. For purposes of paragraph 4, **collective investment scheme** means:
- (a) an investment trust reported to the Financial Supervisory Commission (FSC) pursuant to the *Indirect Investment Asset Management Business Act* (IIAMB Act); and
  - (b) an investment company registered with the FSC pursuant to the IIAMB Act.

#### SECTION B: TRANSFER OF INFORMATION

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 this Agreement enters into force.

#### SECTION C: PERFORMANCE OF FUNCTIONS

1. The Parties recognize 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 territory. To the extent practicable, each Party should 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 processing,<sup>16</sup> 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
- (f) legal functions, including the provision of advice and litigation strategy.

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

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<sup>16</sup> To the extent that a Party is obligated under Section B of Annex 13-B to allow the transfer of information outside its territory, that Party shall also allow data processing of that information after the transfer.

3. 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.

#### SECTION D: TRANSPARENCY

The United States welcomes Korea's ongoing initiative to expand and enhance transparency, noting in particular the adoption by the FSS of the *Operational Rule on Administrative Guidance* and the introduction of the no-action letter mechanism. Korea shall, to the extent practicable, continue its existing practice of issuing in writing any administrative guidance to a financial institution or cross-border financial services supplier. At the request of an affected party, Korea shall put any oral administrative guidance provided into writing and post it on a public Internet site. During any review of previously issued administrative guidance, Korea shall provide interested parties an opportunity to comment on that guidance.

#### SECTION E: INSURANCE COMPLAINT METHODS AND PROCEDURES

Each Party should ensure that its system for public disclosure of data on complaints filed with regard to insurance suppliers fairly takes into account the relative size of such suppliers. Each Party shall ensure that aggregate complaint information is provided in a transparent manner, such as in a complaint index ratio format, grade format, or other reasonable format and include well documented definitions and explanations of calculation methodology. Any public disclosure of the number of complaints filed with respect to an insurance supplier should also disclose the number of such complaints that the authorities found to be valid.

#### SECTION F: SECTORAL COOPERATIVES SELLING INSURANCE

1. The regulation of insurance services supplied by a sectoral cooperative should not provide the cooperative a competitive advantage over private suppliers of like insurance services. To the extent practicable, a Party should apply the same rules to services supplied by such cooperatives that it applies to like services supplied by private insurers.

2. To this end, the FSC should exercise regulatory oversight over services supplied by sectoral cooperatives. At a minimum, Korea shall provide that no later than three years after the date this Agreement enters into force, solvency matters related to the sale of insurance by the National Agricultural Cooperative Federation, the National Federation of Fisheries Cooperatives, the Korea Federation of Community Credit Cooperatives, and the National Credit Union Federation of Korea shall be subject to regulation by the FSC.

3. The Insurance Working Group established in Annex 13-C shall address the need for additional steps to achieve the objectives set out in paragraphs 1 and 2.

#### SECTION G: 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 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 H: GOVERNMENT PROCUREMENT

1. Notwithstanding Article 13.1.4, each Party shall apply Articles 13.2. and 13.3 with respect to the acquisition or procurement of the following services to the extent this Chapter applies to measures adopted or maintained by the Party relating to activities or services set out in subparagraphs (a) and (b) of Article 13.1.3:

- (a) services relating to the sale, redemption, and distribution of central government debt;
- (b) services relating to the holding of central government fiscal and depository accounts; and
- (c) services relating to the management of the following assets:
  - (i) in the case of the United States, assets of federal government employees held by the Federal Retirement Thrift Investment Board as a fiduciary; and
  - (ii) in the case of Korea, assets of the Korea Investment Corporation.

2. Korea shall apply Article 13.5.1 with respect to the services described in subparagraph 1(c) (ii) to the extent that the Korea Investment Corporation chooses to acquire or procure those services on a cross-border basis.

#### SECTION I: EXPEDITED AVAILABILITY OF INSURANCE

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers.

##### *Korea*

1. The United States welcomes Korea's plan to adopt policies and procedures based on a negative list approach<sup>17</sup> to the product filing process no later than one year after the date this Agreement enters into force. Korea requires prior product filing before the introduction of a new insurance product except in cases where the product satisfies criteria<sup>18</sup> set forth by the FSC in the *Regulation on Supervision of Insurance Business*. Section 8 of this regulation establishes the review period for products filed with the FSS.

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<sup>17</sup> For purposes of paragraph 1, adoption of a negative list approach in this context means developing a list of specific procedures or products that are subject to product filing. For greater certainty, procedures or products not on the list would not require prior product filing.

<sup>18</sup> The criteria referred to in paragraph 1 include, among others: whether risk rates already reported are used or only minimal adjustments are made from assumed interest rate or cost; whether the premium rate has changed; whether reinsurers' premium rates are used due to a shortage in domestic statistics; whether insurance employs assumed interest rates and its reported risk rates are used without change or with only minimal change; and whether policy certificates or the policy application form is being amended with minimal change.

Korea requires product filing for all Bancassurance products.

*United States*

2. Recognizing the principles of federalism under the U.S. Constitution, the history of state regulation of insurance in the United States, and the *McCarran-Ferguson Act*, the United States welcomes the efforts of the National Association of Insurance Commissioners (NAIC) relating to the availability of insurance services as expressed in the NAIC's "Statement of Intent: The Future of Insurance Regulation," including the initiatives on speed-to-market intentions and regulatory re-engineering provided under Part II of the Statement of Intent.

**ANNEX 13-C**  
**FINANCIAL SERVICES COMMITTEE**

*Authorities Responsible for Financial Services*

1. The authorities responsible for financial services are:
  - (a) for Korea, the Ministry of Finance and Economy; and
  - (b) for the United States, the Department of the Treasury for banking and other financial services and the Office of the United States Trade Representative, in coordination with the Department of Commerce and other agencies, for insurance.

*Elaboration of the Agenda of the Financial Services Committee*

2. The Parties anticipate discussing a range of issues in the Financial Services Committee, including measures adopted or maintained by central and regional levels of government that affect the supply of financial services by financial institutions or financial service suppliers of either Party. Before any meeting of the Committee, the authorities specified in paragraph 1 will provide their counterparts with a list of financial services issues for the Committee's consideration, including any concerns of financial institutions or financial service suppliers that a Party chooses to raise.

*Insurance Working Group*

3. The Parties recognize the importance of discussions between their respective insurance regulatory authorities to further cooperation, coordination, and mutual understanding of issues relating to the supply of insurance in their territories. To this end, the Parties hereby establish an Insurance Working Group comprising relevant officials of each Party's financial services regulatory structure. The Working Group shall address transparency; actions necessary to ensure competitive equality between Korea Post, sectoral cooperatives selling insurance, and private insurers; financial supervision, including regulations at the central and regional levels of government, the development, adoption, and review of changes in policy; the different regulatory structures of the Parties; and other issues of mutual interest. Unless the Parties otherwise agree, the Working Group shall meet once each year after the date this Agreement enters into force, and each Party shall select, the meeting location every other year. The Working Group shall inform the Joint Committee of the results of each meeting in accordance with Article 13.16, unless the Parties otherwise agree.

**ANNEX 13-D**  
**SUPPLY OF INSURANCE BY THE POSTAL SERVICES TO THE PUBLIC**

1. The regulation of insurance services supplied by Korea Post to the public should not accord Korea Post a competitive advantage over private service suppliers of like insurance services in the territory of Korea.
2. To this end, Korea should, to the extent practicable, provide that the FSC exercise regulatory oversight over the insurance services supplied by Korea Post to the public and that those services be subject to the same rules applicable to private suppliers supplying like insurance services in its territory.
3. The letter exchange regarding these services sets out commitments with regard to insurance services supplied by Korea Post to the public.