

CHAPTER TEN FINANCIAL SERVICES

Article 10.1: 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. Chapter Eight (Cross-Border Trade in Services) and Understanding on the Definitions and Obligations Regarding Investment shall apply to the measures described in paragraph 1 only to the extent that the Chapter or Understanding or Articles of the Chapter or Paragraphs of the Understanding are incorporated into this Chapter.

- (a) Paragraphs on Transfers and Denial of Benefits contained in Understanding on the Definitions and Obligations Regarding Investment, and Article 8.11 (Denial of Benefits) are hereby incorporated into and made part of this Chapter.
- (b) Article 8.10 (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 10.5

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 10.2: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords to its own investors, in like circumstances¹, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favourable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For the purposes of the national treatment obligations in Article 10.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 10.3: Most- Favoured -Nation Treatment

Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors 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 10.4: Market Access for Financial Institutions

¹ For greater certainty, whether treatment is accorded in “like circumstances” under Articles 10.2 or 10.3 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

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;² 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 10.5: Cross-Border Trade

1. Each Party shall permit, under the terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 10-A.

2. Each Party shall permit persons located in its territory, and its nationals wherever 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

² Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

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 authorization of cross-border financial service suppliers of the other Party and of financial instruments.

Article 10.6: New Financial Services³

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 10.4(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 10.7: Treatment of Certain Information

Nothing in this Chapter requires a Party to furnish or allow access:

- (a) to 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 a particular person.

Article 10.8: 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.

³ The Parties understand that nothing in Article 10.6 shall prevent 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 laws and regulations of the Party to which the application is made and, for greater certainty, shall not be subject to the obligations of Article 10.6.

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 10.9: Non-Conforming Measures

1. Articles 10.2 through 10.5 and 10.8 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 set out in Annex III; or
 - (ii) 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 immediately before the amendment, with Article 10.2, 10.3, 10.4, or 10.8.⁴
2. Articles 10.2 through 10.5 and 10.8 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by the Party in Section B of its Schedule set out in Annex III.
3. A non-conforming measure set out in an entry in a Party's Schedule set out in Annex I or II as not subject to Article 8.2 (National Treatment), 8.3 (Most-Favored-Nation Treatment), or 8.4 (Market Access), shall be treated as a non-conforming measure not subject to Article 10.2, 10.3, or 10.4, 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 10.10: Exceptions

⁴ For greater certainty, Article 10.5 shall apply to an amendment to any non-conforming measure referred to in subparagraph (a) only to the extent that the amendment decreases the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 10.5

1. Notwithstanding any other provision of this Chapter or Chapter Eleven (Telecommunications), or Chapter Twelve (Digital Trade) 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 reasons⁵, 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 Eleven (Telecommunications), or Chapter Twelve (Digital Trade), with respect to the supply of financial services in the territory of a Party by 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 8.10 (Payments and Transfers) or Paragraph on Transfers contained in Understanding on the Definitions and Obligations Regarding Investment.

3. Notwithstanding Article 8.10 (Payments and Transfers) and Paragraph on Transfers contained in Understanding on the Definitions and Obligations Regarding Investment, 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

⁵ 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.

as covered by this Chapter.

Article 10.11: Transparency and Administration of Certain Measures

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 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 in accordance with its domestic law:

- (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.^{6 7}

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 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 establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding measures of general

⁶ For greater certainty, a Party may consolidate its responses to the comments received from interested persons and publish them in a separate document from the document setting forth the final regulations.

⁷ For greater certainty, the Parties understand that the comments received on the regulations by interested persons are not binding on the competent authority.

application covered by this Chapter.

7. Each Party's competent 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 competent 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 competent 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 competent 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, the competent authority that has denied an application shall, to the extent possible, inform the applicant of the reasons for denial of the application.

Article 10.12: Self-Regulatory Organizations

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 10.2 and 10.3.

Article 10.13: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party 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 10.14: 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 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 10.15: Specific Commitments

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

Article 10.16: Committee on Financial Services

1. The Committee on Financial Services established in accordance with Article 22.3 (Committees and Working Groups) shall comprise officials of each Party responsible for financial services, without prejudice to the participation of other related institutions, as set out in Annex 10-C.

2. The Committee shall:

- (a) supervise the implementation of this Chapter and its further elaboration;
- (b) consider issues regarding financial services that are referred to it by a Party, including ways for the Parties to cooperate more effectively in the financial services sector;
- (c) facilitate the exchange of information between national

supervisory authorities and cooperate in matters of advice on prudential regulation; and

- (d) consider any other issues related to this Chapter as determined by the Joint Committee under this Agreement.

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

Article 10.17: 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 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 10-C.

3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its domestic law regarding sharing of information between financial authorities or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

Article 10.18: Dispute Settlement

1. Chapter Twenty (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 20.7 (Establishment of the Arbitration 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 Article 20.9.5; and

- (ii) if the Party complained against invokes Article 10.10, 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; and
 - (b) meet the qualifications set out in Article 20.9.5.
4. Notwithstanding Article 20.14 (Compensation and Suspension of Benefits in Case of Non-Compliance), 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 10.19: 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 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, traveller's 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; 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 Understanding on the Definitions and Obligations Regarding Investment,

except that, with respect to “loans” and “debt instruments” referred to in that Paragraph:

- (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 if such loan or debt instrument meets the criteria for investments set out in Understanding on the Definitions and Obligations Regarding Investment;

investor of a Party means “investor of a Party” as defined in Understanding on the Definitions and Obligations Regarding Investment;

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 government, a central bank or monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or a private entity, performing functions normally performed by

a central bank or monetary authority, when exercising those functions.;
and

self-regulatory organization means any non-governmental body, including any securities or financial derivatives 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.

Annex 10-A
Cross-Border Trade in Financial Services

Korea

Insurance and insurance-related services

1. Article 10.5.1 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 10.19 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,⁸ risk assessment,⁹ 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 10.19, of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

2. Article 10.5.1 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 10.19 with respect to services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

⁸ Consultancy means activities such as providing advice on corporate strategy formulation, marketing strategy, or product development strategy.

⁹ Risk assessment means activities such as risk analysis, risk prevention, or expert advice related to difficult or unusual risks.

Banking and other financial services (excluding insurance)

3. Article 10.5.1 shall apply only with respect to:

- (a) the provision and transfer of financial information;¹⁰
- (b) the provision and transfer of financial data processing and related software relating to banking and other financial services as referred to in subparagraph (o) of the definition of financial service in Article 10.19¹¹, and
- (c) advisory and other auxiliary services¹², excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service in Article 10.19. This commitment shall apply 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 only to the extent that Korea allows the supply of these services with respect to such assets in its domestic laws and regulations. This commitment shall 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 shall not subsequently prohibit or limit the supply of such services.

¹⁰ For greater certainty, “financial information” referred to in paragraph 3(a) does not include general financial or business information that is included within a general circulation publication or provided for a general audience.

¹¹ Korea’s commitment is subject to prior approval with certain considerations such as the protection of sensitive information of consumers, prohibitions on unauthorized reuse of sensitive information, the ability of financial regulators to have access to records of financial institutions relating to the handling of such information, and requirements for the location of technology facilities.

¹² It is understood that advisory services include portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

Ecuador

Insurance and insurance-related services

1. Article 10.5.1 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 10.19 with respect to:

- (a) insurance of risks relating to:
 - (i) international maritime shipping, international 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) consultancy, actuarial, risk assessment, and claim settlement services, related to services listed in subparagraph (a), as long as they are qualified by the supervisory authority;
- (d) insurance intermediation related to services listed in subparagraphs (a) and (b).

Banking and other financial services (excluding insurance)

2. Article 10.5.1 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 10.19 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 10.19, subject to prior authorization from the supervisory authority, when required; and
- (b) advisory and other auxiliary services, excluding intermediation and credit reference and analysis, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service in Article 10.19.

Annex 10-B

Specific Commitments

Section A: Supervisory Cooperation

The Parties support the efforts of their respective financial competent authorities to provide assistance to the authorities of the other Party to enhance consumer protection and those authorities' ability to prevent, detect, and prosecute unfair and deceptive practices. Each Party confirms that its financial competent authorities have the legal authority to exchange information in support of those efforts. The Parties shall encourage financial competent authorities 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 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 if such processing is required in the institution's ordinary course of business. Nothing in this Section restricts the right of a Party to adopt or maintain measures to:

- (a) protect personal data, personal privacy and the confidentiality of individual records and accounts; or
- (b) require a financial institution to obtain prior authorization from the authority to designate a particular enterprise as a recipient of such information, based on prudential considerations,

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

Section C: Government Sponsored Policy Implementing Entities

The Parties confirm that the government sponsored policy implementing entities shall not be considered as financial service suppliers for the purposes of this Chapter.

Annex 10-C
Committee On Financial Services

The authorities responsible for financial services are:

- (a) for Korea, the Financial Services Commission and the Ministry of Industry, Trade and Energy or their successors; and
- (b) for Ecuador, the Financial Policy and Regulation Board and the Ministry of Production, Foreign Trade, Investments and Fisheries.

Understanding on the Definitions and Obligations Regarding Investment

The understanding was reached between the delegations of Korea and Ecuador, during the course of negotiations, on the need for the following definitions and obligations regarding investment in this Agreement.

For the purpose of Chapter One (Initial Provisions and General Definitions) and Chapter Ten (Financial Services);

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;¹³
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;^{14 15} and

¹³ Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

¹⁴ Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

¹⁵ The term “investment” does not include an order or judgment entered in a judicial or administrative action.

- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.¹⁶

investment does not mean:

- (a) public debt operation¹⁷; or
- (b) a claim to payment that arises solely from the commercial sale of goods and services, unless it is a loan that has the characteristics of an investment.

investor of a non-Party means, with respect to a Party, an investor that attempts to make¹⁸, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise 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;

For the purpose of Chapter Ten (Financial Services);

Transfers¹⁹

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

- (a) contributions to capital, including the initial contribution;

¹⁶ For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

¹⁷ Notwithstanding, public debt operations are subject to non-discriminatory treatment.

¹⁸ For greater certainty, the Parties understand that, for purposes of the definitions of “investor of a non-Party” and “investor of a Party,” an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channeling resources or capital in order to set up a business, or applying for a permit or license.

¹⁹ For greater certainty, Annex 8-A (Transfers) applies to this Paragraph.

- (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
 - (c) interest, royalty payments, management fees, and technical assistance and other fees;
 - (d) payments made under a contract, including a loan agreement;
 - (e) payments arising out of a dispute.
2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party.
4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:
- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
 - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
 - (c) criminal or penal offenses;
 - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
 - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

- (a) does not maintain normal economic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the other Party's request.

This Understanding shall constitute an integral part of this Agreement.