

Annex 8-A

Financial Services

Definitions

1. For purposes of this Annex:

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 service means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities:

- (a) Insurance and insurance-related services:
 - (i) direct insurance (including co-insurance):
 - (A) life;
 - (B) non-life;
 - (ii) reinsurance and retrocession;
 - (iii) insurance intermediation, such as brokerage and agency; and
 - (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and
- (b) Banking and other financial services (excluding insurance):
 - (i) acceptance of deposits and other repayable funds from the public;
 - (ii) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;
 - (iii) financial leasing;
 - (iv) all payment and money transmission services, including credit, charge and debit cards, travelers checks and bankers drafts;

- (v) guarantees and commitments;
- (vi) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (A) money market instruments (including checks, bills and certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (E) transferable securities; and
 - (F) other negotiable instruments and financial assets, including bullion;
- (vii) 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;
- (viii) money broking;
- (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (x) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (xi) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (xii) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (i) through (xi), including credit reference and analysis, investment and portfolio research and advice, advice

on acquisitions and on corporate restructuring and strategy;

financial service supplier means any natural person or juridical person of a Party that seeks to supply or supplies financial services and does not include a public entity;

new financial service means a service of a financial nature, including services related to existing and new products, that is not supplied by any financial service supplier in the territory of a Party, but which is supplied in the territory of the other Party; and

public entity means:

- (a) a government, a central bank or a 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
- (b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

Scope

2. This Annex shall apply to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as indicated in the definition of **trade in services** in Article 8.1.

3. For purposes of the definition of **services** as set out in Article 8.1, **services supplied in the exercise of governmental authority** means the following:

- (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (b) activities forming part of a statutory system of social security or public retirement plans; and
- (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

4. For purposes of the definition of **services** as set out in Article 8.1, if a Party allows any of the activities referred to in paragraphs 3(b) or 3(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, **services** shall include such activities.

5. **A service supplied in the exercise of governmental authority** as defined in Article 8.1 shall not apply to services covered by this Annex.

Prudential Carve-out

6. Any measure which is applied to financial service suppliers established in a Party's territory that are not regulated and supervised by the financial supervisory authority of that Party would be deemed to be a prudential measure for purposes of this Agreement. For greater certainty, any such measure shall be taken in line with paragraphs 7 through 10.

7. Each Party may adopt or maintain measures for prudential reasons¹, including:

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; and
- (b) ensuring the integrity and stability of the Party's financial system.

8. These measures shall not be more burdensome than necessary to achieve their aim, and where they do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding each Party's commitments or obligations under such provisions.

9. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

10. 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.

Transparency

¹ It is understood that the term "prudential reasons" may include the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers.

11. The Parties recognize that transparent regulations and policies governing the activities of financial service suppliers are important in facilitating access of foreign financial service suppliers to, and their operations in, each other's markets. Each Party commits to promoting regulatory transparency in financial services.

Self-Regulatory Organizations

12. When a Party requires membership or participation in, or access to, any self-regulatory organizations, securities or futures exchange or market, clearing agency or any other organization or association, in order for financial service suppliers of the other Party to supply financial services on an equal basis to financial service suppliers of the Party, or when the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Article 8.4 by such self-regulatory organization.

Payment and Clearing Systems

13. Under terms and conditions that accord national treatment, each Party shall grant financial service suppliers 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 paragraph is not intended to confer access to the Party's lender of last resort facilities.

*New Financial Services*²³

14. Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service that the Party would permit its own financial service suppliers to supply, in like circumstances, under its domestic law, provided that the introduction of the new financial services does not require a new law or modification of an existing law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for

² The Parties understand that nothing in this paragraph shall prevent a financial service supplier 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 this paragraph.

³ For purposes of this paragraph, each Party acknowledges that the term **financial service** as defined in paragraph 1, can be broadly interpreted and that numerous financial services are capable of being offered or supplied in various forms. The Parties note that the term **financial service** as defined in paragraph 1, is comprehensive enough to include, according to paragraph 1, Shariah-compliant financial services. For greater certainty, it is understood that Shariah-compliant financial services are considered one of new financial services under this paragraph for Korea.

the provision of the service. Where such authorization is required, a decision shall be made within a reasonable period of time.

Treatment of Certain Information

15. Nothing in this Chapter requires a Party to furnish or allow access to information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers.

Transfer of information

16. Without prejudice to its commitments under this Agreement, neither Party shall take measures that prevent transfers of information into or out of its territory or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements to which all Parties are party, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier of the other Party.

17. Nothing in paragraph 16 restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Chapter.

18. Nothing in paragraph 16 shall prevent a Party from adopting or maintaining any measure inconsistent with paragraph 16 that it considers necessary to achieve a legitimate public policy objective.

Recognition

19. Where a Party recognizes, by agreement or arrangement, prudential measures of a non-Party in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for the other Party to negotiate its accession to such an agreement or arrangement, or to negotiate a comparable agreement or arrangement with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords such recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

Consultations

20. 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.

21. Consultations under paragraph 20 shall include officials of relevant authorities.