

**AGREEMENT ON TRADE IN SERVICES  
UNDER THE FRAMEWORK AGREEMENT  
ESTABLISHING A FREE TRADE AREA  
BETWEEN THE REPUBLIC OF KOREA  
AND THE REPUBLIC OF TURKEY**

## **PREAMBLE**

The Republic of Korea and the Republic of Turkey (hereinafter referred to as “the Parties” or “Korea” or “Turkey”, where appropriate);

**RECALLING** the Framework Agreement Establishing a Free Trade Area between the Republic of Korea and the Republic of Turkey (hereinafter referred to as “Framework Agreement”) entered into force on the 1<sup>st</sup> day of May 2013;

**FURTHER RECALLING** Articles 1.4 (Relation with Other Agreements) and 1.5 (Liberalization) of the Framework Agreement, which reflect their commitment to establish the Korea-Turkey Free Trade Area covering trade in services;

**NOTING** the objectives of the Korea-Turkey FTA set out in the Framework Agreement to gradually liberalize trade in services between the Parties, in conformity with Article V of *General Agreement on Trade in Services (GATS)*; and

**STRIVING TO** enhance bilateral cooperation in services in order to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the Parties;

**HAVE AGREED** as follows:

## CHAPTER 1 TRADE IN SERVICES

### ARTICLE 1.1: OBJECTIVE AND SCOPE

1. The Parties, reaffirming their respective rights and obligations under the WTO Agreement, hereby lay down the necessary arrangements for progressive reciprocal liberalization of trade in services.

2. For the purposes of this Chapter, **trade in services** is defined as the supply of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party to a service consumer of the other Party;
- (c) by a service supplier of a Party, through commercial presence in the territory of the other Party; and
- (d) by a service supplier of a Party through presence of natural persons of that Party in the territory of the other Party.

3. This Chapter shall apply to measures by Parties affecting trade in services with the exception of:

- (a) national maritime cabotage; and
- (b) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services; and
  - (iii) computer reservation system (hereinafter referred to as “CRS”) services.

4. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement.

5. This Chapter shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.<sup>1</sup>

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<sup>1</sup> The Parties shall review the issue of disciplines on subsidies related to trade in services in the context of the review of this Chapter in accordance with Article 7.4 (Amendments) of the Framework Agreement with a view to incorporating any disciplines agreed under Article XV of the GATS.

6. Nothing in this Chapter shall be construed to limit the Parties' right to regulate or to introduce new regulations to meet legitimate policy objectives.

#### ARTICLE 1.2: DEFINITIONS

1. For the purposes of this Chapter:

- (a) **services** includes any service in any sector except a service supplied in the exercise of governmental authority;
- (b) **services supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;
- (c) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (d) **measures by Parties** means measures taken by:
  - (i) central, regional or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (e) **measures by Parties affecting trade in services** include measures relating to:
  - (i) the production, distribution, marketing, sale and delivery of a service;
  - (ii) the purchase, payment or use of a service;
  - (iii) the access to and use of, in connection with the supply of a service, networks or services which are required by the Parties to be offered to the public generally; and
  - (iv) the presence in a Party's territory of a service supplier of the other Party;
- (f) **service supplier** means any person that supplies or seeks to supply a service;
- (g) **service consumer** means any person that receives or uses a service;
- (h) **person** means either a natural person or a juridical person;
- (i) **natural person** means a national of either Party according to its

respective legislation;

- (j) **juridical person** means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (k) **juridical person of a Party** means:
  - (i) a juridical person set up in accordance with the laws of either Party respectively, and having its registered office, central administration<sup>2</sup> or principal place of business in the respective territories of the Parties. Should the juridical person have only its registered office or central administration in the territory of either Party, it shall not be considered as a juridical person of either Party respectively, unless it engages in substantive business operations in the respective territory of the Parties; or
  - (ii) in the case of the supply of a service through commercial presence, a juridical person owned or controlled by natural persons of Korea or of Turkey respectively, or by a juridical person of Korea or of Turkey identified under subparagraph (i) respectively.

A juridical person is:

- (i) **owned** by persons of Korea or of Turkey if more than 50 per cent of the equity interest in it is beneficially owned by persons of Korea or of Turkey respectively;
  - (ii) **controlled** by persons of Korea or of Turkey if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
  - (iii) **affiliated** with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (l) **commercial presence** means any type of business or professional establishment, including through:
    - (i) the constitution, acquisition or maintenance of a juridical person; or
    - (ii) the creation or maintenance of a branch or a representative office,

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<sup>2</sup> **Central administration** means the head office where ultimate decision-making takes place.

within the territory of a Party for the purpose of supplying a service;

- (m) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;
- (n) **CRS services** means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (o) **selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services, nor the applicable conditions;
- (p) **economic integration agreement** means an agreement substantially liberalizing trade in services pursuant to the WTO Agreement, in particular Articles V and V *bis* of *General Agreement on Trade in Services (GATS)*;
- (q) **direct taxes** comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation; and
- (r) **Framework Agreement** means the Framework Agreement Establishing a Free Trade Area between the Republic of Korea and the Republic of Turkey.

2. The definitions contained in Article 1.3 (General Definitions) of the Framework Agreement shall apply for the purposes of this Agreement.

#### ARTICLE 1.3: COMMITTEE ON TRADE IN SERVICES

1. The Parties hereby establish the Committee on Trade in Services pursuant to Article 7.2 (Committees and Working Groups) of the Framework Agreement, which shall comprise representatives of the Parties. The principal representative of the Parties for the Committee shall be an official of its authority responsible for the implementation of this Agreement.

2. The Committee shall:

- (a) supervise and assess the implementation of this Agreement;

- (b) consider issues regarding this Agreement that are referred to it by a Party; and
- (c) provide opportunities for relevant authorities to exchange information on prudential measures with respect to paragraph 10 (Recognition) in Annex C (Financial Services).

#### ARTICLE 1.4: MARKET ACCESS

1. With respect to market access through the modes of supply identified in paragraph 2 of Article 1.1 (Objective and Scope), each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex D (Schedule of Specific Commitments).

2. In sectors where market access commitments are undertaken, the measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex D (Schedule of Specific Commitments), are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>3</sup>
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentages limit on foreign shareholding or the total value of individual or aggregate foreign investment.

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<sup>3</sup> This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

#### ARTICLE 1.5: NATIONAL TREATMENT

1. In the sectors where market access commitments are inscribed in Annex D (Schedule of Specific Commitments), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of services or service suppliers of a Party compared to like services or service suppliers of the other Party.
4. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

#### ARTICLE 1.6: SCHEDULE OF SPECIFIC COMMITMENTS

1. The sectors liberalized by each Party pursuant to this Agreement and, by means of reservations, the market access and national treatment limitations applicable to services and service suppliers of the other Party in those sectors are set out in the schedules of specific commitments included in Annex D (Schedule of Specific Commitments).
2. Neither Party shall adopt new, or more discriminatory measures with regard to services or service suppliers of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.
3. With respect to sectors where specific commitments are undertaken, the schedule of each Party shall specify:
  - (a) terms, limitations and conditions on market access;
  - (b) conditions and qualifications on national treatment;
  - (c) undertakings relating to additional commitments;
  - (d) where appropriate, the time-frame for implementation of such commitments; and
  - (e) the date of entry into force of such commitments.
4. Measures inconsistent with both Articles 1.4 (Market Access) and 1.5 (National Treatment) shall be inscribed in the column relating to Article 1.4 (Market



Access). In this case, the inscription will be considered to provide a condition or qualification to Article 1.5 (National Treatment) as well.

#### ARTICLE 1.7: MFN TREATMENT<sup>4</sup> AND FUTURE LIBERALIZATION

1. With respect to any measure affecting the supply of services, unless otherwise provided for in this Article, each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords to like services and service suppliers of a non-Party.

2. Treatment arising from an economic integration agreement concluded by one of the Parties and notified under Article V or Article V *bis.* of the GATS shall be excluded from the obligation in paragraph 1.

3. If, after the entry into force of this Agreement, a Party concludes an agreement of the type referred to in paragraph 2 or any agreement on trade in services with a non-Party, the other Party may request consultations with the Party for the incorporation herein of treatment no less favorable than that provided under the aforesaid agreement. On such a request, the Parties shall promptly enter into consultations.

4. Notwithstanding paragraph 3, if, after the entry into force of this Agreement, Turkey concludes any agreement on trade in services adopting the negative list approach with a non-Party, Korea may request Turkey to initiate negotiations, based on a negative list approach, to convert this Agreement and the Agreement on Investment including their respective schedules of commitments into an Agreement or Agreements, for Trade in Services, covering all modes of service supply except through commercial presence and for Investment, covering all kinds of investment, and their combined schedules of reservations.

(a) on such request, the Parties shall enter into negotiations with a goal of concluding the negotiations within a reasonable period of time.<sup>5</sup>

(b) in the context of such negotiations, the Parties shall not decrease the level of liberalization commitments of this Agreement.

5. Notwithstanding paragraph 2, the obligations arising from paragraph 1 shall not apply to treatment granted:

(a) under measures providing for recognition of qualifications, licenses or prudential measures in accordance with Article VII of GATS or its Annex on Financial Services; or

(b) under any international agreement or arrangement relating wholly or mainly to taxation.

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<sup>4</sup> Nothing in this Article shall be interpreted as extending the scope of this Agreement.

<sup>5</sup> Neither Party shall have recourse to Chapter 6 (Dispute Settlement) of the Framework Agreement for any matter under this paragraph.

6. This Agreement shall not be so construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zone of services that are both locally produced and consumed.

#### ARTICLE 1.8: TRANSPARENCY AND CONFIDENTIAL INFORMATION

1. The Parties, through the mechanisms established pursuant to Chapter 4 (Transparency) of the Framework Agreement, shall respond promptly to all requests by the other Party for specific information:

- (a) on international agreements or arrangements, including on mutual recognition, which pertain to or affect matters falling under this Agreement; and
- (b) on standards and criteria for licensing and certification of service suppliers, including information concerning the appropriate regulatory or other body to consult regarding such standards and criteria. Such standards and criteria include requirements regarding education, examination, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge and consumer protection.

2. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interests, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

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

4. 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.

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

6. A Party's regulatory authority shall make an administrative decision on a completed application of a service supplier of the other Party relating to the supply of a 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 possible for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable period of time thereafter.

## ARTICLE 1.9: DOMESTIC REGULATION

1. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

2. (a) Each Party shall institute or maintain as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting supply of services, or temporary presence of natural persons for business purpose. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Parties shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of subparagraph 2 (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, while recognizing the right to regulate and to introduce new regulations on the supply of services in order to meet public policy objectives, each Party shall endeavor to ensure, as appropriate for individual sectors, that such measures are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) in the case of licensing procedures, not in themselves a restriction on the supply of the service; and

(c) not more burdensome than necessary to ensure the quality of the service.

4. This Article shall be amended, as appropriate, after consultations between the Parties, to bring under this Agreement the results of the negotiations pursuant to paragraph 4 of Article VI of GATS or the results of any similar negotiations undertaken in other multilateral fora in which both Parties participate once they become effective.

## ARTICLE 1.10: MUTUAL RECOGNITION

1. Nothing in this Agreement shall prevent a Party from requiring that natural persons possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. The Parties shall encourage the relevant representative professional bodies in their respective territories to jointly develop and provide recommendations on mutual recognition to the Joint Committee, for the purpose of the fulfilment, in whole or in part, by service suppliers, of the criteria applied by each Party for the authorization, licensing, operation and certification of service suppliers, in particular, professional services, including temporary licensing.

3. On receipt of a recommendation referred to in paragraph 2, the Joint Committee shall, within a reasonable period of time, review the recommendation with a view to determining whether it is consistent with this Agreement.

4. When, in conformity with the procedure set out in paragraph 3, a recommendation referred to in paragraph 2 has been found to be consistent with this Agreement and there is a sufficient level of correspondence between the relevant regulations of the Parties, the Parties shall, with a view to implementing that recommendation, negotiate, through their competent authorities, an agreement on mutual recognition (hereinafter referred to as an "MRA") of requirements, qualifications, licenses and other regulations.

5. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

6. The Working Group on MRA to be established pursuant to Article 7.2 (Committees and Working Groups) of the Framework Agreement shall operate under the Joint Committee and shall comprise representatives of the Parties. With a view to facilitating the activities of paragraph 2, the Working Group shall meet within a reasonable period of time after the entry into force of this Agreement.

- (a) The Working Group should consider, for services generally, and as appropriate for individual services, the following matters:
  - (i) procedures for encouraging the relevant representative bodies in their respective territories to consider their interest in mutual recognition; and
  - (ii) procedures for fostering the development of recommendations on mutual recognition by the relevant representative bodies; and
- (b) The Working Group shall function as a contact point for issues relating to mutual recognition raised by relevant professional bodies of either Party.

#### ARTICLE 1.11: PAYMENTS AND TRANSFERS<sup>6</sup>

1. Each Party shall permit all transfers and payments relating to supply of services through the modes of supply defined in paragraph 2 (a), (b) and (d) of Article 1.1 (Objective and Scope) to be made freely and without delay into and out of its territory.
2. Each Party shall permit the transfers and payments referred to in paragraph 1 to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Notwithstanding paragraph 1 and 2, a Party may prevent or delay a transfer or payment 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) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
  - (d) criminal or penal offences; or
  - (e) ensuring compliance with the orders or judgments in judicial or administrative proceedings.

#### ARTICLE 1.12: RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may adopt or maintain restrictions on trade in services in accordance with Article XII of the GATS.
2. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the Joint Committee.

#### ARTICLE 1.13: EMERGENCY SAFEGUARD MEASURES

The Parties take note of the multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination pursuant to Article X of the GATS. Upon conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Chapter based on the results of such multilateral negotiations.

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<sup>6</sup> For greater certainty, Annex C (Temporary Safeguard Measures) in the Agreement on Investment under the Framework Agreement applies to Article 1.11 (Payments and Transfers) of this Agreement.

#### ARTICLE 1.14: REVIEW OF COMMITMENTS

1. With the objective of further liberalization of trade in services between them, the Parties commit themselves to review every two years, or otherwise as the Parties agree, their schedules of specific commitments. The first review shall take place no later than three years after the entry into force of this Agreement.
2. The Joint Committee shall adopt the results of the reviews, which shall be conducted by the Committee on Trade in Services.

#### ARTICLE 1.15: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Agreement to a service supplier of the other Party that is a juridical person of such other Party if the juridical person has no substantial business activities in the territory of the such other Party under whose law it is constituted or organized, and persons of a non-Party or of the denying Party, own or control the juridical person.
2. 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 request of the other Party.

#### ARTICLE 1.16: EXCEPTIONS

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on supply of services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order<sup>7</sup>;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
  - (iii) safety; or

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<sup>7</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (d) inconsistent with Article 1.5 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>8</sup> imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

#### ARTICLE 1.17: SECURITY EXCEPTIONS

Article 8.3 (Security Exceptions) of the Framework Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

#### ARTICLE 1.18: AUDIO VISUAL CO-PRODUCTION

1. Recognizing that audio-visual co-productions in the areas including film, animation and broadcasting program can significantly contribute to the development of audio-visual industry and to an intensification of cultural and economic exchange and understanding between them, the Parties agree to consider and negotiate co-production agreement in the audio-visual sector.

2. The co-production agreement in accordance with paragraph 1, after its entry into force, shall become an integral part of this Agreement. The detailed co-production agreement would be negotiated between the competent authorities of the Parties, which are the Ministry of Culture, Sports and Tourism and the Korea Communications Commission for Korea and the Ministry of Culture and Tourism for Turkey; or their successors.

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<sup>8</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (a) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;
- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
- (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
- (d) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
- (e) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in this paragraph and this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the law of the Party taking the measure.

## CHAPTER 2 ELECTRONIC COMMERCE

### ARTICLE 2.1: GENERAL PROVISION

The Parties, recognizing the economic growth and trade opportunities that electronic commerce provides, and the importance of avoiding barriers to its use and development agree to promote the development of electronic commerce between them, in particular by co-operating on the issues raised by electronic commerce under this Chapter.

### ARTICLE 2.2: DEFINITIONS

For the purposes of this Chapter:

**electronic authentication** means the process or act of establishing the identity of a Party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

**electronic signature** means data in electronic form that is in, affixed to, or logically associated with, an electronic document, and that may be used to identify the signatory in relation to the electronic document and indicate the signatory's approval of the information contained in the electronic document;

**electronic transmissions**<sup>9</sup> means transmissions made using any electromagnetic or photonic means;

**personal data** means any information about an identified or identifiable individual;

**trade administration documents** means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods; and

**unsolicited commercial electronic message** means an electronic message (including a voice service)<sup>10</sup> which is sent for commercial purposes to an electronic address without the consent of the recipient or against the explicit rejection of the recipient, using an internet carriage service or other telecommunications service.

### ARTICLE 2.3: ELECTRONIC SUPPLY OF SERVICES

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter 1 (Trade in Services), which are subject to any limitations,

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<sup>9</sup> The definition of electronic transmissions should not be understood to reflect a Party's view on whether trade in electronic transmissions should be categorized as trade in services or trade in goods.

<sup>10</sup> An electronic message may include a fax message.



conditions, qualifications or exceptions set out in Annex D (Schedule of Specific Commitments) that are applicable to such obligations.

#### ARTICLE 2.4: CUSTOMS DUTIES

1. The Parties agree not to impose customs duties on electronic transmissions between Parties.
2. Paragraph 1 shall not preclude a Party from imposing internal taxes or other internal charges on electronic transmissions provided that the taxes or charges are imposed in a manner consistent with this Agreement.

#### ARTICLE 2.5: ELECTRONIC AUTHENTICATION AND ELECTRONIC SIGNATURES

1. Neither Party shall adopt or maintain legislation for electronic authentication that would:
  - (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction;
  - (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication; or
  - (c) deny a signature legal validity solely on the basis that the signature is in electronic form.
2. Notwithstanding paragraph 1, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited or supervised in accordance with the Party's law, provided that the requirement:
  - (a) serves a legitimate governmental objective; and
  - (b) is substantially related to achieving that objective.

#### ARTICLE 2.6: ONLINE CONSUMER PROTECTION

1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.
2. The Parties recognize the importance of cooperation between their respective national consumer protection agencies on activities related to cross-border electronic commerce in order to enhance consumer welfare.

3. Each Party's national consumer protection enforcement agencies shall endeavor to cooperate with those of the other Party, in appropriate cases of mutual concern, in the enforcement of their respective laws related to consumer protection in order to prevent or detain fraudulent and deceptive commercial practices in electronic commerce.

#### ARTICLE 2.7: ONLINE PERSONAL DATA PROTECTION

The Parties agree that the development of electronic commerce must be fully compatible with the international standards of data protection, in order to ensure the confidence of users of electronic commerce.

#### ARTICLE 2.8: PAPERLESS TRADING

1. Each Party shall endeavor to make trade administration documents available to the public in electronic form.
2. Each Party shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.
3. Each Party shall endeavor to encourage their relevant public and private entities to cooperate on the activities related to paperless trading.

#### ARTICLE 2.9: CO-OPERATION ON REGULATORY ISSUES

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will, *inter alia*, address the following issues:
  - (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
  - (b) the liability of intermediary service providers with respect to the transmission or storage of information;
  - (c) the treatment of unsolicited commercial electronic messages; and
  - (d) any other issues relevant for the development of electronic commerce.
2. The dialogue can include exchange of information on the Parties' respective legislation on these issues as well as on the implementation of such legislation.

## **CHAPTER 3**

### **FINAL PROVISIONS**

#### **ARTICLE 3.1: ENTRY INTO FORCE**

1. This Agreement shall be approved by the Parties in accordance with their own procedures.
2. This Agreement shall enter into force on the first day of the second month, following the date of the exchange of the written notifications through diplomatic channels, by which the Parties inform each other that all necessary requirements foreseen by their domestic legislation for the entry into force of this Agreement have been fulfilled, or on such other date as the Parties may agree.

#### **ARTICLE 3.2: DURATION**

1. This Agreement shall be valid indefinitely.
2. Either Party may notify in writing the other Party of its intention to denounce this Agreement.
3. The denunciation shall take effect six months after the notification under paragraph 2.

#### **ARTICLE 3.3: AMENDMENTS**

The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, or on such other date as the Parties may agree.

#### **ARTICLE 3.4: ANNEXES**

The Annexes to this Agreement shall form an integral part thereof.

#### **ARTICLE 3.5: AUTHENTIC TEXTS**

This Agreement is drawn up in duplicate in the Korean, Turkish and English languages, each of these texts being equally authentic. In case of divergence, the English text shall prevail.

#### ARTICLE 3.6: RELATION WITH OTHER AGREEMENTS

The Parties confirm their rights and obligations under the WTO Agreement and under any other international agreement to which they are a Party.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Agreement on Trade in Services under the Framework Agreement.

DONE at Seoul, Republic of Korea, in duplicate, this twenty sixth day of February two thousand and fifteen.

**For the Government of the  
Republic of Korea**

**For the Government of the  
Republic of Turkey**

## ANNEX A

### TEMPORARY MOVEMENT OF NATURAL PERSONS FOR THE PURPOSE OF SUPPLYING SERVICES

#### 1. *OBJECTIVES AND SCOPE*

- (a) This Annex reflects the common objective of the Parties to facilitate the entry and temporary stay of natural persons for the purpose of supplying services, and the need of establishing transparent, secure, effective and comprehensive information and procedures for entry and temporary stay.
- (b) This Annex sets the reciprocal obligations of the Parties concerning the entry into and temporary stay in their respective territories of key personnel, graduate trainees, business service sellers, contractual service suppliers and independent professionals of the other Party, in respect of supply of a service through presence of natural persons of a Party in the territory of the other Party. Nothing in this Annex prevents the Parties from assuming commitments concerning the entry into and temporary stay in their respective territories of any other category of natural persons in their schedules of specific commitments.
- (c) This Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
- (d) Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment in Annex D (Schedule of Specific Commitments).<sup>11</sup>

#### 2. *DEFINITIONS*

For the purposes of this Annex;

- (a) **business service sellers** means natural persons who are representatives of a service supplier of a Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into contracts to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party.

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<sup>11</sup> The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under the terms of a specific commitment in Annex D (Schedule of Specific Commitments).

- (b) **contractual service suppliers** means natural persons employed by a juridical person of a Party which has no commercial presence in the territory of the other Party and which has concluded a *bona fide* contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to supply services;<sup>12</sup>
- (c) **graduate trainees** means natural persons who have been employed by a juridical person of a Party for at least one year, who possess a university degree and who are temporarily transferred to a commercial presence of that juridical person in the territory of the other Party for career development purposes or to obtain training in business techniques or methods;<sup>13</sup>
- (d) **independent professionals** means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no commercial presence in the territory of the other Party and who have concluded a *bona fide* contract to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to supply services;<sup>14</sup>
- (e) **key personnel** means natural persons employed within a juridical person of a Party other than a non-profit organization and who are responsible for the setting up or the proper control, administration and operation of a commercial presence of that juridical person in the territory of the other Party. Key personnel comprises business visitors responsible for setting up a commercial presence of a service supplier of a Party and intra-corporate transferees:
- (i) **business visitors** means natural persons working in a senior position within a juridical person of a Party who are responsible for setting up a commercial presence of a service supplier of a Party in the territory of the other Party. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party; and
- (ii) **intra-corporate transferees** means natural persons who have been employed by a juridical person of a Party or have been partners in it (other than as majority shareholders) for at least one year and who are temporarily transferred to a commercial presence of that juridical person including subsidiaries, affiliates or branches in the territory of the other Party. The natural person concerned shall belong to one of the following categories.

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<sup>12</sup> The service contract referred to under this subparagraph shall comply with the laws, regulations and requirements of the Party where the contract is executed.

<sup>13</sup> The recipient commercial presence may be required to submit a training program covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training corresponding to the level of a university degree.

<sup>14</sup> The service contract referred to under this subparagraph shall comply with the laws, regulations and requirements of the Party where the contract is executed.

### *Managers*

Natural persons working in a senior position within a juridical person, who primarily direct the management of the juridical person receiving general supervision or direction principally from the board of directors or shareholders of the business or their equivalents, including:

- (A) directing the juridical person or a department or sub-division thereof;
- (B) supervising and controlling the work of other supervisory, professional or managerial employees; and
- (C) having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions.

### *Specialists*

Natural persons working within a juridical person, who possess uncommon knowledge essential to the juridical person's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the juridical person, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

## *3. KEY PERSONNEL AND GRADUATE TRAINEES*

- (a) For every sector where supply of services through commercial presence is liberalized in accordance with this Agreement and subject to any limitations, conditions and qualifications listed in Annex D (Schedule of Specific Commitments), each Party shall allow service suppliers of the other Party to transfer natural persons of that other Party to their commercial presence, including subsidiaries, affiliates or branches in the territory of the other Party, provided that such employees are key personnel or graduate trainees as defined in paragraph 2.
- (b) The temporary entry and stay of key personnel and graduate trainees shall be permitted, in accordance with respective laws, regulations and requirements of the Parties, for a period of up to one year<sup>15</sup> for intra-corporate transferees and graduate trainees, and 90 days for each entry<sup>16</sup> for business visitors.

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<sup>15</sup> A Party may authorize an extension for the period allowed in conformity with its domestic law.

<sup>16</sup> Due to Turkey's commitment to align its visa regulation with that of the Schengen system as part of its accession process to the EU, the period of "90 days" referred in this paragraph shall be reviewed by the Parties provided either that the provisions of the bilateral visa exemption agreement between Korea and Turkey dated April 3, 1972, regarding the period of stay without visa are revised or that Turkey accedes to the Schengen Convention and has to amend the provision of "90 days" stipulated in this paragraph.



#### 4. *BUSINESS SERVICE SELLERS*

For every sector where supply of services is liberalized in accordance with this Agreement, and subject to any limitations, conditions and qualifications listed in Annex D (Schedule of Specific Commitments), each Party shall allow, in accordance with its laws, regulations and requirements, the temporary entry and stay of business service sellers for a period of up to 90 days for each entry.<sup>17</sup>

#### 5. *CONTRACTUAL SERVICE SUPPLIERS AND INDEPENDENT PROFESSIONALS*

No later than five years after the entry into force of this Agreement, the Parties shall consider negotiating commitments concerning the access of contractual service suppliers and independent professionals of a Party to the territory of the other Party, by taking into account the results of negotiations pursuant to Article XIX of GATS and to the *Ministerial Declaration of the WTO Ministerial Conference* adopted on November 14, 2001.

#### 6. *PROVISION OF INFORMATION*

- (a) For the purposes of this Annex, each Party shall ensure that its competent authorities make publicly available the information necessary for an effective application of the grant of authorizations for the entry into and temporary stay in its territory. Such information shall be kept updated.
- (b) Information referred to in subparagraph (a) shall include descriptions of, in particular:
  - (i) all categories of authorization and permits relevant to the entry and temporary stay of natural persons covered by this Annex;
  - (ii) requirements and procedures for application for, and issuance of, first-time entry and temporary stay, including conditions to be met and method of filing; and
  - (iii) requirements and procedures for application for, and issuance of, renewal of entry and temporary stay authorization and permits.
- (c) Each Party shall provide the other Party with details of relevant publications or web-sites where information referred to in subparagraph (b) is made available.

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<sup>17</sup> Due to Turkey's commitment to align its visa regulation with that of the Schengen system as part of its accession process to the EU, the period of "90 days" referred in this paragraph shall be reviewed by the Parties provided either that the provisions of the bilateral visa exemption agreement between Korea and Turkey dated April 3, 1972, regarding the period of stay without visa are revised or that Turkey accedes to the Schengen Convention and has to amend the provision of "90 days" stipulated in this paragraph.

## *7. CONTACT POINTS*

- (a) Each Party shall establish and maintain contact points to facilitate the access of the other Party's service suppliers to the information referred to in paragraph 6.
- (b) Upon entry into force of this Agreement, each Party shall notify to the other Party the contact details of its contact points.

## *8. EXPEDITIOUS APPLICATION PROCEDURES*

- (a) The competent authorities of each Party shall process expeditiously applications for granting entry and temporary stay submitted by service suppliers of the other Party, including applications for extensions thereof.
- (b) If the competent authorities of a Party require additional information from the applicant in order to process its application, they shall notify the applicant without undue delay.
- (c) Upon request by the applicant, the competent authorities of a Party shall provide, without undue delay, information concerning the status of its application.
- (d) The competent authorities of each Party shall notify the applicant of the outcome of its application promptly after a decision has been taken. The notification shall include, if applicable, the period of stay and any other terms and conditions.

## ANNEX B

### TELECOMMUNICATIONS SERVICES

#### *1. SCOPE AND DEFINITIONS*

- (a) This Annex sets out the principles of the regulatory framework for the basic telecommunications services,<sup>18</sup> other than broadcasting, where specific commitments are undertaken in Annex D (Schedule of Specific Commitments).
- (b) For the purposes of this Annex:
  - (i) **end-user** means a final consumer of or subscriber to a public telecommunications transport service, including a service supplier other than a supplier of public telecommunications transport services;
  - (ii) **essential facilities** means facilities of a public telecommunications transport network or service that:
    - (A) are exclusively or predominantly provided by a single or limited number of suppliers; and
    - (B) cannot feasibly be economically or technically substituted in order to provide a service;
  - (iii) **interconnection** means linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken;
  - (iv) **major supplier** in the telecommunication sector means a supplier that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications services as a result of its control over essential facilities or the use of its position in the market;
  - (v) **non-discriminatory** means treatment no less favorable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;
  - (vi) **number portability** means the ability of end-users of public telecommunications transport services to retain for fixed telephone numbers at the same location, for mobile numbers at any location, the same telephone numbers without impairment of quality, reliability or convenience when

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<sup>18</sup> These include services listed in items from a through g under C. Telecommunication Services of 2. Communication Services in the MTN/GNS/W/120.

switching between the same category of suppliers of public telecommunications transport services;

- (vii) **public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (viii) **public telecommunications transport service** means any telecommunications (transport) service that a Party requires, explicitly or in effect, to be offered to the public generally;
- (ix) **regulatory authority** in the telecommunication sector means the body or bodies charged with the regulation of telecommunications mentioned in this Annex;
- (x) **telecommunications services** means all services consisting of the transmission and reception of electro-magnetic signals and does not cover the economic activity consisting of the provision of content which requires telecommunications for its transport; and
- (xi) **universal service** means the set of services that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price.<sup>19</sup>

## *2. REGULATORY AUTHORITY*

- (a) A regulatory authority for telecommunications services shall be legally distinct from and functionally independent of any supplier of telecommunications services.
- (b) The regulatory authority shall be empowered to regulate the telecommunications services sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
- (c) The decisions of, and the procedures used by, the regulatory authority shall be impartial with respect to all market participants.

## *3. AUTHORIZATION TO PROVIDE TELECOMMUNICATIONS SERVICES*

- (a) Provision of services shall, to the extent practicable, be authorized following a simplified authorization procedure.
- (b) A license can be required to address issues of attributions of frequencies, numbers and rights of way. The terms and conditions for such license shall be

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<sup>19</sup> The scope and implementation of universal services shall be decided by each Party.

made publicly available.

(c) Where a license is required:

- (i) all the licensing criteria and the reasonable period of time normally required to reach a decision concerning an application for a license shall be made publicly available; and
- (ii) the reasons for the denial of a license shall be made known in writing to the applicant upon request.

#### *4. COMPETITIVE SAFEGUARDS ON MAJOR SUPPLIERS*

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

#### *5. INTERCONNECTION*

- (a) Each Party shall ensure that suppliers of public telecommunications transport networks or services in its territory provide, directly or indirectly within the same territory, to suppliers of public telecommunications transport services of the other Party the possibility to negotiate interconnection. Interconnection should in principle be agreed on the basis of commercial negotiations between the companies concerned.
- (b) Regulatory authorities shall ensure that suppliers that acquire information from another undertaking during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
- (c) Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:
  - (i) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and of a quality no less favorable than that provided for its own like services, for like services of non-affiliated service suppliers or for like services of its subsidiaries or other

affiliates;

- (ii) in a timely fashion, on terms and conditions (including technical standards and specifications) and at cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
  - (iii) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
- (d) The procedures applicable for interconnection with a major supplier shall be made publicly available.
- (e) Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers.<sup>20</sup>

#### *6. NUMBER PORTABILITY*

Each Party shall ensure that suppliers of public telecommunications transport services in its territory provide number portability to the extent technically feasible, and on reasonable terms and conditions.

#### *7. ALLOCATION AND USE OF SCARCE RESOURCES*

- (a) Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner.
- (b) The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

#### *8. UNIVERSAL SERVICE*

- (a) Each Party has the right to define the kind of universal service obligations it wishes to maintain.
- (b) Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and not be more burdensome than necessary for the kind of

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<sup>20</sup> Each Party will implement this obligation in accordance with its relevant legislation.

universal service defined by each Party.

#### *9. CONFIDENTIALITY OF INFORMATION*

Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunications transport network or service without restricting trade in services.

#### *10. RESOLUTION OF TELECOMMUNICATIONS DISPUTES*

##### *Recourse*

- (a) Each Party shall ensure that:
  - (i) service suppliers may have recourse to a regulatory authority or other relevant body of the Party to resolve disputes between service suppliers or between service suppliers and users regarding matters set out in this Annex; and
  - (ii) in the event of a dispute arising between suppliers of public telecommunications transport networks or services in connection with rights and obligations that arise from this Annex, a regulatory authority concerned shall, on request of either Party to the dispute issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within a reasonable period of time.

##### *Appeal and Judicial Review*

- (b) Any service supplier whose legally protected interests are adversely affected by a determination or decision of a regulatory authority:
  - (i) shall have a right to appeal against that determination or decision to an appeal body.<sup>21</sup> Where the appeal body is not judicial in character, written reasons for its determination or decision shall always be given and its determination or decision shall also be subject to review by an impartial and independent judicial authority. Determinations or decisions taken by appeal bodies shall be effectively enforced; and
  - (ii) may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial body stays such determination or decision.

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<sup>21</sup> For disputes between service suppliers or between service suppliers and users, the appeal body shall be independent of the Parties involved in the dispute.

## ANNEX C

### FINANCIAL SERVICES

#### *1. SCOPE AND DEFINITIONS*

(a) This Annex sets out the principles of the regulatory framework for all financial services on which specific commitments are undertaken in Annex D (Schedule of Specific Commitments).

(b) For the purposes of this Annex:

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

- (i) Insurance and insurance-related services:
  - (A) direct insurance (including co-insurance): life; non-life;
  - (B) reinsurance and retrocession;
  - (C) insurance inter-mediation, such as brokerage and agency; and
  - (D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and
- (ii) Banking and other financial services (excluding insurance):
  - (A) acceptance of deposits and other repayable funds from the public;
  - (B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
  - (C) financial leasing;
  - (D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
  - (E) guarantees and commitments;
  - (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
    - i. money market instruments (including cheques, bills and 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;
- (G) 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;
- (H) money broking;
- (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (J) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (K) provision and transfer of financial information, and financial data processing and related software; and
- (L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) through (K), 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 provide or provides 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 or the manner in which a product is delivered, 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;

**public entity** means:

- (i) 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
- (ii) a private entity, performing functions normally performed by a

central bank or monetary authority, when exercising those functions.

## 2. *PRUDENTIAL CARVE-OUT*<sup>22</sup>

- (a) Each Party may adopt or maintain measures for prudential reasons<sup>23</sup>, including:
  - (i) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; and
  - (ii) ensuring the integrity and stability of the Party's financial system.
- (b) 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.
- (c) Nothing in this Agreement 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.
- (d) 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.

## 3. *TRANSPARENCY*

- (a) 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.
- (b) Each Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.
- (c) Further to Article 4.2 (Publication and Administrative Proceedings) of Chapter 4 (Transparency) of the Framework Agreement, each Party, to the extent practicable:

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<sup>22</sup> 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 the purposes of this Agreement. For greater certainty, any such measure shall be taken in line with this paragraph.

<sup>23</sup> 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.

- (i) shall publish in advance any regulations of general application relating to the subject matter of this Annex that it proposes to adopt and the purpose of the regulation;
  - (ii) shall provide interested persons and the other Party a reasonable opportunity to comment<sup>24</sup> on such proposed regulations; and
  - (iii) should endeavour to take into account comments received from interested persons with respect to the proposed regulations.
- (d) To the extent practicable, each Party should allow reasonable time between publication of final regulations of general application and their effective date.
- (e) 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.
- (f) Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Annex.

#### *4. SELF-REGULATORY ORGANIZATIONS*

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 Articles 1.5 (National Treatment) and 1.7 (MFN Treatment and Future Liberalization), by such self-regulatory organization.

#### *5. PAYMENT AND CLEARING SYSTEMS*

Under terms and conditions that accord national treatment, each Party shall grant to 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 a Party's lender of last resort facilities.

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<sup>24</sup> For greater certainty, when a Party publishes regulations in advance as described in subparagraph (i), the Party shall provide an address, whether electronic or otherwise, to which interested persons and the other Party may send their comments.

## 6. *NEW FINANCIAL SERVICES*

Each Party shall permit a financial service supplier of the other Party established in its territory to provide 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 service 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 the provision of the service. Where such authorization is required, a decision shall be made within a reasonable period of time and the authorization may be refused only for prudential reasons.

## 7. *DATA PROCESSING*

- (a) Each Party shall permit a financial service supplier of the other Party established in its territory to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier; and
- (b) Each Party, reaffirming its commitment<sup>25</sup> to protect fundamental rights and freedom of individuals, shall adopt adequate safeguards to the protection of privacy, in particular with regard to the transfer of personal data.

## 8. *SPECIFIC EXCEPTIONS*

- (a) Nothing in this Annex shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by its domestic regulations, by financial service suppliers in competition with public entities or private institutions.
- (b) Nothing in this Agreement shall apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
- (c) Nothing in this Annex shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities except when those activities may be carried out, as provided by its domestic regulations, by financial service

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<sup>25</sup> For greater certainty, this commitment indicates the rights and freedoms set out in the *Universal Declaration of Human Rights*, the *Guidelines for the Regulation of Computerized Personal Data Files* (adopted by the United Nations General Assembly Resolution 45/95 of December 14, 1990), and the *OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* (adopted by the OECD Council on September 23, 1980).

suppliers in competition with public entities or private institutions.

#### *9. DISPUTE SETTLEMENT*

- (a) Chapter 6 (Dispute Settlement) of the Framework Agreement and its Annexes shall apply to the settlement of disputes on financial services arising exclusively under this Annex, except as otherwise provided in this paragraph.
- (b) Notwithstanding Article 6.7 (Composition of the Arbitration Panel) of the Framework Agreement, arbitrators selected for the settlement of disputes on financial services arising exclusively under this Annex shall, if the Parties so agree, have expertise or experience in financial services law or practice, which may include the regulation of financial service suppliers.
- (c) Subparagraph (b) shall also apply when an arbitration panel is established in accordance with Articles 6.11 (Implementation of the Report) and 6.12 (Non-Implementation, Compensation and Suspension of Concessions or Other Obligations) of the Framework Agreement.
- (d) Notwithstanding Article 6.12 (Non-Implementation, Compensation and Suspension of Concessions or Other Obligations) of the Framework Agreement, where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects 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 its financial services sector. Where such measure affects only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

#### *10. RECOGNITION*

- (a) A Party may recognize prudential measures of the other Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties, or may be accorded autonomously.
- (b) A Party that is a party to an agreement or arrangement of the type referred to in subparagraph (a) with a third party, whether at the time of entry into force of this Agreement or thereafter, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones 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 recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.