

## ANNEX 8-A

### FINANCIAL SERVICES

#### 1. Scope

This Annex applies to measures affecting the supply of financial services.

#### 2. Prudential Carve-out<sup>1</sup>, Exchange Rate and Financial Stability

(a) Notwithstanding any other provision of this Agreement, a Party shall not be prevented from taking measures for prudential reasons<sup>2</sup>, including for the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier, to ensure the integrity and stability of the financial system, or to ensure stability of the exchange rate<sup>3</sup> including to prevent speculative capital flows, subject to the following:

- (i) where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding that Party's commitments or obligations under this Agreement;
  - (ii) for measures to ensure the stability of the exchange rate including to prevent speculative capital flows, such measures shall be no more than necessary, and shall be phased out within one year or when conditions no longer justify their institution or maintenance; and
  - (iii) for measures to ensure the stability of the exchange rate including to prevent speculative capital flows, such measures shall be applied on a Most-Favored-Nation basis.
- (b) Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual service consumers or any confidential or proprietary information in the possession of public entities.
- (c) 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.

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<sup>1</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>2</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.

<sup>3</sup> The measures to ensure the stability of the exchange rate including to prevent speculative capital flows shall not be adopted or maintained for the purposes of protecting a particular sector.

### 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 regulations of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.
- (c) Each Party, to the extent practicable:
  - (i) shall publish in advance any regulation 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 with a reasonable opportunity to comment<sup>4</sup> on such proposed regulation; and
  - (iii) should at the time it adopts the final regulation, address in writing substantive comments received from interested persons with respect to the proposed regulation.
- (d) In accordance with its domestic laws and regulations, each Party should allow a reasonable period of time between publication of final regulations of general application and their effective date.
- (e) Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding regulations of general application covered by this Annex.
- (f) Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of financial services.
- (g) Upon 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 within the timeframe stipulated by relevant laws and regulations.

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<sup>4</sup> For greater certainty, when a Party publishes regulations in advance as described in sub-subparagraph (i), the Party shall provide an address, whether electronic or otherwise, to which interested persons and the other Party may send their comments.

- (h) A Party's regulatory authority shall make an administrative decision on a completed application of a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 180 days<sup>5</sup>, 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 180 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.
- (i) Upon 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.

#### **4. Payment and Clearing Systems**

Under the 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.

#### **5. New Financial Services**

Each Party shall endeavor to 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 laws and regulations, provided that the introduction of the new financial service does not require a new law or regulation or modification of an existing law or regulation. 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<sup>6</sup>.

#### **6. 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.
- (b) Nothing in subparagraph (a) restricts the right of a Party to adopt or maintain measures to protect personal data, personal privacy, and to require a financial

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<sup>5</sup> The Parties confirm that the 180-day period does not include periods during which the applicants are engaged in efforts to meet regulatory requirements for the relevant license.

<sup>6</sup> For Viet Nam, the authorization for the provision of the new financial service is made after a reasonable period of pilot testing and consistent with the level of development of banking and financial system of Viet Nam.

service supplier to obtain prior authorization from the relevant regulator to transfer such information, based on prudential considerations.

## **7. 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 the 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 suppliers in competition with public entities or private institutions.

## **8. Dispute Settlement**

- (a) Chapter 15 (Dispute Settlement) 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 15.8 (Composition of Arbitration Panels), arbitration panel and 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 laws or practice, which may include the regulation of financial service suppliers.

## **9. 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 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 such agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

#### **10. Committee on Financial Services**

- (a) The Parties hereby establish a Committee on Financial Services (hereinafter referred to as the “Committee”) which comprises officials of each Party responsible for financial services as follows:
  - (i) for Korea, the Financial Services Commission and the Ministry of Strategy and Finance; and
  - (ii) for Viet Nam, the State Bank of Viet Nam and the Ministry of Finance; or their respective successors.
- (b) The Committee shall:
  - (i) supervise the implementation of this Annex;
  - (ii) consider issues regarding financial services that are referred to it by a Party, including ways for the Parties to cooperate more effectively in the financial services sector; and
  - (iii) participate in the dispute settlement procedures in accordance with paragraph 8 of this Annex.
- (c) The Committee shall meet as agreed to assess the functioning of this Agreement as it applies to financial services.

#### **11. Consultations**

- (a) A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.
- (b) Consultations under this paragraph shall include officials of the authorities specified in subparagraph 10(a) of this Annex.

#### **12. Definitions**

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:

- (a) insurance and insurance-related services:
  - (i) direct insurance (including co-insurance), life, non-life;
  - (ii) reinsurance and retrocession;
  - (iii) insurance inter-mediation, 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, travellers cheques 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 cheques, 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; and
- (xii) advisory, intermediation and other auxiliary financial services on all the activities listed in sub-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 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; 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.