

## **CHAPTER 11**

### **FINANCIAL SERVICES**

#### **ARTICLE 11.1: SCOPE**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

- (a) financial institutions of the other Party;
- (b) investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
- (c) cross-border trade in financial services.

2. Chapters 9 (Investment) and 10 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that these Chapters or Articles of these Chapters are incorporated into this Chapter.

- (a) Articles 9.7 (Expropriation and Compensation), 9.8 (Transfers), 9.11 (Investment and Environment), 9.12 (Denial of Benefits), 9.14 (Special Formalities and Information Requirements), and 10.11 (Denial of Benefits) are hereby incorporated into and made part of this Chapter.
- (b) Section B (Investor-State Dispute Settlement) of Chapter 9 (Investment) is hereby incorporated into and made part of this Chapter solely for claims that a Party has breached Article 9.7 (Expropriation and Compensation), 9.8 (Transfers), 9.12 (Denial of Benefits), or 9.14 (Special Formalities and Information Requirements) as incorporated into this Chapter.
- (c) Article 10.10 (Transfers and Payments) is incorporated into and made part of this Chapter to the extent that cross-border trade in financial services is subject to obligations under Article 11.5.

3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:

- (a) activities or services forming part of a public retirement plan or statutory system of social security; or
- (b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter shall not apply to laws, regulations or requirements governing the procurement by government agencies of financial services purchased for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.

#### ARTICLE 11.2: NATIONAL TREATMENT

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

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

3. For the purposes of the national treatment obligations in Article 11.5.1, a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

#### ARTICLE 11.3: MOST-FAVORED-NATION TREATMENT

Each Party shall accord to investors of the other Party, financial institutions of the other Party, investments of investors in financial institutions, and cross-border financial service suppliers of the other Party treatment no less favorable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

#### ARTICLE 11.4: MARKET ACCESS FOR FINANCIAL INSTITUTIONS

1. A Party shall not adopt or maintain, with respect to financial institutions of the other Party, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirements of an economic needs test;

- (ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) the total number of financial service operations or on the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test<sup>1</sup>; or
  - (iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

2. For the purposes of this Article, **financial institutions of the other Party** includes financial institutions that investors of the other Party seek to establish in the territory of the Party.

#### ARTICLE 11.5: CROSS-BORDER TRADE

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the services specified in Annex 11-A.

2. Each Party shall permit persons located in its territory and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit such suppliers to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for the purposes of this obligation, provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

#### ARTICLE 11.6: NEW FINANCIAL SERVICES<sup>2</sup>

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<sup>1</sup> This subparagraph shall not cover measures of a Party which limit inputs for the supply of financial services.

<sup>2</sup> The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to the other Party to request that it authorize the supply of a financial service that is supplied in neither Party’s territory. Such application shall be subject to the law of the Party to which the application

Each Party shall permit a financial institution of the other Party to supply any new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without additional legislative action by the Party. Notwithstanding Article 11.4(b), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party requires a financial institution to obtain authorization to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorization and the authorization may be refused only for prudential reasons.

#### ARTICLE 11.7: TREATMENT OF CERTAIN INFORMATION

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

- (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or
- (b) any confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

#### ARTICLE 11.8: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. Neither Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.
2. Neither Party may require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

#### ARTICLE 11.9: NON-CONFORMING MEASURES

1. Articles 11.2 through 11.5 and 11.8 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at
    - (i) the central level of government, as set out by that Party in Section A of its Schedule set out in Annex III; or
    - (ii) a local level of government;

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is made and, for greater certainty, shall not be subject to the obligations of this Article.

- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 11.2, 11.3, 11.4, or 11.8.<sup>3</sup>

2. Articles 11.2 through 11.5 and 11.8 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by the Party in Section B of its Schedule set out in Annex III<sup>4</sup>.

3. A non-conforming measure set out in an entry in a Party's Schedule set out in Annex I or II as not subject to Article 9.3 (National Treatment), 9.4 (Most-Favored-Nation Treatment), 10.2 (National Treatment), 10.3 (Most-Favored-Nation Treatment) or 10.4 (Market Access), shall be treated as a non-conforming measure not subject to Article 11.2, 11.3 or 11.4, as the case may be, to the extent that the measure, sector, subsector, or activity set out in the entry is covered by this Chapter.

#### ARTICLE 11.10: EXCEPTIONS

1. Notwithstanding any other provision of this Chapter or Chapters 9 (Investment), 13 (Telecommunications), including specifically Article 13.22 (Relation to Other Chapters), or 14 (Electronic Commerce), and, in addition, Article 10.1.3 (Scope) with respect to the supply of financial services in the territory of a Party by a covered investment, a Party shall not be prevented from adopting or maintaining measures for prudential reasons<sup>5</sup>, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's commitments or obligations under such provisions.

2. Nothing in this Chapter or Chapters 9 (Investment), 13 (Telecommunications), including specifically Article 13.22 (Relation to Other Chapters), or 14 (Electronic Commerce), and, in addition, Article 10.1.3 (Scope) with respect to the supply of financial services in the territory of a Party by a covered investment, shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 9.9 (Performance Requirements) with respect to measures covered by Chapter 9 (Investment) or under Article 9.8 (Transfers) or 10.10

<sup>3</sup> For greater certainty, Article 11.5 shall apply to an amendment to any non-conforming measure referred to in subparagraph (a) only to the extent that the amendment decreases the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 11.5.

<sup>4</sup> For Nicaragua and Panama, Section B of Annex III shall not apply.

<sup>5</sup> It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers.

(Transfers and Payments).

3. Notwithstanding Articles 9.8 (Transfers) and 10.10 (Transfers and Payments), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services.

#### ARTICLE 11.11: TRANSPARENCY

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

2. In lieu of Article 18.1.2 (Publication), each Party, to the extent practicable:

- (a) shall publish in advance any regulations of general application relating to the subject matter of this Chapter that it proposes to adopt and the purpose of the regulation; and
- (b) shall provide interested persons and the other Party a reasonable opportunity to comment<sup>6</sup> on such proposed regulations.

3. At the time it adopts final regulations, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

4. To the extent practicable, each Party should allow reasonable time between

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

publication of final regulations of general application and their effective date.

5. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

6. Each Party shall establish or maintain appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

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

8. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

9. A Party's regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution, or a cross-border financial service supplier of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

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

#### ARTICLE 11.12: DOMESTIC REGULATION

Except with respect to non-conforming measures listed in its Schedule to Annex III, each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner.

#### ARTICLE 11.13: SELF-REGULATORY ORGANIZATIONS

When a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure that the self-regulatory organization observes the obligations of Articles 11.2 and 11.3.

#### ARTICLE 11.14: PAYMENT AND CLEARING SYSTEMS

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

#### ARTICLE 11.15: RECOGNITION

1. A Party may recognize prudential measures of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

- (a) accorded autonomously;
- (b) achieved through harmonization or other means; or
- (c) based on an agreement or arrangement with the non-Party.

2. A Party according recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

3. Where a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances described in paragraph 2 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

#### ARTICLE 11.16: FINANCIAL SERVICES COMMITTEE

1. The Parties hereby establish a Financial Services Committee (hereinafter referred to as the "Committee"). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 11-B.

2. The Committee shall:

- (a) supervise the implementation of this Chapter and its further elaboration;
- (b) consider issues regarding financial services that are referred to it by a Party;
- (c) participate in the dispute settlement procedures in accordance with Article 11.19; and



- (d) carry out other functions as may be assigned by the Joint Committee or agreed by the Parties.

3. Unless the Parties otherwise agree, the Committee shall meet annually, to assess the functioning of this Agreement as it applies to financial services. Meetings may be conducted in person or by any technological means available to the Parties. The Committee shall inform the Joint Committee of the results of each of its meetings.

#### ARTICLE 11.17: CONSULTATIONS

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 11-B.

3. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 1 to disclose information or take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

#### ARTICLE 11.18: DISPUTE SETTLEMENT

1. Section A (Dispute Settlement) of Chapter 22 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. When a Party claims that a dispute arises under this Chapter, Article 22.7 (Establishment of Panel) shall apply, except that:

- (a) where the Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and
- (b) in any other case,
  - (i) each Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 22.7.12 (Establishment of a Panel); and

- (ii) if the Party complained against invokes Article 11.10, the chair of the panel shall meet the qualifications set out in paragraph 3, unless the Parties otherwise agree.

3. Financial services panelists shall:

- (a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, a disputing Party; and
- (d) comply with the code of conduct to be established by the Joint Committee.

4. Notwithstanding Article 22.13 (Non-Implementation and Suspension of Benefits), where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party shall not suspend benefits in the financial services sector.

ARTICLE 11.19: INVESTMENT DISPUTES IN FINANCIAL SERVICES

1. Where an investor of a Party submits a claim under Section B (Investor-State Dispute Settlement) of Chapter 9 (Investment) against the other Party and the respondent invokes Article 11.10, on request of the respondent, the tribunal shall refer the matter in writing to the Committee for a decision. The tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 11.10 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the tribunal and to the Joint Committee. The decision shall be binding on the tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the respondent or the Party of the claimant may request the establishment of an arbitral panel under Article 22.7 (Establishment of Panel). The panel shall be constituted in accordance with Article 11.18. The panel shall transmit its final report to the Committee and to the tribunal. The report shall be binding on the tribunal.

4. The Committee may decide that, for the purposes of a referral pursuant to paragraph 1, the financial services authorities of the relevant Parties shall make the decision described in paragraph 2 and transmit that decision to the tribunal and the Joint Committee. In that case, a request may be made under paragraph 3 if the relevant Parties have not made the decision described in paragraph 2 within 60 days of their receipt of the referral under paragraph 1.

5. Where no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the tribunal may proceed to decide the matter.

6. For the purposes of this Article, **tribunal** means a tribunal established under Article 9.20 (Selection of Arbitrators).

#### ARTICLE 11.20: DEFINITIONS

For the purposes of this Chapter:

**cross-border financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such services;

**cross-border trade in financial services** or **cross-border supply of financial services** means the supply of a financial service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

**financial institution** means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

**financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

**financial service** means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

*Insurance and insurance-related services*

- (a) direct insurance (including co-insurance):
  - (i) life,
  - (ii) non-life;
- (b) reinsurance and retrocession;
- (c) insurance intermediation, such as brokerage and agency; and
- (d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

*Banking and other financial services (excluding insurance)*

- (e) acceptance of deposits and other repayable funds from the public;
- (f) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transactions;
- (g) financial leasing;
- (h) all payment and money transmission services, including credit, charge and debit cards, travelers checks, and bankers drafts;
- (i) guarantees and commitments;
- (j) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
  - (i) money market instruments (including checks, bills, certificates of deposits);
  - (ii) foreign exchange;
  - (iii) derivative products including, but not limited to, futures and options;

- (iv) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
- (v) transferable securities;
- (vi) other negotiable instruments and financial assets, including bullion;
- (k) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (l) money broking;
- (m) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;
- (n) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (o) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (p) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

**financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

**investment** means “investment” as defined in Article 9.29 (Definitions), except that, with respect to “loans” and “debt instruments” referred to in that Article:

- (a) a loan to or debt instrument issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 9 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 9.29 (Definitions);

**investor of a Party** means a Party or state enterprise thereof, or a person of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

**new financial service** means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

**person of a Party** means "person of a Party" as defined in Article 1.6 (Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party; and

**self-regulatory organization** means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions.

**ANNEX 11-A**  
**CROSS-BORDER TRADE**

**KOREA**

*Insurance and insurance-related services*

1. Article 11.5.1 shall apply to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 11.20 with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance, such as consultancy,<sup>7</sup> risk assessment,<sup>8</sup> actuarial and claim settlement services; and
- (d) insurance intermediation, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 11.20, of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

2. Article 11.5.1 shall apply to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 11.20 with respect to services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services.

*Banking and other financial services (excluding insurance)*

3. Article 11.5.1 shall apply only with respect to:

- (a) the provision and transfer of financial information;
- (b) the provision and transfer of financial data processing and related software relating to banking and other financial services as referred to in

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<sup>7</sup> **Consultancy** means activities such as providing advice on corporate strategy formulation, marketing strategy, or product development strategy.

<sup>8</sup> **Risk assessment** means activities such as risk analysis, risk prevention, or expert advice related to difficult or unusual risks.

subparagraph (o) of the definition of financial service in Article 11.20<sup>9</sup>; and

- (c) advisory and other auxiliary services<sup>10</sup>, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service in Article 11.20. This commitment shall apply to the supply of credit rating, credit reference and investigation, general fund administration, indirect investment vehicle appraisal, and bond appraisal with regard to securities issued in Korea<sup>11</sup> only to the extent that Korea allows the supply of these services with respect to such assets. This commitment shall not apply to (i) credit rating of enterprises in Korea; or (ii) credit reference and investigation undertaken for purposes of lending and other financial transactions in Korea with respect to individuals or companies in Korea. Once Korea allows the supply of certain of these services, it shall not subsequently prohibit or limit the supply of such services.

## **COSTA RICA**

### *Banking and other financial services (excluding insurance)*

1. Article 11.5.1 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 11.20<sup>12</sup>, with respect to:

- (a) the provision and transfer of financial information; and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service; and
- (b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.<sup>13</sup>

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<sup>9</sup> Korea's commitment is subject to prior approval with certain considerations such as the protection of sensitive information of consumers, prohibitions on unauthorized reuse of sensitive information, the ability of financial regulators to have access to records of financial institutions relating to the handling of such information, and requirements for the location of technology facilities.

<sup>10</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

<sup>11</sup> As of March 2007, securities issued in the territory of Korea are denominated solely in Korean won, except in extraordinary circumstances. Where bonds issued outside the territory of Korea are held by a Korean collective investment scheme registered with the Financial Services Commission, appraisal of the bond must be undertaken by a bond appraisal company in the territory of Korea.

<sup>12</sup> Costa Rica reserves the right to request prior approval with regards to provision and transfer of financial data and related software; considerations include the protection of sensitive information of consumers, prohibitions on unauthorized reuse of sensitive information, the ability of financial regulators to have access to records of financial institutions relating to the handling of such information, and requirements for the location of technology facilities.

<sup>13</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.



### Insurance and insurance-related services

2. Article 11.5.1 applies to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 11.20, with respect to:

- (a) insurance of risk relating to:
  - (i) space launching and freight (including satellite), international maritime shipping and international commercial aviation, with such insurance to cover any or all of the following elements: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) retrocession and reinsurance;
- (c) services necessary to support global accounts<sup>14</sup>;
- (d) services auxiliary to insurance as referred to in paragraph (d) of the definition of financial service in Article 11.20<sup>15</sup>;
- (e) insurance intermediation such as brokerage and agency as referred to in paragraph (c) of the definition of financial services in Article 11.20<sup>16</sup>; and
- (f) surplus lines<sup>17</sup>.

3. Paragraph 2 applies only if a Korean entity is not in itself or through an agent insuring a risk in Costa Rica.

## **EL SALVADOR**

### Insurance and Insurance-Related Services

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<sup>14</sup> For the purposes of this subparagraph:

- (a) services necessary to support global accounts means that the coverage of a master (global) insurance policy written in a territory other than Costa Rica for a multinational client by an insurer of a Party extends to the operations of the multinational client in Costa Rica; and
- (b) a multinational client is any foreign enterprise majority owned by a foreign manufacturer or service provider doing business in Costa Rica.

<sup>15</sup> This paragraph only applies to the lines of insurance of risks relating to paragraphs 2(a), 2(b) and 2(c); or to insurance products registered before the General Superintendency of Insurance (SUGESE).

<sup>16</sup> This paragraph only applies to the lines of insurance of risks relating to paragraphs 2(a), 2(b) and 2(c); or to insurance products registered before the General Superintendency of Insurance (SUGESE).

<sup>17</sup> Surplus lines are defined as insurance coverage not available from an admitted company in Costa Rican market.

1. Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risk relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) brokerage of insurance risks relating to paragraphs (a) and (b); and
- (d) consultancy, risk assessment, actuarial, and claims settlement services.

2. Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services<sup>18</sup>.

*Banking and Other Financial Services (Excluding Insurance)*

3. Article 11.5.1 applies with respect to:

- (a) provision and transfer of financial information as described in subparagraph (o) of the definition of financial service;
- (b) financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, when it is required<sup>19</sup>; and
- (c) advisory and other auxiliary financial services, excluding intermediation, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service<sup>20</sup>.

**HONDURAS**

*Insurance and insurance-related services*

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<sup>18</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>19</sup> It is understood that where the financial information or financial data referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with El Salvador's law regulating the protection of such data.

<sup>20</sup> It is understood that advisory services includes portfolio management advice but not other services related to portfolio management, and that auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service.

1. Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services in Article 11.20 with respect to:

- (a) insurance of risk relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) services auxiliary to insurance described in subparagraph (d) such as consultancy, actuarial, risk assessment and claim settlement services from the definition of financial services in Article 11.20 ; and
- (d) insurance intermediation, such as brokerage and agency as referred to in subparagraph (c) of the definition of financial service in Article 11.20, of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

2. Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services in Article 11.20 with respect to insurance services<sup>21</sup>.

*Banking and Other Financial Services (Excluding Insurance)*

3. Article 11.5.1 applies with respect to the provision and transfer of financial information and financial data processing<sup>22</sup> and related software as referred to in subparagraph (o) of the definition of financial service in Article 11.20, and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service<sup>23</sup>.

**NICARAGUA**

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<sup>21</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

<sup>22</sup> Honduras' commitment is subject to prior approval with certain considerations such as the protection of sensitive information of consumers, prohibitions on unauthorized reuse of sensitive information, the ability of financial regulators to have access to records of financial institutions relating to the handling of such information, and requirements for the location of technology facilities.

<sup>23</sup> It is understood that advisory services includes portfolio management and auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 11.20.

### Insurance and Insurance-Related Services

1. Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risk relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) brokerage of insurance risks relating to paragraphs (a)(i) and (a)(ii); and
- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial services. These auxiliary services will only be provided to an insurance supplier.

2. Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services. The commitment for cross-border movement of persons is limited to those insurance and insurance-related services listed in paragraph 1.

### Banking and Other Financial Services (Excluding Insurance)

3. Article 11.5.1 applies with respect to:

- (a) the provision and transfer of financial information as described in subparagraph (o) of the definition of financial service;
- (b) financial data processing as described in subparagraph (o) of the definition of financial service, subject to prior authorization from the relevant regulator, as required; and
- (c) advisory and other auxiliary financial service<sup>24</sup> excluding intermediation and credit reference and analysis, relating to banking and other financial services as described in subparagraph (p) of the definition of financial service.

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<sup>24</sup> It is understood that advisory services includes portfolio management and auxiliary services does not include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 11.20.

Nicaragua's law regulating protection of information applies where the financial information or financial data processing referred to in subparagraphs (a) and (b) involves such protected information. Protected information includes, but is not limited to, information regulated under the concept of banking secrecy and personal information.

## **PANAMA**

### *Insurance and insurance-related services*

1. Subject to paragraph 3, Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (a) of the definition of cross-border supply of financial services with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) insurance intermediation such as brokerage and agency only for the services indicated in subparagraphs (a) and (b); and
- (d) services auxiliary to insurance as referred to in subparagraph (d) of the definition of financial service.

2. Article 11.5.1 applies to the cross-border supply of or trade in financial services as defined in subparagraph (c) of the definition of cross-border supply of financial services with respect to insurance services<sup>25</sup>.

3. Paragraph 1(a)(i) shall not apply to insurance of risk relating to commercial aviation until two years after the date of entry into force of this Agreement.

### *Banking and other financial services (excluding insurance)*

4. Article 11.5.1 applies only with respect to the provision and transfer of financial information and financial data processing and related software as referred to in subparagraph (o) of the definition of financial service, and advisory and other auxiliary financial services<sup>26</sup>, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of financial service.

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<sup>25</sup> It is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services indicated in paragraph 1.

<sup>26</sup> It is understood that advisory services includes portfolio management and auxiliary services does not

**ANNEX 11-B**  
**FINANCIAL SERVICES COMMITTEE**

*Authorities Responsible for Financial Services*

1. The authorities responsible for financial services are:
    - (a) for Korea, the Financial Services Commission and the Ministry of Strategy and Finance;
    - (b) for Costa Rica, the National Council of Supervision of the Financial System (*Consejo Nacional de Supervisión del Sistema Financiero*) and the Ministry of Foreign Trade (*Ministerio de Comercio Exterior*) for banking and other financial services and for insurance;
    - (c) for El Salvador, the Ministry of Economy (*Ministerio de Economía*), in consultation with the corresponding competent authority the Superintendency of the Financial System (*Superintendencia del Sistema Financiero*) and the Central Reserve Bank (*Banco Central de Reserva*);
    - (d) for Honduras, Secretariat of State in the Office of Economic Development (*Secretaría de Estado en el Despacho de Desarrollo Económico*), Central Bank of Honduras (*Banco Central de Honduras*), and the National Commission of Banking and Insurance (*Comisión Nacional de Bancos y Seguros*);
    - (e) for Nicaragua, Ministry of Development, Industry and Trade (*Ministerio de Fomento, Industria y Comercio*); Superintendency of Banks and other Financial Institutions (*Superintendencia de Bancos y otras Instituciones Financieras*) and the Central Bank of Nicaragua (*Banco Central de Nicaragua*); and
    - (f) for Panama, the Ministry of Commerce and Industries (*Ministerio de Comercio e Industrias*), in consultation with the Superintendency of Banks (*Superintendencia de Bancos*), the Superintendency of Insurance and Reinsurance (*Superintendencia de Seguros y Reaseguros*) and Superintendency of Securities Market (*Superintendencia del Mercado de Valores*),
- or their successors.

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include those services referred to in subparagraphs (e) through (o) of the definition of financial service in Article 11.20.