

Article 10.3: Most-Favoured-Nation Treatment

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

Article 10.4: Market Access for Financial Institutions

A Party shall not adopt or maintain, with respect to financial institutions of the other Party, or investors of the other Party seeking to establish such institutions, either on the basis of its entire territory or on the basis of a sub-national government, a measure that:

- (a) imposes limitations on:
 - (i) the number of financial institutions in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement 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 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 test¹; 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

¹ This sub-subparagraph does not apply to measures of a Party which limit inputs for the supply of financial services.

(b) restricts or requires specific types of legal entity or joint venture through

Article 10.6: New Financial Services³

A Party shall permit a financial institution of the other Party to supply a new

2. A Party shall not require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, or natural persons residing in the territory of the Party.

Article 10.9: Non-Conforming Measures

1. Articles 10.2 through 10.5 and Article 10.8 do not apply to:

- (a) an existing non-conforming measure that is maintained by:
 - (i) the national government of a Party, as set out in Section A of its Schedule to Annex III;
 - (ii) a sub-national government⁵ of a Party as set out by that Party in Section A of its Schedule to Annex III; or
 - (iii) a local government⁶ of a Party;
- (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to a 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 Articles 10.2, 10.3, 10.4, and 10.8.⁷

2. Articles 10.2 through 10.5 and Article 10.8 do not apply to a measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-subject to Article 8.3 (National Treatment), 8.4 (Most-Favoured-Nation Treatment), 9.2 (National Treatment), or 9.3 (Most-Favoured-Nation Treatment) shall be treated as a non-conforming measure not subject to Article 10.2 or 10.3, as the case may be, to the extent that the measure, sector, sub-sector, or activity set out in the non-conforming measure is covered by this Chapter.

⁵ For the purposes of this Article, sub-national government does not include local government.

⁶ For Korea, local government means a local government as defined in the *Local Autonomy Act*.

⁷ For greater certainty, Article 10.5 applies to an amendment to any non-conforming measure referred to in subparagraph (a) only to the extent that the amendment decreases the conformity of the measure, as it existed on the date of entry into force of the Agreement, with Article 10.5.

4. Each Party should, at the time it adopts final regulations and to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulations.

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

6. Each Party shall maintain or establish appropriate mechanisms that will, as soon as practicable, respond to inquiries from interested persons regarding measures of general

Article 10.12: Self-Regulatory Organisations

If 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 organisation to provide a financial service in or into its territory, the Party shall ensure that the self-regulatory organisation observes the obligations of Articles 10.2 and 10.3.

Article 10.13:

4. Notwithstanding Article 21.11 (Non-Implementation Suspension of Benefits), if a panel finds a measure to be inconsistent with this Agreement and the measure 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 in the other 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 10.19: Investor-State Dispute Settlement in Financial Services

1. If an investor of a Party submits a claim under Article 8.18 (Claim by an Investor of a Party on Its Own Behalf) or 8.19 (Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section B of Chapter Eight (Investor-State Dispute Settlement) and the disputing Party invokes an exception pursuant to Article 10.10, the Tribunal shall, at the request of the disputing Party, refer the matter in writing to the Committee for a decision. The Tribunal shall not proceed until it receives the decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide whether and to what extent Article 10.10 is a valid defence to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. If the Committee has not decided the issue within 60 days of the receipt of the referral pursuant to paragraph 1, either Party may request the establishment of a panel pursuant to Article 21.6 (Establishment of a Panel). The panel shall be constituted in accordance with Article 10.18 and shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

- (iii) derivative products, including futures and options;
- (iv) exchange rate and interest rate instruments, including products such as swaps, and forward rate agreements;
- (v) transferable securities; or

public entity

- (c) services auxiliary to insurance, such as consultancy¹⁰, risk assessment¹¹, 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 of insurance of risks related to services listed in subparagraphs (a) and (b).

6. Paragraph 5 applies only if an entity is not in itself or through an agent insuring in Korea a risk.

Banking and other Financial Services (excluding insurance)

7. For Korea, Article 10.5.1 applies only with respect to:

- (a) the provision and transfer of financial information¹²;
- (b) the provision and transfer of financial data processing and related software relating to banking and other financial services as referred to in subparagraph (o) of the definition of financial service in Article 10.20; and
- (c) 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 in Article 10.20. This commitment applies to the supply of credit rating, credit reference and investigation, general fund administration, indirect investment vehicle appraisal, and bond appraisal only to the extent that Korea allows the supply of these services. Once

Annex 10-B

Specific Commitments

Section A Portfolio Management

Canada

1. Subject to paragraph 2, Canada shall allow a financial institution organised outside its territory to provide the following services to a collective investment scheme located in its territory:

- (a) investment advice; and
- (b) portfolio management services, excluding:
 - (i)

Korea

6. Korea shall allow a financial institution, other than a trust company, organised outside its territory, to provide investment advice and portfolio management services, excluding custodial services, trustee services, and execution services that are not related to managing a collective investment scheme, to a collective investment scheme located in its territory. This commitment is subject to Articles 10.1 and 10.5.3.

7. For the purposes of paragraph 1, with regard to Korean won-denominated assets, the

Section C Transfer of Information

10. The Parties shall allow a financial institution of the other Party to transfer information in electronic or other form, into and out of their territories, for data

This Section does not restrict the right of a Party to adopt or maintain measures:

- (a) to protect personal data, personal privacy and the confidentiality of individual records and accounts; or
- (b) to require a financial institution to obtain prior authorisation from the relevant regulator to designate a particular enterprise as a recipient of that information, based on prudential considerations¹³;

obligations under this Section.

For greater certainty, considerations under subparagraph (a) include protection of sensitive information of consumers and prohibitions on unauthorised reuse of the records of financial institutions relating to the handling of such information and to maintain requirements for the location of technology facilities.

¹³ For greater certainty, this requirement is without prejudice to other means of prudential regulation.

Section D Certain Government Entities

11. The Parties confirm that the following entities, as currently structured, are covered by this Chapter, but are not considered financial institutions for the purposes of this Chapter: the Korea Deposit Insurance Corporation, Export-Import Bank of Korea, Korea Trade Insurance Corporation, Korea Technology Credit Guarantee Fund, Credit Guarantee Fund, Korea Asset Management Corporation, Korea Finance Corporation and Korea Investment Corporation. The Parties further recognise that Korea Post is currently a government agency and it offers financial services that are regulated by regulatory authorities of Korea.

Annex 10-C

Authorities Responsible for Financial Services

Authorities responsible for Financial Services are:

- (a) for Canada, the Department of Finance Canada; and
- (b) for Korea, the Financial Services Commission and the Ministry of Strategy and Finance,

or their respective successors.