

CHAPTER 11 MOVEMENT OF NATURAL PERSONS

Article 11.1: Definitions

For the purposes of this Chapter,

immigration measure means any law, regulation, procedure, requirement or practice affecting the entry and exit, stay and residence of foreign nationals;

natural person of a Party means a natural person of a Party as defined in Chapter 8 (Trade in Services); and

temporary entry means entry by a natural person covered by this Chapter without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes.

Article 11.2: General Principles

1. This Chapter reflects the preferential trading relationship between the Parties, their mutual desire to facilitate temporary entry for a natural person on a reciprocal basis and to establish transparent criteria and procedures for temporary entry in accordance with Annex 11-A, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding nationality, citizenship, residence, or employment on a permanent basis.

Article 11.3: General Obligations

1. A Party shall apply its measures related to this Chapter in accordance with Article 11.2 and, in particular, shall expeditiously apply those measures so as to avoid unduly nullifying or impairing the benefits accruing to the other Party or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. Notwithstanding paragraph 1, nothing in this Chapter shall be construed to 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 unduly nullify or impair the benefits accruing to the other Party or delay trade in goods or services or conduct of investment activities under this Agreement.¹

¹ The sole fact of requiring a visa for natural persons shall not be regarded as unduly nullifying or impairing the benefits accruing to the other Party or delaying trade in goods or services or conduct of investment activities under this Agreement.

Article 11.4: Visa Facilitation

1. The Parties shall endeavour to facilitate the processes on the issuance and extension of visa.
2. The specific commitments on this Article are set out in Annex 11-B.

Article 11.5: Grant of Temporary Entry

1. The Parties may make commitments in respect of temporary entry of natural person. Such commitments and the conditions governing them shall be inscribed in Annex 11-A.
2. Where a Party makes a commitment under paragraph 1, that Party shall grant temporary entry of natural person of the other Party, as provided for in the commitment, provided that such natural person is otherwise qualified under all applicable immigration measures.
3. A Party shall limit any fees for processing applications for temporary entry of natural persons so as not to unduly nullify or impair the benefits accruing to the other Party or delay trade in goods or services or conduct of investment activities under this Agreement and not to exceed the administrative costs normally rendered.
4. The temporary entry granted pursuant to this Chapter shall not replace the requirements needed to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorizing the temporary entry.

Article 11.6: Transparency

1. Further to Article 18.1 (Publication), each Party shall:
 - (a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter;
 - (b) no later than six months after the date of entry into force of this Agreement, prepare, publish, and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter including information on applicable laws and regulations in such a manner as will enable natural persons of the other Party to become acquainted with them; and
 - (c) upon modifying or amending an immigration measure that affects the temporary entry of natural persons, ensure that such modifications or amendments are promptly published and made available in such a manner as will enable natural persons of the other Party to become acquainted with them.

2. Further to Article 18.1 (Publication), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding applications and procedures related to the temporary entry of natural person.

3. On the request of the applicant, the Party shall endeavor to provide, without undue delay, information on the status of the application or the decision about the application.

Article 11.7: Committee on Movement of Natural Persons

1. The Parties hereby establish a Committee on Movement of Natural Persons (hereinafter referred to as the “Committee”) comprising representatives of each Party including immigration officials, which shall meet on the request of either Party or the Joint Commission to consider any matter arising under this Chapter.

2. The Committee’s functions shall include:

- (a) exchanging information on the relevant laws and regulations;
- (b) identifying and recommending measures to facilitate movement of natural persons between the Parties;
- (c) considering other issues with respect to movement of natural persons that a Party has interest in; and
- (d) reviewing the implementation and operation of this Chapter.

Article 11.8: Dispute Settlement

1. The relevant authorities of both Parties shall endeavour to favourably resolve any problems that may arise from the implementation and administration of this Chapter.

2. If both Parties cannot reach agreement with regard to any specific issues raised from the implementation and administration of this Chapter as provided for in paragraph 1, Chapter 20 (Dispute Settlement) shall apply to the issues.

3. A Party shall not initiate proceedings under Chapter 20 (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

- (a) the matter involves a pattern of practice; and
- (b) the natural person has exhausted the available administrative remedies regarding the particular matter.

4. The remedies referred to in subparagraph 3(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the natural person.

Article 11.9: Relation to Other Chapters

1. Nothing in this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter, Chapters 1 (Initial Provisions and Definitions), 20 (Dispute Settlement), 21 (Exceptions), and 22 (Final Provisions), and Articles 18.1 (Publication) through 18.3 (Administrative Proceedings).
2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters and their Annexes of this Agreement.

ANNEX 11-A
SPECIFIC COMMITMENTS

Section A: China's Specific Commitments

1. China requires a natural person of Korea seeking temporary entry into its territory under the provisions of this Chapter and this Annex to obtain appropriate immigration formalities prior to entry.

Business visitors and services salespersons of Korea

2. Entry and temporary stay shall be granted to a business visitor and a services salesperson of Korea for a period of not more than 90 days without requiring that person to obtain an employment authorization, provided that the business visitor and the services salesperson otherwise complies with immigration measures applicable to temporary entry.

3. **A business visitor of Korea** means a natural person of Korea who is:

- (a) a service seller, who is a sales representative of a service supplier of Korea and is seeking temporary entry into China for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly;
- (b) an investor of Korea, or a duly authorized representative of an investor of Korea, seeking temporary entry into China to establish, expand, monitor, or dispose of a commercial presence of that investor; or
- (c) a goods seller who is seeking temporary entry into the territory of China to negotiate for the sale of goods where such negotiations do not involve direct sales to the general public.

4. **A Services Salesperson of Korea** means a natural person of Korea not based in the territory of China and receiving no remuneration from a source located within China, and who is engaged in activities related to representing a service supplier for the purpose of negotiation for the sale of services of that supplier where:

- (a) such sales are not directly made to the general public and;
- (b) the salesperson is not engaged in supplying the service.

Intra-Corporate Transferees (ICT) of Korea

5. Entry and temporary stay shall be granted to managers, executives and specialists defined as senior employees of a Korean company, who are dispatched to work in representative office, branch, or subsidiary in the territory of China for a period of up to three years, which may be extended for subsequent periods provided the conditions on which it is based remain in effect, provided that such person otherwise complies with immigration measures applicable to temporary entry.

6. Entry and temporary stay shall be granted to managers, executives and specialists defined as senior employees of a Korean company, being engaged in the foreign invested enterprises in the territory of China for conducting business, for a period of up to three years. The aforementioned entry and temporary stay may be extended for subsequent periods provided the conditions on which it is based remain in effect, provided that such person otherwise complies with immigration measures applicable to temporary entry.

7. **ICT** means a manager, an executive, or a specialist, who is an employee of a service supplier or investor of Korea with a commercial presence in China;

- (a) **manager** means a natural person within an organization who primarily directs the organisation or a department or subdivision of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations;
- (b) **executive** means a natural person within an organization who primarily directs the management of the organisation, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment; and
- (c) **specialist** means a natural person within an organization who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organisation's service, research equipment, techniques or management.

Contractual Services Suppliers (CSS) of Korea

8. Entry and temporary stay shall be granted for a period up to one year or the period of the contract, whichever is less, to a natural person of Korea who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 11-A-1, provided that such person otherwise complies with immigration measures applicable to temporary entry.

9. **A contractual service supplier** means a natural person of Korea who:

- (a) is an employee of a service supplier or an enterprise of Korea, whether a company, partnership or firm, who enters into China temporarily in order to perform a service pursuant to a contract(s) between his or her employer and a service consumer(s) in China;
- (b) is employed by a company, partnership or firm of Korea, which has no commercial presence in China where the service is to be supplied;
- (c) receives his or her remuneration from that employer; and

- (d) has appropriate educational and professional qualifications relevant to the service to be supplied.

10. Labour market testing may be required as a condition for temporary entry of CSS, or numerical restriction may be imposed relating to temporary entry for CSS.

Section B: Korea's Specific Commitments

1. Korea requires a natural person of China seeking temporary entry into its territory under the provisions of this Chapter and this Annex to obtain appropriate immigration formalities prior to entry.
2. Korea may refuse to grant temporary entry to a natural person of China who is likely to be involved in any labour dispute² that is in progress and adversely affect the settlement of such labour dispute.

Business visitors of China

3. Entry and temporary stay shall be granted to a business visitor of China for a period of not more than 90 days without requiring that person to obtain an employment authorization, provided that the business visitor otherwise complies with immigration measures applicable to temporary entry.
4. **A business visitor of China** means a natural person of China:
 - (a) who is:
 - (i) a service seller who enters the territory of Korea for the purpose of negotiating sale of services or entering into agreements for such sale;
 - (ii) seeking temporary entry for negotiating sale of goods, where such negotiations do not involve direct sales to the general public; or
 - (iii) an investor or an employee of an investor, who is a manager, executive or specialist as defined in paragraph 6, seeking temporary entry to establish an investment; and
 - (b) whose primary source of remuneration for the proposed business activity, principal place of business and the actual place of accrual of profits, at least predominantly, remain outside Korea.

Intra-Corporate Transferees (ICT) of China

5. Entry and temporary stay shall be granted for a period of up to three years, which may be extended for subsequent periods provided the conditions on which it is based remain in

² **Labour dispute** means a dispute between a union and employer related to terms and conditions of employment.

effect, to an ICT of China, provided that such person otherwise complies with immigration measures applicable to temporary entry.

6. **ICT** means an employee of a company that supplies services through subsidiaries, branches, or designated affiliates established in the territory of Korea and who has been so employed for a period not less than one year immediately preceding the date of the application for temporary entry, and who is an executive, manager, or specialist as defined below:

- (a) **executive** means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual supply of a service or services of the organisation;
- (b) **manager** means a natural person within an organisation who primarily directs the organisation or a department of the organisation; supervises and controls the work of other supervisory, professional or managerial employees; has the authority to hire and fire or recommend hiring, firing, or other personnel actions; and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the supply of the service; and
- (c) **specialist** means a natural person within an organisation who possesses knowledge at an advanced level of continued expertise and proprietary knowledge on the services, research, equipment, techniques, or management of the organisation.

Contractual Services Suppliers (CSS) of China

7. Entry and temporary stay shall be granted for a period up to one year or the period of the contract, whichever is less, to a natural person of China who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 11-A-1, provided that such person otherwise complies with immigration measures applicable to temporary entry.

8. **A contractual service supplier** means a natural person of China who:

- (a) is employed or engaged in a specialised occupation that requires theoretical and practical application of specialised knowledge;
- (b) possesses the necessary academic and professional qualifications and professionally-qualified competency-based experience to perform an activity in the sector relevant to the service to be provided in accordance with the laws, regulations or requirements of Korea;
- (c) is engaged in the supply of a contracted service as an employee of an enterprise that has no commercial presence in Korea, where the enterprise obtains a service contract, for a period not exceeding one year, from an enterprise of

Korea, who is the final consumer of the services supplied. The contract shall comply with the laws and regulations of Korea;

(d) has been an employee of the enterprise for a period of not less than one year immediately preceding the date of application for admission; and

(e) is required to receive no remuneration from an enterprise located in Korea.

9. Labour market testing may be required as a condition for temporary entry of CSS, or numerical restriction may be imposed relating to temporary entry for CSS.

APPENDIX 11-A-1
LIST OF CONTRACTUAL SERVICE SUPPLIERS

For Korea:

1. Services related to the installation, management or repair of industrial equipment or machinery, excluding construction and power generation equipment, for an enterprise in Korea which purchases the equipment or the machinery from an enterprise employing the natural person located in China;
2. Consultancy services related to technical knowledge or skill concerning the natural sciences applied to information technology, e-business, biotechnology, nanotechnology, digital electronics, or the environmental industry;
3. Consultancy services for foreign accounting standards and auditing, training of CPAs, transfer of auditing technology and exchange of information related to accounting, auditing and bookkeeping services, to a Korean accounting firm or office through a membership contract;
4. Architectural services subject to collaboration with architects registered under Korean law in the form of joint contracts;
5. Management consulting services; and
6. The following professional engineering services:
 - (a) consultancy services related to the installation of computer hardware;
 - (b) software R&D-based implementation services;
 - (c) data management services;
 - (d) data system services; and
 - (e) specialty engineering design services for automobiles.

For China:

The services provided by CSS are only limited to the specific sectors as follows:

- (1) architectural services;
- (2) engineering services;
- (3) integrated engineering services

- (4) urban planning services (except general urban planning)
- (5) computer and related services;
- (6) construction and related engineering services;
- (7) education services: CSS shall acquire a bachelor's degree or above, receive appropriate professional titles or certificates, and have at least two-year professional work experience; a Chinese party involved in a contract shall be a juridical person which has the function of providing education service; and
- (8) tourism services.

ANNEX 11-B VISA FACILITATION

1. With a view to ensuring stability and convenience of ICT³ and investors of the other Party, a Party shall take commitments in applying its relevant laws and regulations as follows:

For Korea,

Korea commits to expand the initial stay from one year to two years under its Alien Card system with regard to ICTs of China who are employed in Korea or investors of China with established business in the territory of Korea, and who are engaged with its operation.

Korea commits to facilitate the procedure for the extension of stay under its Alien Card system.

For China,

China commits to expand the initial stay from one year to two years under its Work Certificate and Working Resident Permit system with regard to ICTs of Korea who are employed in China, or investors of Korea with established business in the territory of China, and who are engaged with its operation.

China commits to facilitate the procedure for the extension of stay under its Work Certificate and Working Resident Permit system.

2. Under the framework of *Agreement on the Simplification of Visa Procedures and the Issuance of Multiple Entry Visas Between the Government of the Republic of Korea and the Government of the People's Republic of China* signed at Beijing November 12, 1998, and recognizing possible amendment of the above-mentioned agreement, both Parties commits to facilitate the issuance of multiple entry visa for business visitors.

For Korea,

Pursuant to relevant regulations of Ministry of Justice of Korea, Korea commits to issue multiple entry visa valid for one year and for a stay not exceeding thirty days each time to eligible applicants. Korea confirms that its practice is to issue aforesaid multiple entry visa from the second application, to the personnel who visits Korea and then comes China without unlawful record in previous cases.

For China,

³ ICT means:

- i) with respect to China, the ICT defined in Paragraph 7 of the Section B under the Annex 11-A; and
- ii) with respect to Korea, the ICT defined in Paragraph 6 of the Section A under the Annex 11-A.

China commits to issue multiple entry visa valid for one year and for a stay not exceeding thirty days each time to eligible applicants. China confirms that its practice is to issue aforesaid multiple entry visa from the second application, to the personnel who visits China and then come to Korea without unlawful record in previous cases.

ANNEX 11-C
PREFERENTIAL ARRANGEMENT FOR INVESTMENT FACILITATION

Based on the needs of each Party, the Parties should encourage, through setting up a preferential arrangement, mutual investment and movement of personnel in accordance with each other's respective domestic laws and regulations, and without prejudice to its domestic employment market.

The scope of personnel should include business visitor, contractual service supplier, and ICT. Respective government ministries shall engage in and work out the aforementioned arrangement accordingly.