

## CHAPTER SEVEN

### TRADE IN SERVICES, ESTABLISHMENT AND ELECTRONIC COMMERCE

#### SECTION A GENERAL PROVISIONS

##### ARTICLE 7.1: OBJECTIVE, SCOPE AND COVERAGE

1. The Parties, reaffirming their respective rights and obligations under the WTO Agreement, hereby lay down the necessary arrangements for progressive reciprocal liberalisation of trade in services and establishment and for cooperation on electronic commerce.
2. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement.
3. This Chapter shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.
4. Consistent with this Chapter, each Party retains the right to regulate and to introduce new regulations to meet legitimate policy objectives.
5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment in this Chapter and its Annexes.<sup>1</sup>

##### ARTICLE 7.2: DEFINITIONS

For the purposes of this Chapter:

- (a) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

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<sup>1</sup> The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under the terms of a specific commitment in this Chapter and its Annexes.

- (b) **measures adopted or maintained by a Party** means measures taken by:
  - (i) central, regional or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (c) **person** means either a natural person or a juridical person;
- (d) **natural person** means a national of Korea or one of the Member States of the European Union according to its respective legislation;
- (e) **juridical person** means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (f) **juridical person of a Party** means:
  - (i) a juridical person set up in accordance with the laws of one of the Member States of the European Union or of Korea respectively, and having its registered office, central administration<sup>2</sup> or principal place of business in the territory to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply, or of Korea respectively. Should the juridical person have only its registered office or central administration in the territory to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply or of Korea, it shall not be considered as a juridical person of the European Union or of Korea respectively, unless it engages in substantive business operations<sup>3</sup> in the territory to which the Treaty on European Union and the Treaty on the Functioning of the European Union apply or of Korea respectively; or
  - (ii) in the case of establishment in accordance with Article 7.9(a), a juridical person owned or controlled by natural persons of the EU Party or of Korea respectively, or by a juridical person of the European Union or of Korea identified under subparagraph (i) respectively.

A juridical person is:

- (i) **owned** by persons of the EU Party or of Korea if more than 50 percent of the equity interest in it is beneficially owned by persons of the EU Party or of Korea respectively;

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

<sup>3</sup> In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU Party understands the concept of “effective and continuous link” with the economy of a Member State of the European Union enshrined in Article 48 of the Treaty as equivalent to the concept of “substantive business operations” provided for in paragraph 6 of Article V of the GATS. Accordingly, for a juridical person set up in accordance with the laws of Korea and having only its registered office or central administration in the territory of Korea, the EU Party shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous link with the economy of Korea.

- (ii) **controlled** by persons of the EU Party or of Korea if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (iii) **affiliated** with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (g) Notwithstanding subparagraph (f), shipping companies established outside the EU Party or Korea and controlled by nationals of a Member State of the European Union or of Korea respectively, shall also be covered by this Agreement, if their vessels are registered in accordance with the respective legislation of that Member State of the European Union or of Korea and carry the flag of a Member State of the European Union or of Korea;<sup>4</sup>
- (h) **economic integration agreement** means an agreement substantially liberalising trade in services and establishment pursuant to the WTO Agreement in particular Articles V and V *bis* of GATS;
- (i) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;
- (j) **computer reservation system** (hereinafter referred to as “CRS”) **services** means services provided by computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (k) **selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services, nor the applicable conditions; and
- (l) **service supplier** means any person that supplies or seeks to supply a service, including as an investor.

#### ARTICLE 7.3: COMMITTEE ON TRADE IN SERVICES, ESTABLISHMENT AND ELECTRONIC COMMERCE

1. The Committee on Trade in Services, Establishment and Electronic Commerce established pursuant to Article 15.2.1 (Specialised Committees) shall comprise representatives of the Parties. The principal representative of the Parties for the Committee shall be an official of its authority responsible for the implementation of this Chapter.

2. The Committee shall:

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<sup>4</sup> This subparagraph shall not apply to establishment.

- (a) supervise and assess the implementation of this Chapter;
- (b) consider issues regarding this Chapter that are referred to it by a Party; and
- (c) provide opportunities for relevant authorities to exchange information on prudential measures with respect to Article 7.46.

## **SECTION B**

### **CROSS-BORDER SUPPLY OF SERVICES**

#### **ARTICLE 7.4: SCOPE AND DEFINITIONS**

1. This Section applies to measures of the Parties affecting the cross-border supply of all service sectors with the exception of:

- (a) audio-visual services<sup>5</sup>;
- (b) national maritime cabotage; and
- (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services;
  - (iii) CRS services; and
  - (iv) other services auxiliary to air transport services, such as ground handling services, rental service of aircraft with crew and airport management services.

2. Measures affecting the cross-border supply of services include measures affecting:

- (a) the production, distribution, marketing, sale and delivery of a service;
- (b) the purchase, payment or use of a service;
- (c) the access to and use of, in connection with the supply of a service, networks or services which are required by the Parties to be offered to the public generally; and
- (d) the presence in a Party's territory of a service supplier of the other Party.

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<sup>5</sup> The exclusion of audio-visual services from the scope of this Section is without prejudice to the rights and obligations derived from the Protocol on Cultural Cooperation.

3. For the purposes of this Section:

- (a) **cross-border supply of services** is defined as the supply of a service:
  - (i) from the territory of a Party into the territory of the other Party; and
  - (ii) in the territory of a Party to the service consumer of the other Party;
- (b) **services** includes any service in any sector except services supplied in the exercise of governmental authority; and
- (c) a **service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

#### ARTICLE 7.5: MARKET ACCESS

1. With respect to market access through the cross-border supply of services, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex 7-A.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex 7-A, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;<sup>6</sup>
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; and
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.<sup>7</sup>

#### ARTICLE 7.6: NATIONAL TREATMENT

1. In the sectors where market access commitments are inscribed in Annex 7-A and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services

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<sup>6</sup> This subparagraph includes measures which require a service supplier of the other Party to have an establishment within the meaning of Article 7.9(a) or to be resident in a Party's territory as a condition for the cross-border supply of services.

<sup>7</sup> This subparagraph does not cover measures of a Party which limit inputs for the cross-border supply of services.

and service suppliers.

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of the other Party.

4. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

#### ARTICLE 7.7: LISTS OF COMMITMENTS

1. The sectors liberalised by each Party pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to services and service suppliers of the other Party in those sectors are set out in the lists of commitments included in Annex 7-A.

2. Neither Party may adopt new, or more, discriminatory measures with regard to services or service suppliers of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

#### ARTICLE 7.8: MFN TREATMENT<sup>8</sup>

1. With respect to any measures covered by this Section affecting the cross-border supply of services, unless otherwise provided for in this Article, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any third country in the context of an economic integration agreement signed after the entry into force of this Agreement.

2. Treatment arising from a regional economic integration agreement granted by either Party to services and service suppliers of a third party shall be excluded from the obligation in paragraph 1, only if this treatment is granted under sectoral or horizontal commitments for which the regional economic integration agreement stipulates a significantly higher level of obligations than those undertaken in the context of this Section as set out in Annex 7-B.

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

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

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<sup>8</sup> Nothing in this Article shall be interpreted as extending the scope of this Section.

- (b) under any international agreement or arrangement relating wholly or mainly to taxation; or
- (c) under measures covered by the MFN exemptions listed in Annex 7-C.

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

## SECTION C ESTABLISHMENT

### ARTICLE 7.9: DEFINITIONS

For the purposes of this Section:

- (a) **establishment** means:
  - (i) the constitution, acquisition or maintenance of a juridical person;<sup>9</sup> or
  - (ii) the creation or maintenance of a branch or representative officewithin the territory of a Party for the purpose of performing an economic activity;
- (b) **investor** means any person that seeks to perform or performs an economic activity through setting up an establishment;<sup>10</sup>
- (c) **economic activity** includes any activities of an economic nature except activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators;
- (d) **subsidiary of a juridical person of a Party** means a juridical person which is effectively controlled by another juridical person of that Party; and
- (e) **branch of a juridical person** means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will, if necessary, be a legal link with the parent body, the head office of which is

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<sup>9</sup> The terms “constitution” and “acquisition” of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

<sup>10</sup> Where the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the investor including the juridical person shall, nonetheless, through such establishment be accorded the treatment provided for investors under this Agreement. Such treatment shall be extended to the establishment through which the economic activity is performed and need not be extended to any other parts of the investor located outside the territory where the economic activity is performed.

abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.

#### ARTICLE 7.10: SCOPE

With a view to improving the investment environment, and in particular the conditions of establishment between the Parties, this Section applies to measures by the Parties affecting establishment<sup>11</sup> in all economic activities with the exception of:

- (a) mining, manufacturing and processing<sup>12</sup> of nuclear materials;
- (b) production of, or trade in, arms, munitions and war material<sup>13</sup>;
- (c) audio-visual services;<sup>14</sup>
- (d) national maritime cabotage; and
- (e) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services;
  - (ii) the selling and marketing of air transport services;
  - (iii) CRS services; and
  - (iv) other services auxiliary to air transport services, such as ground handling services, rental service of aircraft with crew and airport management services.

#### ARTICLE 7.11: MARKET ACCESS

1. With respect to market access through establishment, each Party shall accord to establishments and investors of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex 7-A.

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<sup>11</sup> Investment protection, other than the treatment deriving from Article 7.12, including investor-state dispute settlement procedures, is not covered by this Chapter.

<sup>12</sup> For greater certainty, processing of nuclear materials covers all the activities included in the International Standard Industrial Classification of all Economic Activities as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N°4, ISIC REV 3.1, 2002 code 2330.

<sup>13</sup> War material is limited to any product which is solely intended and made for military use in connection with the conduct of war or defence activities.

<sup>14</sup> The exclusion of audio-visual services from the scope of this Section is without prejudice to the rights and obligations derived from the Protocol on Cultural Cooperation.



2. In sectors where market access commitments are undertaken, the measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex 7-A, are defined as:

- (a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or other establishment requirements such as economic needs test;
- (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>15</sup>
- (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholdings or the total value of individual or aggregate foreign investment;
- (e) measures which restrict or require specific types of legal entity or joint ventures through which an investor of the other Party may perform an economic activity; and
- (f) limitations on the total number of natural persons, other than key personnel and graduate trainees as defined in Article 7.17, that may be employed in a particular sector or that an investor may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test.

#### ARTICLE 7.12: NATIONAL TREATMENT<sup>16</sup>

1. In the sectors inscribed in Annex 7-A, and subject to any conditions and qualifications set out therein, with respect to all measures affecting establishment, each Party shall accord to establishments and investors of the other Party treatment no less favourable than that it accords to its own like establishments and investors.

2. A Party may meet the requirement of paragraph 1 by according to establishments and investors of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like establishments and investors.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of establishments or investors of the Party compared to like establishments or investors of the other Party.

4. Specific commitments assumed under this Article shall not be construed to require

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<sup>15</sup> Subparagraphs (a) through (c) do not cover measures taken in order to limit the production of an agricultural product.

<sup>16</sup> This Article applies to measures governing the composition of boards of directors of an establishment, such as nationality and residency requirements.

any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant establishments or investors.

#### ARTICLE 7.13: LISTS OF COMMITMENTS

1. The sectors liberalised by each Party pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to establishments and investors of the other Party in those sectors are set out in the lists of commitments included in Annex 7-A.

2. Neither Party may adopt new, or more, discriminatory measures with regard to establishments and investors of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

#### ARTICLE 7.14: MFN TREATMENT<sup>17</sup>

1. With respect to any measures covered by this Section affecting establishment, unless otherwise provided for in this Article, each Party shall accord to establishments and investors of the other Party treatment no less favourable than that it accords to like establishments and investors of any third country in the context of an economic integration agreement signed after the entry into force of this Agreement.<sup>18</sup>

2. Treatment arising from a regional economic integration agreement granted by either Party to establishments and investors of a third party shall be excluded from the obligation in paragraph 1, only if this treatment is granted under sectoral or horizontal commitments for which the regional economic integration agreement stipulates a significantly higher level of obligations than those undertaken in the context of this Section as set out in Annex 7-B.

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

- (a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of GATS or its Annex on Financial Services;
- (b) under any international agreement or arrangement relating wholly or mainly to taxation; or
- (c) under measures covered by an MFN exemption listed in Annex 7-C.

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

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<sup>17</sup> Nothing in this Article shall be interpreted as extending the scope of this Section.

<sup>18</sup> The obligation contained in this paragraph does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-state dispute settlement procedures.

#### ARTICLE 7.15: OTHER AGREEMENTS

Nothing in this Chapter shall be deemed to:

- (a) limit the rights of investors of the Parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which one of the Member States of the European Union and Korea are party; and
- (b) derogate from the international legal obligations of the Parties under those agreements that provide investors of the Parties with more favourable treatment than that provided for under this Agreement.

#### ARTICLE 7.16: REVIEW OF THE INVESTMENT LEGAL FRAMEWORK

1. With a view to progressively liberalising investments, the Parties shall review the investment legal framework<sup>19</sup>, the investment environment and the flow of investment between them consistently with their commitments in international agreements no later than three years after the entry into force of this Agreement and at regular intervals thereafter.

2. In the context of the review referred to in paragraph 1, the Parties shall assess any obstacles to investment that have been encountered and shall undertake negotiations to address such obstacles, with a view to deepening the provisions of this Chapter, including with respect to general principles of investment protection.

### SECTION D TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS

#### ARTICLE 7.17: SCOPE AND DEFINITIONS

1. This Section applies to measures of the Parties concerning the entry into, and temporary stay in, their territories of key personnel, graduate trainees, business services sellers, contractual service suppliers and independent professionals subject to Article 7.1.5.

2. For the purposes of this Section:

- (a) **key personnel** means natural persons employed within a juridical person of a Party other than a non-profit organisation and who are responsible for the setting up or the proper control, administration and operation of an establishment. Key personnel comprises business visitors responsible for setting up an establishment and intra-corporate transferees;
  - (i) **business visitors** means natural persons working in a senior position who are responsible for setting up an establishment. They do not

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<sup>19</sup> This includes this Chapter and Annexes 7-A and 7-C.

engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party; and

- (ii) **intra-corporate transferees** means natural persons who have been employed by a juridical person of a Party or have been partners in it (other than as majority shareholders) for at least one year and who are temporarily transferred to an establishment (including subsidiaries, affiliates or branches) in the territory of the other Party. The natural person concerned shall belong to one of the following categories.

#### *Managers*

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

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

#### *Specialists*

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

- (b) **graduate trainees** means natural persons who have been employed by a juridical person of a Party for at least one year, who possess a university degree and who are temporarily transferred to an establishment in the territory of the other Party for career development purposes or to obtain training in business techniques or methods;<sup>20</sup>
- (c) **business service sellers** means natural persons who are representatives of a service supplier of a Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from

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<sup>20</sup> The recipient establishment may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training corresponding to the level of a university degree.

a source located within the host Party;

- (d) **contractual service suppliers** means natural persons employed by a juridical person of a Party which has no establishment in the territory of the other Party and which has concluded a *bona fide* contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services<sup>21</sup>; and
- (e) **independent professionals** means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a *bona fide* contract to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services<sup>22</sup>.

#### ARTICLE 7.18: KEY PERSONNEL AND GRADUATE TRAINEES

1. For every sector liberalised in accordance with Section C and subject to any reservations listed in Annex 7-A, each Party shall allow investors of the other Party to transfer to their establishment natural persons of that other Party, provided that such employees are key personnel or graduate trainees as defined in Article 7.17. The temporary entry and stay of key personnel and graduate trainees shall be permitted for a period of up to three years for intra-corporate transferees<sup>23</sup>, 90 days in any 12 month period for business visitors<sup>24</sup>, and one year for graduate trainees.

2. For every sector liberalised in accordance with Section C, the measures which a Party shall not maintain or adopt, unless otherwise specified in Annex 7-A, are defined as limitations on the total number of natural persons that an investor may transfer as key personnel or graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.<sup>25</sup>

#### ARTICLE 7.19: BUSINESS SERVICE SELLERS

For every sector liberalised in accordance with Section B or C and subject to any reservations listed in Annex 7-A, each Party shall allow the temporary entry and stay of business service

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<sup>21</sup> The service contract referred to under this subparagraph shall comply with the laws, regulations and requirements of the Party where the contract is executed.

<sup>22</sup> The service contract referred to under this subparagraph shall comply with the laws, regulations and requirements of the Party where the contract is executed.

<sup>23</sup> A Party may authorise an extension for the period allowed in conformity with the laws and regulations in force in its territory.

<sup>24</sup> This paragraph is without prejudice to the rights and obligations deriving from bilateral visa waiver agreements between Korea and one of the Member States of the European Union.

<sup>25</sup> Unless otherwise provided in Annex 7-A, neither Party may require that an establishment appoints to senior management positions natural persons of any particular nationality or having residency in its territory.

sellers for a period of up to 90 days in any 12 month period.<sup>26</sup>

#### ARTICLE 7.20: CONTRACTUAL SERVICE SUPPLIER AND INDEPENDENT PROFESSIONALS

1. The Parties reaffirm their respective obligations arising from their commitments under the GATS as regards the temporary entry and stay of contractual service suppliers and independent professionals.

2. No later than two years after the conclusion of the negotiations pursuant to Article XIX of GATS and to the *Ministerial Declaration* of the WTO Ministerial Conference adopted on 14 November 2001, the Trade Committee shall adopt a decision containing a list of commitments concerning the access of contractual service suppliers and independent professionals of a Party to the territory of the other Party. Taking into account the results of those GATS negotiations, the commitments shall be mutually beneficial and commercially meaningful.

### SECTION E REGULATORY FRAMEWORK

#### SUB-SECTION A PROVISIONS OF GENERAL APPLICATION

#### ARTICLE 7.21: MUTUAL RECOGNITION

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

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

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

4. When, in conformity with the procedure set out in paragraph 3, a recommendation referred to in paragraph 2 has been found to be consistent with this Agreement and there is a sufficient level of correspondence between the relevant regulations of the Parties, the Parties shall, with a view to implementing that recommendation, negotiate, through their competent

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<sup>26</sup> This Article is without prejudice to the rights and obligations deriving from bilateral visa waiver agreements between Korea and one of the Member States of the European Union.

authorities, an agreement on mutual recognition (hereinafter referred to as an “MRA”) of requirements, qualifications, licences and other regulations.

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

6. The Working Group on MRA established pursuant to Article 15.3.1 (Working Groups) shall operate under the Trade Committee and shall comprise representatives of the Parties. With a view to facilitating the activities referred to in paragraph 2, the Working Group shall meet within one year of the entry into force of this Agreement, unless the Parties agree otherwise.

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

#### ARTICLE 7.22: TRANSPARENCY AND CONFIDENTIAL INFORMATION

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

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

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

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

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

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

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

#### ARTICLE 7.23: DOMESTIC REGULATION

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

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

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

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service; and
- (b) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

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



fora in which both Parties participate once they become effective.

#### ARTICLE 7.24: GOVERNANCE

Each Party shall, to the extent practicable, ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, *inter alia*, the *Core Principle for Effective Banking Supervision* of the Basel Committee on Banking Supervision, the *Insurance Core Principles and Methodology*, approved in Singapore on 3 October 2003 of the International Association of Insurance Supervisors, the *Objectives and Principles of Securities Regulation* of the International Organisation of Securities Commissions, the *Agreement on Exchange of Information on Tax Matters* of the Organisation for Economic Co-operation and Development (hereinafter referred to as the “OECD”), the *Statement on Transparency and Exchange of Information for Tax Purposes* of the G20, and the *Forty Recommendations on Money Laundering* and *Nine Special Recommendations on Terrorist Financing* of the Financial Action Task Force.

### **SUB-SECTION B COMPUTER SERVICES**

#### ARTICLE 7.25: COMPUTER SERVICES

1. In liberalising trade in computer services in accordance with Sections B through D, the Parties subscribe to the understanding set out in the following paragraphs.
2. CPC<sup>27</sup> 84, the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services including computer programs defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing consist of a combination of basic computer services functions respectively.
3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:
  - (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance or management of or for computers or computer systems;
  - (b) computer programs plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing,

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<sup>27</sup> CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N<sup>o</sup> 77, CPC *Prov*, 1991.

debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs;

- (c) data processing, data storage, data hosting or database services;
- (d) maintenance and repair services for office machinery and equipment, including computers; or
- (e) training services for staff of clients, related to computer programs, computers or computer systems, and not elsewhere classified.

4. Computer and related services enable the provision of other services such as banking by both electronic and other means. The Parties recognise that there is an important distinction between the enabling service such as web-hosting or application hosting and the content or core service that is being delivered electronically such as banking, and that in such cases the content or core service is not covered by CPC 84.

### **SUB-SECTION C POSTAL AND COURIER SERVICES**

#### **ARTICLE 7.26: REGULATORY PRINCIPLES**

No later than three years after the entry into force of this Agreement, with a view to ensuring competition in postal and courier services not reserved to a monopoly in each Party, the Trade Committee shall set out the principles of the regulatory framework applicable to those services. Those principles shall aim to address issues such as anti-competitive practices, universal service, individual licenses and nature of the regulatory authority.<sup>28</sup>

### **SUB-SECTION D TELECOMMUNICATIONS SERVICES**

#### **ARTICLE 7.27: SCOPE AND DEFINITIONS**

1. This Sub-section sets out the principles of the regulatory framework for the basic telecommunications services<sup>29</sup>, other than broadcasting, liberalised pursuant to Sections B through D of this Chapter.

2. For the purposes of this Sub-section:

- (a) **telecommunications services** means all services consisting of the transmission

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<sup>28</sup> For greater certainty, nothing in this Article shall be interpreted as intending to change the regulatory framework of the existing regulatory body in Korea which regulates private delivery service suppliers upon the entry into force of this Agreement.

<sup>29</sup> These include services listed in items from a through g under C. Telecommunication Services of 2. Communication Services in the MTN/GNS/W/120.

and reception of electromagnetic signals and does not cover the economic activity consisting of the provision of content which requires telecommunications for its transport;

- (b) **public telecommunications transport service** means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally;
- (c) **public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (d) **regulatory authority** in the telecommunication sector means the body or bodies charged with the regulation of telecommunications mentioned in this Sub-section;
- (e) **essential facilities** means facilities of a public telecommunications transport network or service that:
  - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
  - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (f) **major supplier** in the telecommunication sector means a supplier that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications services as a result of its control over essential facilities or the use of its position in the market;
- (g) **interconnection** means linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken;
- (h) **universal service** means the set of services that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price;<sup>30</sup>
- (i) **end-user** means a final consumer of or subscriber to a public telecommunications transport service, including a service supplier other than a supplier of public telecommunications transport services;
- (j) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances; and

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<sup>30</sup> The scope and implementation of universal services shall be decided by each Party.

- (k) **number portability** means the ability of end-users of public telecommunications transport services to retain, at the same location, the same telephone numbers without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications transport services.

#### ARTICLE 7.28: REGULATORY AUTHORITY

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

#### ARTICLE 7.29: AUTHORISATION TO PROVIDE TELECOMMUNICATIONS SERVICES

1. Provision of services shall, to the extent practicable, be authorised following a simplified authorisation procedure.
2. A license can be required to address issues of attributions of frequencies, numbers and rights of way. The terms and conditions for such license shall be made publicly available.
3. Where a license is required:
  - (a) all the licensing criteria and the reasonable period of time normally required to reach a decision concerning an application for a licence shall be made publicly available;
  - (b) the reasons for the denial of a licence shall be made known in writing to the applicant upon request; and
  - (c) license fees<sup>31</sup> required by any Party for granting a licence shall not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences.<sup>32</sup>

#### ARTICLE 7.30: COMPETITIVE SAFEGUARDS ON MAJOR SUPPLIERS

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<sup>31</sup> License fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

<sup>32</sup> This subparagraph shall take effect no later than five years after the entry into force of this Agreement. Each Party shall ensure that licence fees are imposed and applied in a non-discriminatory manner upon the entry into force of this Agreement.

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

- (a) engaging in anti-competitive cross-subsidisation<sup>33</sup>;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

#### ARTICLE 7.31: INTERCONNECTION

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services in its territory provide, directly or indirectly within the same territory, to suppliers of public telecommunications transport services of the other Party the possibility to negotiate interconnection. Interconnection should in principle be agreed on the basis of commercial negotiations between the companies concerned.

2. Regulatory authorities shall ensure that suppliers that acquire information from another undertaking during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

3. Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers or for like services of its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms and conditions (including technical standards and specifications) and at cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

4. The procedures applicable for interconnection with a major supplier shall be made publicly available.

5. Major suppliers shall make publicly available either their interconnection agreements

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<sup>33</sup> Or margin squeeze for the EU Party.

or their reference interconnection offers.<sup>34</sup>

#### ARTICLE 7.32: NUMBER PORTABILITY

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

#### ARTICLE 7.33: ALLOCATION AND USE OF SCARCE RESOURCES

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

#### ARTICLE 7.34: UNIVERSAL SERVICE

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

#### ARTICLE 7.35: CONFIDENTIALITY OF INFORMATION

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

#### ARTICLE 7.36: RESOLUTION OF TELECOMMUNICATIONS DISPUTES

##### *Recourse*

1. Each Party shall ensure that:
  - (a) service suppliers may have recourse to a regulatory authority or other relevant body of the Party to resolve disputes between service suppliers or between service suppliers and users regarding matters set out in this Sub-section; and

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<sup>34</sup> Each Party will implement this obligation in accordance with its relevant legislation.

- (b) in the event of a dispute arising between suppliers of public telecommunications transport networks or services in connection with rights and obligations that arise from this Sub-section, a regulatory authority concerned shall, at the request of either party to the dispute issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within a reasonable period of time.

#### *Appeal and Judicial Review*

2. Any service supplier whose legally protected interests are adversely affected by a determination or decision of a regulatory authority:

- (a) shall have a right to appeal against that determination or decision to an appeal body.<sup>35</sup> Where the appeal body is not judicial in character, written reasons for its determination or decision shall always be given and its determination or decision shall also be subject to review by an impartial and independent judicial authority. Determinations or decisions taken by appeal bodies shall be effectively enforced; and
- (b) may obtain review of the determination or decision by an impartial and independent judicial authority of the Party. Neither Party may permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant judicial body stays such determination or decision.

### **SUB-SECTION E FINANCIAL SERVICES**

#### **ARTICLE 7.37: SCOPE AND DEFINITIONS**

1. This Sub-section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections B through D.

2. For the purposes of this Sub-section:

**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):
    - (A) life;
    - (B) non-life;

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<sup>35</sup> For disputes between service suppliers or between service suppliers and users, the appeal body shall be independent of the parties involved in the dispute.

- (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 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;

**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;

**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.

#### ARTICLE 7.38: PRUDENTIAL CARVE-OUT<sup>36</sup>

1. Each Party may adopt or maintain measures for prudential reasons<sup>37</sup>, including:
  - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; and
  - (b) ensuring the integrity and stability of the Party's financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim, and where they do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding each Party's commitments or obligations under such provisions.

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<sup>36</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 Article.

<sup>37</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.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

4. 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 7.39: TRANSPARENCY

The Parties recognise 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.

#### ARTICLE 7.40: SELF-REGULATORY ORGANISATIONS

When a Party requires membership or participation in, or access to, any self-regulatory organisations, securities or futures exchange or market, clearing agency or any other organisation or association, in order for financial service suppliers of the other Party to supply financial services on an equal basis to financial service suppliers of the Party, or when the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Articles 7.6, 7.8, 7.12 and 7.14 by such self-regulatory organisation.

#### ARTICLE 7.41: PAYMENT AND CLEARING SYSTEMS

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

#### ARTICLE 7.42: NEW FINANCIAL SERVICES

Each Party shall permit a financial service supplier of the other Party established in its territory to provide any new financial service that the Party would permit its own financial service suppliers to supply, in like circumstances, under its domestic law, provided that the introduction of the new financial service does not require a new law or modification of an existing law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable period of time and the authorisation may be refused only for prudential reasons.

#### ARTICLE 7.43: DATA PROCESSING

No later than two years after the entry into force of this Agreement, and in no case later than the effective date of similar commitments stemming from other economic integration agreements:

- (a) each Party shall permit a financial service supplier of the other Party established in its territory to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier; and
- (b) each Party, reaffirming its commitment<sup>38</sup> to protect fundamental rights and freedom of individuals, shall adopt adequate safeguards to the protection of privacy, in particular with regard to the transfer of personal data.

#### ARTICLE 7.44: SPECIFIC EXCEPTIONS

1. Nothing in this Chapter 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.

2. Nothing in this Agreement shall apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. Nothing in this Chapter 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.

#### ARTICLE 7.45: DISPUTE SETTLEMENT

1. Chapter Fourteen (Dispute Settlement) shall apply to the settlement of disputes on financial services arising exclusively under this Chapter, except as otherwise provided in this Article.

2. The Trade Committee shall, no later than six months after the entry into force of this Agreement, establish a list of 15 individuals. Each Party shall propose five individuals respectively and the Parties shall also select five individuals who are not nationals of either

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<sup>38</sup> For greater certainty, this commitment indicates the rights and freedoms set out in the *Universal Declaration of Human Rights*, the *Guidelines for the Regulation of Computerized Personal Data Files* (adopted by the United General Assembly Resolution 45/95 of 14 December 1990), and the *OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* (adopted by the OECD Council on 23 September 1980).

Party and who shall act as chairperson to the arbitration panel. Those individuals shall have expertise or experience in financial services law or practice, which may include the regulation of financial service suppliers, and shall comply with Annex 14-C (Code of Conduct for Members of Arbitration Panels and Mediators).

3. When panellists are selected by lot pursuant to Article 14.5.3 (Establishment of the Arbitration Panel), Article 14.9.3 (The Reasonable Period of Time for Compliance), Article 14.10.3 (Review of any Measure Taken to Comply with the Arbitration Panel Ruling), Article 14.11.4 (Temporary Remedies in case of Non-compliance), Article 14.12.3 (Review of any Measure Taken to Comply after the Suspension of Obligations), Articles 6.1, 6.3 and 6.4 (Replacement) of Annex 14-B (Rules of Procedure for Arbitration), the selection shall be made in the list established pursuant to paragraph 2.

4. Notwithstanding Article 14.11, where a panel finds a measure to be inconsistent with this Agreement and the measure under dispute affects the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in its financial services sector. Where such measure affects only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

#### ARTICLE 7.46: RECOGNITION

1. A Party may recognise 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 harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties, or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1 with a third party, whether at the time of entry into force of this Agreement or thereafter, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

### **SUB-SECTION F INTERNATIONAL MARITIME TRANSPORT SERVICES**

#### ARTICLE 7.47: SCOPE, DEFINITIONS AND PRINCIPLES

1. This Sub-section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Sections B through D.

2. For the purposes of this Sub-section:

- (a) **international maritime transport** includes door to door transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect includes the right to directly contract with providers of other modes of transport;
- (b) **maritime cargo handling services** means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
  - (i) the loading/discharging of cargo to/from a ship;
  - (ii) the lashing/unlashing of cargo; and
  - (iii) the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- (c) **customs clearance services** (alternatively ‘customs house brokers services’) means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
- (d) **container station and depot services** means activities consisting in storing containers in port areas with a view to their stuffing/stripping, repairing and making them available for shipments; and
- (e) **maritime agency services** means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
  - (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; and
  - (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required.

3. In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) the Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis; and
- (b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that

accorded to its own ships with regard to, *inter alia*, access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

4. In applying these principles, the Parties shall:

- (a) not introduce cargo-sharing arrangements in future bilateral agreements with third parties concerning maritime transport services, including dry and liquid bulk and liner trade, and not activate such cargo-sharing arrangements in case they exist in previous bilateral agreements; and
- (b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could restrict free and fair competition or constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

5. Each Party shall permit international maritime service suppliers of the other Party to have an establishment in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third party, whichever are the better, in accordance with the conditions inscribed in its list of commitments.

6. Each Party shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port:

- (a) pilotage;
- (b) towing and tug assistance;
- (c) provisioning;
- (d) fuelling and watering;
- (e) garbage collecting and ballast waste disposal;
- (f) port captain's services;
- (g) navigation aids; and
- (h) shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

## SECTION F ELECTRONIC COMMERCE

#### ARTICLE 7.48: OBJECTIVE AND PRINCIPLES

1. The Parties, recognising the economic growth and trade opportunities that electronic commerce provides, the importance of avoiding barriers to its use and development, and the applicability of the WTO Agreement to measures affecting electronic commerce, agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under this Chapter.
2. The Parties agree that the development of electronic commerce must be fully compatible with the international standards of data protection, in order to ensure the confidence of users of electronic commerce.
3. The Parties agree not to impose customs duties on deliveries by electronic means.<sup>39</sup>

#### ARTICLE 7.49: COOPERATION ON REGULATORY ISSUES

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

### SECTION G EXCEPTIONS

#### ARTICLE 7.50: EXCEPTIONS

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like

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<sup>39</sup> The inclusion of the provisions on electronic commerce in this Chapter is made without prejudice to Korea's position on whether deliveries by electronic means should be categorised as trade in services or goods.

conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order<sup>40</sup>;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;
- (f) inconsistent with Articles 7.6 and 7.12, provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>41</sup> imposition or collection of direct taxes in respect of economic activities, investors or service suppliers of the other Party.

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<sup>40</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

<sup>41</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

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

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