

ANNEX II SCHEDULE OF KOREA

EXPLANATORY NOTES

1. The Schedule of Korea to this Annex sets out, pursuant to Article 7.10 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which that Korea may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 7.4 (National Treatment);
- (b) Article 7.5 (Most-Favored-Nation Treatment);
- (c) Article 7.8 (Performance Requirements); or
- (d) Article 7.9 (Senior Management and Board of Directors).

2. Each Schedule entry sets out the following elements:

- (a) **Sector** refers to the sector for which the entry is made;
- (b) **Obligations Concerned** specifies the article(s) referred to in paragraph 1 that, pursuant to Articles 7.10.2(Non-Conforming Measures), do not apply to the sectors, subsectors, or activities scheduled in the entry;
- (c) **Description** sets out the scope of the sectors, subsectors, or activities covered by the entry; and
- (d) **Existing Measures** identifies, for transparency purposes, existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Articles 7.10.2(Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the sectors, subsectors, and activities identified in the **Description** element of that entry.

4. A **foreign person** means a foreign national or an enterprise organized under the laws of another country.

1. Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8)
Description:	<p>Korea reserves the right to adopt, with respect to the establishment or acquisition of an investment, any measure that is necessary for the maintenance of public order pursuant to Article 4 of the <i>Foreign Investment Promotion Act</i> (2018) and Article 5 of the <i>Enforcement Decree of the Foreign Investment Promotion Act</i> (2018), provided that the measure:</p> <ul style="list-style-type: none"> (a) is applied in accordance with the procedural requirements set out in the <i>Foreign Investment Promotion Act</i> (2018), <i>Enforcement Decree of the Foreign Investment Promotion Act</i> (2018), and other applicable law; (b) is adopted or maintained only where the investment poses a genuine and sufficiently serious threat to the fundamental interests of society; (c) is not applied in an arbitrary or unjustifiable manner; (d) does not constitute a disguised restriction on investment; and (e) is proportional to the objective it seeks to achieve.
Existing Measures:	<p><i>Foreign Investment Promotion Act</i> (Law No. 16479, August 20, 2019), Article 4</p> <p><i>Enforcement Decree of the Foreign Investment Promotion Act</i> (Presidential Decree No. 30170, October 29, 2019), Article 5</p>

2. Sector:	All Sectors
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	<p>Korea reserves the right to adopt or maintain any measure with respect to the transfer or disposition of equity interests or assets held by state enterprises or governmental authorities.</p> <p>This entry does not apply to former private enterprises that are owned by the state as a result of corporate reorganization processes.</p> <p>For the purposes of this entry, a state enterprise shall include any enterprise created for the sole purpose of selling or disposing of equity interests or assets of state enterprise or governmental authorities.</p>
Existing Measures:	<i>Financial Investment Services and Capital Markets Act</i> (Law No. 16191, December 31, 2018), Article 168

3. Sector:	All sectors
Obligations Concerned:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the defense industry.
Existing Measures:	<i>Foreign Investment Promotion Act</i> <i>Defense Acquisition Program Act</i>

4. Sector:	All sectors
Obligations Concerned:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the critical technology, which is defined in <i>Act on Prevention of Divulgence and Protection of Industrial Technology</i> .
Existing Measures:	<i>Act on Prevention of Divulgence and Protection of Industrial Technology</i> <i>Enforcement Decree of the Act on Prevention of Divulgence and Protection of Industrial Technology</i> <i>Foreign Investment Promotion Act</i> <i>Enforcement Decree of the Foreign Investment Promotion Act</i>

5. Sector:	All (Unrecognized or Technically Unfeasible Services)
Obligations Concerned:	<p>National Treatment (Article 7.4)</p> <p>Most-Favored-Nation Treatment (Article 7.5)</p> <p>Performance Requirements (Article 7.8)</p> <p>Senior Management and Board of Directors (Article 7.9)</p>
Description:	<p>Korea reserves the right to adopt or maintain any measure relating to investment in or the supply of services other than those recognized or other than those that should have been recognized by the Government of Korea owing to the circumstances at the time of entry into force of this Agreement.</p> <p>Any services classified positively and explicitly in KSIC or CPC, at the time of entry into force of the Agreement should have been recognized by the Government of Korea at that time.</p> <p>Korea reserves the right to adopt or maintain any measure relating to investment in or the supply of services which were not technically feasible at the time of entry into force of this Agreement.</p>

6. Sector:	Acquisition of Land
Obligations Concerned:	National Treatment (Article 7.4)
Description:	<p>Korea reserves the right to adopt or maintain any measure with respect to the acquisition of land by foreign persons, except that a juridical person shall continue to be permitted to acquire land where the juridical person:</p> <ol style="list-style-type: none"> 1. is not deemed foreign under Article 2 of the <i>Act on Report on Real Estate Transactions, etc.</i>, and 2. is deemed foreign under the <i>Act on Report on Real Estate Transactions, etc.</i> or is a branch of a foreign juridical person subject to approval or notification in accordance with the <i>Act on Report on Real Estate Transactions, etc.</i>, if the land is to be used for any of the following legitimate business purposes: <ol style="list-style-type: none"> (a) land used for ordinary business activities; (b) land used for housing for senior management; and (c) land used for fulfilling land-holding requirements stipulated by pertinent laws. <p>Korea reserves the right to adopt or maintain any measure with respect to the acquisition of farmland by foreign persons.</p>
Existing Measures:	<p><i>Act on Report on Real Estate Transactions, etc.</i> (Law No. 14569, February 8, 2017), Articles 2, 3, 7, 8, 9 and 11</p> <p><i>Farmland Act</i> (Law No. 16652, November 26, 2019), Article 6</p>

7. Sector:	Firearms, Swords, Explosives, and Similar Items
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the firearms, swords, explosives, gas sprays, electric shocks, and crossbows sector, including the manufacture, use, sale, storage, transport, import, export, and possession of firearms, swords, explosives, gas sprays, electric shocks, and crossbows.

8. Sector:	Disadvantaged Groups
Obligations Concerned:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure that accords rights or preferences to socially or economically disadvantaged groups, such as the disabled, persons who have rendered distinguished services to the state, and ethnic minorities.

9. Sector:	State-Owned National Electronic/Information System
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure affecting the administration and operation of any state-owned electronic information system that contains proprietary government information or information gathered pursuant to the regulatory functions and powers of the government.

10. Sector:	All Sectors
Obligations Concerned:	Most-Favored-Nation Treatment (Article 7.5)
Description:	<p>Korea reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement¹.</p> <p>Korea reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:</p> <ul style="list-style-type: none"> (a) aviation; (b) fisheries; (c) maritime matters, including salvage; (d) railroad transportation; or (e) telecommunications.

¹ For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

11. Sector:	Atomic Energy - Nuclear Power Generation; Manufacturing and Supply of Nuclear Fuel; Nuclear Materials; Radioactive Waste Treatment and Disposal (including treatment and disposal of spent and irradiated nuclear fuel); Radioisotope and Radiation Generation Facilities; Monitoring Services for Radiation; Services Related to Nuclear Energy; Planning, Maintenance, and Repair Services
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the atomic energy industry.

12. Sector:	Energy Industry - Electric Power Generation other than Nuclear Power Generation; Electric Power Transmission, Distribution, and Sales; Electricity Business
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	<p>Korea reserves the right to adopt or maintain any measure with respect to electric power generation, transmission, distribution, and sales.</p> <p>Any such measure shall not decrease the level of foreign ownership permitted in the electric power industry as provided by the entry in Korea's Schedule to Annex I related to Energy Industry (electric power).</p> <p>Notwithstanding this entry, Korea shall not adopt or maintain any measure inconsistent with Article 7.8.1(f) (Performance Requirement – technology transfer).</p>

13. Sector:	Energy Industry - Gas Industry
Obligations Concerned:	National Treatment (Article 7.4) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	<p>Korea reserves the right to adopt or maintain any measure with respect to the import and wholesale distribution of natural gas and the operation of terminals and the national high-pressure pipeline network.</p> <p>Any such measure shall not decrease the level of foreign ownership permitted in the gas industry as provided by the entry in Korea's Schedule to Annex I related to Energy Industry (gas industry).</p>

14. Sector:	Fishing
Obligations Concerned:	National Treatment (Article 7.4)
Description:	Korea reserves the right to adopt or maintain any measure with respect to fishing activities in Korea's territorial waters and Exclusive Economic Zone.

15. Sector:	Cultural Heritage
Obligations Concerned:	National Treatment (Article 7.4) Most-Favored-Nation Treatment (Article 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure with respect to the conservation, reconstruction, and restoration of cultural heritage and properties, including the excavation, appraisal, or dealing of cultural heritage and properties.

16. Sector:	Manufacturing of Liquor
Obligations Concerned:	Performance Requirements (Article 7.8)
Description:	Korea reserves the right to adopt or maintain any measure with respect to manufacturing of liquor.

17. Sector:	All Services Sectors
Obligations Concerned:	National Treatment (Articles 7.4) Most-Favored-Nation Treatment (Articles 7.5) Performance Requirements (Article 7.8) Senior Management and Board of Directors (Article 7.9)
Description:	Korea reserves the right to adopt or maintain any measure relating to investments in services sectors subject to the condition that they do not violate the obligations under the Chapter on Trade in Services.