

CHAPTER 10

MOVEMENT OF NATURAL PERSONS

ARTICLE 10.1: SCOPE

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party into the territory of the other Party under any of the categories referred to in Annex 10-A.
2. This Chapter reflects the mutually beneficial trading relationship between the Parties, the Parties' mutual desire to facilitate temporary entry for business persons on a reciprocal basis and to establish transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.
3. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor to measures regarding citizenship, or residence or employment on a permanent basis.
4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party 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 this Chapter.
5. The sole fact of requiring persons to meet eligibility requirements prior to entry into the territory of a Party shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter.

ARTICLE 10.2: RELATION TO OTHER CHAPTERS

Except for this Chapter, Chapters 1 (Initial Provisions and Definitions), 20 (Dispute Settlement) to the extent permitted by Article 10.6, 21 (Institutional Provisions), 22 (General Provisions and Exceptions) and 23 (Final Provisions) and Articles 19.1 (Publication), 19.2 (Provision of Information) and 19.3 (Administrative Proceedings), nothing in this Agreement shall impose any obligation on a Party regarding its immigration measures within the scope of this Chapter.

ARTICLE 10.3: GRANT OF TEMPORARY ENTRY

1. Each Party shall set out in Annex 10-A the specific commitments it undertakes for each of the categories of natural persons specified therein.

2. Each Party shall grant temporary entry to natural persons of the other Party in accordance with this Chapter, including the terms of the categories in Annex 10-A, provided that the natural persons comply with the relevant laws and regulations of the granting Party applicable to temporary entry, and any measures taken in accordance with them.
3. Neither Party shall impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party under this Chapter, unless otherwise specified in Annex 10-A.³⁴

ARTICLE 10.4: REQUIREMENTS AND PROCEDURES RELATING TO THE MOVEMENT OF NATURAL PERSONS

1. Each Party shall endeavour to establish or maintain immigration formalities, which can be granted prior to arrival in its territory, to allow natural persons covered by this Chapter entry into and temporary stay in its territory.
2. Each Party shall expeditiously process complete applications for immigration formalities received from natural persons of the other Party covered by this Chapter, including further immigration formality requests or extensions thereof.
3. Each Party shall, on request and within a reasonable period after a complete application by a natural person of the other Party covered by this Chapter requesting temporary entry is lodged, notify the applicant of:
 - (a) receipt of the application;
 - (b) the status of the application; and
 - (c) the decision concerning the application, including:
 - (i) if approved, the period of stay and other conditions; or
 - (ii) if refused, the reasons for refusal and any avenues for review.
4. Each Party shall ensure that fees charged by its competent authorities on applications for immigration formalities do not in themselves represent an unjustifiable impediment to the movement of natural persons of the other Party under this Chapter.

³⁴ For greater certainty, for Australia the term 'limitations' includes numerical quotas or the requirement of an economic needs test.

5. Each Party shall endeavour to simplify the procedures and requirements relating to the movement of natural persons of the other Party, within the framework of its laws and regulations.

ARTICLE 10.5: ONLINE LODGEMENT AND PROCESSING

Each Party shall endeavour, to the extent possible, to provide facilities for online lodgement and processing of immigration formalities.

ARTICLE 10.6: DISPUTE SETTLEMENT

1. The Parties shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of this Chapter.

2. The dispute settlement procedures provided in Chapter 20 (Dispute Settlement) shall not apply to this Chapter unless:

- (a) the matter involves a pattern of practice; and
- (b) the natural persons of a Party concerned have exhausted administrative remedies, where available, regarding the particular matter.

3. The remedies referred to in paragraph 2(b) shall be deemed to be exhausted if a final determination in the matter has not been issued within one year after the date of the institution of proceedings (not including any review or appeal) for such remedy, and the failure to issue such a determination is not attributable to delays caused by the natural persons concerned.

ARTICLE 10.7: TRANSPARENCY

Further to Articles 19.1 (Publication) and 19.2 (Provision of Information), each Party shall:

- (a) publish or otherwise make publicly available no later than six months after the date of entry into force of this Agreement, explanatory material regarding the requirements for temporary entry under this Chapter, in such a manner as will enable natural persons of the other Party to become acquainted with them; and
- (b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to the temporary entry of natural persons covered by this Chapter.

ARTICLE 10.8: DEFINITIONS

For the purposes of this Chapter:

immigration formalities means a visa, permit or any other document or electronic authority granting a natural person of a Party temporary entry to the other Party;

natural person of a Party means a natural person who under the law of the Party:

- (a) for Australia, is a citizen or a permanent resident of Australia; and
- (b) for Korea, is a national or a permanent resident of Korea; and

temporary entry means entry by a natural person covered by this Chapter, without the intent to establish permanent residence.

ANNEX 10-A
SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS

Section A: Australia's Specific Commitments

1. Australia requires a natural person of Korea seeking temporary entry to its territory under the provisions of this Chapter and this Annex to obtain appropriate immigration formalities prior to entry. Grant of temporary entry in accordance with this Annex is contingent on meeting eligibility requirements contained within Australia's migration law and regulations, as applicable at the time of an application for grant of temporary entry. Eligibility requirements for grant of temporary entry in accordance with paragraphs 5 through 11 include, but are not limited to, employer nomination and occupation requirements.

Business Visitors of Korea

2. Entry and temporary stay shall be granted to business visitors of Korea referred to in paragraph 4(a) for a period of up to 90 days.

3. Entry and temporary stay shall be granted to business visitors of Korea referred to in paragraph 4(b) for a period of up to six months, with the possibility of further stay.

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

- (a) a natural person seeking to travel to Australia for business purposes, including for investment purposes, whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who must not engage in making direct sales to the general public or in supplying goods or services themselves; or
- (b) a service seller, who is a natural person not based in Australia whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who is a sales representative of a service supplying enterprise, seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplying enterprise.

Intra-Corporate Transferees of Korea

5. Entry and temporary stay shall be granted to intra-corporate transferees of Korea referred to in paragraph 7(a) for a period of up to four years, with the possibility of further stay.

6. Entry and temporary stay shall be granted to intra-corporate transferees of Korea referred to in paragraph 7(b) for a period of up to two years, with the possibility of further stay.

7. An intra-corporate transferee of Korea means an employee of an enterprise of Korea established in Australia through a branch, subsidiary or affiliate which is lawfully and actively operating in Australia, who is transferred to fill a position in the branch, subsidiary or affiliate of the enterprise in Australia, and who is:

- (a) an executive or a senior manager, who is a natural person responsible for the entire or a substantial part of the operations of the enterprise in Australia, receiving general supervision or direction principally from higher-level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise; or
- (b) a specialist, who is a natural person with advanced trade, technical or professional skills and experience who must be assessed as having the necessary qualifications, or alternative credentials accepted as meeting Australia's standards, for that occupation, and who must have been employed by the employer for not less than two years immediately preceding the date of the application for temporary entry.

Independent Executives of Korea

8. Entry and temporary stay shall be granted to independent executives of Korea for a period of up to two years.

9. An independent executive of Korea means an executive of an enterprise headquartered in Korea who is establishing a branch or subsidiary of that enterprise in Australia, and who is a natural person that will be responsible for the entire or a substantial part of the enterprise's operations in Australia, receiving general supervision or direction principally from higher-level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.

Contractual Service Suppliers of Korea

10. Entry and temporary stay shall be granted to contractual service suppliers of Korea for a period of up to one year, with the possibility of further stay.

11. A contractual service supplier of Korea means a natural person of Korea who has trade, technical or professional skills and experience and who is assessed as having the necessary qualifications, skills and work experience accepted as meeting Australia's standards for their nominated occupation and is:

- (a) an employee of an enterprise of Korea that has concluded a contract for the supply of a service within Australia and which does not have a commercial presence within Australia; or
- (b) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia.

Accompanying Spouses and Dependents

12. For a natural person of Korea who has been granted the right of entry and temporary stay under this Chapter for a period of longer than 12 months and who has a spouse or dependent, Australia shall, upon application, grant the accompanying spouse or dependent the right of entry and temporary stay, movement and work for an equal period to that of the natural person.

Section B: Korea's Specific Commitments

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

2. Korea may refuse to grant temporary entry to a natural person who is likely to be involved in any labour dispute that is in progress and adversely affect the settlement of such labour dispute.

Business Visitors of Australia

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

4. A business visitor of Australia means a natural person of Australia:
- (a) who is:
 - (i) a service seller who enters the territory of Korea for the purpose of negotiating the sale of services or entering into agreements for such sale;
 - (ii) seeking temporary entry for negotiating sale of goods, where such negotiations do not involve direct sales to the general public; or
 - (iii) an investor or an employee of an investor, who is a manager, executive or specialist as defined in paragraph 6, seeking temporary entry to establish an investment; and
 - (b) whose primary source of remuneration for the proposed business activity, principal place of business and the actual place of accrual of profits, at least predominantly, remain outside Korea.

Intra-Corporate Transferees of Australia

5. Entry and temporary stay shall be granted for a period of up to three years, which may be extended for subsequent periods provided the conditions on which it is based remain in effect, to an intra-corporate transferee of Australia, provided that such person otherwise complies with immigration measures applicable to temporary entry.

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

- (a) executive means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision-making, and receives general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual supply of a service or services of the organisation;
- (b) manager means a natural person within an organisation who primarily directs the organisation or a department of the organisation; supervises and controls the work of other supervisory, professional or managerial employees; has the authority to hire and fire or recommend hiring, firing, or other personnel actions; and exercises discretionary authority over day-to-day operations. This does not include a first-line supervisor,

unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the supply of the service; and

- (c) specialist means a natural person within an organisation who possesses knowledge at an advanced level of continued expertise and proprietary knowledge on the services, research, equipment, techniques, or management of the organisation.

Traders and Investors of Australia

7. Entry and temporary stay shall be granted for a period of up to two years, which may be extended for subsequent periods provided that the conditions on which it is based remain in effect, to a business person of Australia seeking to:

- (a) carry on substantial trade in goods or services principally between Australia and Korea; or
- (b) establish, develop or administer an investment or provide advice or key technical services to the operation of an investment to which that person or that person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory or executive, or involves essential skills, provided that such a person otherwise complies with immigration measures applicable to temporary entry.

Contractual Service Suppliers of Australia

8. Entry and temporary stay shall be granted for a period up to one year or the period of the contract, whichever is less, to a natural person of Australia who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 10-A-1, provided that such person otherwise complies with immigration measures applicable to temporary entry.

9. A contractual service supplier, means a natural person of Australia who:

- (a) is employed or engaged in a specialised occupation that requires theoretical and practical application of specialised knowledge;
- (b) possesses the necessary academic and professional qualifications and professionally-qualified competency-based experience to perform an activity in the sector relevant to the service to be provided in accordance with the laws, regulations or requirements of Korea;

- (c) is engaged in the supply of a contracted service as an employee of an enterprise that has no commercial presence in Korea, where the enterprise obtains a service contract, for a period not exceeding one year, from an enterprise of Korea, who is final consumer of the services supplied. The contract shall comply with the laws and regulations of Korea;
- (d) has been an employee of the enterprise for a period of not less than one year immediately preceding the date of application for admission; and
- (e) is required to receive no remuneration from an enterprise located in Korea.

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

Accompanying Spouses and Dependents

11. Entry and temporary stay shall be granted for an equal period to a spouse or dependent of an intra-corporate transferee, trader, investor or contractual service supplier of Australia qualifying for temporary entry under this Chapter, provided that the spouse or dependent otherwise complies with immigration measures applicable to temporary entry. A work permit may be granted within the allowed scope in accordance with relevant laws, regulations or requirements of Korea.

APPENDIX 10-A-1
LIST OF CONTRACTUAL SERVICE SUPPLIERS

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