

ANNEX II

SERVICES AND INVESTMENT NON-CONFORMING MEASURES

KOREA

EXPLANATORY NOTE

1. The Schedule of Korea to this Annex sets out, pursuant to Articles 8.8 (Non-Conforming Measures) and 10.15 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which Korea may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:
 - (a) Article 8.4 (National Treatment) or 10.5 (National Treatment);
 - (b) Article 8.5 (Most-Favoured-Nation Treatment) or 10.6 (Most-Favoured-Nation Treatment);
 - (c) Article 8.6 (Market Access);
 - (d) Article 8.7 (Local Presence);
 - (e) Article 10.11 (Performance Requirements); or
 - (f) Article 10.12 (Senior Management and Boards of Directors).
2. Each Schedule entry sets out the following elements:
 - (a) **Sector**, refers to the sector for which the entry is made;
 - (b) **Obligation Concerned**, specifies the obligation(s) referred to in paragraph 1 that, pursuant to Articles 8.8.2 and 10.15.2, do not apply to sectors, subsectors, or activities set out in the Schedule;
 - (c) **Description**, sets out the scope of the sectors, sub-sectors, 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 8.8.2 and 10.15.2, 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 organised under the laws of another country.

5. For greater certainty, Articles 8.4 (National Treatment) and 8.7 (Local Presence) are separate disciplines and a measure that is only inconsistent with Article 8.7 (Local Presence) need not be reserved against Article 8.4 (National Treatment).

SCHEDULE OF KOREA

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.5)
Performance Requirements (Article 10.11)

Description: Investment

1. 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 *Foreign Investment Promotion Act (2012)* and Article 5 of the *Enforcement Decree of the Foreign Investment Promotion Act (2013)*, provided that Korea promptly provides written notice to New Zealand that it has adopted such a measure and that the measure:

- (a) is applied in accordance with the procedural requirements set out in the *Foreign Investment Promotion Act (2012)*, *Enforcement Decree of the Foreign Investment Promotion Act (2013)*, 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.

2. Without prejudice to any claim that may be submitted to arbitration pursuant to Article 10.18 (Settlement of Investment Disputes between a Party and an Investor of the other Party), a claimant may submit to arbitration under Section B of Chapter 10 (Investment) a claim that:

- (a) Korea has adopted a measure for which it has provided notice pursuant to paragraph 1; and

- (b) the claimant or, as the case may be, an enterprise of Korea that is a juridical person that the claimant owns or controls directly or indirectly, has incurred loss or damage by reason of, or arising out of, the measure.

In the event of such a claim, Section B of Chapter 10 (Investment) shall apply, *mutatis mutandis*, and all references in Section B of Chapter 10 (Investment) to a breach, or to an alleged breach, of an obligation under Section A of Chapter 10 (Investment) shall be understood to refer to the measure, which would constitute a breach of an obligation under Section A of Chapter 10 (Investment) but for this entry. However, no award may be made in favour of the claimant, if Korea establishes to the satisfaction of the tribunal that the measure satisfies all the conditions listed in subparagraphs (a) through (e) of paragraph 1.

Existing Measures:

Foreign Investment Promotion Act (Law No. 11535, December 11, 2012), Article 4

Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 24638, June 28, 2013), Article 5

| | |
|------------------------|--|
| Sector: | All Sectors |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <p><u>Investment</u></p> <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>Such a measure shall be implemented in accordance with the provisions of Chapter 17 (Transparency).</p> <p>This entry shall not apply to former private enterprises that are owned by the state as a result of corporate reorganisation 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> <p><u>Cross-Border Trade in Services and Investment</u></p> <p>Without prejudice to Korea's commitments undertaken in Annexes I and II, Korea reserves the right to adopt or maintain any measure with respect to the transfer to the private sector of all or any portion of services provided in the exercise of governmental authority.</p> |
| Existing Measures: | <i>Financial Investment Services and Capital Markets Act</i> (Law No 11845, May 28, 2013), Article 168 |

| | |
|------------------------|--|
| Sector: | All Sectors |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to the defence industry. Foreign investors (stipulated in Article 2 of the <i>Foreign Investment Promotion Act</i>) who intend to acquire the outstanding shares of a defence industry company (enterprises stipulated in Article 3 of the <i>Defense Acquisition Program Act</i>) other than the newly issued ones shall obtain a prior permission from the Minister of Trade, Industry and Energy. |
| Existing Measures: | <i>Foreign Investment Promotion Act</i> (Law No. 11535, December 11, 2012), Article 6 <i>Defense Acquisition Program Act</i> (Law No. 11713, March 23, 2013), Article 35 |

Sector: Acquisition of Land

Obligations Concerned: National Treatment (Article 10.5)

Description: Investment

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:

- (a) is not deemed foreign under Article 2 of the *Foreigner's Land Acquisition Act*, and
- (b) is deemed foreign under the *Foreigner's Land Acquisition Act* or is a branch of a foreign juridical person subject to approval or notification in accordance with the *Foreigner's Land Acquisition Act*, if the land is to be used for any of the following legitimate business purposes:
 - (i) land used for ordinary business activities;
 - (ii) land used for housing for senior management; or
 - (iii) land used for fulfilling land-holding requirements stipulated by pertinent laws.

Korea reserves the right to adopt or maintain any measure with respect to the acquisition of farmland by foreign persons.

Existing Measures: *Foreigner's Land Acquisition Act* (Law No. 11690, March 23, 2013), Articles 2 through 6

Farmland Act (Law No. 11694, March 23, 2013), Article 6

| | |
|------------------------|---|
| Sector: | Firearms, Swords, Explosives, and Similar Items |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> 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, or crossbows. |

| | |
|------------------------|--|
| Sector: | Disadvantaged Groups |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> 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. |

Sector: State-Owned National Electronic/Information System

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

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.

| | |
|------------------------|--|
| Sector: | Social Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for public purposes: income security or insurance, social security or insurance, social welfare, public training, public utilities, public transport, public housing, health, and child care. |

Sector: All Sectors

Obligations Concerned: Market Access (Article 8.6)

Description: Cross-Border Trade in Services

Korea reserves the right to adopt or maintain any measure that is not inconsistent with Korea's obligations under Article XVI of GATS as set out in *Korea's Schedule of Specific Commitments* under GATS (*GATS/SC/48, GATS/SC/48/Suppl.1, GATS/SC/48/Suppl.1/Rev.1, GATS/SC/48/Suppl.2, GATS/SC/48/Suppl.3, and GATS/SC/48/Suppl.3/Rev.1*).

For the purposes of this entry only, Korea's Schedule is subject to the following modifications:

- (a) for any sector and subsector with regard to which Korea's Annex I contains an entry (other than an entry with regard to "All Sectors") that does not list Market Access as one in the Obligations Concerned element, "None" is inscribed in the Market Access column for modes 1, 2, and 3, and "Unbound except as indicated in the Horizontal Commitments section" is inscribed for mode 4;
- (b) for any sector and subsector with regard to which Korea's Annex I contains an entry (other than an entry with regard to "All Sectors") that lists a limitation to the Market Access obligation, that limitation is inscribed in the Market Access column with regard to the appropriate mode of supply; and
- (c) for any sector and subsector listed in Appendix II-A, Korea's Schedule is modified as indicated in that Appendix.

These modifications shall not affect any limitation relating to subparagraph (f) of paragraph 2 of Article XVI of GATS inscribed in the Market Access column of Korea's Schedule.

For greater certainty, an entry of "None" in the Market Access column of Korea's Schedule shall not be construed to alter the application of Article 8.7 (Local Presence) as modified by Article 8.8 (Non-Conforming Measures).

Sector: All Sectors

Obligations Concerned: Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)

Description: Cross-Border Trade in Services and Investment

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 Agreement.

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:

- (a) aviation;
- (b) fisheries;
- (c) maritime matters, including salvage; or
- (d) telecommunications.

| | |
|------------------------|--|
| Sector: | Communication Services - Broadcasting Services |
| Obligations Concerned: | Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to the application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services. |

Sector: Transportation Services - Railroad Transportation

Obligations Concerned: Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)

Description: Cross-Border Trade in Services and Investment

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 railroad transportation.

Sector: Environmental Services - Treatment and Supply Services for Potable Water; Collection and Treatment Services for Municipal Sewage; Collection, Transportation, and Disposal Services for Municipal Refuse; Sanitation and Similar Services; Nature and Landscape Protection Services (Except for Environmental Impact Assessment Services)

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to the following environmental services: treatment and supply of potable water; collection and treatment of municipal sewage; collection, transportation, and disposal of municipal refuse; sanitation and similar services; and nature and landscape protection services (except for environmental impact assessment services).

This entry shall not apply to the supply of the aforementioned services pursuant to a contract between private parties, to the extent private supply of such services is permitted under relevant laws and regulations.

| | |
|------------------------|--|
| 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 (Articles 8.4 and 10.5) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to the atomic energy industry. |

Sector: Energy Services - Electric Power Generation other than Nuclear Power Generation; Electric Power Transmission, Distribution, and Sales; Electricity Business

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to electric power generation, transmission, distribution, and sales.

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).

Notwithstanding this entry, Korea shall not adopt or maintain any measure inconsistent with Article 10.11.1(f).

| | |
|------------------------|---|
| Sector: | Energy Services - Gas industry |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> 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. 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). |

| | |
|------------------------|---|
| Sector: | Distribution Services - Commission Agents' Services, Wholesaling and Retailing of Agricultural Raw Materials and Live Animals (<i>nong chuk san mul</i>) |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Local Presence (Article 8.7) Performance Requirements (Article 10.11) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to: <ul style="list-style-type: none"> (a) commission agents' services of agricultural raw materials, live animals, food products, beverages; (b) wholesale trade services of grain, meat, poultry, grain powder, red ginseng, fertilisers; and (c) retail services of rice, ginseng and red ginseng. |

| | |
|------------------------|---|
| Sector: | Transportation Services - Passenger Road Transportation Services (Taxi Services and Scheduled Passenger Road Transportation Services) |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to taxi services and scheduled passenger road transportation services. |

| | |
|------------------------|--|
| Sector: | Transportation Services - Freight Road Transportation Services (not including Road Transportation Services Related to Courier Services) |
| Obligations Concerned: | Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to freight road transportation services not including road transportation of containerised freight (excluding cabotage) by international shipping companies and road transportation services related to courier services. |

Sector: Transportation Services - Internal Waterways Transportation Services and Space Transportation Services

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to internal waterways transportation services and space transportation services.

Sector: Transportation Services - Storage and Warehousing Services

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to storage and warehousing services related to agricultural, fishery and livestock products.

| | |
|------------------------|--|
| Sector: | Communication Services – Non-Monopoly Postal Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Local Presence (Article 8.7) |
| Description: | <p><u>Cross-Border Trade in Services and Investment</u></p> <p>Korea reserves the right to adopt or maintain any measure relating to the operation and provision of postal services by foreigners including measures with respect to:</p> <ul style="list-style-type: none"> (a) the supply of support services to postal offices by military service personnel or other personnel of equivalent status; and (b) the Minister of Science, ICT and Future Planning not needing authorisation from the Minister of Land, Infrastructure and Transport in determining the total number of vehicles that may belong to the Ministry of Science, ICT and Future Planning and allocating the vehicles to postal offices. <p>The Korean Postal Authority reserves exclusive rights for collecting, processing and delivering domestic and international letters.</p> <p>The exclusive rights of the Korean Postal Authority include the right of access to its postal network and operation thereof.</p> <p>The postal services are not an area in which foreigners can invest.</p> |
| Existing Measures: | <p><i>Postal Services Act</i> (Law No. 11690, March 23, 2013)</p> <p><i>Military Service Act</i> (Law No. 11849, June 4, 2013)</p> <p><i>Regulations on Management of Common-Purpose Motor Vehicles</i> (Presidential Decree No. 24425, March 23, 2013)</p> <p><i>Foreign Investment Promotion Act</i> (Law No. 11535, December 11, 2012), Article 4</p> |

| | |
|------------------------|---|
| Sector: | Communication Services - Broadcasting Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure relating to broadcasting services. Korea shall ensure that this entry is not inconsistent with the Communications Services – Broadcasting Services entry in Korea’s Schedule to Annex I. |
| Existing Measures: | <i>Broadcasting Act</i> (Law No. 12093, August 13, 2013), Articles 8, 9, 69 through 72, 78 and 78-2 <i>Enforcement Decree of the Broadcasting Act</i> (Presidential Decree No. 24763, September 26, 2013), Articles 14, 50 through 58, 60 and 61-3 |

| | |
|------------------------|---|
| Sector: | Communication Services - Broadcasting and Telecommunications Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to subscription-based video services. For purposes of this entry, subscription-based video services means subscription-based video services that are supplied to end-users over dedicated transmission capacity that the supplier owns or controls (including by leasing) and includes IPTV and Interactive Broadcasting. |
| Existing Measures: | <i>Internet Multimedia Broadcasting Act</i> (Law No. 11690, March 23, 2013), Articles 4, 7, 9, 18 and 21 <i>Enforcement Decree of the Internet Multimedia Broadcasting Act</i> (Presidential Decree No. 24445, March 23, 2013), Article 20 |

| | |
|------------------------|--|
| Sector: | Communication Services - Broadcasting and Audio-Visual Services |
| Obligations Concerned: | Most Favoured-Nation Treatment (Articles 8.5 and 10.6) Performance Requirements (Article 10.11) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any preferential co-production arrangement for film or television productions. Official co-production status, which may be granted to a co-production produced under such a co-production arrangement, confers national treatment on works covered by a co-production arrangement. |
| Existing Measures: | <i>Act on Promotion of Motion Pictures and Video Products</i> (Law No. 11902, July 16, 2013) <i>Notice on Programming</i> (Korean Broadcasting Commission Notice No. 2008-135, December 31, 2008) |

| | |
|------------------------|---|
| Sector: | Communication Services - Broadcasting and Audio-Visual Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Performance Requirements (Article 10.11) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure setting criteria for determining whether broadcasting or audio-visual programs are Korean. Korea shall ensure that this entry is not inconsistent with the Communications Services – Broadcasting Services entry in Korea’s Schedule to Annex I or the Communications Services – Broadcasting and Telecommunications Services entry in Korea’s Schedule to Annex II. |
| Existing Measures: | <i>Act on Promotion of Motion Pictures and Video Products</i> (Law No. 11902, July 16, 2013), Articles 27 and 40 <i>Enforcement Decree of the Act on Promotion of Motion Pictures and Video Products</i> (Presidential Decree No. 24036, August 13, 2012), Articles 10 and 19 <i>Enforcement Regulations of the Act on Promotion of Motion Pictures and Video Products</i> (Ordinance of the Ministry of Culture, Sports and Tourism No.128, August 17, 2012) <i>Notice on Programming</i> (Korean Broadcasting Commission Notice No. 2008-135, December 31, 2008) |

Sector: Business Services - Real Estate Services (not including Real Estate Brokerage and Appraisal Services)

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to real estate development, supply, management, sale, and rental services, except for brokerage and appraisal services.

| | |
|------------------------|---|
| Sector: | Business Services - Insolvency and Receivership Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Local Presence (Article 8.7) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to insolvency and receivership services. Korea reserves the right to adopt or maintain any measure with respect to corporate restructuring services, including corporate restructuring companies, corporate restructuring partnerships, and corporate restructuring vehicles. |

| | |
|------------------------|---|
| Sector: | Digital Audio or Video Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) |
| Description: | <p><u>Cross-Border Trade in Services and Investment</u></p> <p>Korea reserves the right to adopt any measure to ensure that, upon a finding by the Government of Korea that Korean digital audio or video content or genres thereof is not readily available to Korean consumers, access to such content is not unreasonably denied to Korean consumers. With respect to digital audio or video services targeted at Korean consumers, Korea reserves the right to adopt any measure to promote the availability of such content.</p> <p>Any measure adopted pursuant to the paragraph above shall be implemented in accordance with the provisions of Chapter 17 (Transparency), as applicable, be based on objective criteria, and be no more trade-restrictive or burdensome than necessary.</p> <p>For the purposes of this entry, digital audio or video service means a service that provides streaming audio content, films or other video downloads or streaming video content regardless of the type of transmission (including through the internet), but does not include broadcasting services as defined by the <i>Broadcasting Act</i> as of the date this Agreement enters into force or subscription-based video services as defined in the Communications Services-Broadcasting and Telecommunications Services entry in Korea`s Schedule to Annex II.</p> |
| Existing Measures: | <i>Contents Industry Promotion Act</i> (Law No. 11690, March 23, 2013) |

Sector: Business Services - Cadastral Surveying Services and Cadastral Map-Making Services

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to cadastral surveying services and cadastral map related services.

Sector: Business and Environmental Services - Examination, Certification, and Classification of Agricultural Raw Materials and Live Animals (*nong chuk san mul*)

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Local Presence (Article 8.7)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to examination, certification, and classification of agricultural raw materials and live animal products.

Sector: Business Services - Services Incidental to Agriculture, Hunting, Forestry, and Fishing

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to services incidental to agriculture, forestry, and livestock, including genetic improvement, artificial insemination, rice and barley polishing, and activities related to a rice processing complex.

Korea reserves the right to adopt or maintain any measure with respect to the supply of services incidental to agriculture, hunting, forestry, and fishing by the Agricultural Cooperatives, the Forestry Cooperatives, and the Fisheries Cooperatives.

Sector: Fishing

Obligations Concerned: National Treatment (Article 10.5)

Description: Investment

Korea reserves the right to adopt or maintain any measure with respect to fishing activities in Korea's territorial waters and Exclusive Economic Zone.

| | |
|------------------------|---|
| Sector: | Publishing of Newspapers |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Local Presence (Article 8.7) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to the publishing (including printing and distribution) of newspapers. |
| Existing Measures: | <i>Act on the Promotion of Newspapers, Etc.</i> (Law No. 11690, March 23, 2013) <i>Enforcement Decree of the Act on the Promotion of Newspapers, Etc.</i> (Presidential Decree No. 22151, May 4, 2010) |

Sector: Education Services - Pre-Primary, Primary, Secondary, Higher and Other Education

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to pre-primary, primary, and secondary education; health and medicine-related higher education; higher education for prospective pre-primary, primary, and secondary teachers; professional graduate education in law; distance education at all education levels (except adult education services, provided that such services do not confer academic credit, diplomas or degrees); and other education services.

Sector: Social Services - Human Health Services

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to human health services.

| | |
|------------------------|--|
| Sector: | Recreational, Cultural, and Sporting Services - Motion Picture Promotion, Advertising, or Post-Production Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to motion picture promotion, advertising, or post-production services. |
| Existing Measures: | <i>Act on Promotion of Motion Pictures and Video Products</i> (Law No. 11902, July 16, 2013) <i>Enforcement Decree of the Act on Promotion of Motion Pictures and Video Products</i> (Presidential Decree No. 24036, August 13, 2012) |

| | |
|------------------------|---|
| Sector: | Recreational, Cultural, and Sporting Services - Museum and Other Cultural Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> 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. |
| Existing Measures: | <i>Cultural Heritage Protection Act</i> (Law No. 11228, January 26, 2012) <i>Enforcement Decree of the Cultural Heritage Protection Act</i> (Presidential Decree No. 23862, June 19, 2012) <i>Archaeological Heritage Protection and Survey Act</i> (Law No. 10882, July 21 2011) <i>Enforcement Regulations of the Archaeological Heritage Protection and Survey Act</i> (Ordinance of the Ministry of Culture, Sports and Tourism No. 78, February 16, 2011) <i>Act on the Cultural Heritage Repair, Etc</i> (Law No. 11530, December 11, 2012) |

Sector: Other Recreational Services

Obligations Concerned: National Treatment (Article 10.5)

Description: Investment

Korea reserves the right to adopt or maintain any measure with respect to tourism in rural, fishery, and agricultural sites.

| | |
|------------------------|---|
| Sector: | Gambling and Betting Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <p><u>Cross-Border Trade in Services and Investment</u></p> <p>Korea reserves the right to adopt or maintain any measure with respect to gambling and betting services.</p> <p>For greater certainty, “gambling and betting services” includes such services supplied through electronic transmission and services that use <i>sa-haeng-seong-ge-im-mul</i>. “<i>Sa-haeng-seong-ge-im-mul</i>”, as defined in Article 2 of <i>Korea’s Game Industry Promotion Act</i>, includes, <i>inter alia</i>, instruments which result in financial loss or gain through betting or by chance.</p> |
| Existing Measures: | <p><i>Tourism Promotion Act</i> (Law No. 12406, March 11, 2014) Articles 5, 21 and 28</p> <p><i>Special Act on the Assistance to the Development of Abandoned Mine Areas</i> (Law No. 12154, January 1, 2014) Article 11</p> <p><i>National Sports Promotion Act</i> (Law No. 12348, January 28, 2014) Articles 24, 25 and 26</p> <p><i>Enforcement Decree of the National Sports Promotion Act</i> (Presidential Decree No. 25511, July 28, 2014) Articles 28 and 30</p> <p><i>Korea Racing Association Act</i> (Law No. 12437, March 18, 2014), Article 3, 22 and 48</p> <p><i>Traditional Bull Fighting Act</i> (Law No. 12434, March 18, 2014), Article 6, 16 and 22</p> <p><i>Bicycle and Motorboat Racing Act</i> (Law No. 12688, May 28, 2014) Articles 4, 19 and 24</p> <p><i>Game Industry Promotion Act</i> (Law No. 11998, August 6, 2013) Articles 2, 21 and 22</p> <p><i>Act on Special Cases concerning Regulation and Punishment of Speculative Acts, etc.</i> (Law No. 11690, March 23, 2013)</p> |

Sector: Legal Services - Foreign Legal Consultants

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Local Presence (Article 8.7)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

1. Korea reserves the right to adopt or maintain any measures including but not limited to:
 - (a) restrictions on certification, approval, registration, admission, and supervision of, and any other requirements with respect to, foreign country-licensed lawyers or foreign law firms supplying any type of legal services in Korea;
 - (b) restrictions on foreign country-licensed lawyers or foreign law firms entering into partnerships, commercial associations, affiliations, or any other type of relationship regardless of legal form, with *byeon-ho-sa* (Korean-licensed lawyers), Korean law firms, *beop-mu-sa* (Korean-certified judicial scriveners), *byeon-ri-sa* (Korean-licensed patent attorneys), *gong-in-hoe-gye-sa* (Korean-certified public accountants), *se-mu-sa* (Korean-certified tax accountants), or *gwan-se-sa* (Korean customs brokers);
 - (c) restrictions on foreign country-licensed lawyers or foreign law firms hiring *byeon-ho-sa* (Korean-licensed lawyers), *beop-mu-sa* (Korean-certified judicial scriveners), *byeon-ri-sa* (Korean-licensed patent attorneys), *gong-in-hoe-gye-sa* (Korean-certified public accountants), *se-mu-sa* (Korean certified tax accountants), or *gwan-se-sa* (Korean customs brokers) in Korea; and
 - (d) restrictions on senior management and the board of directors of legal entities supplying foreign legal consulting services, including with respect to the chairman.
2. Notwithstanding paragraph 1,
 - (a) no later than the date this Agreement enters into force, Korea shall allow, subject to certain

requirements consistent with this Agreement, New Zealand law firms to establish representative offices (Foreign Legal Consultant offices or FLC offices) in Korea, and attorneys licensed in New Zealand to provide legal advisory services regarding the laws of the jurisdiction in which they are licensed and public international law as foreign legal consultants in Korea; and

- (b) no later than two years after the date this Agreement enters into force, Korea shall allow FLC offices, subject to certain requirements consistent with this Agreement, to enter into specific co-operative agreements with Korean law firms in order to be able to jointly deal with cases where domestic and foreign legal issues are mixed, and to share profits derived from such cases.

3. Korea shall maintain, at a minimum, the measures adopted to implement its commitments in paragraph 2.

For the purposes of this entry, New Zealand law firm means a law firm organised under New Zealand law and headquartered in New Zealand.

Sector: Professional Services - Foreign Chartered Accountants

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Market Access (Article 8.6)
Local Presence (Article 8.7)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to public accountancy services including those concerning ownership, partnership, nationality of executives and directors and the scope of services to be provided. Foreign-chartered public accountants intending to provide accountancy services in Korea must be domestically licensed and registered under the *Certified Public Accountant Act*. Their offices must be established within Korea.

| | |
|------------------------|--|
| Sector: | Professional Services - Foreign Certified Tax Accountants |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Local Presence (Article 8.7) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> Korea reserves the right to adopt or maintain any measure with respect to <i>se-mu-sa</i> (Korean-certified tax accountants) services including those concerning ownership, partnership, nationality of executives and directors and the scope of services to be provided. Foreign- <i>Certified Tax Accounts</i> intending to provide <i>se-mu-sa</i> (Korean-certified tax accountants) services in Korea must be domestically licensed and registered under the <i>Certified Tax Accountant Act</i> . Their offices must be established within Korea. |
| Existing Measures: | <i>Certified Tax Accountant Act</i> (Law No. 11610, January 1, 2013), Articles 6, 13, 16-3 and 20 <i>Enforcement Decree of the Corporate Tax Act</i> (Presidential Decree No. 24824, November 5, 2013), Article 97 <i>Enforcement Regulations of the Corporate Tax Act</i> (Ordinance of the Ministry of Strategy and Finance No. 439, October 31, 2014), Article 50-3 <i>Enforcement Regulations of the Income Tax Act</i> (Ordinance of the Ministry of Strategy and Finance No. 407, March 14, 2014), Article 65-3 |

| | |
|------------------------|--|
| Sector: | Business Services |
| Obligations Concerned: | National Treatment (Article 8.4) Local Presence (Article 8.7) |
| Description: | <u>Cross-Border Trade in Services</u> Korea reserves the right to adopt or maintain any measure with respect to the exportation and re-exportation of controlled commodities, software, and technology. Only persons residing in Korea may apply for a license to export or re-export such commodities, software, or technology. |
| Existing Measures: | <i>Promotion of Atomic Energy Act</i> (Law No. 11714, March 23, 2013) <i>Foreign Trade Act</i> (Law No. 11873, June 7, 2013) <i>Notice on Exportation and Re-exportation of Controlled Commodities</i> (Notice of the Ministry of Trade, Industry and Energy No. 2013-39, May 31, 2013) <i>Customs Act</i> (Law No. 11602, January 1, 2013) |

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.5)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Investment

Korea reserves the right to adopt or maintain any measure with respect to an investment to supply a service in the exercise of governmental authority, as “investment” is defined in Article 10.2 (Definitions), such as law enforcement and correctional services.

This entry does not apply to an investor or covered investment that has entered into an agreement with Korea with respect to the supply of such services.

Sector: Transportation Services - Maritime Passenger Transportation and Maritime Cabotage

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

Korea reserves the right to adopt or maintain any measure with respect to the provision of international maritime passenger transportation services, maritime cabotage, and the operation of Korean vessels, including the following measures:

a person that supplies international maritime passenger transportation services must obtain a license from the Minister of Oceans and Fisheries, which is subject to an economic needs test.

Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, maritime cabotage is reserved for Korean vessels, which are assumed to cover transportation of passengers or goods between a port or point located in the entire Korean peninsula or any adjacent Korean islands and another port or point located in the entire Korean peninsula or any adjacent Korean islands, including on its continental shelf as provided in the *United Nations Convention on the Law of the Sea*, and traffic originating and terminating in the same port or point located in the entire Korean peninsula and any adjacent Korean islands.

“Korean vessel” means:

- (a) a vessel owned by the Korean government, a state enterprise, or an institution established under the Ministry of Oceans and Fisheries;
- (b) a vessel owned by a Korean national;
- (c) a vessel owned by an enterprise organised under the *Korean Commercial Code*; or
- (d) a vessel owned by an enterprise organised under foreign law that has its principal office in Korea and whose *dae-pyo-ja* (for example, a chief

executive officer, president, or similar principal senior officer) is a Korean national. In the event there is more than one, all *dae-pyo-ja* must be Korean nationals.

For greater certainty, measures relating to the landside aspects of port activities are subject to the application of Article 20.2 (Security Exceptions).

NEW ZEALAND

EXPLANATORY NOTE

1. The Schedule of New Zealand to this Annex sets out, pursuant to Articles 8.8 (Non-Conforming Measures) and 10.15 (Non-Conforming Measures), the specific sectors, subsectors, or activities for which New Zealand may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

- (a) Article 8.4 (National Treatment) or 10.5 (National Treatment);
- (b) Article 8.5 (Most-Favoured-Nation Treatment) or 10.6 (Most-Favoured-Nation Treatment);
- (c) Article 8.6 (Market Access);
- (d) Article 8.7 (Local Presence);
- (e) Article 10.11 (Performance Requirements); or
- (f) Article 10.12 (Senior Management and Boards of Directors).

For greater certainty, Article 8.6 (Market Access) refers to non-discriminatory measures.

2. Articles 8.4 (National Treatment) and 8.7 (Local Presence) are separate disciplines and a measure that is only inconsistent with Article 8.7 (Local Presence) need not be reserved against Article 8.4 (National Treatment).

3. Each entry in New Zealand's Schedule sets out the following elements:

- (a) **Sector**, refers to the sector in which the entry is made;
- (b) **Obligations Concerned**, specifies the obligation(s) referred to in paragraph 1;
- (c) **Description**, sets out the nature or scope of the non-conforming measures in the sectors, sub-sectors or activities covered by the entry; and
- (d) **Existing measure**, is included for transparency purposes. The measures stipulated therein are not exhaustive.

4. In accordance with Articles 8.8 (Non-Conforming Measures) and 10.15 (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.

5. Where an inconsistency arises in relation to the interpretation of an entry, the Description element of the entry shall prevail to the extent of the inconsistency.

SCHEDULE OF NEW ZEALAND

| | |
|------------------------|---|
| Sector: | All Sectors |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <p><u>Cross Border Trade in Services and Investment</u></p> <p>New Zealand reserves the right to adopt or maintain any measure with respect to:</p> <ul style="list-style-type: none">(a) the provision of public law enforcement and correctional services; and(b) the following, to the extent that they are social services established for a public purpose:<ul style="list-style-type: none">(i) child care;(ii) health;(iii) income security and insurance;(iv) public education;(v) public housing;(vi) public training;(vii) public transport;(viii) public utilities;(ix) social security and insurance; or(x) social welfare. |

| | |
|------------------------|--|
| Sector: | All Sectors |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Market Access (Article 8.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measure with respect to water, including the allocation, collection, treatment and distribution of drinking water. This reservation does not apply to the wholesale trade and retail of bottled mineral, aerated and natural water. |

Sector: All Sectors

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Market Access (Article 8.6)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross Border Trade in Services and Investment

New Zealand reserves the right to adopt and maintain any measure solely as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force. Such measures may include:

- (a) restricting the number of service suppliers;
- (b) allowing an enterprise, wholly or majority owned by the Government of New Zealand, to be the sole service supplier or one amongst a limited number of service suppliers;
- (c) imposing restrictions on the composition of senior management and boards of directors;
- (d) requiring local presence; or
- (e) specifying the juridical form of the service supplier(s).

Sector: All Sectors

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Market Access (Article 8.6)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross Border Trade in Services and Investment

Where the New Zealand Government wholly owns or has effective control over an enterprise, then New Zealand reserves the right to adopt or maintain any measures regarding the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to New Zealand nationals.

Sector: All Sectors

Obligations Concerned: Market Access (Article 8.6)

Description: Cross Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure that is not inconsistent with New Zealand's obligations under Article XVI of GATS as set out in New Zealand's Schedule of Specific Commitments under GATS (*GATS/SC/62, GATS/SC/62 Suppl. 1, GATS/SC/62/Suppl.2*).¹

For the purposes of this entry only, New Zealand's Schedule of Specific Commitments is modified as set out in Appendix II-A.

¹ This means that the stipulation in Articles 8.8 (Non-Conforming Measures) and 10.15 (Non-Conforming Measures) not to decrease the conformity of the measure as it existed immediately before the amendment, does not apply with respect to the Market Access entries in New Zealand's Schedule to Annex I.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 10.5)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Investment

New Zealand reserves the right to adopt or maintain any measure that requires the following investment activities to receive prior approval by the New Zealand Government under its overseas investment regime:

- (a) acquisition or control of 25 percent or more of any class of shares² or voting power³ in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$50 million;
- (b) commencement of business operations or acquisition of an existing business, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ\$50 million;
- (c) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's Overseas Investment legislation; and
- (d) acquisition, regardless of the dollar value, of 25 percent or more of any class of shares or voting power in a New Zealand entity that owns commercial fishing quota or annual catch entitlement, or the acquisition of commercial fishing quota or annual catch entitlement.

New Zealand reserves the right to adopt or maintain any measure that sets out the approval criteria to be applied to the categories of transactions that require approval under New Zealand's overseas investment regime.

² For greater certainty, the term 'shares' includes shares and other types of securities.

³ For greater certainty, 'voting power' includes the power to control the composition of 25 percent or more of the governing body of the New Zealand entity.

Existing measures:

Overseas Investment Act 2005

Fisheries Act 1996

Overseas Investment Regulations 2005

Sector: All Sectors

Obligations Concerned: Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)

Description: Cross Border Trade in Services and Investment

New Zealand 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 Agreement.

For greater certainty, this includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.

New Zealand reserves the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters.

| | |
|------------------------|--|
| Sector: | All Sectors |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Market Access (Article 8.6) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measure regarding the control, management or use of: <ul style="list-style-type: none"> (a) protected areas, including resources on land, interests in land or water, that are set up for heritage management purposes (both historic and natural heritage), public recreation, and scenery preservation; or (b) species owned under enactments by the Crown or that are protected by or under an enactment. |
| Existing measures: | <i>Conservation Act 1987</i> and the enactments listed in: <ul style="list-style-type: none"> (a) Schedule 1 of the <i>Conservation Act 1987</i>; (b) the <i>Resource Management Act 1991</i>; and (c) the <i>Local Government Act 1974</i> and subsequent amendments |

Sector: All Sectors

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Market Access (Article 8.6)
Local Presence (Article 8.7)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

New Zealand reserves the right to adopt or maintain any nationality or residency measures in relation to:

- (a) animal welfare; or
- (b) the preservation of plant, animal and human life and health; including in particular:
 - (i) food safety of domestic and exported foods;
 - (ii) animal feeds;
 - (iii) food standards;
 - (iv) biosecurity
 - (v) biodiversity; or
 - (vi) certification of the plant or animal health status of goods.

Nothing in this reservation shall be construed to derogate from the obligations of Chapter 5 (Sanitary and Phytosanitary Measures), or the obligations of the SPS Agreement.

Nothing in this reservation shall be construed to derogate from the obligations of Chapter 6 (Technical Barriers to Trade), or the obligations of the TBT Agreement.

| | |
|------------------------|--|
| Sector: | All Sectors |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Market Access (Article 8.6) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measure made by or under an enactment in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone, and the continental shelf, including for the issuance of maritime concessions in the continental shelf. |
| Existing Measures: | <i>Resource Management Act 1991</i> <i>Marine and Coastal Area (Takutai Moana) Act 2011</i> <i>Continental Shelf Act 1964</i> <i>Crown Minerals Act 1991</i> <i>EEZ and Continental Shelf (Environmental Effects) Act 2012</i> |

Sector: Business Services
Legal Services

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Market Access (Article 8.6)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross Border Trade in Services and Investment
New Zealand reserves the right to adopt or maintain any measure with respect to the provision to the public of publicly funded legal services.

| | |
|------------------------|--|
| Sector: | Business Services Fire Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Market Access (Article 8.6) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measure with respect to the provision of firefighting services, excluding aerial firefighting services |
| Existing Measures: | <i>Fire Services Act 1975</i> <i>Forest and Rural Fire Services Act 1977</i> |

| | |
|------------------------|--|
| Sector: | Business Services Research and Development |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Performance Requirements (Article 10.11) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measure with respect to: <ul style="list-style-type: none"> (a) research and development services carried out by state funded tertiary institutions or by Crown Research Institutes when such research is conducted for a public purpose; or (b) research and experimental development services on physical sciences, chemistry, biology, engineering and technology, agricultural sciences, medical, pharmaceutical and other natural sciences. |

| | |
|------------------------|---|
| Sector: | Business Services Technical Testing and Analysis Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measures in respect of: <ul style="list-style-type: none">(a) composition and purity testing and analysis services;(b) technical inspection services;(c) other technical testing and analysis services;(d) geological, geophysical, and other scientific prospecting services; or(e) drug testing services. |

| | |
|------------------------|--|
| Sector: | Business Services Fisheries and aquaculture Services related to fisheries and aquaculture |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to control the activities of foreign fishing, including fishing landing, first landing of fish processed at sea, and access to New Zealand ports (port privileges) consistent with the provisions of the <i>United Nations Convention on the Law of the Sea</i> . |
| Existing Measures: | For greater transparency, examples of existing measures contained in the <i>Fisheries Act 1996</i> and the <i>Aquaculture Reform Act 2004</i> include: <ul style="list-style-type: none"> (a) No vessel owned or operated by an overseas person may be registered to carry out commercial fishing or fish carrying activities without the permission of the Chief Executive of the Ministry of Fisheries, and subject to any conditions that he or she thinks fit to impose. (b) Foreign fishing vessels or fish carriers are required to obtain the approval of the Chief Executive before entering New Zealand internal waters or ports. If the Chief Executive is satisfied that the vessel has undermined international conservation and management measures, he or she may deny the vessel approval to enter New Zealand internal waters. (c) Ministerial approval is required before any overseas person may be allocated, purchase or own any provisional catch history, quota, or annual catch entitlement. (d) As set out in <i>S.296B of the Fisheries Act 1996</i>, certain specified functions, duties or powers can |

only be transferred to approved service delivery organisations that comply with specified criteria.

- (e) Foreign research vessels require the permission of the Minister of Fisheries to take fish, seaweed or aquatic life within the New Zealand Exclusive Economic Zone.

| | |
|------------------------|---|
| Sector: | Business Services Energy Manufacturing Wholesale trade Retail |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <p><u>Cross-Border Trade in Services and Investment</u></p> <p>New Zealand reserves the right to adopt any measure in order to prohibit, regulate, manage or control the production, use, distribution or retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so.</p> |

Sector: Business Services
Services incidental to mining

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Market Access (Article 8.6)
Local Presence (Article 8.7)
Performance Requirements (Article 10.11)

Description: Cross-Border Trade in Services and Investment

New Zealand reserves the right to adopt or maintain any measure with respect to services incidental to mining.

Sector: Business Services
Immigration Services

Obligations Concerned: Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Market Access (Article 8.6)

Description: Cross-Border Trade in Services and Investment

New Zealand reserves the right to adopt any measures, with respect to licensing requirements and the enforcement of those requirements, including through information sharing, in respect of natural persons who provide immigration advice, to a person in regards to any immigration matter relating to New Zealand.

For greater transparency, this entry only applies in respect of the Most-Favoured-Nation obligation to the extent that New Zealand enters into a reciprocal agreement about information sharing or enforcement of New Zealand's licensing requirements within the country with whom the agreement is made.

This reservation does not apply to a national or permanent resident of Korea who is authorised to practise law in New Zealand.

Sector: Communication Services
Postal

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Market Access (Article 8.6)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

New Zealand reserves the right to adopt or maintain any measure with respect to the supply of postal services.

| | |
|------------------------|---|
| Sector: | Communication Services Audio-visual and other Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Performance Requirements (Article 10.11) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under preferential co-production arrangements, confers national treatment on works covered by such arrangements. |
| Existing Measures: | For greater transparency, <i>S.18 of the New Zealand Film Commission Act 1978</i> limits New Zealand Film Commission funding to films with a “significant New Zealand content”. This criterion is deemed to be satisfied if made pursuant to a co-production agreement or arrangement with the partner country in question. |

| | |
|------------------------|--|
| Sector: | Communication Services Audio-visual and other Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measure made by or under any enactment with respect to the promotion of film and television production in New Zealand and the promotion of local content on public radio and television, and in films. |

| | |
|------------------------|--|
| Sector: | Agriculture, including services incidental to agriculture |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Market Access (Article 8.6) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measures with respect to: <ul style="list-style-type: none"> (a) the holding of shares in the co-operative dairy company arising from the amalgamation authorised by <i>section 7(1)(a) of the Dairy Industry Restructuring Act 2001 (DIRA)</i> (or any successor body); or (b) the disposition of assets of that company or its successor bodies. |
| Existing Measures: | <i>Dairy Industry Restructuring Act 2001</i> and subsequent regulations. |

| | |
|------------------------|---|
| Sector: | Agriculture, including services incidental to agriculture |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Market Access (Article 8.6) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measures with respect to the export marketing of fresh kiwifruit to all markets other than Australia. |
| Existing Measures: | The <i>Kiwifruit Industry Restructuring Act 1999</i> and Regulations |

Sector: Agriculture, including services incidental to agriculture

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Market Access (Article 8.6)
Performance Requirements (Article 10.11)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

New Zealand reserves the right to adopt or maintain any measures with respect to:

- (a) specifying the terms and conditions for the establishment and operation of any government endorsed allocation scheme for the rights to the distribution of export products falling within the HS Code categories covered by the Agreement on Agriculture to markets where tariff quotas, country-specific preferences or other measures of similar effect are in force; or
- (b) the allocation of distribution rights to wholesale trade service suppliers pursuant to the establishment or operation of such an allocation scheme.

This reservation is not intended to have the effect of prohibiting all investment in the provision of wholesale trade and distribution services relating to goods in the HS Code covered by the Agreement on Agriculture. The entry applies in respect of investment to the extent that the services sectors specified in this reservation are a subset of agricultural products subject to tariff quotas, country-specific preferences or other measures of similar effect.

Sector: Agriculture, including services incidental to agriculture

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Market Access (Article 8.6)
Senior Management and Boards of Directors (Article 10.12)

Description: Cross-Border Trade in Services and Investment

New Zealand reserves the right to maintain or adopt any measures necessary to give effect to the establishment or the implementation of mandatory marketing plans (also referred to as “export marketing strategies”) for the export marketing of products derived from:

- (a) agriculture;
- (b) beekeeping;
- (c) horticulture;
- (d) arboriculture;
- (e) arable farming; or
- (f) the farming of animals,

where there is support within the relevant industry that a mandatory collective marketing plan should be adopted or activated.

For the avoidance of doubt, mandatory marketing plans, in the context of this reservation exclude measures limiting the number of market participants or limiting the volume of exports.

Existing Measures: *New Zealand Horticulture Export Authority Act 1987*

| | |
|------------------------|--|
| Sector: | Education Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Market Access (Article 8.6) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measure with respect to the use of statutorily protected educational terms and titles. |
| Existing Measures: | In the interests of greater transparency such terms include: “university”, “college of education”, “polytechnic” and “institute of technology” as set out in <i>S.292 of the Education Act 1989</i> . |

Sector: Health and Social services

Obligations Concerned: National Treatment (Articles 8.4 and 10.5)
Most-Favoured-Nation Treatment (Articles 8.5 and 10.6)
Market Access (Article 8.6)
Local Presence (Article 8.7)

Description: Cross-Border Trade in Services and Investment

New Zealand reserves the right to adopt or maintain any measure with respect to all services suppliers and investors for the supply of adoption services.

| | |
|------------------------|--|
| Sector: | Health and Social services |
| Obligations Concerned: | Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measure with respect to the following services to the extent that they are provided by the private sector: <ul style="list-style-type: none">(a) hospital services; or(b) maternity deliveries and related services, including services provided by midwives. |

| | |
|------------------------|--|
| Sector: | Recreation, cultural and sporting (other than audio-visual services) |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Market Access (Article 8.6) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measure with respect to gambling, betting and prostitution services. |
| Existing Measures: | <i>Gambling Act 2003</i> and Regulations <i>Prostitution Reform Act 2003</i> <i>Racing Act 2003</i> <i>Racing (Harm Prevention and Minimisation) Regulations 2004</i> <i>Racing (New Zealand Greyhound Racing Association Incorporated) Order 2009</i> |

| | |
|------------------------|--|
| Sector: | Recreation, cultural and sporting Library, archive, museum and other cultural services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Local Presence (Article 8.7) Performance Requirements (Article 10.11) |
| Description: | <u>Cross-Border Trade in Services and Investment</u> New Zealand reserves the right to adopt or maintain any measures in respect of: <ul style="list-style-type: none"> (a) cultural heritage of national value; including ethnological, archaeological, historical, literary, artistic, scientific or technological heritage, as well as collections that are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions; (b) public archives; (c) library and museum services; or (d) services for the preservation of historical or sacred sites or historical buildings. |

| | |
|------------------------|---|
| Sector: | Transport Maritime Services |
| Obligations Concerned: | National Treatment (Articles 8.4 and 10.5) Most-Favoured-Nation Treatment (Articles 8.5 and 10.6) Market Access (Article 8.6) Performance Requirements (Article 10.11) Senior Management and Boards of Directors (Article 10.12) |
| Description: | <p><u>Cross-Border Trade in Services and Investment</u></p> <p>New Zealand reserves the right to adopt or maintain any measure with respect to:</p> <ul style="list-style-type: none"> (a) the carriage by sea of passengers or cargo between a port located in New Zealand and another port located in New Zealand and traffic originating and terminating in the same port in New Zealand (maritime “cabotage”); (b) provision of certain Port Services (pilotage, towing and tug assistance provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captains’ services, navigation aids, emergency repair facilities, anchorage, other shore-based operational services essential to ship operations, including communications, water and electrical supplies). However, no measures shall be applied which deny international maritime transport suppliers reasonable and non-discriminatory access to the above port services; (c) the establishment of registered companies for the purpose of operating a fleet under the New Zealand flag; (d) the registration of vessels in New Zealand; or (e) the regulation and entry of ships crews to New Zealand through the presence of natural person mode of supply. |

Sector: Distribution Services

Obligations Concerned: Market Access (Article 8.6)

Description: Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure for public health or social policy purposes with respect to wholesale and retail trade services of tobacco products and alcoholic beverages

Appendix II-A

KOREA

For the following Sectors, Korea's obligations under Article XVI of GATS as set out in Korea's Schedule of Specific Commitments under GATS (*GATS/SC/48*, *GATS/SC/48/Suppl.1*, *GATS/SC/48/Suppl.1/Rev.1*, *GATS/SC/48/Suppl.2*, *GATS/SC/48/Suppl.3*, and *GATS/SC/48/Suppl.3/Rev.1*) are improved as described.

| <u>Sector/Subsector</u> | <u>Market Access Improvements</u> |
|--|---|
| <u>Research and Development Services</u> <div style="margin-left: 40px;">Research and development services on natural sciences</div> <div style="margin-left: 40px;">Research and development services on social sciences and humanities</div> <div style="margin-left: 40px;">Interdisciplinary research and development services</div> | <div style="margin-left: 40px;">Insert new commitments with "None" for modes 1 and 2, "Unbound" for mode 3 and "Unbound except as indicated in the Horizontal Commitments section." for mode 4.</div> <div style="margin-left: 40px;">Modify mode 1 and 2 limitations from "Unbound" to "None".</div> <div style="margin-left: 40px;">Insert new commitments with "None" for modes 1 and 2, "Unbound" for mode 3 and "Unbound except as indicated in the Horizontal Commitments section" for mode 4.</div> |
| <u>Market research and public opinion polling services</u> | <div style="margin-left: 40px;">Modify mode 1 and 2 limitations from "Unbound" to "None".</div> |
| <u>Services incidental to mining</u> | <div style="margin-left: 40px;">Modify mode 1 and 2 limitations from "Unbound" to "None".</div> |
| <u>Packaging services</u> | <div style="margin-left: 40px;">Modify mode 1 and 2 limitations from "Unbound" to "None".</div> |
| <u>Tourism and travel related services</u> <div style="margin-left: 40px;">Beverage serving services without entertainment. (Excluding rail and air transport related facilities in beverage serving services without entertainment)</div> <div style="margin-left: 40px;">Tour operator services</div> <div style="margin-left: 40px;">Tourist Guides Services</div> | <div style="margin-left: 40px;">Insert new commitments with "Unbound*" for mode 1, "None" for mode 2 and 3 and "Unbound except as indicated in the Horizontal Commitments section" for mode 4.</div> <div style="margin-left: 40px;">Insert new commitments with "None" for mode 1, 2 and 3 and "Unbound except as indicated in the Horizontal Commitments section" for mode 4.</div> <div style="margin-left: 40px;">Modify mode 3 from "Only travel agencies are allowed to supply tourist guide services" to "None".</div> |

NEW ZEALAND

For the purposes of New Zealand's entry on page II-58 of this Annex, New Zealand's obligations under Article XVI of GATS as set out in New Zealand's Schedule of Specific Commitments under GATS (*GATS/SC/62*, *GATS/SC/62 Suppl. 1*, *GATS/SC/62/Suppl. 2*) are improved in the following sectors as described below.

| <u>Sector/Subsector</u> | <u>Market Access Improvement</u> |
|--|--|
| <u>Professional Services</u> | |
| (a) Integrated Engineering Services (CPC 8673) | Insert new commitment with "None" for mode 3. |
| <u>Computer and Related Services</u> | |
| (a) Maintenance and Repair of office machinery and equipment including computers (CPC 845) | Insert new commitments with "None" for modes 1, 2 and 3 |
| <u>Other Business Services</u> | |
| (a) Photographic Services (CPC 875) | Insert new commitment with "None" for mode 3. |
| (b) Duplicating Services (CPC 87904) | Insert new commitments with "None" for modes 1, 2 and 3. |
| (c) Convention Agency Services (CPC 87909**) | Insert new commitments with "None" for modes 1, 2 and 3 |

The (**) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.