

Chapter on Trade in Services in the Regional Comprehensive Economic Partnership (RCEP)

Article #.19 Payments and Transfers¹

India would like to maintain GATS text

[ASEAN/IN/CN/JP: 1. Except under the circumstances envisaged in Article #.# [ASEAN/IN/JP: (Restriction to Safeguard the Balance of Payments)] [CN: (Measures to Safeguard the Balance of Payments)], a Party shall not apply restrictions on international transfers or payments for current transactions [JP: and capital transactions] relating to [ASEAN/CN/IN: its specific commitments] [JP: trade in services].]

[AU, KR: 2. Each Party shall permit all payments and transfers relating to trade in services to be made freely and without delay into and out of its territory [AU:, except where:

- (a) circumstances envisaged in Article #.20 (Restrictions to Safeguard the Balance of Payments); or
- (b) as provided in paragraph 3].

3. Each Party shall permit such payments and transfers relating to the trade in services to be made in a freely usable currency at the market rate of exchange prevailing at the time of the payment or transfer.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a payment or transfer through the equitable, non-discriminatory, and good faith application of its laws [AU: and regulations] relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.]

¹ [KR: For greater certainty, Annex #-F (Transfers) applies to Article #.# (Payment and Transfer).]

[ASEAN/CN/IN/AU/JP: 5. Nothing in this Chapter shall affect the rights and obligations of [ASEAN/IN: any of] [ASEAN/IN/CN: the Parties as members] [AU/JP: a Party as a member] of the International Monetary Fund under the [ASEAN/IN: IMF] Articles of Agreement [CN: of the International Monetary Fund ("Articles of Agreement")] [AU/JP: of the International Monetary Fund], including the use of exchange actions which are in conformity with the [ASEAN/IN: IMF] Articles of Agreement [AU/JP: of the International Monetary Fund], provided that a Party shall not impose restrictions on any capital transactions [ASEAN/IN: inconsistent] [CN/IN/AU/JP: inconsistently] with [ASEAN/IN/CN: its specific commitments] [AU/JP: the obligations under this Chapter] regarding such transactions, except under Article #.20 [ASEAN/IN/AU/JP: (Restriction to Safeguard the Balance of Payments)] [CN: Measures to Safeguard the Balance of Payments], or at the request of the International Monetary Fund.]

ASEAN tasked ASEAN SWG-FIN to discuss this Article with the AFPs.

AU and NZ prefers this Article to be discussed by WGI. Korea suggested a joint session among WGTIS, WGI and SWGFIN.

**[ASEAN/CN/IN/JP: Article #.20
Restriction to Safeguard the Balance of Payments**

ASEAN tasked ASEAN SWG-FIN to discuss this article with the AFPs

India would like to maintain GATS text

AU and NZ prefers this Article to be discussed by WGI. Korea suggested a joint session among WGTIS, WGI and SWGFIN.

1. [ASEAN/CN/IN: Where a Party is in] [JP: in the event of] serious balance of payments and external financial difficulties or threat thereof, [ASEAN/CN/IN: it] [JP: a Party] may adopt or maintain [ASEAN/CN/IN: restrictions] [JP: restrictive measures] on trade in services [ASEAN/CN/IN: in accordance with Article XII of the GATS] [JP: , including on payments and transfer for transaction].

[JP: 2. The restrictive measures referred to in paragraph 1:

- (a) shall be applied such that the other Parties are treated no less favourably than any non-Party;
- (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
- (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Parties;

- (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and
- (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictive measures, a Party may give priority to the supply of services which are more essential to its economic or development programmes. However, such restrictive measures shall not be adopted or maintained for the purposes of protecting a particular service sector.

4. Any restrictive measures adopted or maintained in accordance with paragraph 1, or any changes therein, shall be promptly notified to the other Parties.

5. The Party which has adopted any restrictive measures in accordance with paragraph 1 shall, on request, commence consultations with the other Parties in order to review the restrictive measures adopted by it.

Note: "Consultations" referred to in this Chapter does not mean consultations under Article #.# (Consultations) (Chapter Dispute Settlement).]]

ANNEX

[KR: Annex #-F Transfers

ASEAN tasked ASEAN SWG-FIN to consider this Annex Korea will revert intersessionally with a greater clarity on the status of this proposed article, if need be with a revised proposal.
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1. Nothing in this Chapter, Chapter # (Trade in Services), or Chapter # (Financial Services) shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures with regard to payments and capital movements:

- (a) in the event of serious balance of payments or external financial difficulties or threat thereof; or
- (b) where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party.

2. The measures referred to in paragraph 1:

- (a) shall not exceed a period of one year; however, if extremely exceptional circumstances arise such that a Party seeks to extend such measures, the Party will coordinate in advance with the other Party concerning the implementation of any proposed extension;
- (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
- (c) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) shall avoid unnecessary damage to the commercial, economic, or financial interests of any other Party;
- (e) shall not otherwise interfere with investors' ability to earn a market rate of return in the territory of the Party on any restricted assets;²
- (f) shall be temporary and phased out progressively as the situation described in paragraph 1 improves;
- (g) shall not be confiscatory;
- (h) shall promptly be notified to the other Party;
- (i) are applied in a manner consistent with Articles #.4 (National Treatment), #.# (National Treatment of the Cross-Border Trade in Services Chapter) and #.# (National Treatment of the Financial Services) and Articles #.6 (Most-Favoured-Nation Treatment) , #.# (Most-Favoured-Nation Treatment of the Cross-Border Trade in Services Chapter) and #.# (Most-Favoured-Nation Treatment of the Financial Services Chapter) subject to the Schedules set out in Annex I, Annex II, and Annex III;
- (j) shall not constitute a dual or multiple exchange rate practice; and
- (k) shall not restrict payments or transfers associated with foreign direct investment.

3. Nothing in this Chapter, Chapter # (Trade in Services), or [Chapter #] (Financial Services) shall be regarded to affect the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.]

² [KR: For greater certainty, the term "restricted assets" in subparagraph (d) refers only to assets invested in the territory of Korea by an investor of any other Party that are restricted from being transferred out of the territory of Korea.]