



April 25, 2022

BSA SUBMISSION TO THE REPUBLIC OF KOREA ON KOREA-SINGAPORE DIGITAL PARTNERSHIP AGREEMENT

Overview

BSA | The Software Alliance (**BSA**)¹ seeks to provide comments to the Ministry of Trade, Industry and Energy (**MOTIE**) on the substantially concluded Korea-Singapore Digital Partnership Agreement (**KSDPA**). BSA understands that MOTIE is presently conducting public consultations on the KSDPA and would like to voice our support for the KSDPA's signing and entry into force.

Our key messages are as follows:

1. The digital trade provisions in the KSDPA, notably binding rules prohibiting unwarranted restrictions on cross-border data transfers and requirements to localize computing facilities, will yield tangible benefits for Korean businesses.
2. Unfortunately, the KSDPA's prohibition on location of computing facilities does not apply to financial institutions/service suppliers. Requiring financial institutions/service suppliers to localize their computing facilities and data may hamper regulatory oversight and create security concerns.

Introduction

BSA is the leading advocate for the global software industry before governments and in the international marketplace. BSA's members are at the forefront of the data-driven innovation that is fueling global economic growth and recovery, including through cutting-edge advancements in cloud computing, security solutions, artificial intelligence (**AI**) and machine learning, and the Internet of Things (**IoT**). BSA member companies provide software solutions to enterprise customers, and as such they understand the critical importance of robust policies that facilitate digital trade and trusted data flows.

BSA congratulates Korea on the substantial conclusion of the KSDPA. The KSDPA is a forward-looking, comprehensive Digital Economy Agreement (**DEA**), and an important step in building a global consensus on new rules for the digital economy. These rules are critical to job creation, economic competitiveness, and software-enabled innovations such as cloud computing, AI, smart devices, and other emerging technologies. They also reflect the transformative role of technology and data in growing economies and raising competitiveness across a wide range of industries. BSA and its members are therefore strongly supportive of DEAs, such as the KSDPA.

¹ BSA's members include: Adobe, Alteryx, Altium, Amazon Web Services, Atlassian, Autodesk, Aveva, Bentley Systems, Box, Cisco, CNC/Mastercam, Dassault, DocuSign, Dropbox, IBM, Informatica, Intel, MathWorks, Microsoft, Nikon, Okta, Oracle, PTC, Rockwell, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

How the KSDPA will benefit Korean businesses

Korea is one of the fastest digitalizing economies in the world.² For example, Korea's public cloud market is expected to double in size from USD1.5 billion in 2018 to USD3.1 billion in 2023, which will generate an estimated USD45 billion in national GDP and approximately 50,000 jobs.³ While digital native businesses, such as e-commerce platforms and gaming companies, are drivers of digitalization, there is increasing traction from retail players and large conglomerates as they seek to support their digital arms and expand businesses internationally.⁴ Indeed, from healthcare and manufacturing to agriculture and retail, digital technologies are becoming an integral part of how companies design, create, and export new products and services; enhance business processes and increase productivity; reach new customers; manage their supply-chain and engage in research and development.⁵

Unfortunately, trade barriers and digital protectionism are growing around the world at the very time that digital trade and connectivity are helping to sustain economic activity, employment, and social well-being. The World Trade Organization (**WTO**) has reported that some 80 countries have imposed export and other trade restrictions in reaction to the COVID-19 epidemic, in addition to a growing number of digital trade barriers that impact the movement of data and information across borders.⁶

The requirement to store data within a country's borders, coupled with restrictions on international data transfers, present serious challenges for businesses of all kinds, which can undermine Korea's economic competitiveness in the global digital economy. Data localization requirements create unnecessary costs, difficulties, and uncertainties that hamper business and investments in the following ways:

- prevent local businesses from accessing new and innovative technologies, which may consequently preclude participation in global supply chains and access to customers in foreign markets;
- prevent local businesses from using data analytics to drive R&D in emerging technologies that are heavily reliant on large datasets, such as AI and machine learning;
- reduce Korea's attractiveness as a destination for investment and R&D, as foreign investors will need to incur significant costs duplicating their processing and storage facilities locally; and
- result in potential conflict of laws as other countries may impose contradictory requirements regarding the movement of data across borders.

The KSDPA addresses these concerns by imposing binding rules on the movement and localization of data:

- Article 14.14 (Cross-Border Transfer of Information by Electronic Means) stipulates that "neither Party shall prohibit or restrict the cross-border transfer of information by electronic means, including personal information, if this activity is for the conduct of business of a covered person".
- Article 14.15 (Location of Computing Facilities) prohibits the Parties from imposing requirements "to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory".

The KSDPA will further benefit Korean businesses in the following ways:

² Korea has topped the Bloomberg Innovation Index for seven of the last nine years. See: <https://www.bloomberg.com/news/articles/2021-02-03/south-korea-leads-world-in-innovation-u-s-drops-out-of-top-10?sref=d8oB8qmA>.

³ BCG, "Ascent to the Cloud: How Six Key APAC Economies can Lift-Off", October 2019, https://web-assets.bcg.com/img-src/Ascent_to_the_Cloud_Report_21Oct_tcm9-231826.pdf (BCG Report).

⁴ BCG Report (2019).

⁵ Global Data Alliance, "Jobs in every sector depends upon data flows", March 2020, <https://globaldataalliance.org/wp-content/uploads/2021/07/infographicqda.pdf>.

⁶ World Trade Organisation Report 2021, https://www.wto.org/english/res_e/booksp_e/wtr21_e/00_wtr21_e.pdf

- **Prohibition of Customs duties on electronic transmissions:** The KSDPA prohibits the imposition of customs duties on electronic transmissions, including on content transmitted electronically. BSA strongly supports this position, as imposing customs duties on electronic transmissions would drive up the costs of conducting trade and interrupt cross-border access to knowledge and digital tools, which are detrimental to businesses.
- **Mutual recognition and interoperability for electronic signature, authentication, electronic contracts, electronic invoicing and digital identity frameworks:** These are important provisions that will break down barriers to digital trade by reducing unnecessary and outdated processes. They will also support individuals and businesses in Korea by allowing them to conduct business quickly and securely with customers and partners in Singapore.
- **Interoperability of personal information protection regimes.** Privacy and security are bedrock principles for the digital economy and international interoperability will provide a safe digital trading environment for both consumers and businesses.
- **Prohibition on access to or disclosure of source code:** Companies can rest assured that they will not be required to disclose, transfer or provide access to the source code of their products as a condition for the import, distribution, sale or use of such products.
- **Cooperation on data innovation:** Korea and Singapore will explore the possibility of collaborating on data-sharing projects through regulatory sandboxes. Businesses can leverage on the opportunities provided to explore and develop new products and services from data-driven innovations.
- **Open Government Data:** BSA commends the addition of a provision on open government data. Government-generated data can serve as a powerful economic driver, promoting economic growth and enabling innovation.

Concerns regarding location of computing facilities for financial institutions/service suppliers

Despite the binding rules on cross-border transfer of data and location of computing facilities, BSA notes that the KSDPA's prohibition on computing facility localization does not apply with respect to a "financial institution" or a "financial service supplier of a Party".⁷ In other words, financial institutions and service suppliers from Singapore may be required to use or locate their computing facilities in Korea as a condition for conducting business in Korea, and vice versa.

BSA recognizes that regulatory authorities in the financial sector require immediate and ongoing access to information of financial institutions and service suppliers, including information underlying their transactions and operations, to discharge their supervisory and monitoring duties.⁸ It is a common concern among financial regulatory authorities that their ability to access financial data may be hampered if such data was stored outside of the country. Localization measures are thus seen as the solution for financial regulatory authorities seeking to maintain access to financial data.

However, requiring financial institutions/service suppliers to localize their computing facilities and data may increase security risks. As the capabilities of malicious actors in cyberspace continue to evolve, investments in data security have increased. This is especially so for the financial sector, where the effects of a cyberattack can be devastating. However, localization measures often compel financial institutions and service suppliers to use local data storage service providers in the country that imposes such measures. This by definition limits the options of such financial institutions and service providers when deciding where and with what entities they wish to entrust their data, including the option of using their own centralized data storage and processing centers, or those provided by third party service providers that may not have data centers in country. Local data storage service providers may not have the same security capabilities as global counterparts, many which invest enormous amounts of

⁷ KSDPA, Article 14.15 (4)

⁸ KSDPA, Article 14.16 (2)

resources in their cybersecurity capabilities and constantly upgrade their security programs and controls to deal with the latest cyber threats. Delays in uploading threat incident information to cybersecurity companies' global networks due to regional data restrictions could also expose customers in that region to new threats spreading from other parts of the world, reducing information privacy and security for those customers. Information sharing across jurisdictions could also be limited, undermining efforts from both financial institutions/service suppliers and regulatory authorities to combat money-laundering and financing of terrorism.

Localization requirements in the financial sector are also not necessary for regulatory oversight.

In a globalized economy, financial institutions and service suppliers often must provide services internationally to their customers in other countries, requiring the international transfer of significant amounts of financial data daily. Regulators have several mechanisms to ensure that they may maintain access to necessary data from financial institutions and service suppliers regardless of where the data may be stored, such as entering contractual agreements with financial institutions/service suppliers to have immediate and ongoing access to information processed or stored on computing facilities out of the country. As a general principle, there is no reason to impose localization requirements on financial institutions/service suppliers if regulatory authorities have immediate and ongoing access to their data.

This is the approach taken in Singapore's DEAs with both Australia and the United Kingdom (UK), which BSA strongly supports:

- In the Singapore-Australia DEA, Article 25(2) states that neither Party shall require a financial institution/services supplier to localize their computing facilities and data, so long as financial regulatory authorities "have immediate, direct, complete and ongoing access" to the information processed or stored on computing facilities used by the financial institution/service supplier located out of the country.
- Similarly, the UK-Singapore DEA amends Article 8.54 of the UK-Singapore Free Trade Agreement to state that a Party may only impose localization measures on a financial service supplier if it is "not able to ensure appropriate access to information required for the purposes of financial regulation and supervision". The Article further requires the Party imposing the localization measure to: (1) provide the financial service supplier "a reasonable opportunity to remediate any lack of access to information"; and (2) to consult with the other Party's regulatory authorities before imposing the localization measure.

The United States-Singapore Joint Statement on Financial Services Data Connectivity⁹ is also a useful reference point. While non-binding in nature, both countries agreed to:

- Ensure that financial service suppliers can transfer data, including personal information, across borders by electronic means if this activity is for the conduct of the business of a financial service supplier.
- Oppose measures that restrict where data can be stored and processed for financial service suppliers as long as financial regulators have full and timely access to data needed to fulfill their regulatory and supervisory mandate.
- Ensure that financial service suppliers have the opportunity to remediate the lack of access to such data before being required to use or locate computing facilities locally.

BSA urges Korea to work towards the high watermark set by the Singapore-Australia and UK-Singapore DEAs in its future DEAs. We also urge Korea's financial regulatory authorities to collaborate closely with their Singaporean counterparts, including through non-binding joint statements or Memorandums of Understanding, so that this issue may be addressed in future upgrades to the KSDPA.

Conclusion

BSA once again congratulates MOTIE and the Korean government on successfully concluding the

⁹ United States-Singapore Joint Statement on Financial Services Data Connectivity, February 2020, <https://www.mas.gov.sg/news/media-releases/2020/usa-singapore-joint-statement-on-financial-services-data-connectivity>

KSDPA with Singapore. We look forward to working and collaborating with Korea on advancing international norms in digital trade. If you require any clarification or further information in respect of this submission, please contact the undersigned at shenhongt@bsa.org.

Sincerely,



Tham Shen Hong
Manager, Policy – APAC