

## CHAPTER 9 MOVEMENT OF NATURAL PERSONS

### ARTICLE 77 Definitions

For the purposes of this Chapter:

- (a) **business visitor** means a natural person of either Party who is:
  - (i) a service seller being a natural person who is a sales representative of a service supplier of that Party and is seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services for that service supplier, where such representative will not be engaged in making direct sales to the general public or in supplying services directly; or
  - (ii) (A) an investor of a Party, being a natural person of a Party who is making or has made an investment in the territory of the other Party; or  
(B) a duly authorised representative of an investor of a Party (including a juridical person of a Party that is making or has made an investment in the territory of the other Party),  
  
seeking temporary entry into the territory of the other Party to establish, expand, monitor, or dispose of an investment of that investor; or
  - (iii) a goods seller, being a natural person who is seeking temporary entry to the territory of the other Party to negotiate the sale of goods where such negotiations do not involve direct sales to the general public;
- (b) **contractual service supplier** means a natural person of a Party who:
  - (i) is an employee of a service supplier or an enterprise of a Party, whether a company, partnership or firm, who enters the territory of the other Party temporarily in order to perform a service pursuant to a contract between his employer and a service consumer in the territory of the other Party;

- (ii) is employed by a company, partnership or firm of the Party, which has no commercial presence in the territory of the other Party where the service is to be provided;
  - (iii) receives his or her remuneration from that employer; and
  - (iv) satisfies any other requirements under the domestic laws and regulations of the other Party to provide such services in the territory of that Party;
- (c) **executive** means a natural person within an organisation who primarily directs the management of the organisation, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service or the operation of an investment;
- (d) **immigration formality** means a visa, permit, pass, or other document or electronic authority granting a natural person of one Party the right to enter, reside or work in the territory of the other Party;
- (e) **immigration measure** means any law, regulation, policy or procedure affecting the entry and sojourn of foreign nationals;
- (f) **intra-corporate transferee** means an executive, a manager, or a specialist as defined respectively in sub-paragraphs (c), (g) and (h) of this Article, who is an employee of a service supplier or investor of a Party with a commercial presence, as defined in Chapter 8 (Trade in Services), in the territory of the other Party;
- (g) **manager** means a natural person within an organisation who primarily directs the organisation or a department or sub-division of the organisation, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercises discretionary authority over day-to-day operations. For greater clarity, this does not include employees who primarily perform tasks necessary for the provision of the service;
- (h) **specialist** means a natural person within an organisation who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; and

- (i) **temporary entry** means entry by a business visitor, an intra-corporate transferee, or a contractual service supplier, as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or juridical person which employs that visitor in the visitor's home country.

## **ARTICLE 78 Objectives**

The objective of this Chapter, which reflects the preferential trading relationship between the Parties and their mutual desire to facilitate temporary entry of natural persons, is to establish transparent criteria and streamlined procedures for temporary entry, while recognising the need to ensure border security and to protect the domestic labour force in the territories of the Parties.

## **ARTICLE 79 Scope**

1. This Chapter applies to measures affecting the movement of natural persons of a Party into the territory of the other Party, where such persons are:
  - (a) business visitors;
  - (b) contractual services suppliers; or
  - (c) intra-corporate transferees.
2. Nothing in this Chapter, Chapter 8 (Trade in Services) or Chapter 10 (Investment) shall apply to measures pertaining to citizenship, nationality, residence or employment on a permanent basis.
3. Nothing contained in this Chapter, Chapter 8 (Trade in Services) or Chapter 10 (Investment) shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided

such measures are not applied in a manner so as to nullify or impair the benefits accruing to the other Party under this Agreement<sup>1</sup>.

## **ARTICLE 80**

### **Expeditious Application Procedures**

Each Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof, so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement. Each Party shall notify applicants for temporary entry, either directly or through their authorised representative or their prospective employer of the outcome of their applications, including the period of stay and other conditions.

## **ARTICLE 81**

### **General Principles for Grant of Temporary Entry**

1. The Parties may make commitments in respect of temporary entry of natural persons, as defined in Article 59 (Definitions).
2. Such commitments and the conditions governing them shall be inscribed in Annex 6 (Commitments on Temporary Entry of Natural Persons).
3. Where a Party makes a commitment under paragraphs 1 and 2, that Party shall grant temporary entry to the extent provided for in that commitment, provided that such natural persons are otherwise qualified under all applicable immigration measures.
4. In respect of the commitments on temporary entry in Annex 6 (Commitments on Temporary Entry of Natural Persons), unless otherwise specified therein, neither Party may:
  - (a) require labour certification tests, or other procedures of similar effect;
  - (b) impose or maintain any numerical restriction relating to temporary entry; or
  - (c) require labour market testing, economic needs testing or other procedures of similar effects as a condition for temporary entry.

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<sup>1</sup> The sole fact of requiring a visa for natural persons of a Party and not for those of non-Parties shall not be regarded as nullifying or impairing trade in goods or services or conduct of investment activities under this Agreement.

5. Each Party shall limit any fees for processing applications for temporary entry of natural persons to the approximate cost of services rendered.

6. The temporary entry granted by virtue of this Chapter does not replace the requirements needed to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorising the temporary entry.

## **ARTICLE 82**

### **Transparency**

Each Party shall, upon modifying or amending an immigration measure that affects the temporary entry of natural persons, ensure that such modifications or amendments are promptly published and made available through electronic means or otherwise, in such a manner as will enable natural persons of the other Party to become acquainted with them.

## **ARTICLE 83**

### **Contact Points**

Each Party shall designate a contact point to facilitate communication and the effective implementation of this Chapter, and respond to inquiries from the other Party regarding regulations affecting the movement of natural persons between the Parties or on any matter covered by this Chapter, and shall provide details of this contact point to the other Party. The Parties shall notify each other promptly of any amendment to the details of their contact point. The contact point should identify and recommend areas for and ways of furthering co-operation in promoting increased movement of natural persons between the Parties.