

CHAPTER 9 MOVEMENT OF NATURAL PERSONS

Article 9.1 Objectives

The objectives of this Chapter are:

- (a) to provide for rights and obligations additional to those set out in Chapters 8 (Trade in Services) and 10 (Investment) in relation to the movement of natural persons between the Parties while recognizing the need to ensure border security;
- (b) to enhance and facilitate the movement of natural persons engaged in the conduct of trade in services, goods and investment between the Parties; and
- (c) to establish simplified streamlined and transparent procedures for immigration formalities for the temporary entry of natural persons to whom this Chapter applies.

Article 9.2 Scope

1. This Chapter applies to measures affecting the temporary movement of natural persons of a Party into the territory of the other Party, where such natural persons are:

- (a) business visitor;
- (b) intra-corporate transferee;
- (c) installer and servicer;
- (d) contractual service supplier;
- (e) independent professional.

2. This Chapter shall not apply to measures pertaining to citizenship, permanent residence, or employment on a permanent basis.

3. Nothing contained in this Chapter shall prevent a Party from applying measures to regulate the temporary entry or 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 unduly impair the benefits accruing to the other Party or delay trade in goods, services or conduct of investment activities under this Agreement. The sole fact of requiring a visa or other relevant document authorizing employment to a natural person, shall not be regarded as unduly impairing or delaying trade in goods or service or conduct of investment activities under this Agreement.

Article 9.3 Definitions

For the purposes of this Chapter, the following definitions shall apply:

- (a) **natural person of a Party** means a natural person who resides in the territory of a Party or elsewhere, and who under the law of that Party:
 - (i) is a citizen of that Party; or
 - (ii) has the right of permanent residence in that Party, provided that such Party accords substantially the same treatment to its permanent residents as it does to its citizens in respect of measures affecting trade in services. The other Party is not obligated to accord to such permanent residents treatment more favourable than would be accorded by a Party to such permanent residents;
- (b) **immigration formality or visa:**
 - (i) in respect of Malaysia means a visa, permit, pass or other document or electronic authority granting natural person of one Party the right to enter, reside or work or establish commercial presence in the territory of the other Party;
 - (ii) in respect of India, immigration visa or visa refers to an employment visa or business visa or other document issued by a Party granting a natural person of the other Party the right to enter, reside or work or remain or establish commercial presence in the territory of the granting party, without the intent to reside permanently;
- (c) **temporary entry** means entry by a business visitor, an intra-corporate transferee, or a professional, installer and servicer, contractual service supplier and spouses or dependants covered by this Chapter without the intent to establish permanent residence;
- (d) **business visitor** means a natural person of either Party who is:
 - (i) a service seller being a natural person who is a representative of a service supplier of that Party and is seeking temporary entry into the other Party, for the purpose of negotiating the sale of services for that service supplier where such representative will not be engaged in direct sales to the general public or in supplying services directly;
 - (ii) a goods seller, being a natural person who is seeking temporary entry into the territory of the other Party to negotiate for the sale of goods, or to enter into a distribution or retailing arrangement where such negotiations do not involve direct sales to the general public; or

- (iii) an investor of a Party, as defined in Chapter 10 (Investment), seeking temporary entry into the territory of the other Party to establish an investment and a natural person employed or otherwise engaged by an investor of the first mentioned Party in respect of an investment of that investor in the territory of the other Party;

(e) **intra-corporate transferee** means:

- (i) in respect of Malaysia:

(AA) senior manager being person within an organization that provides services within Malaysia:

- (1) having proprietary information of the organization;
- (2) exercise wide latitude in decision making relating to the establishment, control and operation of the organization;
- (3) primarily direct the management of the organization; and
- (4) receive only general supervision or direction from the board of directors or partners of the organization;

(BB) specialists or experts being person within the organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization's new service products and technology, research equipment and techniques or management,

provided that such persons are employees of the foreign service supplier and have been in the employment of that foreign service supplier for a period of not less than one year immediately preceding the date of their application for a work permit and he is to serve in at least a similar capacity.

- (i) in respect of India:

an employee of a juridical person of a Party as defined in Chapter 8 (Trade in Services), or of an investor of a Party or enterprise of a Party as defined in the Chapter 10 (Investment) established in the territory of the other Party (such juridical person or investor or enterprise, as the case may be referred to below as an organization), who is being transferred temporarily to a branch or a representative office or an affiliate or subsidiary of the said juridical person or investor or enterprise in the other Party, and who has been so employed by the relevant organization for the period of not less than one year immediately preceding the date of the application for the temporary entry and who is a manager, executive or specialist as defined below:

- (AA) manager means a natural person within an organization who primarily directs the organization or a department or sub-division of the organization, 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 authorization), and exercises discretionary authority over day-to-day operations;
- (BB) executive means a natural person within an organization who primarily directs the management of the organization, 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;
- (CC) specialist means a natural person within an organization who possesses knowledge at an advanced level of expertise and who possesses relevant knowledge of the organization's service, research, equipment, techniques or management. (A specialist may include, but is not limited to, members of a licensed profession);

(f) **installer or servicer** means persons who are installer or servicer of machinery and/or equipment who is employed or appointed by a supplying company, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery and/or equipment, and are not performing activities which are not related to the installing or servicing activities which is the subject of the contract, and receives his or her remuneration from the supplying company;

(g) **contractual service supplier** means natural persons of a Party who:

- (i) is an employee of a juridical person of the Party, who enters the territory of the other Party temporarily in order to perform a service pursuant to a contract between his or her employer and a person in the territory of the other Party;
- (ii) is employed by a juridical person, 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 juridical person;
- (iv) possesses appropriate educational and professional qualifications relevant to the service to be provided and has obtained, wherever necessary registration with the relevant professional body or regulator; and
- (v) may not engage in other employment in the territory of the other Party where the service is being provided.

The service contract pursuant to which the natural person seeks to travel as a contractual service supplier has to be obtained in any one of the sectors or professions listed in the Horizontal Section of the Schedule of Specific Commitments;

(h) **independent professional** means a self-employed natural person of one Party who seeks to travel to the other Party temporarily, in order to perform a service pursuant to a contract with a person of the other Party, for which that natural person possesses appropriate educational and other qualifications relevant to the service to be provided, and has obtained wherever required, registration or license from the relevant professional body or regulator. The service contract pursuant to which the natural person seeks to travel as an independent professional has to be obtained in any one of the sectors or professions listed in the Horizontal Section of the Schedule of Specific Commitments and remuneration under such service contract should be payable directly to such natural person.

Article 9.4

Grant of Temporary Entry

1. Each Party shall, in accordance with this Chapter, grant temporary entry or extension of temporary stay to natural persons of the other Party, provided such persons are otherwise qualified for entry under applicable measures relating to public health and safety and national security. The conditions governing the temporary entry of natural persons including the duration of stay is inscribed in Annex 9-1.

2. Any fees imposed in respect of the processing of such applications for temporary stay or extension of temporary entry shall be reasonable and in accordance with domestic laws and regulations.

Article 9.5

Spouses and Dependents

For natural persons of a Party who have been granted the right to long term temporary entry and have been allowed to bring in their spouses and dependents, a Party shall, upon application and in accordance with that Party's domestic laws and regulation, and relevant licensing, administrative and registration requirements grant the accompanying spouses and dependents of such natural persons of the other Party, the right to work. The Parties agree that a natural person shall not be barred from working solely on the ground that he or she is a spouse or dependent of a natural person already employed in the other Party.

Article 9.6

Regulatory Transparency

1. Each Party shall publish or otherwise make publicly available explanatory material on all relevant visa formalities which pertain to or affect the operation of this Chapter.

2. Each Party shall maintain or establish contact points to respond to inquiries from interested persons regarding regulations affecting the temporary entry of natural persons. These contact points shall also be the authorized points allowing business persons to report and seek clarifications, if any, on instances where they have encountered special difficulties in the process of seeking temporary entry in the other Party.

3. To the extent possible, each Party shall allow reasonable time between publication of final regulations affecting the temporary entry of natural persons and their effective date, and such notification to the other Party can be made electronically available.

Article 9.7

Procedures and Notification of Outcome

1. Each Party shall process expeditiously completed applications for temporary entry of natural persons of the other Party including requests for further extension of visas and permits, as applicable.

2. Each Party shall, at the request of the applicant, provide without undue delay, information concerning the status of the application. Each Party shall notify the applicant for temporary entry, either directly or through his or her prospective employers, of the outcome of the final determination, including period of stay and other conditions. In the case of an incomplete application, the Party shall notify the applicant of all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies.

3. If an application is terminated or denied, each Party shall, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. Each Party shall maintain or institute as soon as practicable procedures which provide, at the request of an affected applicant for temporary entry, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting such temporary entry.

Article 9.8

Consultations

A Party may request a consultation with the other Party regarding any matter arising under this Chapter. The other Party shall give sympathetic consideration to the request and shall endeavour to favourably resolve any specific or general problems which may arise from the implementation and administration of this Chapter.

Article 9.9 Dispute Settlement

1. A Party may not initiate proceedings under Chapter 14 (Dispute Settlement) regarding a refusal to grant temporary entry under this chapter unless:

- (a) the matter involves a breach of any of the provisions relating to the grant of temporary entry accruing under this Chapter;
- (b) the matter involves a pattern of practice; and
- (c) that Party's natural persons affected by the pattern of practice have exhausted the available domestic administrative remedies.

Article 9.10 Reservations

The commitments made by each Party under this Chapter shall be subject to any terms, conditions, reservations or limitations it has scheduled in its Schedule of Specific Commitments under Chapter 8 (Trade in Services).

Article 9.11 Implementation

The Sub-Committee on Trade in Services established under Article 15.2 (Sub-Committees) shall consider matters relating to the implementation of this Chapter.