

## **CHAPTER TWELVE**

### **TEMPORARY ENTRY FOR BUSINESS PERSONS**

#### **Article 12.1: General Principles**

This Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

#### **Article 12.2: General Obligations**

1. Each Party shall apply its measures relating to this Chapter in accordance with Article 12.1 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.
2. This Chapter does not prevent a Party from applying measures to regulate the entry of natural persons into, or the temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to unduly impair or delay trade in goods or services or the conduct of activities under this Agreement. The sole fact of requiring a visa, or other document authorising entry or work for a business person, or for natural persons shall not be regarded as unduly impairing or delaying trade in goods or services or the conduct of activities under this Agreement.

### **Article 12.3: Grant of Temporary Entry**

1. Each Party shall grant temporary entry to business persons who otherwise comply with existing immigration measures related to public health, safety and national security applicable to temporary entry, in accordance with this Chapter, including Annex 12-A.
2. A Party may refuse to issue a work permit or authorisation to a business person if the temporary entry of that person might affect adversely:
  - (a) the settlement of a labour dispute that is in progress at the place or intended place of employment; or
  - (b) the employment of a person who is involved in such dispute.
3. If a Party refuses pursuant to paragraph 2 to issue a work permit or authorisation, it shall inform in writing the business person of the reasons for the refusal.
4. Each Party shall limit fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

### **Article 12.4: Provision of Information**

1. Recognising the importance to the Parties of transparency of information on temporary entry and further to Article 19.1 (Publication), each Party shall, after the date of entry into force of this Agreement, make available through any means, information on its measures relating to this Chapter.
2. Each Party shall collect and maintain data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued a work permit or authorisation. On the request of a Party, the other Party shall make such information available to the other Party in accordance with its domestic law.

## **Article 12.5: Contact Points**

1. Each Party hereby establishes a contact point:
  - (a) for Korea:

Director  
Border Control Division  
Korea Immigration Service  
Ministry of Justice; and
  - (b) for Canada:

Director  
Temporary Resident Policy  
Immigration Branch  
Citizenship and Immigration Canada,  
or their respective successors.
2. The contact points shall meet at least once each year, unless otherwise agreed, to exchange information as described in Article 12.4 and to consider matters pertaining to this Chapter, such as:
  - (a) the implementation and administration of this Chapter;
  - (b) the development and adoption of common criteria, definitions and interpretations for the implementation of this Chapter;
  - (c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis; and
  - (d) proposed modifications to this Chapter.

## **Article 12.6: Dispute Settlement**

1. A Party shall not initiate proceedings under Chapter Twenty-One (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:
  - (a) the matter involves a pattern of practice; and
  - (b) the business person has exhausted the normal administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) are deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the initiation of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

### **Article 12.7: Relation to Other Chapters**

Except for this Chapter and Chapters One (Initial Provisions and General Definitions), Nineteen (Transparency), Twenty (Institutional Provisions and Administration) and Twenty-Three (Final Provisions), this Agreement does not impose an obligation on a Party regarding its immigration measures.

### **Article 12.8: Definitions**

For the purposes of this Chapter:

**business person** means a national of a Party who is engaged in trade in goods, the provision of services or the conduct of investment activities;

**contract service supplier** means an employee of an enterprise who is engaged in the supply of a contracted service as an employee of an enterprise. That enterprise has a service contract from an enterprise of the other Party, who is the final consumer of the service which is supplied. The contract and duration of stay shall comply with the domestic law of the other Party;

**independent professional** means a self-employed professional who seeks to engage, as part of a service contract granted by an enterprise or a service consumer of the other Party, in an activity at a professional level, provided that the person possesses the necessary education, or satisfies accreditation or licensing requirements as stipulated for the profession;

**management trainee on professional development** means an employee who has a Bachelor or Baccalaureate degree or who has a license at a professional level concerning the intra-company activity, who is on a temporary work assignment intended to broaden an employee's knowledge of and experience in a company in preparation for a senior leadership position within the company;

**pre-arranged professional service** means a professional service to be provided in the territory of the other Party, the terms of which have been determined and documented prior to the entry of the professional into the territory of the other Party;

**professional** means a national of a Party who is engaged in a specialty occupation as stated in Appendix 12-A-2 who is not engaged in the field of education; and

**temporary entry** means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence, and does not apply to measures regarding citizenship or employment on a permanent basis.

## **Annex 12-A**

### **Temporary Entry for Business Persons**

#### **Section A – Business Visitors**

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix 12-A-1 without requiring that the business person obtain a work permit or authorisation, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

- (a) proof of citizenship or permanent resident status of the other Party;
- (b) documentation demonstrating that the business person will be so engaged in a business activity set out in Appendix 12-A-1 and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
- (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. If the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. A Party shall not:
  - (a) as a condition for temporary entry pursuant to paragraph 1 or 2, require prior approval procedures, labour certification tests or other procedures of similar effect; or
  - (b) impose or maintain a numerical restriction relating to temporary entry pursuant to paragraph 1 or 2.

4. Notwithstanding paragraph 3, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

## **Section B – Traders and Investors**

5. Each Party shall grant temporary entry and provide a work permit or visa to a business person seeking to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the Party into which entry is sought; or
- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

6. A Party shall not:
  - (a) as a condition for temporary entry pursuant to paragraph 5, require labour certification tests or other procedures of similar effect; or
  - (b) impose or maintain a numerical restriction relating to temporary entry pursuant to paragraph 5.

7. Notwithstanding paragraph 6, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

### **Section C – Intra-Company Transferees**

8. Each Party shall grant temporary entry and provide a work permit or visa to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or an affiliate or a branch thereof as an executive or manager, a specialist or a management trainee on professional development, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

9. A Party shall not:

- (a) as a condition for temporary entry pursuant to paragraph 8, require labour certification tests or other procedures of similar effect; or
- (b) impose or maintain a numerical restriction relating to temporary entry pursuant to paragraph 8.

10. Notwithstanding paragraph 9, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

## **Section D – Professionals**

11. Each Party shall grant temporary entry and provide a work permit or visa to a business person who is a professional seeking to engage in a business activity at a professional level, in a profession set out in Appendix 12-A-2, if the business person otherwise complies with existing immigration measures applicable to temporary entry, on presentation of:

- (a) proof of citizenship or permanent resident status of the other Party; and
- (b) documentation demonstrating that the business person is seeking to enter to provide pre-arranged professional services, either as a contractual service supplier, or as an independent professional, in the field for which the business person has the appropriate qualifications.

12. A Party shall not:

- (a) as a condition for temporary entry pursuant to paragraph 11, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain a numerical restriction relating to temporary entry pursuant to paragraph 11.

13. Notwithstanding paragraph 12, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

## **Section E – Spouses**

14. Each Party shall grant temporary entry and provide a work permit or authorisation to a spouse of a business person qualifying for temporary entry under Section B, C , or D, if the spouse otherwise complies with existing immigration measures applicable to temporary entry and meets the relevant employment qualifications.

15. A Party shall not:

- (a) as a condition for temporary entry pursuant to paragraph 14, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain a numerical restriction relating to temporary entry pursuant to paragraph 14.

16. Notwithstanding paragraph 15, a Party may require a spouse of a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement on the spouse, the Party shall consult with the other Party with a view to avoiding the imposition of the requirement.

## **Appendix 12-A-1**

### **Business Visitors**

#### *Research and Design*

Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party;

#### *Growth, Manufacture and Production*

Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party;

#### *Marketing*

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party;

Trade-fair and promotional personnel attending a trade convention;

#### *Sales*

Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services;

Buyers purchasing for an enterprise located in the territory of the other Party;

#### *Distribution*

Transportation operators transporting goods or passengers to the territory of a Party from the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party;

*After-Sales or After-Lease Service*

Installers, repair and maintenance personnel, and supervisors, possessing specialised knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement;

*General Service*

Professionals engaging in a business activity at a professional level;

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party;

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party;

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions;

Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in a convention or conducting a tour that has begun in the territory of the other Party; and

Translators or interpreters performing services as employees of an enterprise located in the territory of the other Party.

## **Appendix 12-A-2**

### **Listed Professionals**

#### **Independent Professionals:**

<b>Profession</b>	<b>Korean Requirements</b>	<b>Canadian Requirements</b>
Architect*	Bachelor degree; or professional license	Bachelor degree; or provincial license
Engineer	Bachelor degree; or professional license	Bachelor degree; or provincial license
Management Consultant	Bachelor degree***	Bachelor degree***
Veterinarian	Bachelor degree; or professional license	Doctorate of Veterinary Medicine; or provincial license

#### **Contract Service Suppliers:**

<b>Profession</b>	<b>Korean Requirements</b>	<b>Canadian Requirements</b>
Accountant	Professional license**	Bachelor degree; or Chartered Professional Accountant (CPA), Chartered Accountant (CA), Certified General Accountant (CGA), or Certified Management Accountant (CMA)
Actuary	Professional license	Bachelor degree and membership in a professional actuarial association
Agrologist	Master degree and three years of experience; or doctorate**	Bachelor degree

<b>Profession</b>	<b>Korean Requirements</b>	<b>Canadian Requirements</b>
Architect*	Bachelor degree; or professional license	Bachelor degree; or provincial license
Landscape Architect	Bachelor degree	Bachelor degree
Apiculturalist	Master degree and three years of experience; or doctorate**	Bachelor degree
Auditor	Professional license	Bachelor degree; or CPA, CA, CGA or CMA
Biologist  <i>This category would include the following:</i>	Master degree and three years of experience; or doctorate**  1. <i>Botanist</i> 2. <i>Biologist</i> 3. <i>Ecologist</i> 4. <i>Embryologist</i> 5. <i>Toxicologist</i> 6. <i>Enzymologist</i> 7. <i>Etiologist</i> 8. <i>Bacteriologist</i> 9. <i>Geneticist</i> 10. <i>Histologist</i> 11. <i>Helminthologist</i> 12. <i>Human Physiologist</i> 13. <i>Pathologist</i> 14. <i>Immunologist</i> 15. <i>Mycologist</i> 16. <i>Naturalist</i> 17. <i>Physiologist</i> 18. <i>Virologist</i> 19. <i>Serologist</i> 20. <i>Ecobiologist</i> 21. <i>Echthyologist</i>	Bachelor degree

Profession	Korean Requirements	Canadian Requirements
<p>22. <i>Plant Pathologist</i></p> <p>23. <i>Crop Scientist</i></p> <p>24. <i>Anatomist</i></p> <p>25. <i>Bryologist</i></p> <p>26. <i>Cytochemist</i></p> <p>27. <i>Nematologist</i></p> <p>28. <i>Osteologist</i></p> <p>29. <i>Entomologist</i></p> <p>30. <i>Epidemiologist</i></p> <p>31. <i>Biochemist</i></p> <p>32. <i>Plant Breeder</i></p> <p>33. <i>Animal Breeder</i></p> <p>34. <i>Poultry Scientist</i></p> <p>35. <i>Soil Scientist</i></p> <p>36. <i>Food Scientist</i></p> <p>37. <i>Animal Scientist</i></p> <p>38. <i>Zoologist</i></p> <p>39. <i>Dairy Scientist</i></p>		
Chemist	Master degree and three years of experience; or doctorate**	Bachelor degree
Engineer	Bachelor degree; or professional license	Bachelor degree; or provincial license
Forester	Master degree and three years of experience; or doctorate**	Bachelor degree
Geoscientist  <i>This category would include the following:</i>	Master degree and three years of experience; or doctorate**	Bachelor degree
<p>1. <i>Palaeontologist</i></p> <p>2. <i>Petrologist</i></p> <p>3. <i>Sedimentologist</i></p> <p>4. <i>Seismologist</i></p> <p>5. <i>Stratigrapher</i></p> <p>6. <i>Glaciologist</i></p>		

<b>Profession</b>	<b>Korean Requirements</b>	<b>Canadian Requirements</b>
7. <i>Hydrogeologist</i> 8. <i>Hydrologist</i> 9. <i>Mineralogist</i> 10. <i>Oceanographer</i> 11. <i>Petrophysicist</i> 12. <i>Quaternarist</i> 13. <i>Volcanologist</i> 14. <i>Metallurgist</i>		
Horticulturalist	Master degree and three years of experience; or doctorate **	Bachelor degree
Management Consultant	Bachelor degree***	Bachelor degree***
Meteorologist	Master degree and three years of experience; or doctorate **	Bachelor degree
Physical Scientist  <i>This category would include the following:</i> 1. <i>Physicist</i> 2. <i>Astronomer</i> 3. <i>Aerodynamicist</i> 4. <i>Cosmologist</i> 5. <i>Research Scientist</i> 6. <i>Radiation Biophysicist</i> 7. <i>Rheologist</i>	Master degree and three years of experience; or doctorate**	Post-graduate degree
Sylviculturalist	Master degree and three years of experience; or doctorate **	Bachelor degree
Urban and Land Use Planner	Bachelor degree***	Bachelor degree***

<b>Profession</b>	<b>Korean Requirements</b>	<b>Canadian Requirements</b>
Veterinarian	Bachelor degree; or professional license	Doctorate of Veterinary Medicine; or professional license
Information System Analyst Database Analyst and Data Administrator	Bachelor degree or Post-secondary diploma in computer science or a related discipline and seven years of experience in computer and information systems;  Bachelor degree or Post-secondary diplomas and nine years of experience in computer and information systems; or  Engineering Mobility Forum (EMF) license in the case of Professional engineers	Bachelor degree in computer sciences or a related discipline and two years of experience in computer science;  Bachelor degree and five years of experience in the field of computer science and information systems; or  A Canadian I.S.P. designation (Information Systems Professional of Canada) or a license or designation from a recognised foreign certification body
Computer Programmer and Interactive Media Developer	Bachelor degree or Post-secondary diploma in computer sciences or a related discipline and seven years of experience in computer and information systems;  Bachelor degree or Post-secondary diplomas and nine years of experience in computer and information systems; or	Bachelor degree in computer science or a related discipline and two years of experience in computer science;  Bachelor degree and five years of experience in the field of computer science and information systems; or
	EMF license in the case of Professional engineers	A Canadian I.S.P. designation (Information

<b>Profession</b>	<b>Korean Requirements</b>	<b>Canadian Requirements</b>
		Systems Professional of Canada) or a license or designation from a recognised foreign certification body
Software Engineer and Designer	Bachelor degree or Post-secondary diploma in computer science or a related discipline and seven years of experience in computer and information systems;  Bachelor degree or Post-secondary diplomas and nine years of experience in computer and information systems; or	Bachelor degree in computer sciences or a related discipline and two years of experience in computer science;  Bachelor degree and five years of experience in the field of computer science and information systems; or

<b>Profession</b>	<b>Korean Requirements</b>	<b>Canadian Requirements</b>
	EMF license in the case of Professional engineers	A Canadian I.S.P. designation (Information Systems Professional of Canada) or a license or designation from a recognised foreign certification body

\* Providing architectural services is subject to collaboration with architects registered under Korean law in the form of joint contracts.

\*\* If there is no conflict of laws in both countries, Korean educational requirements shall be deemed to be met whenever a Canadian professional has met Canadian educational requirements and the Korean client or employer has provided a letter indicating that the Canadian professional's qualifications are satisfactory and vice versa.

\*\*\* A license may be required to perform certain activities.