

CHAPTER NINE

CROSS-BORDER TRADE IN SERVICES

Article 9.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party, including measures affecting:

- (a) the production, distribution, marketing, sale, and delivery of a service;
- (b) the purchase or use of, or payment for, a service;
- (c) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;
- (d) the presence in its territory of a service supplier of the other Party; and
- (e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. For the purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:

- (a) a national, sub-national, or local government and authority; or
- (b) a non-governmental body of a Party in the exercise of powers delegated by a national, sub-national, or local government and authority of the Party.

3. Notwithstanding paragraph 1, Articles 9.4 and 9.7 apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment¹ as defined in Article 8.45 (Definitions).

¹ For greater certainty, the application of Articles 9.4 and 9.7 to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment is limited by the scope and coverage specified in this Article, subject to any applicable non-conforming measures and exceptions. For greater certainty, this Chapter, including this paragraph, is not subject to investor-State dispute settlement under Section B of Chapter Eight (Investor – State Dispute Settlement).

4. This Chapter does not apply to:
 - (a) financial services as defined in Article 10.20 (Definitions);
 - (b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; or
 - (iii) computer reservation system (CRS) services;
 - (c) procurement by a Party or a state enterprise; or
 - (d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, or insurance.
5. This Chapter is not to be construed to impose an obligation on a Party with respect to a national of the other Party seeking access to its employment market, or a national of the other Party employed on a permanent basis in its territory, and does not confer that national a right with respect to that access or employment.
6. This Chapter does not apply to services supplied in the exercise of governmental authority in a Party's territory.

Article 9.2: National Treatment

1. Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service suppliers.
2. The treatment accorded by a Party under paragraph 1 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to service suppliers of the Party of which it forms a part.

Article 9.3: Most-Favoured-Nation Treatment

Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to service suppliers of a non-party.

Article 9.4: Market Access

A Party shall not adopt or maintain, either on the basis of its entire territory or on the basis of a sub-national government, a measure that:

- (a) imposes limitations on:
 - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers, or the requirement of an economic needs test;
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test²;
or
 - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the provision of a specific service in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restricts or requires specific types of legal entity or joint venture through which a service supplier may supply a service.

² This sub-subparagraph does not apply to measures of a Party that limit inputs for the supply of services.

Article 9.5: Local Presence

A Party shall not require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 9.6: Non-Conforming Measures

1. Articles 9.2 through 9.5 do not apply to:
 - (a) an existing non-conforming measure that is maintained by:
 - (i) the national government of a Party, as set out in its Schedule to Annex I;
 - (ii) a sub-national government of a Party as set out by that Party in its Schedule to Annex I³; or
 - (iii) a local government of a Party⁴;
 - (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 9.2 through 9.5.
2. Articles 9.2 through 9.5 do not apply to a measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II.
3. Annex 9-A sets out specific commitments with regard to consultation regarding a non-conforming measure adopted or maintained by a sub-national government.

³ For the purposes of this Article, sub-national government does not include local government.

⁴ For Korea, local government means a local government as defined in the *Local Autonomy Act*.

Article 9.7: Domestic Regulation

1. If a Party requires authorisation for the supply of a service covered by this Chapter, the Party, through its competent authorities, shall, within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the Party, through its competent authorities, shall provide, without undue delay, information concerning the status of the application.

2. The Parties note their mutual obligations related to domestic regulation in Article VI:4 of the GATS and affirm their commitment respecting the development of any necessary disciplines pursuant to Article VI:4 of the GATS. To the extent that any such disciplines are adopted by the WTO Members, the Parties shall, as appropriate, review them jointly with a view to determining whether this Article needs to be supplemented.

Article 9.8: Recognition

1. For the purposes of fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 5, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the country concerned or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-party, Article 9.3 is not to be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

3. On request of the other Party, a Party shall promptly provide information, including appropriate descriptions, concerning a recognition agreement or arrangement that the Party or relevant bodies in its territory have concluded.

4. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate accession to such an agreement or arrangement or to negotiate a comparable one with that other Party. If a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognised.

5. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

6. The Parties shall endeavour to ensure that the relevant bodies in their respective territories:

- (a) exchange information and enter into negotiations with the relevant bodies of the other Party to develop an agreement or arrangement referred to in paragraph 1;
- (b) meet within 12 months of the date of entry into force of this Agreement, to develop an agreement or arrangement referred to in paragraph 1, for sectors set out in Annex 9-B;
- (c) be guided by Annex 9-C for the negotiations of such agreement or arrangement; and
- (d) provide notification following the conclusion of an agreement or arrangement to the Commission.

7. On receipt of a notification referred to in paragraph 6(d), the Commission shall review the agreement or arrangement within a reasonable period of time to determine whether it is consistent with this Agreement. Based on the Commission's review, each Party shall ensure that its respective competent authorities, if appropriate, implement the agreement or arrangement within a mutually agreed period of time.

Article 9.9: Temporary Licensing

1. If the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for the temporary licensing of professional service suppliers of the other Party.
2. Notwithstanding Article 9.8, each Party shall endeavour to ensure that the relevant bodies in their respective territories:
 - (a) exchange information and enter into negotiations with the relevant bodies of the other Party to develop procedures for the temporary licensing of professional service suppliers of the other Party;
 - (b) meet within 12 months of the date of entry into force of this Agreement, to develop procedures referred to in subparagraph (a) for the sectors set out in Annex 9-B;
 - (c) be guided by Annex 9-C for the negotiations concerning procedures referred to in subparagraph (a); and
 - (d) provide notification to the Commission regarding the implementation of any such procedures by the relevant bodies in the Parties' respective territories.
3. On receipt of a notification referred to in paragraph 2(d), the Commission shall review the procedures within a reasonable period of time to determine whether they are consistent with this Agreement. Based on the Commission's review, each Party shall ensure that its respective competent authorities, if appropriate, implement the procedures within a mutually agreed period of time.
4. If a relevant body in the territory of a Party implements procedures for the temporary licensing of professional service suppliers of a non-party, the Party shall notify the existence of such procedures promptly to the other Party and shall, within a reasonable period of time, provide information on the terms and conditions that were agreed upon for the implementation of the procedures.

Article 9.10: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-party, and the denying Party adopts or maintains measures with respect to the non-party or a person of the non-party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non-party or of the denying Party that has no substantial business activities in the territory of the other Party.

Article 9.11: Payments and Transfers

1. Each Party shall permit all payments and transfers relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

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

3. 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 law 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.

Article 9.12: Definitions

For the purposes of this Chapter:

aircraft repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;

computer reservation system (CRS) services means services supplied by computerised systems that contain information about air carriers' schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued;

cross-border trade in services or **cross-border supply of services** means the supply of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by a covered investment, as defined in Article 8.45 (Definitions);

enterprise means an "enterprise" as defined in Article 1.8 (Definitions of General Application) and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the domestic law of a Party, and a branch of that enterprise located in the territory of a Party and carrying out business activities there;

professional services means services, the supply of which requires specialised post-secondary education, or equivalent training or experience or examination, and for which the right to practice is granted or restricted by a Party, but does not include services supplied by tradespersons or crew members of a vessel or aircraft;

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising, and distribution, but does not include the pricing of air transport services nor the applicable conditions;

service supplied in the exercise of governmental authority means a service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers; and

service supplier of a Party means a person of that Party that seeks to supply or supplies a service⁵.

⁵ For the purposes of Articles 9.2 and 9.3, the treatment that a Party is required to accord to a service supplier of the other Party pursuant to these Articles extends to the relevant services supplied by that service supplier. For the purposes of Articles 9.2 and 9.3, “service suppliers” has the same meaning as “services and service suppliers” as used in Articles XVII and II of the GATS, respectively.

Annex 9-A

Consultations Regarding Non-Conforming Measures Maintained by a Sub-National Government

If a Party considers that an Annex I non-conforming measure applied by a sub-national government of the other Party creates a material impediment to a service supplier of the Party, an investor of the Party, or a covered investment, it may request consultations with regard to that measure. If a Party considers that an Annex I non-conforming measure applied by a sub-national government of the other Party prevents the development of a mutual recognition agreement or arrangement or prevents a service supplier of a Party from receiving the benefits of such an agreement or arrangement, it may also request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

Annex 9-B

Sectors to be Developed: Mutual Recognition Agreements or Arrangements

1. Engineering Services
2. Architectural Services
3. Veterinary Services

Annex 9-C

Guidelines for Mutual Recognition Agreements or Arrangements for the Professional Services Sector

Introductory Notes

This Annex provides practical guidance for governments, negotiating entities or other entities entering into mutual recognition negotiations for the professional services sector. These guidelines are non-binding and are intended to be used by the Parties on a voluntary basis. They do not modify or affect the rights and obligations of the Parties under this Agreement.

The objective of these guidelines is to facilitate the negotiation of mutual recognition agreements or arrangements (hereinafter referred to as “MRAs”).

The examples listed under this Annex are provided by way of illustration. The listing of these examples is indicative and is intended neither to be exhaustive, nor as an endorsement of the application of such measures by the Parties.

Section A – Conduct of Negotiations and Relevant Obligations

Introductory Note

With reference to the obligations of the Parties under Article 9.8, this Section sets out elements considered useful in the discharge of these obligations.

Opening of Negotiations

1. The information supplied by a Party to the Commission should include the following:
 - (a) the intent to enter into negotiations;
 - (b) the entities involved in discussions (for example, governments, national organisations in the professional services sector or institutes which have authority, statutory or otherwise, to enter into such negotiations);

- (c) a contact point to obtain further information;
- (d) the subject of the negotiations (specific activity covered); and
- (e) the expected time of the start of negotiations and an indicative date for the expression of interest by third parties.

Results

2. Upon the conclusion of an MRA by a Party, the information it should supply to the Commission includes:

- (a) the content of a new MRA; or
- (b) the significant modifications to an existing MRA.

Follow-up Actions

3. Follow-up actions by a Party supplying information under paragraph 1 include ensuring that:

- (a) the conduct of negotiations and the MRA comply with the provisions of this Chapter, and in particular, Article 9.8; and
- (b) the Party adopts measures and undertakes actions required to ensure the implementation and monitoring of the MRA in accordance with Article 9.8.7.

Single Negotiating Entity

4. Where no single negotiating entity exists, the Parties are encouraged to establish one.

Section B – Form and Content of MRAs

Introductory Note

This Section sets out various issues that may be addressed in MRA negotiations and, if so agreed during the negotiations, included in the MRA. It includes some basic ideas on what a Party might require of foreign professionals seeking to take advantage of an MRA.

Participants

5. The MRA should identify clearly:
 - (a) the parties to the MRA (for example, governments, national professional organisations, or institutes);
 - (b) competent authorities or organisations other than the parties to the MRA, if any, and their position in relation to the MRA; and
 - (c) the status and area of competence of each party to the MRA.

Purpose of the MRA

6. The purpose of the MRA should be clearly stated.

Scope of the MRA

7. The MRA should set out clearly:
 - (a) its scope in terms of the specific profession or titles and professional activities it covers in the territories of the Parties;
 - (b) who is entitled to use the professional titles concerned;
 - (c) whether the recognition mechanism is based on qualifications, on the licence obtained in the country of origin or on some other requirement; and
 - (d) whether it covers temporary access, permanent access, or both, to the profession concerned.

MRA Provisions

8. The MRA should clearly specify the conditions to be met for recognition in the territories of each Party and the level of equivalence agreed between the parties to the MRA. The precise terms of the MRA depend on the basis on which the MRA is founded, as discussed above. In case the requirements of the various sub-national jurisdictions of a party to an MRA are not identical, the difference should be clearly presented. The MRA should address the applicability of the recognition granted by one sub-national jurisdiction in the other sub-national jurisdictions of the party to the MRA.

Eligibility for Recognition - Qualifications

9. If the MRA is based on recognition of qualifications, then it should, where applicable, state:
- (a) the minimum level of education required (including entry requirements, length of study, and subjects studied);
 - (b) the minimum level of experience required (including location, length, and conditions of practical training or supervised professional practice prior to licensing, and framework of ethical and disciplinary standards);
 - (c) examinations passed, especially examinations of professional competence;
 - (d) the extent to which home country qualifications are recognised in the host country; and
 - (e) the qualifications which the parties are prepared to recognise, for instance, by listing particular diplomas or certificates issued by certain institutions, or by reference to particular minimum requirements to be certified by the authorities of the country of origin, including whether the possession of a certain level of qualification would allow recognition for some activities but not others.

Eligibility for Recognition - Registration

10. If the MRA is based on recognition of the licensing or registration decision made by regulators in the country of origin, it should specify the mechanism by which eligibility for such recognition may be established.
11. (a) Where it is considered necessary to provide for additional requirements in order to ensure the quality of the service, the MRA should set out the conditions under which those requirements may apply, for example, in case of shortcomings in relation to qualification requirements in the host country or knowledge of local law, practice, standards, and regulations. This knowledge should be essential for practice in the host country or required because there are differences in the scope of licensed practice.

- (b) Where additional requirements are deemed necessary, the MRA should set out in detail what they entail (for example, examination, aptitude test, additional practice in the host country or in the country of origin, practical training, and language used for examination).

Mechanisms for Implementation

12. The MRA should state:

- (a) the rules and procedures to be used to monitor and enforce the provisions of the MRA;
- (b) the mechanisms for dialogue and administrative cooperation between the parties; and
- (c) the means of arbitration for disputes under the MRA.

13. As a guide to the treatment of individual applicants, the MRA should include details on:

- (a) the focal point of contact in each party for information on all issues relevant to the application (name and address of competent authorities, licensing formalities, information on additional requirements which need to be met in the host country, etc.);
- (b) the length of procedures for the processing of applications by the relevant authorities of the host country;
- (c) the documentation required of applicants and the form in which it should be presented and any time limits for applications;
- (d) acceptance of documents and certificates issued in the country of origin in relation to qualifications and licensing;
- (e) the procedures of appeal to or review by the relevant authorities; and
- (f) the fees that might be reasonably required.

14. The MRA should also include the following commitments:

- (a) that requests about the measures will be promptly dealt with;

- (b) that adequate preparation time will be provided where necessary;
- (c) that any exams or tests will be arranged with reasonable periodicity;
- (d) that fees to applicants seeking to take advantage of the terms of the MRA will be in proportion to the cost to the host country or organisation; and
- (e) that information on any assistance programmes in the host country for practical training, and any commitments of the host country in that context, be supplied.

Licensing and Other Provisions in the Host Country

15. Where applicable:

- (a) the MRA should also set out the means by which, and the conditions under which, a licence is actually obtained following the establishment of eligibility, and what such licence entails (a licence and its content, membership of a professional body, use of professional or academic titles, etc.);
- (b) a licensing requirement, other than qualifications, should include, for example:
 - (i) an office address, an establishment requirement, or a residency requirement;
 - (ii) a language requirement;
 - (iii) proof of good conduct and financial standing;
 - (iv) professional indemnity insurance;
 - (v) compliance with host country's requirements for use of trade or firm names; and
 - (vi) compliance with host country ethics, for instance independence and incompatibility;
- (c) in order to ensure the transparency of the system, the MRA should include the following details for each party:
 - (i) the relevant laws and regulations to be applied (disciplinary action, financial responsibility, liability, etc.);

- (ii) the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential limitations on the professionals;
- (iii) the means for ongoing verification of competence;
- (iv) the criteria for, and procedures relating to, revocation of the registration of professionals; and
- (v) regulations relating to any nationality and residency requirements needed for the purposes of the MRA.

Revision of the MRA

16. If the MRA includes terms under which it can be reviewed or revoked, the details of such terms should be clearly stated.