

CHAPTER EIGHT
MOVEMENT OF NATURAL PERSONS

ARTICLE 8.1: GENERAL PRINCIPLES

1. This Chapter reflects the preferential trading relationship between the Parties and their mutual desire to facilitate temporary entry of natural persons on a comparable basis and to establish transparent criteria and streamlined procedures for temporary entry, while recognising the need to ensure border security. This Chapter provides for rights and obligations additional to those set out in Chapter Two (Trade in Goods), Chapter Six (Trade in Services) and Chapter Ten (Investment) in relation to the movement of natural persons between the Parties.
2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. Nothing contained in this Chapter 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 unduly impair the benefits accruing to the other Party or delay trade in goods or services or conduct of investment activities under this Agreement.

ARTICLE 8.2: SCOPE AND DEFINITIONS

1. This Chapter applies to measures affecting the movement of natural persons of a Party who enter into the territory of the other Party, where such persons are:
 - (a) service sellers of the former Party;
 - (b) service suppliers of the former Party;
 - (c) sellers of goods of the former Party;
 - (d) investors of the former Party in respect of their investments in the territory of the latter Party; or
 - (e) employed by an investor of the former Party in respect of an investment of that investor in the territory of the latter Party.
2. For the purposes of this Chapter, the following definitions shall apply:
 - (a) **natural person of a Party** is as defined in Chapter Six (Trade in Services) and specifically covers only a national of a Party as described in paragraph 1;
 - (b) **immigration visa** means an employment visa or business visa granting a natural person of the other Party the right to reside or work or remain in the territory of host country, without the intent to reside permanently;
 - (c) **temporary entry** means entry by a business visitor, an intra-corporate transferee, or a professional 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;

- (d) **service seller** means a natural person of a Party 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 a representative will not be engaged in making direct sales to the general public or in supplying services directly;
- (e) **seller of goods** means any natural person of a Party engaged in the manufacture, production, supply or distribution of industrial or agricultural goods seeking temporary entry into the other Party in order to sell goods to, or to enter into a distribution or retailing arrangement with a natural person or an enterprise of the other Party engaged in an industrial or commercial activities, provided, however, that such person shall not sell goods directly to the general public of the other Party;
- (f) **professional** means a natural person of a Party who is employed in a specialised occupation that requires theoretical and practical application of specialised knowledge and;
- (i) attainment of a post secondary degree in the specialty requiring three or more years of study (or the equivalent of such a degree) as a minimum of entry into the occupation. Such degrees include Bachelors' degree, Masters' degree and Doctoral degree conferred by institutions in Korea or India; and
- (ii) in the case of regulated professions, registration, licence or credentials, as specified by the relevant authorities of a Party, if applicable, to engage in a business activity;
- (g) **business visitor** means a natural person of either Party who is:
- (i) a service seller who enters the territory of the other Party for the sale of services or entering into agreements for such sale for that services supplier;
- (ii) seeking temporary entry for negotiating sale of goods, where such negotiations do not involve direct sales to the general public; or
- (iii) an investor of a Party or an employee of an investor, who is a manager, executive or specialist as defined under subparagraph (h), seeking temporary entry to establish an investment;
- (h) **intra-corporate transferee** means an employee of a service supplier, juridical person, as defined in Chapter Six (Trade in Services), an investor or enterprise of a Party established in the territory of the other Party referred to below as an organisation, through a branch, subsidiary or affiliate, who has been so employed for a period of not less than one year immediately preceding the date of the application for temporary entry, and who is a manager, executive or specialist as defined below:
- (i) **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. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment. However, this does not prevent the manager, in the course of executing his or her duties as described above, from secondarily performing tasks necessary for the provision of the service or operation of an investment;

- (ii) **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 primarily perform tasks related to the actual provision of the service or the operation of an investment. However, this does not prevent the executive, in the course of executing his duties as described above, from secondarily performing tasks necessary for the provision of the service or operation of an investment; or
- (iii) **specialist** means a natural person within an organisation who possesses knowledge at an advanced level of expertise and who possesses relevant knowledge of the organisation's service, research, equipment, techniques or management. A specialist may include, but is not limited to, members of a licenced profession;
- (i) **contractual service supplier** means a person possessing appropriate educational and other qualifications relevant to the service to be provided who is engaged in the supply of a contracted service as an employee of a juridical person that has no commercial presence in the other Party, where the juridical person obtains a service contract from a juridical person of the other Party. The contractual service supplier should have been an employee of the juridical person for a period of not less than one year immediately preceding the date of application for admission; and
- (j) **independent professional** means a self-employed person possessing appropriate educational and other qualifications relevant to the service to be provided who is engaged in the supply of a contracted service, where the professional has a service contract from a person of the other Party.¹

ARTICLE 8.3: GRANT OF TEMPORARY ENTRY

1. Each Party shall grant temporary entry to natural persons of the other Party, who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter.

2. Each Party shall process expeditiously applications for temporary entry from natural persons of the other Party, including requests for further extensions, particularly applications from members of professions for which mutual recognition arrangements have been concluded pursuant to Article 6.8 (Recognition). Each Party shall notify the applicant for temporary entry, either directly or through his or her prospective employers,

¹ Each Party reserves the right to confine the party to the service contract to a juridical person, if illegal immigration relating to a service contract between natural persons of the Parties takes place within two years from the date of entry into force of this Agreement. In case of illegal immigration, the Parties shall share the information.

of the outcome of final determination, including the period of stay and other conditions.

3. Natural persons of either Party who are granted temporary entry into the territory of the other Party shall not be required to make contributions to social security funds in the host country. In such cases, they will not be eligible for social security benefits in the other Party for the duration of the stay.

4. A Party may refuse to issue an immigration visa authorising employment to a business person where the temporary entry of that person might affect adversely:

- (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or
- (b) the employment of any person who is involved in such dispute.

5. *Business visitors*

- (a) Korea shall grant temporary entry to a business visitor for a period of not more than 90 days; and
- (b) India shall grant temporary entry to a business visitor for a period of not more than 180 days or for longer duration for a maximum period up to five years with 180 days stay stipulation on a single visit; and

Such a business visitors' visa under subparagraphs (a) and (b) shall be granted, provided that the business visitor:

- (i) complies with immigration measures applicable to temporary entry;
- (ii) presents proof of nationality of the other Party;
- (iii) is an employee of a juridical person not already having commercial presence in the host country; and
- (iv) does not receive any remuneration from a source located within the visiting Party;

Neither Party may require labour market test as a condition for temporary entry or impose numerical restriction relating to temporary entry for business visitors.

6. *Intra-Corporate Transferees*

Each Party shall grant temporary entry to an intra-corporate transferee of the other Party, who otherwise complies with applicable immigration measures, for an initial period of up to two years for Korea and up to one year for India, or the period of the contract, whichever is less.

The period of stay may be extended:

- (a) for Korea, provided the conditions on which it is based remain in effect; and
- (b) for India, on year to year basis for a total term not exceeding five years if the above conditions are still met by the applicants;

Neither Party may require labour market test as a condition for temporary entry or impose numerical restriction relating to temporary entry for intra-corporate transferees.

7. Professionals

Each Party shall grant temporary entry to a professional of the other Party who is seeking to provide services as a contractual service supplier or an independent professional in a profession as set out in Annex 8-A, if that natural person otherwise complies with immigration measures applicable to temporary entry, for an initial period of up to one year or the period of the contract, whichever is less, on the presentation of:

- (a) proof of nationality of the other Party;
- (b) documentation demonstrating that he or she will be so engaged and describing the purpose of entry, including the letter of contract from the entity engaging the services of the natural person in the host Party; and
- (c) documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.

ARTICLE 8.4: EMPLOYMENT OF SPOUSES AND DEPENDANTS

Each Party shall grant temporary entry and provide a work permit or authorisation to a spouse and a dependant of a intra-corporate transferee, contractual service supplier or independent professional qualifying for temporary entry, if the spouse or the dependant otherwise complies with immigration measures applicable to temporary entry and meets the relevant employment qualifications.

ARTICLE 8.5: REGULATORY TRANSPARENCY

1. Each Party shall maintain or establish contact points or other mechanisms to respond to inquiries from interested persons regarding regulations affecting the temporary entry of natural persons. These contact points shall also be the authorised 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.
2. 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.
3. Prior to the date of entry into force of this Agreement, the Parties shall exchange information on current procedures relating to the processing of applications for temporary entry.

ARTICLE 8.6: RESOLUTION OF PROBLEMS

The relevant authorities of both Parties shall endeavour to favourably resolve any specific or general problems, (within the framework of their laws, regulations and other similar measures governing the temporary entry of natural persons) which may arise from the implementation and administration of this Chapter.

ARTICLE 8.7: DISPUTE SETTLEMENT

1. A Party may not initiate proceedings under Chapter Fourteen (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 right of entry accruing under this Chapter;

- (b) the matter involves a pattern of practice; and
- (c) its natural persons affected by the pattern of practice have exhausted the available domestic administrative remedies of the other Party.

2. The remedies referred to in paragraph 1(c) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of proceedings for domestic administrative remedies including proceedings by way of review, and the failure to issue a determination is not attributable to the delay caused by the natural person.

ARTICLE 8.8: RESERVATIONS

The commitments made by each Party under this Chapter shall be subject to any terms, conditions, reservations or limitations it has scheduled in respect of each service sector under Chapter Six (Trade in Services).