

## 11 MOVEMENT OF BUSINESS PERSONS

### ARTICLE 1

#### *Purpose*

The purposes of this Chapter are to:

- (a) provide for rights and obligations additional to those set out in Chapters 7 (Trade in Services) and 8 (Investment) in relation to the movement of natural persons between the Parties; and
- (b) enhance the mobility of business persons of either Party engaged in the conduct of trade and investment between the Parties, by facilitating temporary business entry and establishing streamlined, transparent immigration clearance procedures for business persons.

### ARTICLE 2

#### *Scope and Definitions*

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) service suppliers of the first Party;
  - (b) service sellers of the first Party;
  - (c) investors of the first Party in respect of an investment of that investor in the territory of the other Party; or
  - (d) employed by an investor of the first Party in respect of an investment of that investor in the territory of the other Party.
2. For the purposes of this Chapter, the following definitions shall apply:
  - (a) “business visitors” means natural persons of either Party who are:
    - (i) service sellers;
    - (ii) short-term service suppliers;
    - (iii) investors of a Party or employees of an investor (who are managers, executives or specialists as defined under Article 2.2(c) seeking temporary entry to establish an investment; or

(iv) seeking temporary entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sales to the general public;

(b) “immigration formality” means a visa, employment pass, or other document or electronic authority granting a natural person of one Party the right to reside or work in the territory of the other Party;

(c) “intra-corporate transferee” means an employee of a service supplier, investor or enterprise of a Party established in the territory of the other Party 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:

(i) a manager – a business 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;

(ii) an executive – a business 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; or

(iii) a specialist – a business person within an organisation who possesses knowledge at an advanced level of expertise and who possesses proprietary knowledge of the organisation’s service, research equipment, techniques, or management (A specialist may include, but is not limited to, members of a licensed profession.);

(d) “service seller” means a natural person of a Party who is a sales representative of a service supplier of that Party and is seeking temporary entry to 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) “short-term service suppliers” means persons who:

(i) are employees of a service supplier or an enterprise of a Party not having a commercial presence or investment in the other, which has concluded a service contract with a service supplier or an

enterprise engaged in substantive business operations in the other Party;  
and

(ii) have been employees of the service supplier or enterprise for a time period of not less than one year immediately preceding an application for admission for temporary entry; and

(iii) are managers, executives or specialists as defined under Article 2.2(c) and

(iv) are seeking temporary entry to the other Party for the purpose of providing a service as a professional in the following service sectors on behalf of the service supplier or enterprise which employs them:

- (A) professional services;
- (B) computer and related services;
- (C) telecommunication services; or
- (D) financial services; and

(v) satisfy any other requirements under the domestic laws and regulations of the other Party to provide such services in the territory of that Party; and

(f) “temporary entry” means entry by a business visitor or an intra-corporate transferee, 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 enterprise which employs that visitor in the visitor’s home country.

3. Nothing in this Chapter shall 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.

### ARTICLE 3

#### *Short-Term Temporary Entry*

A Party shall, upon application by a business visitor of the other Party who otherwise meets its criteria for the grant of an immigration formality, grant that business visitor, through the issue of a single immigration formality, the right to temporary entry in the granting Party's territory for a period of up to three months.

## ARTICLE 4

### *Long-Term Temporary Entry*

A Party shall grant temporary entry to an intra-corporate transferee of the other Party who otherwise meets its criteria for the grant of an immigration formality unless there has been a breach of any of the conditions governing temporary entry, or an application for an extension of an immigration formality has been refused on such grounds of national security or public order by the granting Party as it deems fit:

- (a) in the case of Singapore, for an initial period of up to two years which may be extended for periods of up to three years at a time for a total term not exceeding 14 years; and
- (b) in the case of Australia, for an initial period of up to four years which may be extended for further periods of up to four years at a time for a total term not exceeding 14 years.

## ARTICLE 5

### *Provision of Information*

A Party shall:

- (a) publish or otherwise make available to the other Party such information as will enable the other Party to become acquainted with its measures relating to this Chapter; and
- (b) no later than six months after the date of entry into force of this Agreement, prepare, publish or otherwise make available in its own territory, and in the territory of the other Party, explanatory material regarding the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them.

## ARTICLE 6

### *Dispute Settlement*

1. A Party may not initiate proceedings under Chapter 16 (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:
  - (a) the matter involves a pattern of practice; and
  - (b) its natural persons affected have exhausted the available domestic administrative remedies regarding the particular matter.
2. The remedies referred to in Article 6.1(b) 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 delays caused by the natural person.

## ARTICLE 7

### ***Immigration Measures***

Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their 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 nullify or impair the benefits accruing to the other Party under the terms of this Chapter.

## ARTICLE 8

### ***Expeditious Application Procedures***

A Party shall process expeditiously applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof, particularly applications from members of professions for which mutual recognition arrangements have been concluded.

## ARTICLE 9

### ***Notification of Outcome of Application***

A Party shall notify the applicants for temporary entry, either directly or through their prospective employers, of the outcome of their applications, including the period of stay and other conditions.

## ARTICLE 10

### ***Online Lodgement and Processing***

As soon as possible after the date of entry into force of this Agreement, Parties shall provide facilities for online lodgement and processing:

- (a) in the case of Australia, of immigration formalities; and
- (b) in the case of Singapore, of employment passes which shall be applied for by the prospective employers.

## ARTICLE 11

### ***Resolution of Problems***

The relevant authorities of both Parties shall endeavour to favourably resolve any specific or general problems (within the framework of their domestic 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 12

### ***Labour Market Testing***

Neither Party shall require labour market testing, labour certification tests or other procedures of similar effect as a condition for temporary entry in respect of natural persons on whom the benefits of this Chapter are conferred.

## ARTICLE 13

### ***Immigration Formality Requirements***

1. Australia shall accord to natural persons of Singapore conditions of entry and processing requirements relating to its Electronic Travel Authority (“ETA”) no less favourable than those accorded to natural persons of any other country eligible under the ETA or equivalent processing system for immigration formalities.
2. Singapore shall waive visa requirements for nationals of Australia, provided that such persons are not nationals of a non-Party for which visa-requirements are imposed for entry into Singapore.

## ARTICLE 14

### ***Inclusion of Permanent Residents***

A Party shall grant the benefits of this Chapter, other than those accorded by Article 13 (Immigration Formality Requirements), to natural persons who have the right of permanent residence in the territory of the other Party, provided that these natural persons satisfy all the administrative, legal, repatriation and other requirements as may be imposed by the granting Party.

## ARTICLE 15

### *Employment of Spouses and Dependants*

For natural persons who have been granted the right to long-term temporary entry and who have been allowed to bring in their spouses or dependants, a Party shall, upon application, grant the accompanying spouses or dependants the right to work as managers, executives or specialists (as defined in Article 2.2(c)(i)-(iii)), or as office administrators in its territory, subject to the relevant licensing, administrative and registration requirements of the granting Party.

## ARTICLE 16

### *Reservations*

The commitments made by each Party under this Chapter shall be subject to any reservations it has taken in its Annex 4-I (Reservations to Chapter 7 (Trade in Services) and Chapter 8 (Investment)) and Annex 4-II (Reservations to Chapter 7 (Trade in Services) and Chapter 8 (Investment)).