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CHAPTER 9

INVESTMENT LIBERALISATION AND TRADE IN SERVICES

SECTION D

TEMPORARY ENTRY AND PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 9.18

Scope

1. This Section applies to measures of a Party affecting:
 - (a) the temporary entry of a natural person of the other Party into the territory of the Party for business purposes; and
 - (b) the supply of services through the presence of a natural person of a Party in the territory of the other Party,

if natural persons as referred to in points (a) and (b) of this paragraph fall within the categories defined in Article 9.19 (Definitions).

2. For greater certainty, nothing in this Section affects requirements provided for in the law of a Party regarding work and social security measures, including regulations concerning minimum wages and collective wage agreements.

3. This Section does not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party or to measures regarding nationality or citizenship, residence or employment on a permanent basis.

4. Nothing in this Agreement shall prevent a Party from applying measures to regulate the temporary entry of natural persons into its territory, including measures necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons across them, provided that such measures are not applied in such a manner as to nullify or impair the benefits¹ accruing to the other Party under this Section.

5. Commitments on the temporary entry of natural persons for business purposes may not apply in individual cases where the intent or effect of the temporary entry is to affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in that labour or management dispute.

ARTICLE 9.19

Definitions

For the purposes of this Section, the following definitions apply:

(a) "business visitors" means:

(i) for Australia:

¹ The sole fact that a Party requires natural persons of the other Party seeking entry for business purposes has to comply with an immigration formality (such as a requirement to obtain a visa) shall not be regarded as nullifying or impairing the benefits accruing to the Party under this Section.

- (A) natural persons seeking to travel to Australia for business purposes, including for investment purposes, or negotiating the sale of goods, whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia and who must not engage in making direct sales to the general public or in supplying goods or services themselves; and
 - (B) service sellers being natural persons who are not based in Australia and whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia, and who are sales representatives of a service supplier, seeking entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier;
- (ii) for the Union, natural persons seeking temporary entry into the Union who:
- (A) are not engaged in selling their goods or supplying services to the general public;
 - (B) do not, on their own behalf, receive remuneration from within the Union; and
 - (C) are not engaged in the supply of a service in the framework of a contract concluded between a juridical person who is not established in the Union, and a consumer in the Union, except as provided for in Annex 9-E (Business Visitors for Establishment Purposes, Intra-Corporate Transferees and Short-Term Business Visitors);
- (b) "business visitors for establishment purposes" means natural persons, working in a senior position within a juridical person of a Party, who:
- (i) are responsible for setting up an enterprise of a juridical person of a Party in the territory of the other Party;
 - (ii) do not offer or provide services to a service consumer of the other Party or engage in any economic activity other than that which is required for the purposes of the establishment of the enterprise referred to in point (i); and
 - (iii) do not receive remuneration from a source located within the other Party;

(c) "contractual services suppliers" means:

- (i) for the Union, natural persons employed by a juridical person of Australia, other than through an agency for placement and supply services of personnel, which is not established in the territory of the Union and has concluded a *bona fide* contract not exceeding 12 months, to supply services to a service consumer of the Union requiring the temporary presence of its employees² who:
 - (A) have offered such services as employees of the juridical person for a period of not less than one year immediately preceding the date of their application for temporary entry;
 - (B) possess on the date as referred to in point (A), at least three years of professional experience in the sector of activity that is the object of the contract³, a bachelor's degree or higher, or a qualification demonstrating knowledge of an equivalent level⁴ and the professional qualifications legally required to exercise that activity in the Union; and
 - (C) do not receive remuneration from a source located within the Union;
- (ii) for Australia, natural persons with trade, technical or professional skills and experience who demonstrate they possess the skills, qualifications and employment background necessary to perform the nominated occupation including, where required, by providing

² The *bona fide* service contract shall comply with the law of the Party where that *bona fide* service contract is executed.

³ Professional experience shall be obtained after having reached the age of majority.

⁴ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether such degree or qualification is equivalent to a university degree required in its territory. To the extent that such an evaluation involves the recognition of professional qualifications, it shall be consistent with the terms of any mutual recognition of professional qualifications established pursuant to Sub-section 2 (Professional Services) of Section E (Regulatory framework). Paragraph XX of Appendix 9-F-1 (Schedule of the Union – Equivalent Qualifications for Engineering, Scientific and Information Technologists) shall apply for the purposes of assessing such equivalence.

the results of a skill assessment by the relevant Australian skills assessing authority and who are:

- (A) employees of an enterprise of the Union that have concluded a contract for the supply of a service within the territory of Australia and that do not have a commercial presence within the territory of Australia; or
 - (B) employees of an enterprise of the Union that are engaged by an enterprise lawfully and actively operating in the territory of Australia in order to supply a service under a contract within the territory of Australia;
- (d) "independent professionals of Australia" means natural persons engaged in the supply of a service and established as self-employed in the territory of Australia who:
- (i) are not established in the territory of the Union;
 - (ii) have concluded a *bona fide* contract (other than through an agency for placement and supply services of personnel) for a period not exceeding 12 months to supply services to a service consumer of the Union, requiring their presence on a temporary basis⁵; and
 - (iii) possess, on the date of their application for temporary entry, the qualifications and experience required to exercise the supply services as referred to in point (ii) in the Union, as specified in Annex 9-F (Contractual Service Suppliers and Independent Professionals);
- (e) "installers and servicers of the Union" means natural persons who are installers or servicers of machinery, equipment, or computer software, where such installation or servicing by the supplying enterprise is a condition of purchase under contract of the said machinery, equipment, or computer software, and who must abide by Australian workplace standards and conditions, and who must not perform services which are not related to the service activity which is the subject of the contract;

⁵ The *bona fide* service contract shall comply with the law of the Party where that *bona fide* service contract is executed.

- (f) "intra-corporate transferees" means natural persons, who are employees of a juridical person of a Party that has established an enterprise which is lawfully and actively operating in the other Party, who are transferred to fill a position in that enterprise, and who are:
- (i) "executives or senior managers", which means natural persons responsible for the entire or a substantial part of the operations of the enterprise in the other Party, receiving general supervision or direction principally from the board of directors or stockholders of the enterprise⁶, and whose responsibilities include:
- (A) directing the enterprise or a department or subdivision thereof;
- (B) supervising and controlling the work of other supervisory, professional or managerial employees; and
- (C) having the authority to establish goals and policies of the department or subdivision of the enterprise, including hiring, dismissing or other personnel-related actions; or
- (ii) "specialists", which means:
- (A) for Australia, natural persons with advanced trade, technical or professional skills and experience who must be assessed as having the necessary qualifications, or alternative credentials accepted as meeting the domestic standards in Australia, for that occupation, and who must have been employed by the employer for not less than two years immediately preceding the date of the application for entry;
- (B) for the Union, natural persons essential to the enterprise's areas of activity, techniques or management, which shall be assessed by taking into account not only knowledge specific to the enterprise, but also whether the person has a high level of qualification, including adequate professional experience, referring to a

⁶ For the purposes of this point, "general supervision or direction principally from the board of directors or stockholders of the enterprise" includes supervision or direction provided by higher-level executives of the enterprise who have been delegated such authority by the board of directors or stockholders.

type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession; or

(iii) for the Union, "trainee employees of Australia", which means natural persons possessing a university degree who are temporarily transferred for career development purposes or to obtain training in business techniques or methods⁷ and are paid during the transfer;

(g) "investor" means:

(i) for Australia, a natural person of the Union who is an executive of an enterprise headquartered in the Union that has no other representative office, branch or subsidiary in Australia and who is establishing a branch or subsidiary of that enterprise in Australia, and who will be responsible for the entire or a substantial part of the enterprise's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including:

(A) directing the enterprise or a department or subdivision thereof;

(B) supervising and controlling the work of other supervisory, professional or managerial employees; and

(C) having the authority to establish goals and policies of the department or subdivision of the enterprise;

(ii) for the Union, a natural person who establishes an enterprise, and develops or administers the operation of that enterprise in the other Party in a capacity that is supervisory or executive, and to which that natural person or the juridical person employing that natural person has committed, or is in the process of committing, a substantial amount of capital.

⁷ The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For Austria, Czechia, Germany, France, Spain, Hungary and Lithuania, training must be linked to the university degree which has been obtained.

ARTICLE 9.20

General obligations

A Party shall allow temporary entry to natural persons of the other Party for business purposes in accordance with this Section and Annex 9-E (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors) and Annex 9-F (Contractual service suppliers and independent professionals) who comply with its immigration measures, application procedures and any other eligibility requirements or conditions applicable to temporary entry.

ARTICLE 9.21

Intra-corporate transferees, investors and business visitors for establishment purposes

1. Each Party shall allow temporary entry to business visitors for establishment purposes, investors and intra-corporate transferees of the other Party in accordance with its commitments set out in Annex 9-E (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors).⁸

2. Unless otherwise specified in Annex 9-E (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors), a Party shall not adopt or maintain limitations in the form of numerical quotas or economic needs tests, either on the basis of a territorial subdivision or on the basis of its entire territory, on the total number of natural persons granted temporary entry in accordance with paragraph 1 in a specific sector.

ARTICLE 9.22

⁸ If an intra-corporate transferee is allowed temporary entry pursuant to this Section, that intra-corporate transferee shall also have the right to be employed by the intra-corporate transferee's enterprise in the territory of the allowing Party.

Business visitors and installers and servicers

1. Each Party shall allow temporary entry to business visitors and installers and servicers of the other Party in accordance with its commitments set out in Annex 9-E (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors).
2. Unless otherwise specified in Annex 9-E (Business visitors for establishment purposes, intra-corporate transferees and short-term business visitors), a Party shall allow temporary entry of business visitors without the requirement of a work permit or economic needs test.

ARTICLE 9.23

Contractual service suppliers

1. Each Party shall allow temporary entry to contractual service suppliers of the other Party in accordance with its commitments set out in Annex 9-F (Contractual services suppliers and independent professionals).
2. Unless otherwise specified in Annex 9-F (Contractual services suppliers and independent professionals) a Party shall not adopt or maintain limitations, in the form of numerical quotas or an economic needs test, on the total number of contractual service suppliers of the other Party allowed temporary entry.

ARTICLE 9.24

Independent professionals

1. The Union shall allow temporary entry and presence to independent professionals of Australia in accordance with its commitments set out in Annex 9-F (Contractual services suppliers and independent professionals).
2. Unless otherwise specified in Annex 9-F (Contractual services suppliers and independent professionals), the Union shall not adopt or maintain limitations, in the form of numerical quotas or

the requirement of an economic needs test, on the total number of independent professionals of Australia allowed entry.

ARTICLE 9.25

Non-conforming measures or obligations in other Chapters

1. This Agreement does not impose any obligations on a Party regarding its immigration measures, except as specifically provided for in this Section.
2. Without prejudice to any decision relating to the grant of temporary entry of a natural person of the other Party, including the permissible length of stay pursuant to any such grant, Article 9.13 (Market access – Cross-border trade in services), Article 9.14 (National treatment – Cross-border trade in services) and Article 9.15 (Most favoured nation treatment – Cross-border trade in services), apply to this Section, and apply to measures affecting a service supplied in accordance with point (b) of Article 9.18(1) (Scope), to the extent that each Article applies to measures that affect the supply of a service through the presence of natural persons of a Party present in the territory of the other Party.
3. The Articles that apply to this Section pursuant to paragraph 2 shall not apply to:
 - (a) any existing non-conforming measure of a Party at the level of:
 - (i) for the Union:
 - (A) the Union, as set out in its Schedule to Annex 9-C (Existing measures);
 - (B) the central government of a Member State, as set out in its Schedule to Annex 9-C (Existing measures);
 - (C) a regional government of a Member State, as set out in its Schedule to Annex 9-C (Existing measures); or

(D) a local government, other than that referred to in point (C); and

(ii) for Australia:

(A) the central government, as set out in its Schedule to in Annex 9-C (Existing measures);

(B) a regional government, as set out in its Schedule to Annex 9-C (Existing measures); or

(C) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in point (a);

(c) a modification of any non-conforming measure referred to in points (a) and (b) to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with the Articles that apply to pursuant to paragraph 2; or

(d) a measure of a Party with respect to sectors, subsectors or activities, as set out in its Schedule in Annex 9-D (Future measures).

4. For greater certainty, the Articles referred to in paragraph 2 do not apply to measures relating to the granting of temporary entry into a Party to natural persons of that Party or of a third country.

ARTICLE 9.26

Transparency

1. Further to Chapter 21 (Transparency), each Party shall make publicly available information on relevant measures that pertain to the temporary entry and presence of natural persons of the other Party referred to in Article 9.18(1) (Scope).

2. The information referred to in paragraph 1 shall, to the extent possible, include *inter alia*, the following information relevant to the temporary entry and presence of natural persons:

- (a) entry conditions;
- (b) an indicative list of documentation that may be required in order to verify the fulfilment of the conditions;
- (c) indicative processing time;
- (d) applicable fees;
- (e) appeal procedures; and
- (f) relevant laws of general application pertaining to the temporary entry and presence of natural persons.

ARTICLE 9.27

Annex on temporary entry-related procedures

Additional provisions on procedures related to the temporary entry of natural persons of each Party are set out in Annex 9-A (Movement of natural persons for business purposes).

ARTICLE 9.28

Non-application of dispute settlement

No Party shall have recourse to Chapter 24 (Dispute settlement) regarding a refusal to grant temporary entry to a particular natural person or persons.