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CHAPTER 9

SERVICES AND INVESTMENT

SECTION E

REGULATORY FRAMEWORK

SUB-SECTION 2

PROFESSIONAL SERVICES

ARTICLE 9.41

Mutual Recognition of Professional Qualifications

1. The Parties shall encourage the relevant professional bodies or authorities in their respective territories¹ to develop and provide a joint recommendation on mutual recognition of professional qualifications to the [Committee on Trade in Services, Digital Trade, Establishment, Government Procurement, Intellectual Property Rights] established pursuant to Article X (Specialised Committees). Such a joint recommendation shall be supported by an evidence-based assessment of:

¹ For the Union, professional bodies or authorities are those covering the territory of the EU as a whole.

- (a) the economic value of an envisaged understanding² on mutual recognition of professional qualifications (hereinafter referred to as “Understanding”); and
 - (b) the compatibility of the respective regimes, i.e., the extent to which the requirements applied in each Party for the authorisation, licensing, operation and certification are compatible and how divergent regimes would be bridged.
2. On receipt of a joint recommendation, the Committee shall review that recommendation within a reasonable period of time.
3. The [Committee], on the basis of its review of the joint recommendation, may make a recommendation to the relevant professional bodies or authorities to negotiate an Understanding based on the joint recommendation, if it is satisfied that an Understanding would have significant economic value for the Parties to this Agreement, that their regimes are compatible and that divergence between them can be bridged. The [Committee] shall abstain from making a recommendation if the joint recommendation contains elements that give rise to concern that any ensuing Understanding would be inconsistent with this Agreement.
4. The Parties shall encourage the professional bodies and authorities to use the Guidelines for Understandings set out in Annex XX [Guidelines for understandings on the recognition of professional qualifications] in the development of the joint recommendations referred to in paragraph 1 of this Article. The [Committee] shall take the Guidelines for Understandings into account when reviewing the joint recommendation and assessing whether to recommend to the relevant professional bodies or authorities to negotiate, as referred to in paragraph 3 of this Article.
5. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary qualifications or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

ARTICLE 9.42

² For greater certainty, such understandings shall not be legally binding but may set, in the mutual interest of both Parties, recommendations for the professional bodies or authorities granting recognition.

Additional Recognition Disciplines

1. The obligations contained in this Article shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article X.X (Non-conforming measures investment) or Article X.X (Non-conforming measures services).
2. Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like situations, to its own service suppliers with respect to:
 - (a) for the EU, recognition by one Member State of the European Union of a professional qualification, or a licence or registration relating to that professional qualification, obtained in another Member State of the European Union;
 - (b) for Australia, recognition by one State or Territory of Australia of a professional qualification, or a licence or registration relating to that professional qualification, obtained in another State or Territory of Australia.
3. For the Union, this Article shall only apply if the service supplier:
 - a) has established an enterprise in a Member State of the European Union where the service is provided, or
 - b) is established as self-employed in a Member State of the European Union where the service is provided, or
 - c) is employed or contracted by an enterprise established in a Member State where the service is provided as defined in Chapter IV, Art 4.2(c) or in Chapter IV, Art. 4.2(d), or
 - d) is providing a service to a consumer in a Member State of the European Union under a contractual arrangement defined in Chapter IV, Art 4.2(b).

This Article shall not apply to cross-border trade in services between the territories of the Parties or within the Union.³

ARTICLE 9.43

Regulation of Professional Services

³ For greater certainty, nothing in this Article shall be construed as a commitment on the temporary entry and presence of natural persons.

1. The Parties recognise that professional services play an essential role in facilitating trade and investment across both goods and services sectors and in promoting economic growth and business confidence.
2. If a Party regulates or seeks to regulate the provision of professional services by foreign service suppliers⁴, (herein after referred to as “foreign professionals”), the Party may consider providing for a regulatory framework that allows:
 - (a) the presence of foreign professionals on a temporary basis for business purposes in order to provide professional services in the territory of the Party on the basis of their right to provide those services in their home jurisdiction;
 - (b) where relevant and appropriate, for local ethical, conduct and disciplinary standards to be applied to foreign professionals in a manner that is no more burdensome for foreign professionals than the requirements applied to domestic (host-country) suppliers of those professional services in like situations;
 - (c) requirements, such as requirements that foreign professionals:
 - (i) are members of a professional organisation;
 - (ii) participate in collective compensation funds for members of professional organisations;
 - (iii) post a bond or other form of financial security, or establish or contribute to a trust account;
 - (iv) maintain a particular type and amount of insurance, or provide other similar guarantees; or
 - (v) provide access to records or alternatively disclose to clients their status as a foreign professional; and
 - (d) the following modes of providing professional services to be accommodated:
 - (i) the supply of services through the presence on a temporary basis of a foreign professional in the territory of the other Party;

⁴ For greater certainty, for the Union, the terms ‘foreign professionals’ and ‘foreign service suppliers’ in this Article exclude professionals and service suppliers from the Union.

- (ii) on a cross-border basis through the use of telecommunications technology;
- (iii) through establishing a commercial presence.

3. Where feasible, the Parties may consider implementing a temporary, limited or project-specific licensing or registration regime based on a foreign service supplier's home licence or recognised professional body membership, without the need for a further written examination. Such a regime should not operate to prevent a foreign service supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements.