

**CHAPTER ELEVEN**  
**TEMPORARY ENTRY FOR BUSINESS PERSONS**

ARTICLE 11.1: GENERAL PRINCIPLES

1. Further to Article 11.2, this Chapter reflects the preferential trading relationship between the Parties, the mutual objective to facilitate temporary entry for business persons on a reciprocal basis and in accordance with Annex 11A, and the need to establish transparent criteria and procedures for temporary entry, to ensure border security, and to protect the domestic labor force and permanent employment in their respective territories.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of the other Party<sup>1</sup>, nor shall it apply to measures regarding nationality, citizenship, residence, or employment on a permanent basis.

ARTICLE 11.2: GENERAL OBLIGATIONS

1. Each Party shall apply its measures related to this Chapter in accordance with Article 11.1 and, in particular, shall expeditiously apply those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

2. Nothing in this Chapter shall be construed to prevent a Party from applying measures to regulate the entry of natural persons 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 unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement. The sole fact of requiring a visa for natural persons shall not be regarded as unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

ARTICLE 11.3: RELATION TO OTHER CHAPTERS

1. Nothing in this Agreement, including provisions provided for in Chapter Ten (Cross-Border Trade in Services), shall be construed to impose any obligation on a Party regarding its immigration measures, except as specifically identified in this Chapter, Chapters One (Initial Provisions and Definitions), Twenty-One (Transparency), Twenty-Two (Administration of the Agreement), Twenty-Three (Dispute Settlement), Twenty-Four (Exceptions), and Twenty-Five (Final Provisions).

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

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<sup>1</sup> For greater certainty, this paragraph shall not be construed to nullify or impair the obligations under Section C of Annex 11A.

#### ARTICLE 11.4: GRANT OF TEMPORARY ENTRY

1. Each Party shall grant temporary entry to business persons who comply with immigration measures applicable to temporary entry such as those related to public health, safety, and national security, in accordance with this Chapter, including Annex 11A and Appendix 11A-3.
2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might adversely affect:
  - (a) the settlement of any labor 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.
3. Where a Party, in accordance with paragraph 2, refuses to issue an immigration document authorizing employment, it shall inform in writing the business person of the reasons for the refusal.
4. Each Party shall limit any fees for processing applications for temporary entry of business persons so as not to unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement and not to exceed the administrative costs normally rendered.

#### ARTICLE 11.5: PROVISION OF INFORMATION

1. Further to Article 21.1 (Publication), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:
  - (a) provide the other Party with relevant materials that will enable the other Party to become acquainted with its measures related to this Chapter; and
  - (b) no later than six months after the date of entry into force of this Agreement, prepare, publish, and 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, including references to applicable laws and regulations, in such a manner that will enable business persons of the other Party to become acquainted with them.
2. Each Party shall collect and maintain, and, upon request, make available to the other Party in accordance with its laws, data regarding the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each occupation, profession, or activity.

#### ARTICLE 11.6: WORKING GROUP

1. The Parties hereby establish a Working Group on Temporary Entry for Business Persons comprising representatives of each Party, which include immigration officials.
2. The Working Group shall meet, when necessary, to consider matters arising under this Chapter, such as:
  - (a) the implementation and administration of this Chapter;
  - (b) the development and adoption of common criteria and interpretation for the implementation of the Chapter;
  - (c) the development and implementation of measures to further facilitate temporary entry of business persons on a reciprocal basis; and
  - (d) any measures of mutual interest.

#### ARTICLE 11.7: DISPUTE SETTLEMENT

1. A Party shall not initiate proceedings under Chapter Twenty-Three (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:
  - (a) the matter involves a pattern of practice; and
  - (b) the business person has exhausted the available administrative remedies regarding the particular matter.
2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within six months of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

#### ARTICLE 11.8: TRANSPARENCY IN PROCESSING OF APPLICATIONS

1. Further to Article 21.1 (Publication), each Party shall establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding applications and procedures related to the temporary entry of business persons.
2. Upon request of the applicant, the Party shall endeavor to provide, without undue delay, information on the status of the application or the decision about the application.

#### ARTICLE 11.9: DEFINITIONS

For purposes of this Chapter:

**business person** means a national of a Party who is engaged in trade in goods, the supply of services, or the conduct of investment activities;

**contractual service supplier** means a business person of a Party who:

- (a) possesses appropriate educational and other qualifications relevant to the service to be provided;
- (b) 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;
- (c) should have been an employee of the juridical person for a period of no less than one year immediately preceding the date of application for admission. The contract shall comply with the laws and regulations of the other Party; and
- (d) is required to receive no remuneration from a juridical person located in the other Party;

**executive** means a business person within an organization who primarily directs the management of the organization, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, and/or stockholders of the business;

**independent professional** means a business person who:

- (a) possesses appropriate educational and other qualifications relevant to the service to be provided;
- (b) is a self-employed services supplier who is engaged in the supply of a contracted service, where the professional has a service contract from a person<sup>2</sup> of the other Party. The contract shall comply with the laws and regulations of the other Party; and
- (c) receives remuneration from a person of the Party where the service is supplied;

**labor dispute** means a dispute between a union and employer related to terms and conditions of employment;

**manager** means a business person within an organization who primarily directs the organization or a department or sub-division of the organization, supervises, and controls the work of other supervisory, professional or managerial employees, has the authority to hire

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<sup>2</sup> If a Party observes, within two years following the entry into force of this Agreement, that the independent professionals that have entered into its territory pursuant to a service contract between natural persons do not comply with the relevant immigration measures, that Party reserves the right to allow under this Chapter only independent professionals of the other Party pursuant to a service contract with a juridical person. The Party which considers that it is adversely affected may request consultations with the other Party on such matters. Such requests shall be accorded sympathetic consideration. The term “consultations” referred to in this footnote does not mean “consultations” in accordance with Article 23.4 (Consultations).

and fire or take other personnel actions such as promotion or leave authorization, and exercises discretionary authority over day-to-day operations;

**professional** means a business person of a Party who is engaged in a specialty occupation requiring:

- (a) theoretical and practical application of a body of specialized knowledge; and
- (b) attainment of a post-secondary degree, requiring four years of study, or the equivalent of such a degree, as a minimum for entry into the occupation<sup>3</sup>;

**specialist** means a business person who possesses specialized knowledge of the company's products or services and its application in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures. A specialist may include, but is not limited to, professionals; and

**temporary entry** means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

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<sup>3</sup> With respect to Korea, the requirements for a Peruvian national seeking temporary entry under Section B of Appendix 11A-2 shall be those defined in the *Immigration Control Act* of Korea and its enforcement decree and guideline.