

Chapter 9 Investment, Trade in Services and Temporary Entry of Business Persons

Section A Investment

Article 89: Investment

The Parties reaffirm their commitments under the Agreement between the Government of the People's Republic of China and the Government of the Republic of Costa Rica on the Promotion and Protection of Investments, signed in Beijing, on 24th October 2007.

Section B Trade in Services⁶

Article 90: Definitions

For purposes of this Section:

1. **trade in services** means the supply of a service:
 - (a) from the territory of a Party into the territory of the other Party;
 - (b) in the territory of a Party to a service consumer of the other Party;
 - (c) by a service supplier of a Party, through commercial presence in the territory of the other Party; or
 - (d) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party;
2. **juridical person** means a legal entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned, including a corporation, trust, partnership, sole proprietorship, joint venture or association;
3. **juridical person** is:
 - (a) “**owned**” by persons of a Party if more than 50 percent of the equity in it is beneficially owned by persons of that Party;
 - (b) “**controlled**” by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

⁶ Nothing in this Section shall be subject to the investor-State dispute settlement procedure established in the Agreement between the Government of the People's Republic of China and the Government of the Republic of Costa Rica on the Promotion and Protection of Investments.

4. **service supplier of a Party** means any person that supplies a service;⁷
5. **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
6. **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;
7. **commercial presence** means any type of business or professional establishment, including through:
 - (a) the constitution, acquisition or maintenance of a juridical person, or
 - (b) the creation or maintenance of a branch or a representative office,within the territory of a Party for the purpose of supplying a service.

Article 91: Scope and Coverage

1. This Section applies to measures adopted or maintained by a Party affecting trade in services. Such measures include measures affecting:
 - (a) the purchase or use of, or payment for, a service;
 - (b) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally; or
 - (c) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party.
2. For purposes of this Section, measures adopted or maintained by a Party means measures adopted or maintained by:
 - (a) central, regional or local governments and authorities; and
 - (b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.
3. This Section does not apply to:
 - (a) government procurement;

⁷ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

- (b) air services,⁸ including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system (CRS) services;
- (c) subsidies or grants provided by a Party, including government supported loans, guarantees and insurance;
- (d) national maritime cabotage and internal waterways cabotage; and
- (e) financial services.

4. This Section does not impose any obligation on a Party with respect to a natural person of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment.

5. This Section does not apply to services supplied in the exercise of governmental authority in a Party's territory. A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

6. Nothing in this Section 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 Section.⁹

Article 92: National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.¹⁰

⁸ For greater certainty, the term "air services" includes traffic rights.

⁹ The sole fact of requiring a visa for natural persons of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.

¹⁰ Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

Article 93: Market Access

1. With respect to market access through the modes of supply identified in paragraph 1 of Article 90 (Definitions), each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.¹¹

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;¹²
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to,

¹¹ If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 1(a) of the Article 90 (Definitions), and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 1(c) of the Article 90 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

¹² Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; or
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 94: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 92 (National Treatment) or Article 93 (Market Access), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments.

Article 95: Schedule of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 92 (National Treatment), Article 93 (Market Access), and Article 94 (Additional Commitments). With respect to sectors where such commitments are undertaken, each schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments referred to in Article 94 (Additional Commitments); and
- (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Article 92 (National Treatment) and Article 93 (Market Access) shall be inscribed in the column relating to Article 93 (Market Access). In this case, the inscription will be considered to provide a condition or qualification to Article 92 (National Treatment) as well.

3. The Parties' schedules of specific commitments are set out in Annex 7 (Schedules of Specific Commitments). The Annex 7 (Schedules of Specific Commitments) attached to this Agreement forms an integral part of this Section.

Article 96: Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall aim to ensure that such measures are:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. If the results of the negotiations related to Article VI.4 of GATS (or the results of any similar negotiations undertaken in other multilateral *fora* in which both Parties participate) enter into effect, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations, as appropriate.

Article 97: Recognition

1. For purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party or a non-Party. Such recognition, which

may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the other Party or a non-Party concerned or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. Each Party should encourage the relevant bodies in its respective territory to develop mutually acceptable standards and criteria for licensing, temporary licensing and certification of professional services suppliers through future negotiations.

Article 98: Transfers and Payments

1. Each Party shall permit transfers and payments for current transactions relating to its specific commitments to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options, or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

4. Nothing in this Section shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Section regarding such transactions, except under Article 163 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

Article 99: Denial of Benefits

1. A Party may deny the benefits of this Section to:

- (a) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and the juridical person has no substantive business operations in the territory of the other Party; or
- (b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantive business operations in the territory of the other Party.

2. Upon a written request of the other Party, the denying Party shall inform in writing and consult with the other Party on the specific case of denial as referred to in paragraph 1 of this Article.

Article 100: Transparency

Further to Chapter 12 (Transparency):

- (a) each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons of a Party regarding its laws and regulations relating to the subject matter of this Section;
- (b) at the time it adopts final laws and regulations relating to the subject matter of this Section, each Party shall, to the extent possible, including upon request, take into consideration substantive comments received from interested persons of a Party with respect to the proposed laws and regulations; and
- (c) to the extent possible, each Party shall allow a reasonable period of time between publication of final laws and regulations and their effective date.

Article 101: Implementation and Review

The Parties shall consult annually, or as otherwise agreed, to review the implementation of this Section and consider other matters of mutual interest affecting trade in services.

Section C

Temporary Entry of Business Persons¹³

Article 102: General Principles

1. This Section reflects the preferential trading relationship between the Parties, the mutual objective to facilitate temporary entry of business persons in accordance with their domestic laws and regulations and Annex 7 (Schedules of Specific Commitments), the need to establish transparent criteria and procedures for temporary entry and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

2. Nothing in this Section shall be construed to 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 a specific commitment¹⁴ or investment activities.

3. This Section 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, nationality, permanent residence, or employment on a permanent basis.

Article 103: Grant of Temporary Entry

Each Party shall grant temporary entry to business persons who comply with immigration measures applicable to temporary entry and other related measures, such as those relating to public health and safety and national security, in accordance with this Chapter.

Article 104: Transparency

1. Each Party shall:

- (a) no later than 6 months after the date of entry into force of this Agreement, make available explanatory material regarding the requirements for temporary entry under this Section in such a manner as to enable business persons of the other Party to become acquainted with them; and

¹³ Nothing in this Section shall be subject to the investor-State dispute settlement procedure established in the Agreement between the Government of the People's Republic of China and the Government of the Republic of Costa Rica on the Promotion and Protection of Investments.

¹⁴ The sole fact of requiring a visa for natural persons of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.

- (b) establish or maintain appropriate mechanisms to respond to inquiries from interested persons regarding its laws and regulations relating to the temporary entry of business persons covered by this Section.

2. Each Party shall endeavour to, within a reasonable period in accordance with its domestic laws and regulations, after an application requesting temporary entry is considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application.

Article 105: Working Group

1. The Parties hereby establish a Working Group on Temporary Entry of Business Persons, comprising the representatives of each Party set out in Annex 8 (Working Group on Temporary Entry of Business Persons), which shall meet at least once every 3 years, unless otherwise agreed by the Parties, to consider any matter arising under this Section.

2. The Working Group's functions shall include:

- (a) to review the application of this Section;
- (b) to consider the development of measures to further facilitate temporary entry of business persons between the Parties;
- (c) to enhance cooperation under Article 106 (Cooperation); and
- (d) to address other related issues of mutual interest.

Article 106: Cooperation

Taking into account the principles set out in Article 102 (General Principles), the Parties shall:

- (a) exchange information and experiences on regulations and implementation of programs and technology in the framework of migratory issues, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programs and security of travel documents;
- (b) endeavour to coordinate actively in multilateral *fora*, in order to promote the facilitation of temporary entry of business persons;
- (c) encourage capacity building and promote technical assistance among migratory authorities; and
- (d) endeavour to take measures to facilitate the temporary entry of business persons of the other Party in accordance with its domestic laws and regulations.

Article 107: Dispute Settlement

1. Chapter 14 (Dispute Settlement) shall not apply to this Section, except for Article 144 (Good Offices, Conciliation and Mediation), provided that:

- (a) the matter involves a pattern of practice; and
- (b) the business person has exhausted, in accordance with the applicable domestic laws and regulations, the available administrative remedies regarding the particular matter.

2. The remedies referred to in subparagraph 1(b) shall be deemed exhausted if a final determination in the matter has not been issued by the competent authority within 1 year 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 108: Definitions

For purposes of this Chapter:

1. **business person** means a national of a Party who is engaged in trade in goods, trade in services or investment activities;
2. **temporary entry** means entry into the territory of a Party by a business person of the other Party without the intent of establishing permanent residence;
3. **business visitor** or **business agent** means a natural person of a Party who is:

- (a) for China:
 - (i) a service seller 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 representative will not be engaged in making direct sales to the general public or in supplying services directly;
 - (ii) an investor of a Party or a duly authorized representative of an investor of a Party, who is seeking temporary entry into the territory of the other Party to establish, develop, administer, expand, monitor, or dispose an investment of that investor; or
 - (iii) a goods seller who is seeking temporary entry to the territory of the other Party to negotiate the sale of goods where such negotiations do not involve direct sales to the general public;

- (iv) temporary entry for business persons shall be granted for a period of stay up to a maximum of 6 months;
 - (b) for Costa Rica: a business agent, travel agent or commercial delegate who is seeking temporary entry into the territory of Costa Rica to address matters related with the activities of the enterprises or juridical persons that they represent, provided that they do not receive any kind of remuneration and do not require residence to perform such activities, in the territory of Costa Rica;
- 4. **intra-corporate transferee** means a manager, an executive, or a specialist, who is a senior employee of a service supplier of a Party with a commercial presence in the territory of the other Party, as defined in Article 90 (Definitions) of Section B (Trade in Services);
- 5. **executive** means a natural 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. An executive would not directly perform tasks related to the actual provision of the service nor the operation of an investment;
- 6. **immigration measure** means any law, regulation or procedure affecting the entry and sojourn of foreign nationals;
- 7. **manager** means a natural 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 and fire or take other personnel actions (such as promotion or leave authorization), and exercises discretionary authority over day-to-day operations;
- 8. **specialist** means an employee within an organization who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organization's service, research equipment, techniques or management.