

CHAPTER TWELVE

Domestic regulation

Article 12.1

Definitions

For the purposes of this Chapter:

authorisation means the granting of permission to a person to supply a service or to pursue any other economic activity;

competent authority means any government of a Party, or non-governmental body in the exercise of powers delegated by any government of a Party, that grants an authorisation;

licensing procedures means administrative or procedural rules, including for the amendment or renewal of a licence, that must be adhered to in order to demonstrate compliance with licensing requirements;

licensing requirements means substantive requirements, other than qualification requirements, that must be complied with in order to obtain, amend or renew an authorisation;

qualification procedures means administrative or procedural rules that must be adhered to in order to demonstrate compliance with qualification requirements; and

qualification requirements means substantive requirements relating to competency that must be complied with in order to obtain, amend or renew an authorisation.

Article 12.2

Scope

1. This Chapter applies to a measure adopted or maintained by a Party relating to licensing requirements, licensing procedures, qualification requirements, or qualification procedures that affect:

- (a) the cross-border supply of services as defined in Article 9.1 (Definitions);
- (b) the supply of a service or pursuit of any other economic activity, through commercial presence in the territory of the other Party, including the establishment of such commercial presence; and
- (c) the supply of a service through the presence of a natural person of the other Party in the territory of the Party, in accordance with Article 10.6.2 (Obligations in other chapters).

2. This Chapter does not apply to licensing requirements, licensing procedures, qualification requirements, or qualification procedures:

- (a) pursuant to an existing non-conforming measure maintained by a Party as set out in its Schedule to Annex I; or
- (b) relating to one of the following sectors or activities:
 - (i) for Canada, cultural industries and, as set out in its Schedule to Annex II, social services, aboriginal affairs, minority affairs, gambling and betting services, and the collection, purification, and distribution of water; and
 - (ii) for the EU Party, audio-visual services and, as set out in its Schedule to Annex II, health, education, and social services, gambling and betting services ⁽¹⁾, and the collection, purification, and distribution of water.

⁽¹⁾ With the exception of Malta.

*Article 12.3***Licensing and qualification requirements and procedures**

1. Each Party shall ensure that licensing requirements, qualification requirements, licensing procedures, or qualification procedures it adopts or maintains are based on criteria that preclude the competent authority from exercising its power of assessment in an arbitrary manner.
2. The criteria referred to in paragraph 1 shall be:
 - (a) clear and transparent;
 - (b) objective; and
 - (c) established in advance and made publicly accessible.
3. The Parties recognise that the exercise of statutory discretion conferred on a minister with respect to a decision on the granting of an authorisation in the public interest is not inconsistent with subparagraph 2(c), provided that it is exercised consistently with the object of the applicable statute and not in an arbitrary manner, and that its exercise is not otherwise inconsistent with this Agreement.
4. Paragraph 3 does not apply to licensing requirements, or qualification requirements for a professional service.
5. Each Party shall ensure that an authorisation is granted as soon as the competent authority determines that the conditions for the authorisation have been met, and once granted, that the authorisation enters into effect without undue delay, in accordance with the terms and conditions specified therein.
6. Each Party shall maintain or institute judicial, arbitral, or administrative tribunals or procedures that provide for, at the request of an affected investor, as defined in Article 8.1 (Definitions), or an affected service supplier, as defined in Article 1.1 (Definitions of general application), a prompt review of, and if justified, appropriate remedies for, administrative decisions affecting the supply of a service or the pursuit of any other economic activity. If such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures are applied in a way that provides for an objective and impartial review.
7. Each Party shall ensure that licensing procedures or qualification procedures it adopts or maintains are as simple as possible, and do not unduly complicate or delay the supply of a service, or the pursuit of any other economic activity.
8. An authorisation fee that an applicant may incur in relation to its application for an authorisation shall be reasonable and commensurate with the costs incurred, and shall not in itself restrict the supply of a service or the pursuit of any other economic activity.
9. Authorisation fees do not include payments for auction, the use of natural resources, royalties, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to provide a universal service.
10. Each Party shall ensure that licensing procedures, or qualification procedures used by the competent authority and decisions of the competent authority in the authorisation process are impartial with respect to all applicants. The competent authority should reach its decisions in an independent manner and in particular should not be accountable to any person supplying a service or pursuing any other economic activity for which the authorisation is required.
11. If specific time periods for authorising applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. If possible, applications should be accepted in electronic format under similar conditions of authenticity as paper submissions.
12. Authenticated copies should be accepted, if considered appropriate, in place of original documents.

13. Each Party shall ensure that the processing of an authorisation application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party should establish the normal timeframe for the processing of an application.

14. At the request of an applicant, a Party's competent authority shall provide, without undue delay, information concerning the status of the application.

15. If an application is considered incomplete, a Party's competent authority shall, within a reasonable period of time, inform the applicant, identify the additional information required to complete the application, and provide the applicant an opportunity to correct deficiencies.

16. If a Party's competent authority rejects an application, it shall inform the applicant in writing and without undue delay. Upon request of the applicant, the Party's competent authority shall also inform the applicant of the reasons the application was rejected and of the timeframe for an appeal or review against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

CHAPTER THIRTEEN

Financial services

Article 13.1

Definitions

For the purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of that service;

cross-border supply of financial services or **cross-border trade in financial services** means the supply of a financial service:

- (a) from the territory of a Party into the territory of the other Party; or
- (b) in the territory of a Party by a person of that Party to a person of the other Party;

but does not include the supply of a service in the territory of a Party by an investment in that territory;

financial institution means a supplier that carries out one or more of the operations defined as being financial services in this Article, if the supplier is regulated or supervised in respect of the supply of those services as a financial institution under the law of the Party in whose territory it is located, including a branch in the territory of the Party of that financial service supplier whose head offices are located in the territory of the other Party;

financial institution of the other Party means a financial institution, including a branch, located in the territory of a Party that is controlled by a person of the other Party;

financial service means a service of a financial nature, including insurance and insurance-related services, banking and other financial services (excluding insurance), and services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

- (a) insurance and insurance-related services
 - (i) direct insurance (including co-insurance):
 - (A) life; or
 - (B) non-life;
 - (ii) reinsurance and retrocession;
 - (iii) insurance intermediation, such as brokerage and agency; or
 - (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services; and