

CHAPTER 14

MOVEMENT OF BUSINESS PERSONS

Article 1 Objectives

The objectives of this Chapter are to:

- (a) facilitate the movement of business persons of either Party engaged in the conduct of trade and investment between the Parties;
- (b) establish streamlined and transparent immigration procedures for applications made by business persons of the other Party; and
- (c) provide for rights and obligations additional to those set out in Chapter 13 (Trade in Services) and Chapter 3 (Trade in Goods) in relation to the movement of natural persons between the Parties for business purposes,

while recognising the need to ensure border security and to protect the domestic labour force and employment in the Areas of the Parties.

Article 2 Scope

1. This Chapter shall apply to measures affecting the temporary entry of business persons of one Party into the Area of the other Party, where such persons include:

- (a) business visitors;
- (b) intra-corporate transferees;
- (c) independent service suppliers; and

(d) installers or servicers.

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

3. Nothing in this Chapter or Chapter 13 (Trade in Services) 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 Area, 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 Chapter. The sole fact of a Party requiring an immigration formality in respect of natural persons of the other Party and not those of non-Parties shall not be regarded as nullifying or impairing benefits accruing to the other Party under the terms of this Chapter.

Article 3

Definitions

For the purposes of this Chapter:

- (a) **business visitor** means a natural person of a Party who:
 - (i) is seeking temporary entry to the Area of the other Party for the purpose of:
 - (1) attending meetings or conferences, or engaging in consultations with business colleagues;

- (2) taking orders or negotiating contracts for an enterprise located in the Area of the Party but not selling goods or providing services to the general public; or
 - (3) undertaking business consultations concerning the establishment, expansion or winding up of an enterprise or investment in the other Party;
 - (ii) who is not seeking to enter the labour market of the other Party; and
 - (iii) whose principal place of business, actual place of remuneration and predominant place of accrual of profits remain outside the Area of the other Party;
- (b) **granting Party** means a Party who receives an application for temporary entry from a business person of the other Party who is covered by Paragraph 1 of Article 2;
- (c) **immigration formality** means a visa, permit, pass or other document or electronic authority granting a natural person permission to enter, stay, work or establish commercial presence in the Area of the granting Party;
- (d) **installer or servicer** means a natural person of a Party who is an installer or servicer of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract;

- (e) **intra-corporate transferees** means a senior manager or a specialist who is an employee of a service supplier or investor of a Party with a commercial presence in the Area of the other Party;
- (f) **natural person** means a natural person as defined in Article 3 (Definitions) of Chapter 13 (Trade in Services);
- (g) **senior manager** means a natural person of a Party within an organisation of a Party who:
 - (i) is a senior employee of that organisation with responsibility for the entire organisation's operations, or a substantial part of it, in the Area of the other Party;
 - (ii) has proprietary information of the organisation and receives only general supervision or direction from higher level executives or the board of directors or stockholders of the organisation; and
 - (iii) supervises and controls the work of other supervisory, professional or managerial employees. This does not include a first-line supervisor unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment;
- (h) **specialist** means a natural person of a Party within an organisation of a Party who:
 - (i) possesses knowledge at an advanced level of technical expertise;

- (ii) possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; and
- (iii) is essential to the operation of the concerned service supplier's or investor's establishment in the Area of the other Party; and
- (i) **temporary entry** means entry by a business person covered by this Chapter, without the intent to establish permanent residence.

Article 4

Grant of Temporary Entry

1. The Parties shall make commitments in respect of the temporary entry of business persons covered by Article 2. Each Party shall set out in Annex I a Schedule containing such commitments. These Schedules shall specify the conditions and limitations for entry and temporary stay, including the requirements and length of stay, for each category of business persons included in each Party's Schedule of commitments.

2. Where a Party makes a commitment under Paragraph 1, that Party shall grant temporary entry or extension of temporary stay to the extent provided for in that commitment, provided that those business persons:

- (a) follow prescribed application procedures for the immigration formality sought; and
- (b) meet all relevant eligibility requirements for entry to the granting Party.

3. Temporary entry granted to a business person pursuant to this Chapter does not exempt that person from the requirements needed to carry out a profession or activity according to the domestic law, and any applicable mandatory

codes of practice made pursuant to the domestic law, in force in the Area of the Party authorising the temporary entry.

4. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with domestic law.

5. Neither Party may, except as provided for in its Schedule of commitments set out in Annex I, impose or maintain any numerical restriction relating to temporary entry as a condition for entry under Paragraph 1.

Article 5

Expeditious Application Procedures

1. Where an application for an immigration formality is required by a Party, the Party shall process expeditiously completed applications for immigration formalities or extensions thereof received from business persons of the other Party covered by Paragraph 1 of Article 2.

2. A Party shall, within ten working days of receipt of an application for temporary entry that has been completed and submitted in accordance with its domestic law, either:

- (a) make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions; or
- (b) if a decision cannot be made in that time period, inform the applicant when a decision will be made.

3. At the request of an applicant, a Party in receipt of a completed application for temporary entry shall provide, without undue delay, information concerning the status of the application.

Article 6

Transparency

Each Party shall:

- (a) publish, such as on the website of its immigration authority, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable business persons of the other Party to become acquainted with the Party's requirements; and
- (b) upon modifying or amending the requirements for temporary entry referred to in subparagraph (a) that affect the temporary entry of business persons, ensure that the information published pursuant to subparagraph (a) is updated by the date that modification or amendment comes into effect.

Article 7

Dispute Settlement

1. Any differences or disputes arising out of the implementation of this Chapter shall be settled amicably through consultations or negotiations between the Parties.
2. Neither Party shall have recourse to Chapter 16 (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 all available administrative remedies regarding the particular matter.

Article 8

Contact Points

1. Each Party shall designate a contact point to facilitate communication and the effective implementation of this Chapter, and respond to inquiries from the other Party regarding regulations affecting the movement of business persons between the Parties or any matters covered in this Chapter, and shall provide details of this contact point to the other Party.
2. The Parties shall notify each other promptly of any amendments to the details of their contact points.

ANNEX I TO CHAPTER 14 (MOVEMENT OF BUSINESS PERSONS)

SCHEDULE OF HONG KONG, CHINA

1. The following sets out Hong Kong, China's commitments in accordance with Article 4 (Grant of Temporary Entry) in respect of the temporary entry of business persons, including the presence of natural persons mode (Mode 4).
2. For greater certainty, Hong Kong, China reserves the right to adopt or maintain any measure in respect of the supply of a service by a service supplier of New Zealand, through presence of natural persons of New Zealand in the Area of Hong Kong, China (Mode 4) except as set out in these commitments.

Entry in the following categories only	Conditions (including duration of stay)
Business visitors	The commitments shall apply in relation to goods and services set out in all divisions in the United Nations Central Product Classification Provisional Code. Entry for a period not exceeding 90 days, provided that normal immigration requirements are met.
Intra-corporate transferees	The commitments: (a) shall only apply to the sectors and sub-sectors in MTN.GNS/W/120 as set out in paragraph 3 below; (b) shall only apply to natural persons of New Zealand of service suppliers or investors of New Zealand which have a bona fide business establishment operating in Hong Kong, China. The number of natural persons who may seek entry under these commitments shall be reasonable having regard to the size and the nature of the business operation of the relevant establishment in Hong Kong, China; and (c) are limited to entry and temporary stay. Temporary

Entry in the following categories only	Conditions (including duration of stay)
	stay implies that the appropriate prior authority will have been applied for and obtained before departure for Hong Kong, China. For senior managers and specialists, temporary stay shall be limited to one year in the first instance, which may be extended up to a total of five years. Natural persons of New Zealand seeking entry into Hong Kong, China as senior manager or specialist under Hong Kong, China's commitments on intra-corporate transferees shall: (a) be employees who have been in the prior employ of the concerned service supplier or investor which sponsors their entry into Hong Kong, China for a period of not less than one year immediately preceding the date of application for admission; and (b) during their stay in Hong Kong, China, except with the prior approval of the Government of Hong Kong, China, not change employment or employers.
Installers or servicers	The commitments shall only apply to the sectors and sub-sectors in MTN.GNS/W/120 as set out in paragraph 4 below. Entry for a period not exceeding three months in any 12-month period and subject to economic needs tests²⁴.

²⁴ Including economic benefits test and labour market test.

3. In respect of intra-corporate transferees, the commitments apply only to the following sectors and sub-sectors in MTN.GNS/W/120:

<u>SECTORS AND SUB-SECTORS</u>		<u>CORRESPONDING</u> <u>CPC</u>
1	<u>BUSINESS SERVICES</u>	<u>Section B</u>
A.	<u>Professional Services</u>	
b.	Accounting, auditing and bookkeeping services	862
c.	Taxation Services	863
d.	Architectural services	8671
e.	Engineering services	8672
f.	Integrated engineering services	8673
g.	Urban planning and landscape architectural services	8674
i.	Veterinary services	932
B.	<u>Computer and Related Services</u>	
a.	Consultancy services related to the installation of computer hardware	841
b.	Software implementation services	842
c.	Data processing services	843
d.	Data base services	844
e.	Other	845+849
D.	<u>Real Estate Services</u>	
a.	Involving own or leased property	821
b.	On a fee or contract basis	822
E.	<u>Rental/Leasing Services without Operators</u>	
a.	Relating to ships	83103
c.	Relating to other transport equipment, excluding other land transport equipment	83101+83102
d.	Relating to other machinery and equipment	83106-83109
F.	<u>Other Business Services</u>	
a.	Advertising services	871
b.	Market research and public opinion polling services	864
c.	Management consulting service	865
d.	Services related to man. consulting	866
e.	Technical testing and analysis serv.	8676
f.	Services incidental to agriculture, hunting and forestry	881
g.	Services incidental to fishing	882
i.	Services incidental to manufacturing	884+885 (except for 88442)
k.	Placement and supply services of Personnel	872
l.	Investigation and security	873
m.	Related scientific and technical consulting services	8675
n.	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+8861-8866
o.	Building-cleaning services	874
p.	Photographic services	875
q.	Packaging services	876

<u>SECTORS AND SUB-SECTORS</u>		<u>CORRESPONDING CPC</u>
	r. Printing, publishing	88442
	s. Convention services	87909*
	t. Other	8790
2	<u>COMMUNICATION SERVICES</u>	
	B. <u>Courier services</u>	
	These are limited to the provision of services on a fee or contract basis for the delivery of documents and parcels, but excluding services reserved to the Post Office under Post Office Ordinance	7512**
	C. <u>Telecommunication services</u>	
	a. Voice telephone services	7521
	b. Packet-switched data transmission services	7523**
	c. Circuit-switched data transmission services	7523**
	d. Telex services	7523**
	e. Telegraph services	7522
	f. Facsimile services	7521**+7529**
	g. Private leased circuit services	7522**+7523**
	h. Electronic mail	7523**
	i. Voice mail	7523**
	j. On-line information and data base retrieval	7523**
	k. electronic data interchange (EDI)	7523**
	l. enhanced/value-added facsimile services, incl. store and forward, store and retrieve	7523**
	m. code and protocol conversion	n.a.
	n. on-line information and/or data processing (incl. transaction processing)	843**
	o. other	
	D. <u>Audiovisual services</u>	
	a. Motion picture and video tape production and distribution services	9611
	b. Motion picture projection service	9612
	e. Sound recording	n.a.
3	<u>CONSTRUCTION AND RELATED ENGINEERING SERVICES</u>	
	A. <u>General construction work for buildings</u>	512
	B. <u>General construction work for civil engineering</u>	513
	C. <u>Installation and assembly work</u>	514+516
	D. <u>Building completion and finishing work</u>	517
	E. <u>Other</u>	511+515+518
4	<u>DISTRIBUTION SERVICES</u>	
	A. <u>Commission agents' services</u>	621
	B. <u>Wholesale trade services</u>	622
	C. <u>Retailing services</u>	631+632; 6111+6113+6121
	D. <u>Franchising</u>	8929
	E. <u>Other</u>	

	<u>SECTORS AND SUB-SECTORS</u>	<u>CORRESPONDING CPC</u>
5	<u>EDUCATIONAL SERVICES</u>	
A.	<u>Primary education services</u>	921
B.	<u>Secondary education services</u>	922
C.	<u>Higher education services</u> (limited to courses regulated under Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493))	923
D.	<u>Adult education services</u> (limited to courses regulated under Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493))	924
E.	<u>Other education services</u>	929
6	<u>ENVIRONMENTAL SERVICES</u>	
A.	<u>Sewage services</u>	9401
B.	<u>Refuse disposal services</u>	9402
C.	<u>Sanitation and similar services</u>	9403
	<u>Cleaning services of exhaust gases</u>	9404
	<u>Noise abatement services</u>	9405
	<u>Nature and landscape protection services</u>	9406
	<u>Other environmental protection services n.e.c.</u>	9409
7	<u>FINANCIAL SERVICES (W/120)</u>	
A.	<u>All insurance and insurance-related services</u>	812**
a.	Life, accident and health insurance services	8121
b.	Non-life insurance services	8129
c.	Reinsurance and retrocession	81299*
d.	Services auxiliary to insurance (including broking and agency services)	8140
B.	<u>Banking and other financial services (excl. insurance)</u>	
a.	Acceptance of deposits and other repayable funds from the public	81115-81119
b.	Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction	8113
c.	Financial leasing	8112
d.	All payment and money transmission services	81339**
e.	Guarantees and commitments	81199**
f.	Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:	
	- money market instruments (cheques, bills, certificate of deposits, etc.)	81339**
	- foreign exchange	81333
	- derivative products incl., but not limited to, futures and options	81339**
	- exchange rate and interest rate instruments, inclu. products such as swaps, forward rate agreements, etc.	81339**
	- transferable securities	81321*
g.	Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues	8132

<u>SECTORS AND SUB-SECTORS</u>	<u>CORRESPONDING CPC</u>
i. Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services	8119**+81323*
k. Advisory and other auxiliary financial services on all the activities listed in Article 1B of MTN.TNC/W/50, incl. credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	8131 or 8133
l. Provision and transfer of financial information, and financial data processing and related software by providers of other financial services	8131
9 <u>TOURISM AND TRAVEL RELATED SERVICES</u>	
A. <u>Hotels and restaurants (incl. catering)</u>	641 - 643
B. <u>Travel agencies and tour operators services</u>	7471
C. <u>Tourist guides services</u>	7472
D. <u>Other</u>	
10 <u>RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)</u>	
A. <u>Entertainment services</u> (including theatre, live bands and circus services)	
- Theatrical producer, singer group, band and orchestra entertainment services	96191
- Ancillary theatrical services n.e.c.	96193
- Ballroom, discotheque and dance instructor services	96195
C. <u>Libraries, archives, museums and other cultural services</u>	
- Library and archive services	9631
D. <u>Sporting and other recreational services</u>	
- Sporting and other recreational services except gambling and betting services	964 except 96492
11 <u>TRANSPORT SERVICES</u>	
A. <u>Maritime Transport Services (excluding cabotage)</u> ²⁵	
a. Passenger transportation	7211
b. Freight transportation	7212
c. Rental of vessels with crew	7213
d. Maintenance and repair of vessels	8868**
e. Pushing and towing services	7214
f. Supporting services for maritime transport	745**

²⁵ Cabotage is assumed to cover transportation of passengers or goods between a point in Hong Kong, China and another point in Hong Kong, China, as well as traffic originating and terminating in the same point in Hong Kong, China, provided that this traffic remains within the waters of Hong Kong, China.

<u>SECTORS AND SUB-SECTORS</u>	<u>CORRESPONDING CPC</u>
C. <u>Air Transport Services</u> - Selling and marketing of air transport services - Computer reservation system services	As defined in Article 3 (Definitions) of Chapter 13 (Trade in Services) As defined in Article 3 (Definitions) of Chapter 13 (Trade in Services)
H. <u>Services auxiliary to all modes of transport</u> a. Cargo-handling services (except those of rail and air) b. Storage and warehouse services (except those of rail and air) c. Freight transport agency services d. Other	741** 742** 748 749

The (*) indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in MTN.GNS/W/120.

The (**) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

4. In respect of installers or servicers, the commitments apply only to the following sectors and sub-sectors in MTN.GNS/W/120:

<u>SECTORS AND SUB-SECTORS</u>	<u>CORRESPONDING CPC</u>
1 <u>BUSINESS SERVICES</u>	<u>Section B</u>
B. <u>Computer and Related Services</u> a. Consultancy services related to the installation of computer hardware b. Software implementation services c. Data Processing Services d. Data base services	841 842 843 844
6 <u>ENVIRONMENTAL SERVICES</u>	
A. <u>Sewage services</u> B. <u>Refuse disposal services</u> C. <u>Sanitation and similar services</u> <u>Cleaning services of exhaust gases</u> <u>Noise abatement services</u> <u>Nature and landscape protection services</u> <u>Other environmental protection services n.e.c.</u>	9401 9402 9403 9404 9405 9406 9409

SCHEDULE OF NEW ZEALAND

1. The following sets out New Zealand's commitments in accordance with Article 4 (Grant of Temporary Entry) in respect of the temporary entry of business persons, including the presence of natural persons mode (Mode 4).

2. For greater certainty, New Zealand reserves the right to adopt or maintain any measure in respect of the supply of a service by a service supplier of Hong Kong, China through presence of natural persons of Hong Kong, China in the Area of New Zealand (Mode 4) except as set out in these commitments.

Entry in the following categories only	Conditions (including duration of stay)										
Business visitors	Entry for a period not exceeding in aggregate three months in any calendar year.										
Intra-corporate transferees	In respect of the services sectors set out in the Services Sectoral Classification List WTO document MTN.GNS/W/120. Senior manager: Entry for a period of initial stay up to a maximum of three years for senior managers who have been employed by their employer for at least 12 months prior to their proposed transfer to New Zealand. Specialist: Entry for a period of initial stay up to a maximum of three years.										
Installers or servicers	In respect of the following services sectors and sub-sectors in MTN.GNS/W/120 only: <table border="1" data-bbox="774 1713 1364 1966"> <thead> <tr> <th data-bbox="774 1713 1252 1747"><u>SECTORS AND SUB-SECTORS</u></th><th data-bbox="1252 1713 1364 1747"><u>CPC</u></th></tr> </thead> <tbody> <tr> <td data-bbox="774 1780 1252 1814">1 BUSINESS SERVICES</td><td data-bbox="1252 1780 1364 1814"></td></tr> <tr> <td data-bbox="774 1814 1252 1848"> B. Computer and Related Services</td><td data-bbox="1252 1814 1364 1848"></td></tr> <tr> <td data-bbox="774 1848 1252 1881"> a. Consultancy services</td><td data-bbox="1252 1848 1364 1881">841</td></tr> <tr> <td data-bbox="774 1881 1252 1966"> related to the installation</td><td data-bbox="1252 1881 1364 1966"></td></tr> </tbody> </table>	<u>SECTORS AND SUB-SECTORS</u>	<u>CPC</u>	1 BUSINESS SERVICES		B. Computer and Related Services		a. Consultancy services	841	related to the installation	
<u>SECTORS AND SUB-SECTORS</u>	<u>CPC</u>										
1 BUSINESS SERVICES											
B. Computer and Related Services											
a. Consultancy services	841										
related to the installation											

Entry in the following categories only	Conditions (including duration of stay)
	of computer hardware b. Software implementation services 842 c. Data Processing Services 843 d. Data base services 844 6 ENVIRONMENTAL SERVICES A. Sewage services 9401 B. Refuse disposal services 9402 C. Sanitation and similar services 9403 Cleaning services of exhaust gases 9404 Noise abatement services 9405 Nature and landscape protection services 9406 Other environmental protection services n.e.c. 9409 Entry for periods not exceeding three months in any 12-month period.

3. Notwithstanding the commitments set out above, New Zealand remains unbound in cases of labour/management disputes, and also with respect to ships' crews.

4. With respect to audiovisual services, the New Zealand immigration policy, based on the Immigration Act 1987 and the Immigration Regulations 1999, stipulates a special procedure for the granting of visas to entertainers, performing artists and associated support personnel for work purposes. To be eligible for a work visa or work permit, such applicants must come within the policy guidelines agreed to between the Minister of Immigration, independent promoters, agents or producers and the relevant performing artists' unions.

5. All the commitments in respect of the presence of natural persons made in New Zealand's Schedule of Specific Commitments in the WTO (as currently set out in GATS/SC/62, GATS/SC/62/Suppl.1, and GATS/SC/62/Suppl.2), including any requirements, regulations and additional commitments, apply to the service suppliers of Hong Kong, China.