

Chapter 13

Temporary Entry for Business Persons

Article 13.1: Definitions

For the purposes of this Chapter:

- (a) **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;
- (b) **business visitor** means a national of a Party who is seeking to travel to the other Party for business purposes, including for investment purposes, whose remuneration and financial support for the duration of the visit is derived from sources outside the granting Party, and who is not engaged in making direct sales to the general public or in supplying goods or services themselves.

For the purposes of qualifying under this category, a national seeking temporary entry under the present category, shall present¹³⁻¹

- (i) proof of nationality of a Party;
- (ii) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
- (iii) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labour market.

Each Party shall provide that a business person may satisfy the requirements of subparagraph (b)(iii) by demonstrating that:

- (A) the source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
 - (B) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory.
- (c) **contractual service supplier** means a national:
- (i) who has high level technical or professional qualifications, skills and experience and:
 - (A) who is an employee of an enterprise of a Party that has concluded a contract for the supply of a service within the other

¹³⁻¹In addition to the requirements in Article 13.1(b)(i) to (iii), temporary entry will only be granted to business persons who also meet the requirements of a Party's immigration measures.

Party and which does not have a commercial presence within that Party; or

(B) who is engaged by an enterprise lawfully and actively operating in the other Party in order to supply under a contract within that Party; and

(ii) who is assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in the granting Party for their nominated occupation.

Nothing in (A) or (B) above shall preclude a Party from requiring an employment contract between the national and the enterprise operating in the granting Party.

(d) **dependent** means:

(i) For Australia, a person who meets the requirements for a dependent or dependent child as defined in the Migration Regulations 1994.

(ii) For Chile, a family member who lives with the business person, including the parents, children and the concubine.

(e) **executive** means a national who primarily directs the management of an enterprise, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the enterprise. An executive would not directly perform tasks related to the actual provision of the service or the operation of the enterprise.

(f) **granting Party** means a Party who receives an application for temporary entry from a national of the other Party who is covered by Article 13.2.

(g) **immigration formality** means a visa, employment pass, or other document or electronic authority granting a national of one Party the right:

(i) in the case of business visitors, to enter and visit the granting Party;

(ii) in the case of executives and their accompanying spouses, intra-corporate transferees and their accompanying spouses and contractual service suppliers and their accompanying spouses, to enter, reside and work in the granting Party; or

(iii) in the case of dependents of executives, intra-corporate transferees and contractual service suppliers, to enter and reside in the territory of the granting Party.

(h) **immigration measure** means a measure affecting the entry and sojourn of aliens.

- (i) **intra-corporate transferee** means an employee of an enterprise of a Party established in the territory of the other Party through a branch, subsidiary or affiliate which is lawfully and actively operating in that Party, who is transferred by that enterprise to fill a position in the branch, subsidiary or affiliate of the enterprise in the granting Party, and who is:
- (i) **a manager** which means a national who will be responsible for the entire or a substantial part of the operations of the enterprise in the granting Party, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise; or
 - (ii) **a specialist** which means a national with advanced trade, technical or professional skills. The person seeking entry must be assessed as having the necessary qualifications or alternative credentials accepted as meeting the granting Party's domestic standards for the relevant occupation.
- For the purposes of qualifying under this category, a national seeking temporary entry under the present category, shall present¹³⁻²
- (A) proof of nationality of a Party;
 - (B) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
 - (C) documentation demonstrating the attainment of the relevant minimum educational requirements or alternative credentials.
- (j) **spouse** means:
- (i) For Australia, a person who meets the requirements for a spousal relationship as defined in the Migration Regulations 1994.
 - (ii) For Chile, a person who meets the requirements for a spousal relationship under Chilean domestic laws and regulations.
- (k) **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.

¹³⁻² In addition to the requirements in Article 13.1(i)(A) to (C), temporary entry will only be granted to business persons who also meet the requirements of a Party's immigration measures.

Article 13.2: Scope and Coverage

1. This Chapter shall apply to measures affecting the movement of nationals of a Party into the territory of the other Party where such persons are:

- (a) business visitors;
- (b) contractual service suppliers;
- (c) executives of a business headquartered in a Party, establishing a branch or subsidiary of that business in the other Party; or
- (d) intra-corporate transferees.

2. This Chapter does not apply to measures affecting nationals 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 13.3: General Obligations

1. Each Party shall apply expeditiously its measures relating to the provisions of this Chapter 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 Agreement shall prevent a Party from applying measures to regulate the entry of nationals 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 nationals 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 and Chapter 9 (Cross-Border Trade in Services).

3. The sole fact of requiring nationals to meet eligibility requirements prior to entry to a Party shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter and Chapter 9 (Cross-Border Trade in Services).

4. Any measure regarding temporary entry of business persons adopted and maintained by a Party at its own initiative or as a result of an agreement between the Parties, that provides for more liberal access for and/or treatment of business persons covered by this Chapter, shall be accorded to business persons covered by this Chapter. However, with respect to such measures adopted or maintained by a Party at its own initiative, any more liberal access and/or treatment under such measures shall only be accorded for so long as the measures are in place.

Article 13.4: Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons, including spouses and dependents of intra-corporate transferees, who are otherwise qualified for entry under applicable measures including those relating to public health and safety and

national security, in accordance with this Chapter, including the provisions of Annex 13-A.

2. Each Party shall ensure that fees charged by its competent authorities on applications for an immigration formality do not constitute an unjustifiable impediment to the movement of nationals under this Chapter.
3. The temporary entry granted by virtue of this Chapter does not replace the requirements needed to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorising the temporary entry.

Article 13.5: Provision of Information

1. Each Party shall:
 - (a) make publicly available explanatory material on all relevant measures which pertain to or affect the operation of this Chapter, including any new or changed measures;
 - (b) no later than six months after the date of entry into force of this Agreement provide the other Party with a consolidated document describing the requirements for temporary entry under this Chapter in such a manner as will enable business persons of the other Party to become acquainted with them; and
 - (c) maintain appropriate mechanisms to respond to inquiries from the other Party, and interested persons of the other Party, regarding measures affecting the temporary entry and temporary stay of nationals of the other Party.
2. Each Party shall collect and maintain, and make available upon request to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documents.

Article 13.6: Consultations

1. The Parties agree to consult on any issue raised by a Party that relates to this Chapter. Such consultations may include:
 - (a) consideration of suggestions to further facilitate temporary entry of business persons;
 - (b) consideration of the development of common criteria and interpretations for the implementation of this Chapter; and

- (c) any concerns regarding a refusal to grant temporary entry under this Chapter.
- 2. Consultations shall include officials from the Parties' immigration authorities.

Article 13.7: Dispute Settlement

1. A Party may not initiate proceedings under Chapter 21 (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 13.3 unless:
 - (a) the matter involves a pattern of practice;
 - (b) the business person has exhausted the available domestic remedies regarding the particular matter; and
 - (c) the Parties have undertaken consultations in accordance with Article 13.6.
2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted where there is undue delay in the remedial process which is attributable to the Party in which the process is undertaken.

Article 13.8: Relation to Other Chapters

1. Except for this Chapter, Chapters 1 (Initial Provisions), 2 (General Definitions), 20 (Institutional Arrangements), 21 (Dispute Settlement), and 23 (Final Provisions), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.
2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Article 13.9: Application of Regulations

1. To the extent possible, each Party shall, on request, provide to interested persons a concise statement addressing comments received on proposed and existing regulations relating to the temporary entry of business persons.
2. Where an application for an immigration formality is required by a Party, the Party shall process expeditiously complete applications for immigration formalities received from nationals of the other Party covered by Article 13.2, including further immigration formality requests.
3. Each Party shall upon request, and within a reasonable period after a complete application by a national covered by Article 13.2 requesting temporary entry is lodged, notify the applicant of:

- (a) receipt of the application;
- (b) the status of the application; and
- (c) the decision concerning the application, including, if approved, the period of stay and other conditions; or if refused, the reasons for refusal and any avenues for merits review.

Annex 13-A

Temporary Entry for Business Persons

Section 1

1. In the case of Chile:
 - (a) Business persons who enter Chile under any of the categories set out in Article 13.2, including spouses and dependants of intra-corporate transferees, shall be deemed to be engaged in activities which are in the country's interest.
 - (b) Business persons who enter Chile under any of the categories set out in Article 13.2 and are issued a temporary visa shall have that temporary visa extended for subsequent periods provided the conditions on which it is based remain in effect, without requiring that person to apply for permanent residence.
 - (c) When a national:
 - (i) has been granted the right to temporary entry under Article 13.4 for longer than 12 months; and
 - (ii) has a spouse;

Chile shall, upon application by an accompanying spouse of a national of Australia who meets Chile's criteria for the grant of an immigration formality, grant that accompanying spouse the right of temporary entry, stay, work and movement, for an equal period to that of the national.
 - (d) Business persons who enter Chile may also obtain an identity card for foreigners.

Section 2

2. In the case of Australia:

For the purposes of this Section of the Annex:

service seller means a national who is a sales representative of a service supplier of that Party who is seeking temporary entry to the other Party for the purpose of negotiating, or entering into, agreements for the sale of services for that service supplier, where such a representative will not be engaged in making direct sales to the general public or in supplying services directly.

Short Term Temporary Entry

- (a) Australia shall, upon application by a business visitor of Chile who meets Australia's criteria for the grant of an immigration formality, grant that business visitor, through a single immigration formality, the right of temporary entry to, and stay and movement in, Australia, consistent with the purpose of the visit, for a period of up to 90 days. A business visitor of Chile who is a service seller may stay for a period of up to 12 months.

Long Term Temporary Entry

- (b) Australia shall, upon application by a contractual service supplier, an executive or an intra-corporate transferee, who is a national of Chile who meets Australia's criteria for the grant of an immigration formality, grant that person, through a single immigration formality, the right of temporary entry to, and stay, work and movement in, Australia. These rights shall be granted for an initial period of time, sufficient to supply relevant services and consistent with the purpose of the visit, for:
 - (i) an intra-corporate transferee, who meets the definition of an intra-corporate transferee and who is a manager, for a period of up to four years, with the possibility of further stay;
 - (ii) an intra-corporate transferee, who meets the definition of an intra-corporate transferee and who is a specialist, for a period of up to two years, with the possibility of further stay; and
 - (iii) a contractual service supplier for a period of up to one year, with the possibility of further stay.
- (c) When a national:
 - (i) has been granted the right to temporary entry under Article 13.4 for longer than 12 months; and
 - (ii) has a spouse;

Australia shall, upon application by an accompanying spouse of a national of Chile who meets Australia's criteria for the grant of an immigration formality, grant that accompanying spouse the right of temporary entry, stay, work and movement, for an equal period to that of the national.