

CHAPTER 10

MOVEMENT OF NATURAL PERSONS

Article 10.1

Objectives

The objectives of this Chapter are to:

- (a) provide for rights and obligations additional to those set out in Chapter 8 (Trade in Services) and Chapter 12 (Investment) in relation to the movement of natural persons between the Parties for business purposes;
- (b) facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties; and
- (c) establish streamlined and transparent procedures for applications for immigration formalities for the temporary entry of natural persons to whom this Chapter applies,

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

Article 10.2

Scope

1. This Chapter shall apply, as set out in each Party's schedule of specific commitments in Annex 4 (Schedules of Movement of Natural Persons Commitments), to measures affecting the movement of natural persons of a Party into the territory of the other Party. Such persons may include:

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

2. This Chapter 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, residence or employment on a permanent basis.

Article 10.3

Definitions

For the purposes of this Chapter:

- (a) **granting Party** means a Party who receives an application for temporary entry from a natural person of the other Party who is covered by paragraph 1 of Article 10.2 (Scope);
- (b) **immigration formality** means a visa, permit, pass or other document or electronic authority permitting a natural person of a Party to enter, reside, work or establish commercial presence in the territory of the granting Party; and
- (c) **temporary entry** means entry by a natural person covered by this Chapter, without the intent to establish permanent residence.

Article 10.4

Immigration Measures

1. Nothing in this Chapter, Chapter 8 (Trade in Services) or Chapter 12 (Investment) 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 this Chapter or to unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

2. The sole fact of requiring natural persons to meet eligibility requirements prior to entry to a Party shall not be regarded as nullifying or impairing benefits accruing to the other Party under this Chapter, or of unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement.

Article 10.5

Grant of Temporary Entry

Each Party shall, in accordance with this Chapter and that Party's schedule of specific commitments in Annex 4 (Schedules of Movement of Natural Persons Commitments), grant temporary entry or extension of temporary stay to natural persons of the other Party covered by paragraph 1 of Article 10.2 (Scope), provided those natural persons:

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

Article 10.6

Schedules of Commitments for the Movement of Natural Persons

Each Party shall set out in Annex 4 (Schedules of Movement of Natural Persons Commitments) a schedule containing its specific commitments for the temporary entry and stay in its territory of natural persons of the other Party covered by paragraph 1 of Article 10.2 (Scope). These schedules shall specify the conditions and limitations governing those commitments, including lengths of stay.

Article 10.7

Spouses and Dependants

For a natural person who has been granted temporary entry or extension of temporary stay under this Chapter for at least 12 months and who has a spouse and/or dependants, a Party shall, upon application, grant the accompanying spouse and/or dependants temporary entry and stay in its territory for an equal period to that of the natural person. A Party shall also, upon application, allow the accompanying spouses and/or dependants who have been granted temporary entry and stay under an immigration formality pursuant to this Article to work subject to the Party's laws and regulations, relevant licensing, administrative and registration requirements.

Article 10.8

Processing of Applications

1. Where an application for an immigration formality is required by a Party, that Party shall process promptly complete applications for immigration formalities or extensions thereof received from natural persons or representative¹⁶ of natural persons of the other Party covered by paragraph 1 of Article 10.2 (Scope).

2. Each Party shall, upon request and within a reasonable period after receiving a complete application for an immigration formality from a natural person or representative of natural person of the other Party covered by paragraph 1 of Article 10.2 (Scope), notify the natural person or its representative of:

- (a) the 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, any avenues for review.

3. In relation to a complete application for an immigration formality covered by paragraph 1 of Article 10.2 (Scope), where practicable the granting Party shall both

¹⁶ For the purposes of this Article, "representative" means:

- (a) for Australia, a duly appointed migration agent or authorized recipient in accordance with Australia's immigration law and regulations; and
- (b) for Malaysia, a prospective employer or authorised agent in accordance with immigration laws and regulations and directives issued by the Director General of Immigration related to immigration matters.

make a decision and notify the natural person or its representative of that decision prior to the natural person's arrival in its territory.

4. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with each Party's laws and regulations.

Article 10.9 Transparency

Each Party shall:

- (a) publish or otherwise make publicly available explanatory material on all relevant immigration formalities which pertain to or affect the operation of this Chapter;
- (b) no later than six months after the date of entry into force of this Agreement publish, such as on its immigration website, or otherwise make publicly available, the requirements for the movement of natural persons under this Chapter, including explanatory material and relevant forms and documents that will enable natural persons of the other Party to become acquainted with those requirements;
- (c) establish or 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 natural persons of the other Party; and
- (d) upon modifying or amending any immigration measure that affects the temporary entry of natural persons, ensure that the information published or otherwise made available pursuant to subparagraph (b) is updated as soon as possible within 90 days.

Article 10.10 Application of Chapter 20 (Consultations and Dispute Settlement)

1. The Parties shall endeavour to settle any differences arising out of the implementation of this Chapter through consultations.

2. A Party shall not have recourse to Chapter 20 (Consultations and Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

- (a) the matter involves a pattern of practice on the part of the granting Party; and
- (b) the natural persons affected have exhausted all available domestic remedies regarding the particular matters.