

CHAPTER 9

TEMPORARY ENTRY OF BUSINESS PERSONS

Article 9.1 : Objectives

The objectives of this Chapter are to:

- (a) facilitate the temporary entry 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 Chapters 8 (Cross-Border Trade in Services) and 10 (Investment) in relation to the temporary entry of business persons between the Parties,

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

Article 9.2 : Definitions

For the purposes of this Chapter:

business person means a natural person of a Party who is engaged in trade in goods, the provision of services or the conduct of investment;

business visitor means a natural person of either Party who is not seeking to enter the labour market of the other Party, whose principal place of business, actual place of remuneration, and predominant place of accrual of profits remain outside the territory of the other Party and is:

- (a) a goods seller, being a business person who is seeking temporary entry into the territory of the other Party to negotiate for the sale of goods where such negotiations do not involve direct sales to the general public;
- (b) a service seller being a business person who is a sales representative of a service supplier of that Party and is seeking temporary entry into the territory of 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; or
- (c) an investor of a Party, as defined in Chapter 10 (Investment), or a duly authorised representative of an investor of a Party, seeking temporary entry into the territory of the other Party to establish, expand, monitor or dispose of an investment of that investor.

commercial presence means any type of business or professional establishment, including through:

- (a) the constitution, acquisition or maintenance of an enterprise; or
- (b) the creation or maintenance of a branch or a representative office, within the territory of a Party;

contractual service supplier means a business person of a Party who:

- (a) possesses appropriate educational and other qualifications relevant to the service to be provided;
- (b) is engaged in the supply of a contracted service as an employee of a juridical person that has no commercial presence in the other Party, where the juridical person obtains a service contract from a juridical person of the other Party;
- (c) has been an employee of the juridical person for a period of not less than one year immediately preceding the date of application for admission. The juridical person has to obtain a service contract for a period not exceeding one year from a juridical person in the other Party, who is the final consumer of the service which is supplied. The contract shall comply with the domestic laws and regulations of the other Party; and
- (d) receives no remuneration from a juridical person located in the other Party;

granting Party means a Party who receives an application for temporary entry from a business person of the other Party who is covered by Article 9.3;

immigration formality means a visa, permit, pass or other document or electronic authority allowing a natural person of a Party to enter, reside or work in the territory of the granting Party;

independent service supplier/professional means a natural person of a Party who:

- (a) is a self-employed services supplier working on a contractual basis, without a requirement for commercial presence;
- (b) has advanced technical or professional skills and a valid contract which enables them to work in the territory of the other Party; and
- (c) has a qualification resulting from three or more years of formal post-secondary school education leading to a recognised degree or diploma in the field in which the natural person wishes to supply their services;

installer and servicer means a natural person who is an installer or servicer of machinery or equipment, where such installation 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;

intra-corporate transferee means an executive, manager or a specialist who is an employee of a service supplier or investor of a Party with a commercial presence in the territory of the other Party and who have been so employed for a period not less than one year immediately preceding the date of the application for temporary entry where:

- (a) **executive** means a natural person within an organisation who primarily directs the management of the organisation, 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 business. An executive would not directly perform tasks related to the actual supply of a service nor the operation of an investment;
- (b) **manager** means a natural person within an organisation who primarily directs the organisation or a department of the organisation; supervises and controls the work of other supervisory, professional or managerial employees; has the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercises discretionary authority over day-to-day operations. 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 supply of the service or the operation of an investment; and
- (c) **specialist** means a natural person within an organisation who possesses knowledge at an advanced level of technical expertise and proprietary knowledge on the services, research, equipment, techniques, or management of the organisation;

natural person of a Party means:

- (a) for Korea, a Korean national within the meaning of the *Nationality Act*, or its successor legislation, or a permanent resident of Korea; and
- (b) for New Zealand, a New Zealand national or a permanent resident under its domestic laws; and

temporary entry means entry into the territory of a Party by a business person covered by this Chapter of the other Party without the intent to establish permanent residence.

Article 9.3 : Scope

1. This Chapter shall apply, as set out in each Party's Schedule of specific commitments in Annex 9-A or 9-B to measures affecting the temporary entry of business persons of a Party into the territory of the other Party. Such business persons may include:

- (a) business visitors;

- (b) independent service suppliers/professionals;
- (c) intra-corporate transferees;
- (d) installers and servicers; or
- (e) contractual service suppliers.

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 8 (Cross-Border Trade in Services) or 10 (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 commitments made by a Party under this Agreement. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing commitments made by a Party under this Agreement.

Article 9.4 : Grant of Temporary Entry

1. Each Party shall, in accordance with that Party's Schedule of specific commitments in Annex 9-A or 9-B, grant temporary entry to business persons of the other Party who are otherwise qualified for entry in accordance with Article 9.3.

2. Each Party shall set out in Annexes 9-A and 9-B a Schedule containing its commitments for the entry and temporary stay in its territory of business persons of the other Party. These Schedules of specific commitments 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 specific commitments.

3. Where a Party makes a commitment under paragraphs 1 and 2, that Party shall grant temporary entry or extension of temporary stay to business persons of the other Party provided 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.

4. Temporary entry granted pursuant to this Chapter shall 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.

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

6 Neither Party shall, except as provided for in its Schedule of specific commitments in Annex 9-A or 9-B, require labour market tests or other procedures of similar effect, or impose or maintain any numerical restriction relating to temporary entry as a condition for entry.

Article 9.5 : Transparency

Each Party shall:

- (a) publish, such as on its immigration website, by the date of entry into force of this Agreement, 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 its requirements; and
- (b) upon modifying or amending an immigration measure that affects the temporary entry of business persons, ensure that the information published pursuant to this Article is updated by the date of entry into force of that modification or amendment.

Article 9.6 : Expeditious Application Procedures

1. Where an application for an immigration formality is required by a Party, the Party shall process expeditiously complete applications for immigration formalities or extensions thereof, received from business persons of the other Party covered by Article 9.3.

2. Upon receipt of an application for temporary entry that has been completed and submitted in accordance with its domestic laws and regulations, a Party shall, without undue delay, make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.

3. On 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 9.7 : Dispute Settlement

1. The Parties shall endeavour to favourably resolve, through consultations or negotiations between the Parties, any differences or dispute arising out of the implementation of this Chapter.

2. A Party shall not initiate proceedings under Chapter 19 (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 any available administrative remedies regarding the particular matter.

3. The remedies referred to in paragraph 2(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the relevant competent authority within one 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 9.8 : Relation to Other Chapters

Except for this Chapter, Chapters 1 (Initial Provisions and Definitions), 18 (Institutional Provisions), 19 (Dispute Settlement) to the extent permitted by Article 9.7, 20 (General Provisions and Exceptions) and 21 (Final Provisions), and Articles 17.2 (Publication), 17.4 (Administrative Proceedings) and 17.5 (Notification and Provision of Information), nothing in this Agreement shall impose any obligation on a Party regarding its immigration measures.

ANNEX 9-A

KOREA'S SCHEDULE OF SPECIFIC COMMITMENTS ON TEMPORARY ENTRY OF BUSINESS PERSONS

1. Korea requires a business person of New Zealand seeking temporary entry into its territory under the provisions of this Chapter and this Annex to obtain appropriate immigration formalities prior to entry.
2. Korea may refuse to grant temporary entry to a natural person who is likely to be involved in any labour dispute that is in progress and adversely affect the settlement of such labour dispute.

Business Visitors of New Zealand

3. Entry and temporary stay shall be granted to a business visitor of New Zealand for a period of not more than 90 days without requiring that person to obtain an employment authorisation, provided that such person otherwise complies with immigration measures applicable to temporary entry.

Intra-Corporate Transferees of New Zealand

4. Entry and temporary stay shall be granted for a period of up to three years, which may be extended for subsequent periods provided the conditions on which it is based remain in effect, to an intra-corporate transferee of New Zealand, provided that such person otherwise complies with immigration measures applicable to temporary entry.

Contractual Service Suppliers of New Zealand

5. Entry and temporary stay shall be granted for a period up to one year or the period of the contract, whichever is less, to a natural person of New Zealand who is seeking to provide services as a contractual service supplier in a profession as set out in Appendix 9-A-1, provided that such person otherwise complies with immigration measures applicable to temporary entry.
6. Contractual service supplier means a natural person of New Zealand who:
 - (a) is employed or engaged in a specialised occupation that requires theoretical and practical application of specialised knowledge;
 - (b) possesses the necessary academic and professional qualifications and professionally qualified competency-based experience to perform an activity in the sector relevant to the service to be provided in accordance with the laws, regulations or requirements of Korea;

- (c) is engaged in the supply of a contracted service as an employee of an enterprise that has no commercial presence in Korea, where the enterprise obtains a service contract for a period not exceeding one year from an enterprise of Korea, who is final consumer of the services supplied. The contract shall comply with the laws and regulations of Korea;
- (d) has been an employee of the enterprise for a period of not less than one year immediately preceding the date of application for admission; and
- (e) is required to receive no remuneration from an enterprise located in Korea.

7. A labour market test may be required as a condition for temporary entry of contractual service suppliers, or a numerical restriction may be imposed relating to temporary entry of contractual service suppliers.

Appendix 9-A-1

List of Contractual Service Suppliers

A contract is required to be obtained in the following service-supplying activities or subsectors, without conferring entitlement to exercise the professional title of Korea:

- (a) services related to the instalment, management or repair of industrial equipment or machinery, excluding construction and power generation equipment, for a juridical person in Korea who purchases the equipment or the machinery from a juridical person employing the natural person located in New Zealand;
- (b) consultancy services related to technical knowledge or skill in natural sciences applied to information technology, e-business, biotechnology, nanotechnology, digital electronics, and environmental industry;
- (c) consultancy services for foreign accounting standards and auditing, training of Certified Public Accountants, transfer of auditing technology and exchange of information related to accounting, auditing and bookkeeping services to a Korean accounting firm or office through a membership contract;
- (d) architectural services subject to collaboration with architects registered under Korean domestic law in the form of joint contracts;
- (e) management consulting services; and
- (f) professional engineers in the following services:
 - (i) consultancy services related to the installation of computer hardware;
 - (ii) software research and development based implementation services;
 - (iii) data management services;
 - (iv) data system services; or
 - (v) specialty engineering design services for automobiles.

ANNEX 9-B

NEW ZEALAND'S SCHEDULE OF SPECIFIC COMMITMENTS ON TEMPORARY ENTRY OF BUSINESS PERSONS

1. The following sets out New Zealand's commitments in accordance with Article 9.4 in respect of the temporary entry of business persons.
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 Korea through the presence of natural persons of Korea in New Zealand except as set out in these commitments.

General Commitments

Entry in the following categories only	Conditions and Limitations (Including Length of Stay)
Business visitors	With respect to all business visitors, the period of stay shall not exceed a total of 90 days in any calendar year.
Intra-corporate transferees	Senior Managers: A natural person, who has been employed by their employer for at least 12 months prior to their proposed transfer to New Zealand, Entry for a period of initial stay up to a maximum of three years. Specialists: Specialists are responsible for or employed in a particular aspect of an organisation's operations in New Zealand. Skills are assessed in terms of the applicant's employment experience, qualifications, and suitability for the position. Entry for a period of initial stay up to a maximum of three years.
Installers and Servicers	Entry for periods not exceeding three months in any 12 month period.

In addition to the general commitments above on business visitors, intra-corporate transferees, and installers and servicers, New Zealand makes the following sector-specific commitments:

Sectoral Commitments

Entry in the following categories only	Conditions and Limitations (Including Length of Stay)
Independent Service Suppliers (Self-employed services suppliers working on a contractual basis, without a requirement for commercial presence) In the following category only: A. Independent Professionals: <u>Definition:</u> Self-employed natural persons with advanced technical or professional skills, working under a valid contract in New Zealand, without the requirement for a commercial presence. Independent professionals must also have: (i) a qualification resulting from three or more years of formal post-secondary school education leading to a recognised degree or diploma; and (ii) six or more years of experience. Both (i) and (ii) must be in the field in which the Independent Professionals wish to supply their professional services.¹	In respect of the services sectors set out in New Zealand's <i>Schedule of Specific Commitments in the WTO</i> (as currently set out in <i>GATS/SC/62</i>, <i>GATS/SC/62/Suppl.1</i>, and <i>GATS/SC/62/Suppl.2</i>) only and subject to economic needs tests, entry for a period of stay up to a maximum of 12 months

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

4. With respect to audio-visual 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 New Zealand Minister of

¹ These qualifications must be recognised by the appropriate New Zealand authority where under New Zealand domestic laws such recognition is a condition of the provision of that service in New Zealand.

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*), including any requirements, regulations and additional commitments, apply to the services suppliers of Korea.